

## **APPENDIX**



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# **APPENDIX A**





**U.S. Department of Justice**  
Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

November 14, 2018

**MEMORANDUM FOR EMMET T. FLOOD**  
**COUNSEL TO THE PRESIDENT**

*Re: Designating an Acting Attorney General*

After Attorney General Jefferson B. Sessions III resigned on November 7, 2018, the President designated Matthew G. Whitaker, Chief of Staff and Senior Counselor to the Attorney General, to act temporarily as the Attorney General under the Federal Vacancies Reform Act of 1998, 5 U.S.C. §§ 3345–3349d. This Office had previously advised that the President could designate a senior Department of Justice official, such as Mr. Whitaker, as Acting Attorney General, and this memorandum explains the basis for that conclusion.

Mr. Whitaker's designation as Acting Attorney General accords with the plain terms of the Vacancies Reform Act, because he had been serving in the Department of Justice at a sufficiently senior pay level for over a year. *See id.* § 3345(a)(3). The Department's organic statute provides that the Deputy Attorney General (or others) may be Acting Attorney General in the case of a vacancy. *See* 28 U.S.C. § 508. But that statute does not displace the President's authority to use the Vacancies Reform Act as an alternative. As we have previously recognized, the President may use the Vacancies Reform Act to depart from the succession order specified under section 508. *See Authority of the President to Name an Acting Attorney General*, 31 Op. O.L.C. 208 (2007) ("2007 Acting Attorney General").

We also advised that Mr. Whitaker's designation would be consistent with the Appointments Clause of the U.S. Constitution, which requires the President to obtain "the Advice and Consent of the Senate" before appointing a principal officer of the United States. U.S. Const. art. II, § 2, cl. 2. Although an Attorney General is a principal officer requiring Senate confirmation, someone who temporarily performs his duties is not. As all three branches of government have long recognized, the President may designate an acting official to perform the duties of a vacant principal office, including a Cabinet office, even when the acting official has not been confirmed by the Senate.

Congress did not first authorize the President to direct non-Senate-confirmed officials to act as principal officers in 1998; it did so in multiple statutes starting in 1792. In that year, Congress authorized the President to ensure the government's uninterrupted work by designating persons to perform temporarily the work of vacant offices. The President's authority applied to principal offices and did not require the President to select Senate-confirmed officers. In our brief survey of the history, we have identified over 160 times before 1860 in which non-Senate-confirmed persons performed, on a temporary basis, the duties of such high offices as Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Secretary of the Interior, and Postmaster General. While designations to the office of Attorney General were less

frequent, we have identified at least one period in 1866 when a non-Senate-confirmed Assistant Attorney General served as Acting Attorney General. Mr. Whitaker's designation is no more constitutionally problematic than countless similar presidential orders dating back over 200 years.

Were the long agreement of Congress and the President insufficient, judicial precedent confirms the meaning of the Appointments Clause in these circumstances. When Presidents appointed acting Secretaries in the nineteenth century, those officers (or their estates) sometimes sought payment for their additional duties, and courts recognized the lawfulness of such appointments. The Supreme Court confirmed the legal understanding of the Appointments Clause that had prevailed for over a century in *United States v. Eaton*, 169 U.S. 331 (1898), holding that an inferior officer may perform the duties of a principal officer “for a limited time[] and under special and temporary conditions” without “transform[ing]” his office into one for which Senate confirmation is required. *Id.* at 343. The Supreme Court has never departed from *Eaton*'s holding and has repeatedly relied upon that decision in its recent Appointments Clause cases.

In the Vacancies Reform Act, Congress renewed the President's authority to designate non-Senate-confirmed senior officials to perform the functions and duties of principal offices. In 2003, we reviewed the President's authority in connection with the Director of the Office of Management and Budget (“OMB”), who is a principal officer, and concluded that the President could designate a non-Senate-confirmed official to serve temporarily as Acting Director. *See Designation of Acting Director of the Office of Management and Budget*, 27 Op. O.L.C. 121 (2003) (“*Acting Director of OMB*”). Presidents George W. Bush and Barack Obama placed non-Senate-confirmed officials in several lines of agency succession and actually designated unconfirmed officials as acting agency heads. President Trump, too, has previously exercised that authority in other departments; Mr. Whitaker is not the first unconfirmed official to act as the head of an agency in this administration.

It is no doubt true that Presidents often choose acting principal officers from among Senate-confirmed officers. But the Constitution does not mandate that choice. Consistent with our prior opinion and with centuries of historical practice and precedents, we advised that the President's designation of Mr. Whitaker as Acting Attorney General on a temporary basis did not transform his position into a principal office requiring Senate confirmation.

### **I. The Vacancies Reform Act**

Mr. Whitaker's designation as Acting Attorney General comports with the terms of the Vacancies Reform Act. That Act provides three mechanisms by which an acting officer may take on the functions and duties of an office, when an executive officer who is required to be appointed by the President with the advice and consent of the Senate “dies, resigns, or is otherwise unable to perform the functions and duties of the office.” 5 U.S.C. § 3345(a). First, absent any other designation, the “first assistant” to the vacant office shall perform its functions and duties. *Id.* § 3345(a)(1). Second, the President may depart from that default course by directing another presidential appointee, who is already Senate confirmed, to perform the functions and duties of the vacant office. *Id.* § 3345(a)(2). Or, third, the President may designate an officer or employee within the same agency to perform the functions and duties of



the vacant office, provided that he or she has been in the agency for at least 90 days in the 365 days preceding the vacancy, in a position for which the rate of pay is equal to or greater than the minimum rate for GS-15 of the General Schedule. *Id.* § 3345(a)(3). Except in the case of a vacancy caused by sickness, the statute imposes time limits on the period during which someone may act. *Id.* § 3346. And the acting officer may not be nominated by the President to fill the vacant office and continue acting in it, unless he was already the first assistant to the office for at least 90 days in the 365 days preceding the vacancy or is a Senate-confirmed first assistant. *Id.* § 3345(b)(1)–(2); *see also Nat'l Labor Relations Bd. v. SW General, Inc.*, 137 S. Ct. 929, 941 (2017).

#### A.

The Vacancies Reform Act unquestionably authorizes the President to direct Mr. Whitaker to act as Attorney General after the resignation of Attorney General Sessions on November 7, 2018.<sup>1</sup> Mr. Whitaker did not fall within the first two categories of persons made eligible by section 3345(a). He was not the first assistant to the Attorney General, because 28 U.S.C. § 508(a) identifies the Deputy Attorney General as the “first assistant to the Attorney General” “for the purpose of section 3345.” Nor did Mr. Whitaker already hold a Senate-confirmed office. Although Mr. Whitaker was previously appointed, with the advice and consent of the Senate, as the United States Attorney for the Southern District of Iowa, he resigned from that position on November 25, 2009. At the time of the resignation of Attorney General Sessions, Mr. Whitaker was serving in a position to which he was appointed by the Attorney General.

In that position, Mr. Whitaker fell squarely within the third category of officials, identified in section 3345(a)(3). As Chief of Staff and Senior Counselor, he had served in the Department of Justice for more than 90 days in the year before the resignation, at a GS-15 level or higher. And Mr. Whitaker has not been nominated to be Attorney General, an action that would render him ineligible to serve as Acting Attorney General under section 3345(b)(1). Accordingly, under the plain terms of the Vacancies Reform Act, the President could designate

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<sup>1</sup> Attorney General Sessions submitted his resignation “[a]t [the President’s] request,” Letter for President Donald J. Trump, from Jefferson B. Sessions III, Attorney General, but that does not alter the fact that the Attorney General “resign[ed]” within the meaning of section 3345(a). Even if Attorney General Sessions had declined to resign and was removed by the President, he still would have been rendered “otherwise unable to perform the functions and duties of the office” for purposes of section 3345(a). As this Office recently explained, “an officer is ‘unable to perform the functions and duties of the office’ during both short periods of unavailability, such as a period of sickness, and potentially longer ones, such as one resulting from the officer’s removal (which would arguably not be covered by the reference to ‘resign[ation].’)” *Designating an Acting Director of the Bureau of Consumer Financial Protection*, 41 Op. O.L.C. \_\_\_, at \*4 (2017); *see also Guidance on Application of Federal Vacancies Reform Act of 1998*, 23 Op. O.L.C. 60, 61 (1999) (“In floor debate, Senators said, by way of example, that an officer would be ‘otherwise unable to perform the functions and duties of the office’ if he or she were fired, imprisoned, or sick.”). Indeed, any other interpretation would leave a troubling gap in the ability to name acting officers. For most Senate-confirmed offices, the Vacancies Reform Act is “the exclusive means” for naming an acting officer. 5 U.S.C. § 3347(a). If the statute did not apply in cases of removal, then it would mean that no acting officer—not even the first assistant—could take the place of a removed officer, even where the President had been urgently required to remove the officer, for instance, by concerns over national security, corruption, or other workplace misconduct.

Mr. Whitaker to serve temporarily as Acting Attorney General subject to the time limitations of section 3346.

**B.**

The Vacancies Reform Act remains available to the President even though 28 U.S.C. § 508 separately authorizes the Deputy Attorney General and certain other officials to act as Attorney General in the case of a vacancy.<sup>2</sup> We previously considered whether this statute limits the President’s authority under the Vacancies Reform Act to designate someone else to be Acting Attorney General. *2007 Acting Attorney General*, 31 Op. O.L.C. 208. We have also addressed similar questions with respect to other agencies’ succession statutes. See *Designating an Acting Director of the Bureau of Consumer Financial Protection*, 41 Op. O.L.C. \_\_ (2017) (“*Acting Director of CFPB*”); *Acting Director of OMB*, 27 Op. O.L.C. at 121 n.1. In those instances, we concluded that the Vacancies Reform Act is not the “exclusive means” for the temporary designation of an acting official, but that it remains available as an option to the President. We reach the same conclusion here: Section 508 does not limit the President’s authority to invoke the Vacancies Reform Act to designate an Acting Attorney General.

We previously concluded that section 508 does not prevent the President from relying upon the Vacancies Reform Act to determine who will be the Acting Attorney General. Although the Vacancies Reform Act, which “ordinarily is the exclusive means for naming an acting officer,” *2007 Acting Attorney General*, 31 Op. O.L.C. at 209 (citing 5 U.S.C. § 3347), makes an exception for, and leaves in effect, statutes such as section 508, “[t]he Vacancies Reform Act nowhere says that, if another statute remains in effect, the Vacancies Reform Act may not be used.” *Id.* In fact, the structure of the Vacancies Reform Act makes clear that office-specific provisions are treated as exceptions from its generally exclusive applicability, not as provisions that supersede the Vacancies Reform Act altogether.<sup>3</sup> Furthermore, as we noted, “the Senate Committee Report accompanying the Act expressly disavows” the view that, where another statute is available, the Vacancies Reform Act may not be used. *Id.* (citing S. Rep. No. 105-250, at 17 (1998)). That report stated that, “with respect to the specific positions in which temporary officers may serve under the specific statutes this bill retains, the Vacancies [Reform] Act would continue to provide an alternative procedure for temporarily occupying the office.” *Id.* We therefore concluded that the President could direct the Assistant Attorney General for the Civil Division to act as Attorney General under the Vacancies Reform Act, even though the incumbent Solicitor General would otherwise have served under the chain of succession specified in section 508 (as supplemented by an Attorney General order).

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<sup>2</sup> Under 28 U.S.C. § 508(a), in the case of a vacancy in the office of Attorney General, “the Deputy Attorney General may exercise all the duties of that office, and for the purpose of [the Vacancies Reform Act] the Deputy Attorney General is the first assistant to the Attorney General.” If the offices of Attorney General and Deputy Attorney General are both vacant, “the Associate Attorney General shall act as Attorney General,” and “[t]he Attorney General may designate the Solicitor General and the Assistant Attorneys General, in further order of succession, to act as Attorney General.” *Id.* § 508(b).

<sup>3</sup> One section (entitled “Exclusion of certain offices”) is used to exclude certain offices altogether. 5 U.S.C. § 3349c. Office-specific statutes, however, are mentioned in a different section (entitled “Exclusivity”) that generally makes the Vacancies Reform Act “the exclusive means” for naming an acting officer but also specifies exceptions to that exclusivity. *Id.* § 3347(a)(1).

At the time of our 2007 *Acting Attorney General* opinion, the first two offices specified in section 508(a) and (b)—Deputy Attorney General and Associate Attorney General—were both vacant. *See* 31 Op. O.L.C. at 208. That is not currently the case; there is an incumbent Deputy Attorney General. But the availability of the Deputy Attorney General does not affect the President’s authority to invoke section 3345(a)(3). Nothing in section 508 suggests that the Vacancies Reform Act does not apply when the Deputy Attorney General can serve. To the contrary, the statute expressly states that the Deputy Attorney General is the “first assistant to the Attorney General” “for the purpose of section 3345 of title 5” (i.e., the provision of the Vacancies Reform Act providing for the designation of an acting officer). 28 U.S.C. § 508(a). It further provides that the Deputy Attorney General “may” serve as Acting Attorney General, not that he “must,” underscoring that the Vacancies Reform Act remains an alternative means of appointment.<sup>4</sup> These statutory cross-references confirm that section 508 works in conjunction with, and does not displace, the Vacancies Reform Act.

Although the Deputy Attorney General is the default choice for Acting Attorney General under section 3345(a)(1), the President retains the authority to invoke the other categories of eligible officials, “notwithstanding [the first-assistant provision in] paragraph (1).” 5 U.S.C. § 3345(a)(2), (3). Moreover, there is reason to believe that Congress, in enacting the Vacancies Reform Act, deliberately chose to make the second and third categories of officials in section 3345(a) applicable to the office of Attorney General. Under the previous Vacancies Act, the first assistant to an office was also the default choice for filling a vacant Senate-confirmed position, and the President was generally able to depart from that by selecting another Senate-confirmed officer. *See* 5 U.S.C. § 3347 (1994). That additional presidential authority, however, was expressly made inapplicable “to a vacancy in the office of Attorney General.” *Id.*; *see also* Rev. Stat. § 179 (2d ed. 1878). Yet, when Congress enacted the Vacancies Reform Act in 1998, it did away with the exclusion for the office of Attorney General. *See* 5 U.S.C. § 3349c (excluding certain other officers).<sup>5</sup>

Our conclusion that the Vacancies Reform Act remains available, notwithstanding section 508, is consistent with our prior opinions. In *Acting Director of OMB*, we recognized that an OMB-specific statute, 31 U.S.C. § 502(f), did not displace the President’s authority under the Vacancies Reform Act. *See* 27 Op. O.L.C. at 121 n.1 (“The Vacancies Reform Act does not provide, however, that where there is another statute providing for a presidential designation, the Vacancies Reform Act becomes unavailable.”). More recently, we confirmed that the President could designate an Acting Director of the Bureau of Consumer Financial Protection (“CFPB”),

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<sup>4</sup> We do not mean to suggest that a different result would follow if section 508 said “shall” instead of “may,” since as discussed at length in *Acting Director of CFPB*, such mandatory phrasing in a separate statute does not itself oust the Vacancies Reform Act. *See* 41 Op. O.L.C. \_\_\_, \*7–9 & n.3. The point is that, in contrast with the potential ambiguity arising from the appearance of “shall” in the CFPB-specific statute, section 508 expressly acknowledges that the Deputy Attorney General is the first assistant but will not necessarily serve in the case of a vacancy in the office of Attorney General.

<sup>5</sup> When it reported the Vacancies Reform Act, the Senate Committee on Governmental Affairs contemplated that the Attorney General would continue to be excluded by language in a proposed section 3345(c) that would continue to make section 508 “applicable” to the office. *See* S. Rep. No. 105-250, at 13, 25; 144 Cong. Rec. 12,433 (June 16, 1998). But that provision “was not enacted as part of the final bill, and no provision of the Vacancies Reform Act bars the President from designating an Acting Attorney General under that statute.” 2007 *Acting Attorney General*, 31 Op. O.L.C. at 209 n.1.

notwithstanding 12 U.S.C. § 5491(b)(5), which provides that the Deputy Director of the CFPB “shall” serve as Acting Director when the Director is unavailable. *See Acting Director of CFPB*, 41 Op. O.L.C. \_\_\_. We reasoned that the CFPB-specific statute should “interact with the Vacancies Reform Act in the same way as other, similar statutes providing an office-specific mechanism for an individual to act in a vacant position.” *Id.* at \*7–9 & n.3. We noted that the Vacancies Reform Act itself provides that a first assistant to a vacant office “shall perform the functions and duties” of that office unless the President designates someone else to do so, 5 U.S.C. § 3345(a), and that mandatory language in either the CFPB-specific statute or the Vacancies Reform Act does not foreclose the availability of the other statute. *Acting Director of CFPB*, 41 Op. O.L.C. \_\_\_, at \*7–8.

Courts have similarly concluded that the Vacancies Reform Act remains available as an alternative to office-specific statutes. *See Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555–56 (9th Cir. 2016) (General Counsel of the National Labor Relations Board, which has its own office-specific statute prescribing a method of filling a vacancy); *English v. Trump*, 279 F. Supp. 3d 307, 323–24 (D.D.C. 2018) (holding that the mandatory language in the CFPB-specific statute is implicitly qualified by the Vacancies Reform Act’s language providing that the President also “may direct” qualifying individuals to serve in an acting capacity), *appeal dismissed upon appellant’s motion*, No. 18-5007, 2018 WL 3526296 (D.C. Cir. July 13, 2018).

For these reasons, we believe that the President could invoke the Vacancies Reform Act in order to designate Mr. Whitaker as Acting Attorney General ahead of the alternative line of succession provided under section 508.

## II. The Appointments Clause

While the Vacancies Reform Act expressly authorizes the President to select an unconfirmed official as Acting Attorney General, Congress may not authorize an appointment mechanism that would conflict with the Constitution. *See Freytag v. Commissioner*, 501 U.S. 868, 883 (1991). The Appointments Clause requires the President to “appoint” principal officers, such as the Attorney General, “by and with the Advice and Consent of the Senate.” U.S. Const., art. II, § 2, cl. 2. But for “inferior Officers,” Congress may vest the appointment power “in the President alone, in the Courts of Law, or in the Heads of Departments.” *Id.*

The President’s designation of Mr. Whitaker as Acting Attorney General is consistent with the Appointments Clause so long as Acting Attorney General is not a principal office that requires Senate confirmation. If so, it does not matter whether an acting official temporarily filling a vacant principal office is an inferior officer or not an “officer” at all within the meaning of the Constitution, because Mr. Whitaker was appointed in a manner that satisfies the requirements for an inferior officer: He was appointed by Attorney General Sessions, who was the Head of the Department, and the President designated him to perform additional duties. *See Acting Director of OMB*, 27 Op. O.L.C. at 124–25. If the designation constituted an appointment to a principal office, however, then section 3345(a)(3) would be unconstitutional as applied, because Mr. Whitaker does not currently occupy a position requiring Senate confirmation.

For the reasons stated below, based on long-standing historical practice and precedents, we do not believe that the Appointments Clause may be construed to require the Senate’s advice and consent before Mr. Whitaker may be Acting Attorney General.

A.

The Attorney General is plainly a principal officer, who must be appointed with the advice and consent of the Senate. *See Edmond v. United States*, 520 U.S. 651, 662–63 (1997); *Morrison v. Olson*, 487 U.S. 654, 670–72 (1988). The Attorney General has broad and continuing authority over the federal government’s law-enforcement, litigation, and other legal functions. *See, e.g.*, 28 U.S.C. §§ 516, 533. The Supreme Court has not “set forth an exclusive criterion for distinguishing between” inferior officers and principal officers. *Edmond*, 520 U.S. at 661. “Generally speaking, the term ‘inferior officer’ connotes a relationship with some higher ranking officer or officers below the President.” *Id.* at 662. There is no officer below the President who supervises the Attorney General.

Although the Attorney General is a principal officer, it does not follow that an Acting Attorney General should be understood to be one. An office under the Appointments Clause requires both a “continuing and permanent” position and the exercise of “significant authority pursuant to the laws of the United States.” *Lucia v. SEC*, 138 S. Ct. 2044, 2051 (2018) (internal quotation marks omitted); *see also Officers of the United States Within the Meaning of the Appointments Clause*, 31 Op. O.L.C. 73, 74 (2007). While a person acting as the Attorney General surely exercises sufficient authority to be an “Officer of the United States,” it is less clear whether Acting Attorney General is a principal office.

Because that question involves the division of powers between the Executive and the Legislative Branches, “historical practice” is entitled to “significant weight.” *Nat’l Labor Relations Bd. v. Noel Canning*, 134 S. Ct. 2550, 2559 (2014); *see also, e.g., The Pocket Veto Case*, 279 U.S. 655, 689 (1929). That practice strongly supports the constitutionality of authorizing someone who has not been Senate-confirmed to serve as an acting principal officer. Since 1792, Congress has repeatedly legislated on the assumption that temporary service as a principal officer does not require Senate confirmation. As for the Executive Branch’s practice, our non-exhaustive survey has identified over 160 occasions between 1809 and 1860 on which non-Senate-confirmed persons served temporarily as an acting or ad interim principal officer in the Cabinet.

Furthermore, judicial precedents culminating in *United States v. Eaton*, 169 U.S. 331 (1898), endorsed that historical practice and confirm that the temporary nature of acting service weighs against principal-officer status. The Supreme Court in *Eaton* held that an inferior officer may perform the duties of a principal officer “for a limited time[] and under special and temporary conditions” without “transform[ing]” his office into one for which Senate confirmation is required. *Id.* at 343. That holding was not limited to the circumstances of that case, but instead reflected a broad consensus about the status of an acting principal officer that the Supreme Court has continued to rely on in later Appointments Clause decisions.

## 1.

Since the Washington Administration, Congress has “authoriz[ed] the President to direct certain officials to temporarily carry out the duties of a vacant PAS office [i.e., one requiring Presidential Appointment and Senate confirmation] in an acting capacity, without Senate confirmation.” *SW General*, 137 S. Ct. at 934; *see also Noel Canning*, 134 S. Ct. at 2609 (Scalia, J., dissenting in relevant part) (observing that the President does not need to use recess appointments to fill vacant offices because “Congress can authorize ‘acting’ officers to perform the duties associated with a temporarily vacant office—and has done that, in one form or another, since 1792”). Those statutes, and evidence of practice under them during the early nineteenth century, did not limit the pool of officials eligible to serve as an acting principal officer to those who already have Senate-confirmed offices. This history provides compelling support for the conclusion that the position of an *acting* principal officer is not itself a principal office.

In 1792, Congress first “authorized the appointment of ‘any person or persons’ to fill specific vacancies in the Departments of State, Treasury, and War.” *SW General*, 137 S. Ct. at 935 (quoting Act of May 8, 1792, ch. 37, § 8, 1 Stat. 279, 281). Although the statute expressly mentioned vacancies in the position of Secretary in each of those Departments, the President was authorized to choose persons who held no federal office at all—much less one requiring Senate confirmation. Although the 1792 statute “allowed acting officers to serve until the permanent officeholder could resume his duties or a successor was appointed,” Congress “imposed a six-month limit on acting service” in 1795. *Id.* at 935 (citing Act of Feb. 13, 1795, ch. 21, 1 Stat. 415). In 1863, in response to a plea from President Lincoln, *see* Message to Congress (Jan. 2, 1863), Cong. Globe, 37th Cong., 3d Sess. 185 (1863), Congress extended the provision to permit the President to handle a vacancy in the office of “the head of any Executive Department of the Government, or of any officer of either of the said Departments whose appointment is not in the head thereof.” Act of Feb. 20, 1863, ch. 45, § 1, 12 Stat. 656, 656. The 1863 statute allowed the duties of a vacant office to be performed for up to six months by “the head of any other Executive Department” or by any other officer in those departments “whose appointment is vested in the President.” *Id.*

In 1868, Congress replaced all previous statutes on the subject of vacancies with the Vacancies Act of 1868. *See* Act of July 23, 1868, ch. 227, 15 Stat. 168. That act provided that, “in case of the death, resignation, absence, or sickness of the head of any executive department of the government, the first or sole assistant thereof shall . . . perform the duties of such head until a successor be appointed or the absence or sickness shall cease.” *Id.*, § 1, 15 Stat. at 168. In lieu of elevating the “first or sole assistant,” the President could also choose to authorize any other officer appointed with the Senate’s advice and consent to perform the duties of the vacant office until a successor was appointed or the prior occupant of the position was able to return to his post. *Id.* § 3, 15 Stat. at 168. In cases of death or resignation, an acting official could serve for no longer than ten days. *Id.* The 1868 act thus eliminated the President’s prior discretion to fill a vacant office temporarily with someone who did not hold a Senate-confirmed position. Yet, it preserved the possibility that a non-Senate-confirmed first assistant would serve as an acting head of an executive department.

Over the next 120 years, Congress repeatedly amended the Vacancies Act of 1868, but it never eliminated the possibility that a non-Senate-confirmed first assistant could serve as an acting head of an executive department. In 1891, it extended the time limit for acting service in cases of death or resignation from ten to thirty days. Act of Feb. 6, 1891, ch. 113, 26 Stat. 733. In 1966, it made minor changes during the course of re-codifying and enacting title 5 of the United States Code. *See* S. Rep. No. 89-1380, at 20, 70–71 (1966); 5 U.S.C. §§ 3345–3349 (1970). Congress amended the act once more in 1988, extending the time limit on acting service from 30 to 120 days and making the statute applicable to offices that are not in “Departments” and thus are less likely to have Senate-confirmed first assistants. Pub. L. No. 100-398, § 7(b), 102 Stat. 985, 988 (1988).

Accordingly, for more than two centuries before the Vacancies Reform Act, Congress demonstrated its belief that the Appointments Clause did not require Senate confirmation for temporary service in a principal office, by repeatedly enacting statutes that affirmatively authorized acting service—even in principal offices at the heads of executive departments—by persons who did not already hold an appointment made with the Senate’s advice and consent.

## 2.

Not only did Congress authorize the Presidents to select officials to serve temporarily as acting principal officers, but Presidents repeatedly exercised that power to fill temporarily the vacancies in their administrations that arose from resignations, terminations, illnesses, or absences from the seat of government. In providing this advice, we have not canvassed the entire historical record. But we have done enough to confirm that Presidents often exercised their powers under the 1792 and 1795 statutes to choose persons who did not hold any Senate-confirmed position to act temporarily as principal officers in various departments. In the Washington, Adams, and Jefferson Administrations, other Cabinet officers (or Chief Justice John Marshall) were used as temporary or “ad interim” officials when offices were vacant between the departure of one official and the appointment of his successor. *See, e.g., Biographical Directory of the American Congress, 1774–1971*, at 13–14 (1971); *see id.* at 12 (explaining that the list of Cabinet officers excludes “[s]ubordinates acting temporarily as heads of departments” and therefore lists only those who served ad interim after an incumbent’s departure).

President Jefferson made the first designation we have identified of a non-Senate-confirmed officer to serve temporarily in his Cabinet. On February 17, 1809, approximately two weeks before the end of the Jefferson Administration, John Smith, the chief clerk of the Department of War, was designated to serve as Acting Secretary of War. *See id.* at 14; Letter from Thomas Jefferson to the War Department (Feb. 17, 1809), *Founders Online*, National Archives, <https://founders.archives.gov/documents/Jefferson/99-01-02-9824> (“Whereas, by the resignation of Henry Dearborne, late Secretary at War, that office is become vacant. I therefore do hereby authorize John Smith, chief clerk of the office of the Department of War, to perform the duties of the said office, until a successor be appointed.”). As chief clerk, Smith was not a principal officer. He was instead “an inferior officer . . . appointed by the [Department’s] principal officer.” Act of Aug. 5, 1789, ch. 6, § 2, 1 Stat. 49, 50. The next Secretary of War did not enter upon duty until April 8, 1809, five weeks after the beginning of the Madison Administration. *See Biographical Directory* at 14.

Between 1809 and 1860, President Jefferson’s successors designated a non-Senate-confirmed officer to serve as an acting principal officer in a Cabinet position on at least 160 other occasions. We have identified 109 additional instances during that period where chief clerks, who were not Senate confirmed, temporarily served as ad interim Secretary of State (on 51 occasions), Secretary of the Treasury (on 36 occasions), or Secretary of War (on 22 occasions). See *id.* at 15–19; 1 *Trial of Andrew Johnson, President of the United States, Before the Senate of the United States, on Impeachment by the House of Representatives for High Crimes and Misdemeanors*, 575–81, 585–88, 590–91 (Washington, GPO 1868); *In re Asbury Dickins*, 34th Cong., 1st Sess., Rep. C.C. 9, at 4–5 (Ct. Cl. 1856) (listing 18 times between 1829 and 1836 that chief clerk Asbury Dickins was “appointed to perform the duties of Secretary of the Treasury” or Secretary of State “during the absence from the seat of government or sickness” of those Secretaries, for a total of 359 days).<sup>6</sup> Between 1853 and 1860 there were also at least 21 occasions on which non-Senate-confirmed Assistant Secretaries were authorized to act as Secretary of the Treasury.<sup>7</sup>

We have also identified instances involving designations of persons who apparently had no prior position in the federal government, including Alexander Hamilton’s son, James A. Hamilton, whom President Jackson directed on his first day in office to “take charge of the Department of State until Governor [Martin] Van Buren should arrive in the city” three weeks later. 1 *Trial of Andrew Johnson* at 575; see *Biographical Directory* at 16. President Jackson also twice named William B. Lewis, who held no other government position, as acting Secretary of War. See 1 *Trial of Andrew Johnson* at 575. Moving beyond the offices expressly covered by the 1792 and 1795 statutes, there were at least 23 additional instances before 1861 in which Presidents authorized a non-Senate-confirmed chief clerk to perform temporarily the duties of the Secretary of the Navy (on 21 occasions), or the Secretary of the Interior (on 2 occasions).<sup>8</sup>

At the time, it was well understood that when an Acting or ad interim Secretary already held an office such as chief clerk, he was not simply performing additional duties, but he was deemed the Acting Secretary. We know this, because the chief clerks sometimes sought

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<sup>6</sup> See also Act of July 27, 1789, ch. 4, § 2, 1 Stat. 28, 29 (providing that the chief clerk in what became the Department of State was “an inferior officer, to be appointed by the [Department’s] principal officer”); Act of Sept. 2, 1789, ch. 12, § 1, 1 Stat. 65, 65 (providing for an “Assistant to the Secretary of the Treasury,” later known as the chief clerk, who “shall be appointed by the said Secretary”). The sources cited in the text above indicate that (1) the following chief clerks served as ad interim Secretary of State: Aaron Ogden Dayton, Aaron Vail (twice), Asbury Dickins (ten times), Daniel Carroll Brent (five times), Daniel Fletcher Webster, Jacob L. Martin (three times), John Appleton, John Graham, Nicholas Philip Trist (four times), Richard K. Cralle, William S. Derrick (fifteen times), William Hunter (seven times); (2) the following chief clerks served as ad interim Secretary of the Treasury: Asbury Dickins (eight times), John McGinnis, and McClintock Young (twenty-seven times); and (3) the following chief clerks (or acting chief clerks) served as ad interim Secretary of War: Albert Miller Lee, Archibald Campbell (five times), Christopher Vandeventer, George Graham, John D. McPherson, John Robb (six times), Philip G. Randolph (five times), Samuel J. Anderson, and William K. Drinkard.

<sup>7</sup> See 1 *Trial of Andrew Johnson* at 580–81, 590–91 (entries for William L. Hodge and Peter Washington); Act of Mar. 3, 1849, ch. 108, § 13, 9 Stat. 395, 396–97 (providing for appointment by the Secretary of an “Assistant Secretary of the Treasury”).

<sup>8</sup> See *Biographical Directory* at 14–17 (chief clerks of the Navy in 1809, 1814–15, 1829, 1831, and 1841); *id.* at 18 (chief clerk of the Department of the Interior, Daniel C. Goddard, in 1850 (twice)); *In re Cornelius Boyle*, 34th Cong., 3d Sess., Rep. C.C. 44, at 3, 12–13 (Ct. Cl. 1857) (identifying 13 times between 1831 and 1838 that chief clerk John Boyle was appointed as Acting Secretary of the Navy, for a total of 466 days).



payment for the performance of those additional duties. Attorney General Legaré concluded that Chief Clerk McClintock Young had a claim for compensation as “Secretary of the Treasury *ad interim*.” *Pay of Secretary of the Treasury ad Interim*, 4 Op. Att’y Gen. 122, 122–23 (1842). And the Court of Claims later concluded that Congress should appropriate funds to compensate such officers for that service. *See, e.g., In re Cornelius Boyle*, 34th Cong., 3d Sess., Rep. C.C. 44, at 9, 1857 WL 4155, at \*4 (Ct. Cl. 1857) (“The office of Secretary *ad interim* being a distinct and independent office in itself, when it is conferred on the chief clerk, it is so conferred not because it pertains to him *ex officio*, but because the President, in the exercise of his discretion, sees fit to appoint him[.]”); *Dickins*, 34 Cong. Rep. C.C. 9, at 16, 1856 WL 4042, at \*3.

Congress not only acquiesced in such appointments, but also required a non-Senate-confirmed officer to serve as a principal officer in some instances. In 1810, Congress provided that in the case of a vacancy in the office of the Postmaster General, “all his duties shall be performed by his senior assistant.” Act of Apr. 30, 1810, ch. 37, § 1, 2 Stat. 592, 593. The senior assistant was one of two assistants appointed by the Postmaster General. *Id.* When Congress reorganized the Post Office in 1836, it again required that the powers and duties of the Postmaster General would, in the case of “death, resignation, or absence” “devolve, for the time being on the First Assistant Postmaster General,” who was still an appointee of the Postmaster General. Act of July 2, 1836, ch. 270, § 40, 5 Stat. 80, 89. On four occasions before 1860, a First Assistant Postmaster General served as Postmaster General *ad interim*. *See Biographical Directory* at 17–19 (in 1841 (twice), 1849, and 1859).

On the eve of the Civil War in January 1861, President Buchanan summarized the Chief Executive’s view of his authority to designate interim officers in a message submitted to Congress to explain who had been performing the duties of the Secretary of War:

The practice of making . . . appointments [under the 1795 statute], whether in a vacation or during the session of Congress, has been constantly followed during every administration from the earliest period of the government, and *its perfect lawfulness has never, to my knowledge, been questioned or denied*. Without going back further than the year 1829, and without taking into the calculation any but the chief officers of the several departments, it will be found that provisional appointments to fill vacancies were made to the number of one hundred and seventy-nine . . . . Some of them were made while the Senate was in session, some which were made in vacation were continued in force long after the Senate assembled. *Sometimes, the temporary officer was the commissioned head of another department, sometimes a subordinate in the same department.*

Message from the President of the United States, 36th Cong., 2d Sess., Exec. Doc. No. 2, at 1–2 (1861) (emphases added).

### 3.

When it comes to vacancy statutes, the office of Attorney General presents an unusual case, albeit not one suggesting any different constitutional treatment. The office was established in the Judiciary Act of 1789, *see* Act of Sept. 24, 1789, ch. 20, § 35, 1 Stat. 73, 93, and the Attorney General was a member of the President’s Cabinet, *see Office and Duties of Attorney*

*General*, 6 Op. Att’y Gen. 326, 330 (1854). But the Attorney General did not supervise an “executive department,” and the Department of Justice was not established until 1870. *See* Act of June 22, 1870, ch. 150, § 1, 16 Stat. 162, 162. Thus, the terms of the 1792, 1795, and 1863 statutes, and of the Vacancies Act of 1868, did not expressly apply to vacancies in the office of the Attorney General.

Even so, the President made “temporary appointment[s]” to the office of Attorney General on a number of occasions. In 1854, Attorney General Cushing noted that “proof exists in the files of the department that temporary appointment has been made by the President in that office.” *Office and Duties of Attorney General*, 6 Op. Att’y Gen. at 352. Because the 1792 and 1795 statutes did not provide the President with express authority for those temporary appointments, Cushing believed it “questionable” whether the President had the power, but he also suggested that “[p]erhaps the truer view of the question is to consider the two statutes as declaratory only, and to assume that the power to make such temporary appointment is a constitutional one.” *Id.* Cushing nonetheless recommended the enactment of “a general provision . . . to remove all doubt on the subject” for the Attorney General and “other non-enumerated departments.” *Id.*

Congress did not immediately remedy the problem that Cushing identified, but Presidents designated Acting Attorneys General, both before and after the Cushing opinion. In some instances, the President chose an officer who already held another Senate-confirmed office. *See Acting Attorneys General*, 8 Op. O.L.C. 39, 40–41 (1984) (identifying instances in 1848 and 1868 involving the Secretary of the Navy or the Secretary of the Interior).<sup>9</sup> In other instances, however, non-Senate-confirmed individuals served. After the resignation of Attorney General James Speed, for instance, Assistant Attorney General J. Hubley Ashton was the ad interim Attorney General from July 17 to July 23, 1866. *See id.* at 41; *Biographical Directory* at 20. At the time, the Assistant Attorney General was appointed by the Attorney General alone. *See* Act of March 3, 1859, ch. 80, 11 Stat. 410, 420 (“[T]he Attorney-General . . . is hereby[] authorized to appoint one assistant in the said office, learned in the law, at an annual salary of three thousand dollars[.]”).<sup>10</sup>

On other occasions between 1859 and 1868, Ashton and other Assistant Attorneys General who had not been Senate confirmed also signed several formal legal opinions as “Acting Attorney General,” presumably when their incumbent Attorney General was absent or otherwise

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<sup>9</sup> This list is almost certainly under-inclusive because the published sources we have located identify only those who were Acting Attorney General during a period between the resignation of one Attorney General and the appointment of his successor. They do not identify individuals who may have performed the functions and duties of Attorney General when an incumbent Attorney General was temporarily unavailable on account of an absence or sickness that would now trigger either 28 U.S.C. § 508(a) or 5 U.S.C. § 3345(a).

<sup>10</sup> In 1868, Congress created two new Assistant Attorneys General positions to be “appointed by the President, by and with the advice and consent of the Senate,” and specified that those positions were “in lieu of,” among others, “the assistant attorney-general now provided for by law,” which was “abolished” effective on July 1, 1868. Act of June 25, 1868, ch. 71, § 5, 15 Stat. 75, 75. A few weeks later, Ashton was confirmed by the Senate as an Assistant Attorney General. *See* 18 Sen. Exec. J. 369 (July 25, 1868). He was therefore holding a Senate-confirmed office when he served another stint as Acting Attorney General for several days at the beginning of the Grant Administration in March 1869, *see Biographical Directory* at 21, and when he signed five opinions as “Acting Attorney General” in September and October 1868.

unavailable. See *Case of Colonel Gates*, 11 Op. Att’y Gen. 70, 70 (1864) (noting that the question from the President “reached this office in [the Attorney General’s] absence”).<sup>11</sup> In 1873, when Congress reconciled the Vacancies Act of 1868 with the Department of Justice’s organic statute, it expressly excepted the office of Attorney General from the general provision granting the President power to choose who would temporarily fill a vacant Senate-confirmed office. See Rev. Stat. § 179 (1st ed. 1875). There is accordingly no Attorney General-specific practice with respect to the pre-1998 statutes.

## B.

Well before the Supreme Court’s foundational decision in *Eaton* in 1898, courts approved of the proposition that acting officers are entitled to payment for services during their temporary appointments as principal officers. See, e.g., *United States v. White*, 28 F. Cas. 586, 587 (C.C.D. Md. 1851) (Taney, Circuit J.) (“[I]t often happens that, in unexpected contingencies, and for temporary purposes, the appointment of a person already in office, to execute the duties of another office, is more convenient and useful to the public, than to bring in a new officer to execute the duty.”); *Dickins*, 34 Cong. Rep. C.C. 9, at 17, 1856 WL 4042, at \*3 (finding a chief clerk was entitled to additional compensation “for his services[] as acting Secretary of the Treasury and as acting Secretary of State”). Most significantly, in *Boyle*, the Court of Claims concluded that the chief clerk of the Navy (who was not Senate confirmed) had properly served as Acting Secretary of the Navy on an intermittent basis over seven years for a total of 466 days. 34 Cong. Rep. C.C. 44, at 8, 1857 WL 4155, at \*1–2 (1857). The court expressly addressed the Appointments Clause question and distinguished, for constitutional purposes, between the office of Secretary of the Navy and the office of Acting Secretary of the Navy. *Id.* at 8, 1857 WL 4155 at \*3 (“It seems to us . . . plain that the office of Secretary *ad interim* is a distinct and independent office in itself. It is not the office of Secretary[.]”). Furthermore, the court emphasized, the defining feature of the office of Secretary *ad interim* was its “temporary” character, and it must therefore be considered an inferior office:

Congress has exercised the power of vesting the appointment of a Secretary *ad interim* in the President alone, and we think, in perfect consistency with the Constitution of the United States. We do not think that there can be any doubt that he is an *inferior* officer, in the sense of the Constitution, whose appointment may be vested by Congress in the President alone.

*Id.*

When the Supreme Court addressed this Appointments Clause issue in 1898, it reached a similar conclusion. In *United States v. Eaton*, the Court considered whether Congress could authorize the President alone to appoint a subordinate officer “charged with the duty of temporarily performing the functions” of a principal officer. 169 U.S. at 343. The statute

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<sup>11</sup> There were two additional opinions signed by Ashton as “Acting Attorney General” in 1864 and 1865 (11 Op. Att’y Gen. 482; 11 Op. Att’y Gen. 127); as well as four signed as “Acting Attorney General” by Assistant Attorney General John Binckley in 1867 (12 Op. Att’y Gen. 231; 12 Op. Att’y Gen. 229; 12 Op. Att’y Gen. 222; 12 Op. Att’y Gen. 227); two signed as “Acting Attorney General” by Assistant Attorney General Titian J. Coffey in 1862 and 1863 (10 Op. Att’y Gen. 492; 10 Op. Att’y Gen. 377); and one signed as “Acting Attorney General” by Assistant Attorney General Alfred B. McCalmont in 1859 (9 Op. Att’y Gen. 389).

authorized the President “to provide for the appointment of vice-consuls . . . in such a manner and under such regulations as he shall deem proper.” *Id.* at 336 (quoting Rev. Stat. § 1695 (2d ed. 1878)). The President’s regulation provided that “[i]n case a vacancy occurs in the offices both of the consul and the vice-consul, which requires the appointment of a person to perform temporarily the duties of the consulate, the diplomatic representative has authority to make such appointment, with the consent of the foreign government . . . immediate notice being given to the Department of State.” *Id.* at 338 (quoting regulation). Pursuant to that authority, Sempronius Boyd, who was the diplomatic representative and consul-general to Siam, appointed Lewis Eaton (then a missionary who was not employed by the government) as a vice-consul-general and directed him to take charge of the consulate after Boyd’s departure. *Id.* at 331–32. With the “knowledge” and “approval” of the Department of State, Eaton remained in charge of the consulate, at times calling himself “acting consul-general of the United States at Bangkok,” from July 12, 1892, until a successor vice-consul-general arrived on May 18, 1893. *Id.* at 332–33. In a dispute between Boyd’s widow and Eaton over salary payments, the Court upheld Eaton’s appointment, and the underlying statutory scheme, against an Appointments Clause challenge. *Id.* at 334–35, 352.

The Constitution expressly includes “Consuls” in the category of officers whose appointment requires the Senate’s advice and consent. U.S. Const. art. II, § 2, cl. 2. The *Eaton* Court, however, concluded that a “vice-consul” is an inferior officer whose appointment Congress may “vest in the President” alone. 169 U.S. at 343. The Court held that Eaton’s exercise of the authority of a Senate-confirmed office did not transform him into an officer requiring Senate confirmation:

Because the subordinate officer is charged with the performance of the duty of the superior for a limited time and under special and temporary conditions, he is not thereby transformed into the superior and permanent official. To so hold would render void any and every delegation of power to an inferior to perform under any circumstances or exigency the duties of a superior officer, and the discharge of administrative duties would be seriously hindered.

*Id.* The Court concluded that more than forty years of practice “sustain the theory that a vice-consul is a mere subordinate official,” which defeated the contention that Eaton’s appointment required Senate confirmation. *Id.* at 344. In so doing, the Court cited Attorney General Cushing’s 1855 opinion about appointments of consular officials, which had articulated the parameters for that practice. *See id.*<sup>12</sup> Significantly, the Court also made clear that its holding was not limited to vice-consuls or to the exigencies of Eaton’s particular appointment. Rather, the Court emphasized that the temporary performance of a principal office is not the same as holding that office itself. The Court feared that a contrary holding would bear upon “any and every delegation of power to an inferior to perform *under any circumstances or exigency.*” *Id.* at

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<sup>12</sup> In the 1855 opinion, Attorney General Cushing explained that a vice-consul is “the person employed to fill the [consul’s] place temporarily in his absence.” *Appointment of Consuls*, 7 Op. Att’y Gen. 242, 262 (1855). He noted that consuls had to be Senate-confirmed, but vice-consuls were regarded as the “subordinates of consuls” and therefore did not require “nomination to the Senate.” *Id.* at 247.

343 (emphasis added). In view of the long history of such appointments, *Eaton* simply confirmed the general rule. It did not work any innovation in that practice.

The Court has not retreated from *Eaton*, or narrowed its holding, but instead has repeatedly cited the decision for the proposition that an inferior officer may temporarily perform the duties of a principal officer without Senate confirmation. In *Edmond*, the Court observed that “‘inferior officers’ are officers whose work is directed and supervised at some level by others who were appointed by Presidential nomination with the advice and consent of the Senate.” 520 U.S. at 663. But the Court also observed that there is no “exclusive criterion for distinguishing between principal and inferior officers” and restated *Eaton*’s holding that “a vice consul charged temporarily with the duties of the consul” is an “inferior” officer. *Id.* at 661. In *Morrison*, the Court emphasized that a subordinate who performed a principal officer’s duties “for a limited time and under special and temporary conditions” is not “thereby transformed into the superior and permanent official,” and explained that a vice-consul appointed during the consul’s “temporary absence” remained a “subordinate officer notwithstanding the Appointment Clause’s specific reference to ‘Consuls’ as principal officers.” 487 U.S. at 672–73 (quoting *Eaton*, 169 U.S. at 343)). Justice Scalia’s dissenting opinion in *Morrison* similarly described *Eaton* as holding that “the appointment by an Executive Branch official other than the President of a ‘vice-consul,’ charged with the duty of temporarily performing the function of the consul, did not violate the Appointments Clause.” *Id.* at 721 (Scalia, J., dissenting). Likewise, in his dissenting opinion in *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 537 F.3d 667 (D.C. Cir. 2008), *aff’d in part and rev’d in part*, 561 U.S. 447 (2010), then-Judge Kavanaugh cited *Eaton* to establish that “[t]he temporary nature of the office is the . . . reason that *acting* heads of departments are permitted to exercise authority without Senate confirmation.” *Id.* at 708 n.17 (Kavanaugh, J. dissenting). Notably, Judge Kavanaugh also cited our 2003 opinion, which concluded that an OMB official who was not Senate confirmed could serve as Acting Director of OMB. *See id.* (citing *Acting Director of OMB*, 27 Op. O.L.C. at 123).

In *SW General*, the Court acknowledged the long history of Acts of Congress permitting the President to authorize officials to temporarily perform the functions of vacant offices requiring Senate approval. 137 S. Ct. at 935. Although the Court’s opinion did not address the Appointments Clause, Justice Thomas’s concurring opinion suggested that a presidential directive to serve as an officer under the Vacancies Reform Act should be viewed as an appointment, and that such a direction would “raise[] grave constitutional concerns because the Appointments Clause forbids the President to appoint principal officers without the advice and consent of the Senate.” *Id.* But Justice Thomas also distinguished *Eaton* on the ground that the acting designation at issue in *SW General* was not “special and temporary” because it had remained in place “for more than three years in offices limited by statute to a 4-year term.” *Id.* at 946 n.1. Justice Thomas’s opinion may therefore be understood to be consistent not only with *Eaton*, but also with the precedents of this Office, which have found it “implicit” that “the tenure of an Acting Director should not continue beyond a reasonable time.” *Status of the Acting Director, Office of Management and Budget*, 1 Op. O.L.C. 287, 289–90 (1977). Even under Justice Thomas’s opinion, Mr. Whitaker’s designation as Acting Attorney General, which was made one week ago, and which would lapse in the absence of a presidential nomination, should qualify as “special and temporary” under *Eaton*.

### C.

Executive practice and more recent legislation reinforces that an inferior officer may temporarily act in the place of a principal officer. In 1980, for instance, this Office raised no constitutional concerns in concluding (in the context of a non-executive office) that the Comptroller General was statutorily authorized to “designate an employee” of the General Accounting Office to be Acting Comptroller General during the absence or incapacity of both the Senate-confirmed Comptroller General and the Senate-confirmed Deputy Comptroller General. *Authority of the Comptroller General to Appoint an Acting Comptroller General*, 4B Op. O.L.C. 690, 690–91 (1980).

Most significantly, in 2003, this Office relied on *Eaton* in concluding that, although “the position of Director [of OMB] is a principal office, . . . an Acting Director [of OMB] is only an inferior officer.” *Acting Director of OMB*, 27 Op. O.L.C. at 123. We did not think that that conclusion had been called into question by *Edmond*’s statement that an inferior officer is one who reports to a superior officer below the President, because in that case “[t]he Court held only that ‘[g]enerally speaking’ an inferior officer is subordinate to an officer other than the President,” and because *Edmond* did not deal with temporary officers. 27 Op. O.L.C. at 124 (citations omitted). Assuming that for constitutional purposes the official designated as acting head of an agency would need to be an inferior officer (and that the OMB official in question was not already such an officer), we further concluded that the President’s designation of an acting officer under the Act should be regarded as an appointment by the President alone—a constitutionally permissible mode for appointing an inferior officer. *Id.* at 125. Since then, Presidents George W. Bush and Obama each used their authority under the Vacancies Reform Act to place non-Senate-confirmed Chiefs of Staff in the lines of succession to be the acting head of several federal agencies.<sup>13</sup> In three instances, President Obama placed a Chief of Staff above at least one Senate-confirmed officer within the same department.<sup>14</sup> And, in practice, during the Bush, Obama, and Trump Administrations, multiple unconfirmed officers were designated to serve as acting agency heads, either under the Vacancies Reform Act or another office-specific

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<sup>13</sup> See Memorandum, Designation of Officers of the Social Security Administration, 71 Fed. Reg. 20333 (Apr. 17, 2006); Memorandum, Designation of Officers of the Council on Environmental Quality, 73 Fed. Reg. 54487 (Sept. 18, 2008) (later superseded by 2017 memorandum cited below); Memorandum, Designation of Officers of the Overseas Private Investment Corporation to Act as President of the Overseas Private Investment Corporation, 76 Fed. Reg. 33613 (June 6, 2011); Memorandum, Designation of Officers of the Millennium Challenge Corporation to Act as Chief Executive Officer of the Millennium Challenge Corporation, 77 Fed. Reg. 31161 (May 21, 2012); Memorandum, Designation of Officers of the General Services Administration to Act as Administrator of General Services, 78 Fed. Reg. 59161 (Sept. 20, 2013); Memorandum, Designation of Officers of the Office of Personnel Management to Act as Director of the Office of Personnel Management, 81 Fed. Reg. 54715 (Aug. 12, 2016); Memorandum, Providing an Order of Succession Within the National Endowment of the Humanities, 81 Fed. Reg. 54717 (Aug. 12, 2016); Memorandum, Providing an Order of Succession Within the National Endowment of the Arts, 81 Fed. Reg. 96335 (Dec. 23, 2016); Memorandum, Designation of Officers or Employees of the Office of Science and Technology Policy to Act as Director, 82 Fed. Reg. 7625 (Jan. 13, 2017); Memorandum, Providing an Order of Succession Within the Council on Environmental Quality, 82 Fed. Reg. 7627 (Jan. 13, 2017).

<sup>14</sup> See Executive Order 13612, Providing an Order of Succession Within the Department of Agriculture, 77 Fed. Reg. 31153 (May 21, 2012); Executive Order 13735, Providing an Order Within the Department of the Treasury, 81 Fed. Reg. 54709 (Aug. 12, 2016); Executive Order 13736, Providing an Order of Succession Within the Department of Veterans Affairs, 81 Fed. Reg. 54711 (Aug. 12, 2016).

statute.<sup>15</sup> Those determinations reflect the judgments of these administrations that the President may lawfully designate an unconfirmed official, including a Chief of Staff, to serve as an acting principal officer.

Congress too has determined in the Vacancies Reform Act and many other currently operative statutes that non-Senate-confirmed officials may temporarily perform the functions of principal officers. By its terms, the Vacancies Reform Act applies to nearly all executive offices for which appointment “is required to be made by the President, by and with the advice and consent of the Senate.” 5 U.S.C. § 3345(a); *see id.* § 3349c(1)–(3) (excluding only certain members of multi-member boards, commissions, or similar entities). And it specifically provides for different treatment in some respects depending on whether the vacant office is that of an agency head. *Id.* § 3348(b)(2). Moreover, the statute contemplates that non-Senate-confirmed officials will be able to serve as acting officers in certain applications of section 3345(a)(1) as well as in all applications of section 3345(a)(3), which refers to an “officer or employee.” The latter provision had no counterpart in the Vacancies Act of 1868, but it was not completely novel, because clerks, who were not Senate-confirmed, were routinely authorized to serve as acting officers under the 1792 and 1795 statutes.<sup>16</sup>

Congress has also enacted various statutes that enable deputies not confirmed by the Senate to act when the office of the Senate-confirmed agency head is vacant. *See* 12 U.S.C. § 4512(f) (providing for an Acting Director of the Federal Housing Finance Agency); *id.* § 5491(b)(5) (providing for an Acting Director of the Bureau of Consumer Financial Protection); 21 U.S.C. § 1703(a)(3) (providing for an Acting Director of the Office of National Drug Control Policy); 40 U.S.C. § 302(b) (providing for an Acting Administrator of the General Services Administration); 44 U.S.C. § 2103(c) (providing for an Acting Archivist). All of those provisions contemplate the temporary service of non-Senate-confirmed officials as acting

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<sup>15</sup> For example, during this administration, Grace Bochenek, a non-Senate-confirmed laboratory director, served as Acting Secretary of Energy from January 20, 2017, until March 2, 2017; Tim Horne, a non-Senate-confirmed Regional Commissioner, served as Acting Administrator of the General Services Administration from January 20, 2017, until December 12, 2017 (pursuant to a designation under a GSA-specific statute); Phil Rosenfelt, a non-Senate-confirmed Deputy General Counsel, served as Acting Secretary of Education from January 20, 2017, until February 7, 2017 (pursuant to a designation under a statute specific to that department); Don Wright, a non-Senate-confirmed Deputy Assistant Secretary, served as Acting Secretary of Health and Human Services from September 30, 2017, until October 10, 2017; Peter O’Rourke, a non-Senate-confirmed Chief of Staff, served as Acting Secretary of Veterans Affairs from May 29, 2018, until July 30, 2018; and Shelia Crowley, a non-Senate-confirmed Chief of Operations, served, upon President’s Obama’s designation, as Acting Director of the Peace Corps from January 20, 2017, until November 16, 2017. During the Obama administration, Darryl Hairston, a career employee, served as Acting Administrator of the Small Business Administration from January 22, 2009, until April 6, 2009, and Edward Hugler, a non-Senate-confirmed Deputy Assistant Secretary, served as Acting Secretary of Labor from February 2, 2009, until February 24, 2009. During the Bush Administration, Augustine Smythe, a non-Senate-confirmed Executive Associate Director served as Acting Director of OMB from June 10, 2003, until late June 2003, consistent with our opinion.

<sup>16</sup> Echoing the movement in the early nineteenth century to chief clerks rather than Senate-confirmed officials from other departments, section 3345(a)(3) was reportedly the product of a desire to give the President “more flexibility” to use “qualified individuals who have worked within the agency in which the vacancy occurs for a minimum number of days and who are of a minimum grade level.” S. Rep. No. 105-250, at 31 (additional views of Sen. Glenn et al.); *id.* at 35 (minority views of Sens. Durbin and Akaka).

principal officers, and these statutes would appear to be unconstitutional if only a Senate-confirmed officer could temporarily serve as an acting principal officer.

Similarly, other current statutes provide that, although the deputy is appointed by the President with the Senate's advice and consent, the President or the department head may designate another official to act as the agency head, even though that official is not Senate-confirmed. *See* 20 U.S.C. § 3412(a)(1) (providing that “[t]he Secretary [of Education] shall designate the order in which other officials of the Department shall act for and perform the functions of the Secretary . . . in the event of vacancies in both” the Secretary and Deputy Secretary positions); 31 U.S.C. § 502(f) (providing that the President may designate “an officer of the Office [of Management and Budget] to act as Director”); 38 U.S.C. § 304 (providing that the Deputy Secretary of Veterans Affairs serves as Acting Secretary “[u]nless the President designates another officer of the Government”); 42 U.S.C. § 7132(a) (providing that “[t]he Secretary [of Energy] shall designate the order in which the Under Secretary and other officials shall act for and perform the functions of the Secretary . . . in the event of vacancies in both” the Secretary and Deputy Secretary positions); 49 U.S.C. § 102(e) (providing that the Secretary of Transportation shall establish an order of succession that includes Assistant Secretaries who are not Senate-confirmed for instances in which the offices of the Secretary, Deputy Secretary, and Under Secretary of Transportation for Policy are vacant); 40 U.S.C. § 302(b) (providing that the Deputy Administrator serves as Acting Administrator of General Services when that office “is vacant,” “unless the President designates another officer of the Federal Government”); *cf.* 44 U.S.C. § 304 (limiting the individuals whom the President may choose to serve as Acting Director of the Government Printing Office to those who occupy offices requiring presidential appointment with the Senate's advice and consent).

Indeed, if it were unconstitutional for an official without Senate confirmation to serve temporarily as an acting agency head, then the recent controversy over the Acting Director of the CFPB should have been resolved on that ground alone—even though it was never raised by any party, the district court, or the judges at the appellate argument. On November 24, 2017, the Director of the CFPB appointed a new Deputy Director, expecting that she would become the Acting Director upon his resignation later that day. *Acting Director of CFPB*, 41 Op. O.L.C. \_\_\_, at \*2 n.1. The Director of the CFPB relied on 12 U.S.C. § 5491(b)(5), which expressly contemplates that a non-Senate-confirmed official (the Deputy Director) will act as a principal officer (the Director). The President, however, exercised his authority under 5 U.S.C. § 3345(a)(2) to designate the Director of OMB as Acting Director of the CFPB. *See English*, 279 F. Supp. 3d at 330. When the Deputy Director challenged the President's action, we are not aware that anyone ever contended that the Deputy Director was constitutionally ineligible to serve as Acting Director because she had not been confirmed by the Senate. If the newly installed Deputy Director of the CFPB could lawfully have become the Acting Director, then the Chief of Staff to the Attorney General may serve as Acting Attorney General in the case of a vacancy.

#### D.

The constitutionality of Mr. Whitaker's designation as Acting Attorney General is supported by Supreme Court precedent, by acts of Congress passed in three different centuries, and by countless examples of executive practice. To say that the Appointments Clause now



prohibits the President from designating Mr. Whitaker as Acting Attorney General would mean that the Vacancies Reform Act and a dozen statutes were unconstitutional, as were countless prior instances of temporary service going back to at least the Jefferson Administration.

There is no question that Senate confirmation is an important constitutional check on the President's appointments of senior officers. The Senate's role "serves both to curb Executive abuses of the appointment power, and to promote a judicious choice of [persons] for filling the offices of the union." *Edmond*, 520 U.S. at 659 (internal quotation marks omitted). At the same time, the "constitutional process of Presidential appointment and Senate confirmation . . . can take time: The President may not promptly settle on a nominee to fill an office; the Senate may be unable, or unwilling, to speedily confirm the nominee once submitted." *SW General*, 137 S. Ct. at 935. Despite their frequent disagreements over nominees, for over 200 years, Congress and the President have agreed upon the value and permissibility of using temporary appointments, pursuant to limits set by Congress, in order to overcome the delays of the confirmation process.

If the President could not rely on temporary designations for principal offices, then the efficient functioning of the Executive Branch would be severely compromised. Because most Senate-confirmed officials resign at the end of an administration, a new President must rely on acting officials to serve until nominees have been confirmed. If Senate confirmation were required before anyone could serve, then the Senate could frustrate the appropriate functioning of the Executive Branch by blocking the confirmation of principal officers for some time. *See* 144 Cong. Rec. 27496 (Oct. 21, 1998) (statement of Sen. Thompson) (noting that section 3345(a)(3) had been added because "[c]oncerns had been raised that, particularly early in a presidential administration, there will sometimes be vacancies in first assistant positions, and that there will not be a large number of Senate-confirmed officers in the government," as well as "concerns . . . about designating too many Senate-confirmed persons from other offices to serve as acting officers in additional positions"). A political dispute with the Senate could frustrate the President's ability to execute the laws by delaying the appointment of his principal officers.

The problems with a contrary rule are not limited to the beginning of an administration. Many agencies would run into problems on an ongoing basis, because they have few officers subject to Senate confirmation. Thus, when a vacancy in the top spot arises, such an agency would either lack a head or be forced to rely upon reinforcements from Senate-confirmed appointees outside the agency. Those outside officers may be inefficient choices when a non-Senate-confirmed officer within the agency is more qualified to act as a temporary caretaker. At best, designating a Senate-confirmed officer to perform temporary services would solve a problem at one agency only by cannibalizing the senior personnel of another.

It is true that these concerns do not apply to the current circumstances of the Department of Justice, which is staffed by a number of Senate-confirmed officers. Following Attorney General Sessions's resignation, the President could have relied upon the Deputy Attorney General, the Solicitor General, or an Assistant Attorney General to serve as Acting Attorney General. But the availability of potential alternatives does not disable Congress from providing the President with discretion to designate other persons under section 3345(a)(3) of the Vacancies Reform Act. Nothing in the text of the Constitution or historical practice suggests that

the President may turn to an official who has not been confirmed by the Senate if, but only if, there is no appropriate Senate-confirmed official available.

**III.**

The President's designation to serve as Acting Attorney General of a senior Department of Justice official who does not currently hold a Senate-confirmed office is expressly authorized by 5 U.S.C. § 3345(a)(3). Mr. Whitaker has been designated based upon a statute that permits him to serve as Acting Attorney General for a limited period, pending the Senate's consideration of a nominee for Attorney General. Consistent with our 2003 opinion, with *Eaton*, and with two centuries of practice, we advised that his designation would be lawful.

A handwritten signature in black ink, appearing to read 'S. Engel', with a stylized flourish at the end.

STEVEN A. ENGEL  
*Assistant Attorney General*

## **Authority of the President to Name an Acting Attorney General**

The President may designate an Acting Attorney General under the Vacancies Reform Act, even if an officer of the Department of Justice otherwise could act under 28 U.S.C. § 508, which deals with succession to the office of the Attorney General.

September 17, 2007

### MEMORANDUM OPINION FOR THE COUNSEL TO THE PRESIDENT

You have asked for our opinion whether the President has authority to name an Acting Attorney General under the Vacancies Reform Act, 5 U.S.C. §§ 3345-3349d (2000 & Supp. IV 2004), even if an officer of the Department of Justice otherwise could act under 28 U.S.C. § 508 (2000). As we advised orally, we believe that the President has this authority.

The Vacancies Reform Act ordinarily provides “the exclusive means for temporarily authorizing an acting official to perform the functions and duties of any office of an Executive agency . . . for which appointment is required to be made by the President, by and with the advice and consent of the Senate.” 5 U.S.C. § 3347(a). This provision is subject to an exception, however, when “a statutory provision expressly . . . 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.” *Id.* § 3347(a)(1)(A). Section 508 of title 28 is such a statute. It states that when the office of Attorney General is vacant, the Deputy Attorney General “may exercise all the duties of that office”; that when the office of Deputy Attorney General is vacant, the Associate Attorney General “shall act as Attorney General”; and that the Attorney General “may designate the Solicitor General and the Assistant Attorneys General, in further order of succession, to act as Attorney General.” 28 U.S.C. § 508(a), (b). The Vacancies Reform Act thus did not extinguish the authority under 28 U.S.C. § 508 by which an Acting Attorney General might serve.

Attorney General Alberto R. Gonzales has resigned, effective today. Attorney General Order No. 2877-2007 (Mar. 29, 2007), issued under 28 U.S.C. § 508, specifies the order of succession to act as Attorney General when the positions of Deputy Attorney General and Associate Attorney General are vacant—as they are now. The Solicitor General is first in line, followed by the Assistant Attorneys General for the Office of Legal Counsel, for National Security, for the Criminal Division, and for the Civil Division. The President wishes the Assistant Attorney General for the Civil Division to act as Attorney General. To achieve this end, he has decided to designate that officer under the Vacancies Reform Act. Your question arises because the provision specifying that the Vacancies Reform Act

*Authority of the President to Name an Acting Attorney General*

ordinarily is the exclusive means for naming an acting officer, 5 U.S.C. § 3347, does not apply here.

That the Vacancies Reform Act is not exclusive does not mean that it is unavailable. By its terms, the Vacancies Reform Act (with express exceptions not relevant here) applies whenever a Senate-confirmed officer in an executive agency resigns. 5 U.S.C. § 3345(a). The Vacancies Reform Act nowhere says that, if another statute remains in effect, the Vacancies Reform Act may not be used. Indeed, the Senate Committee Report accompanying the Act expressly disavows this view. After listing a number of statutes that would come within the exception to exclusivity in the Vacancies Reform Act, including 28 U.S.C. § 508, the Senate Committee Report states that “[i]n any event, even with respect to the specific positions in which temporary officers may serve under the specific statutes this bill retains, the Vacancies [Reform] Act would continue to provide an alternative procedure for temporarily occupying the office.” S. Rep. No. 105-250, at 17 (1998).<sup>1</sup>

Furthermore, nothing in the text of the statute or its legislative history supports the conclusion that the “alternative procedure” of the Vacancies Reform Act may be used only when no one can serve under a statute like 28 U.S.C. § 508. In analogous circumstances, we earlier concluded that the President could use the Vacancies Reform Act to name an Acting Director of the Office of Management and Budget, even though another statute, 31 U.S.C. § 502(f) (2000), came within the exception to exclusivity under the Vacancies Reform Act and authorized the President to designate an Acting Director. We wrote that “[t]he Vacancies Reform Act does not provide . . . that where there is another statute providing for a presidential designation, the Vacancies Reform Act becomes unavailable. The legislative history squares with the conclusion that, in such circumstances, the

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<sup>1</sup> The President has already issued an order embodying the conclusion that the Vacancies Reform Act is available for naming an Acting Attorney General. On March 19, 2002, he issued a Memorandum for the Attorney General on Designation of Officers of the Department of Justice, 1 *Pub. Papers of Pres. George W. Bush* 752 (2002), under which he exercised his authority under the Vacancies Reform Act to provide that, when the officials designated under 28 U.S.C. § 508 have died, resigned, or otherwise become unavailable to perform the duties of the Attorney General, specified United States Attorneys would constitute an additional chain of succession to act as Attorney General. The precise issue here, however, is whether the President may use the Vacancies Reform Act even if an officer otherwise would be able to act under 28 U.S.C. § 508.

We note that, under the version of the Vacancies Act in effect before the Vacancies Reform Act, the provision allowing the President to designate an officer to act did “not apply to a vacancy in the office of Attorney General.” 5 U.S.C. § 3347 (1994). As originally introduced and as later reported by the Senate Committee, the Vacancies Reform Act would have provided that “[w]ith respect to the office of the Attorney General of the United States, the provisions of section 508 of title 28 shall be applicable.” *See* 144 Cong. Rec. 12,433 (June 16, 1998) (proposed 5 U.S.C. § 3345(c)); S. Rep. No. 105-250, at 25 (same). That provision was not enacted as part of the final bill, and no provision of the Vacancies Reform Act bars the President from designating an Acting Attorney General under that statute.

Vacancies Reform Act may still be used.” *Designation of Acting Director of the Office of Management and Budget*, 27 Op. O.L.C. 121, 121 n.1 (2003).<sup>2</sup> We do not believe that this opinion could be distinguished on the ground that, there, the President had the authority under both statutes, while here the authority under the Vacancies Reform Act belongs to the President and section 508 provides that the Attorney General may designate officers to serve. Neither the text of the statute nor the legislative history places any weight on such a distinction. Nor would it make sense that the Attorney General, through the exercise of a discretionary authority to name a further order of succession after the Deputy Attorney General and Associate Attorney General, could prevent the President, his superior, from using his separate authority under the Vacancies Reform Act. Indeed, for this reason, we believe that the President’s action under the Vacancies Reform Act, without more, trumps the Attorney General’s designation of a succession under section 508.<sup>3</sup>

A footnote in guidance from the Counsel to the President issued in 2001 states that the Vacancies Reform Act does not apply to the position of Attorney General “unless there is no official serving in any of the positions designated by section 508 to act as attorney general in the case of a vacancy.” Memorandum for the Heads of Federal Executive Departments and Agencies and Units of the Executive Office of the President, from Alberto R. Gonzales, Counsel to the President, *Re: Agency Reporting Requirements Under the Vacancies Reform Act* at 2 n.2 (Mar. 21, 2001). For the reasons set out above, we believe that this statement is incorrect and that the President may use the Vacancies Reform Act even when there is an official serving in one of the designated positions under section 508. We note that the subject of the memorandum was reporting requirements under the Vacancies Reform Act, not the eligibility of officers to act under the statute, and the footnote appears in a section of the memorandum that only gives background for the reader. Moreover, the memorandum preceded our later analysis of the analogous issue posed by a vacancy in the Office of Management and Budget.

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<sup>2</sup> Similarly, we have concluded that the Vacancies Reform Act could be used to provide for an Acting United States Attorney. We observed that another statute, 28 U.S.C. § 546, allowed appointment of an interim United States Attorney, who would fill the office (not be an acting officer), but that even if section 546 had dealt with acting officers, that section and the Vacancies Reform Act would both be available. *Temporary Filling of Vacancies in the Position of United States Attorney*, 27 Op. O.L.C. 149, 149–50 (2003).

<sup>3</sup> Section 508 itself may give some indication that it does not displace the Vacancies Reform Act whenever an official in the chain of succession under 28 U.S.C. § 508(a) remains at the Department. Section 508(a) provides that “for the purpose of section 3345(a) of title 5 the Deputy Attorney General is the first assistant to the Attorney General.” *Cf. United States v. Lucido*, 373 F. Supp. 1142, 1147–51 (E.D. Mich. 1974) (under a previous version of the statute, the court suggested that the Deputy Attorney General had acted under the “first assistant” provision of the Vacancies Act and, when he reached the time limit under that statute, thereafter served under 28 U.S.C. § 508; the Department of Justice argued that the entire service was only under section 508).

*Authority of the President to Name an Acting Attorney General*

We therefore believe that the President may name an Acting Attorney General under the Vacancies Reform Act and that he can take this step even if officers named under section 508 would otherwise be able to perform the Attorney General's functions and duties.<sup>4</sup>

STEVEN G. BRADBURY  
*Principal Deputy Assistant Attorney General*  
*Office of Legal Counsel*

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<sup>4</sup> In the event that the Assistant Attorney General for the Civil Division were unable to carry out the duties of the Attorney General, either in general or in a specific case, the order of succession under 28 U.S.C. § 508 would again become applicable.

## Acting Attorneys General

From 1870 until 1953, the Solicitor General served as Acting Attorney General in the event that the office of Attorney General was vacant or the Attorney General was absent or disabled. This plan of succession was modified by Reorganization Plan No. 4 of 1953 and by the codification in 1977 at 28 U.S.C. § 508 providing for the following statutory succession: Deputy Attorney General, Associate Attorney General, and in such order as the Attorney General shall designate, the Solicitor General and the Assistant Attorneys General.

March 30, 1984

### MEMORANDUM OPINION FOR THE ATTORNEY GENERAL

We have prepared in the time available a list of all of the documented occasions in which individuals have served as Acting Attorney General because of a vacancy in the office of the Attorney General.<sup>1</sup> From the time of the establishment of the Department of Justice in 1870 until 1953, the statute governing succession to the office of Attorney General designated the Solicitor General as the individual who would be Acting Attorney General in case of the absence or disability of the Attorney General, or of a vacancy in the office.<sup>2</sup> Reorganization Plan No. 4 of 1953, § 2, 67 Stat. 636 (1953), designated the Deputy Attorney General to be the first in order of succession, followed by the Solicitor General. This change was subsequently codified in 28 U.S.C. § 508. In 1977, the statute was amended to include the Associate Attorney General as the official who is next in line immediately after the Deputy Attorney General. The Solicitor General and Assistant Attorneys General were listed as the officials next in the line of succession, subject to the Attorney General's discretion as to their sequence. The statute now reads as follows:

(a) In case of a vacancy in the office of Attorney General, or of his absence or disability, the Deputy Attorney General may exercise all the duties of that office, and for the purpose of section 3345 of title 5 the Deputy Attorney General is the first assistant to the Attorney General.

(b) When, by reason of absence, disability, or vacancy in office, neither the Attorney General nor the Deputy Attorney General is available to exercise the duties of the office of Attor-

<sup>1</sup> Undoubtedly there are other occasions that are not as well documented but that could be located with further research. This list should not be viewed as exhaustive.

<sup>2</sup> See Act of July 20, 1870, ch. 150, § 2, 16 Stat. 162, 162; Rev. Stat. § 347 (1873); 5 U.S.C. § 293 (1952).

ney General, the Associate Attorney General shall act as Attorney General. The Attorney General may designate the Solicitor General and the Assistant Attorneys General, in further order of succession, to act as Attorney General.

28 U.S.C. § 508.

We have found records of the following officials having acted as Attorney General during vacancies in that office pursuant to these various provisions:

<i>Name</i>	<i>Dates of Service</i>	<i>Reason for Vacancy</i>
Solicitor General Robert H. Bork <sup>3</sup>	October 21, 1973 to January 3, 1974	Resignation of Elliot L. Richardson
Deputy Attorney General Richard G. Kleindienst	March 2, 1972 to June 12, 1972	Resignation of John N. Mitchell
Deputy Attorney General Ramsey Clark	October 3, 1966 to March 2, 1967	Resignation of Nicholas deB. Katzenbach
Deputy Attorney General Nicholas deB. Katzenbach	September 4, 1964 to February 10, 1965	Resignation of Robert F. Kennedy
Solicitor General Phillip B. Perlman	April 7, 1952 to May 27, 1952	Resignation of J. Howard McGrath
Solicitor General Francis Biddle	July 10, 1941 to September 5, 1941	Resignation of Robert H. Jackson
Solicitor General James M. Beck	March 4, 1925 to March 16, 1925	Resignation of Harlan Fiske Stone
Solicitor General John K. Richards	April 1, 1901 to April 5, 1901	Resignation of Joseph McKenna
Solicitor General John K. Richards	January 18, 1898 to February 1, 1898	Resignation of John W. Griggs
Solicitor General Samuel H. Phillips	October 24, 1881 to January 2, 1882	Resignation of Wayne MacVeagh
Secretary of the Interior Orville H. Browning	March 3, 1868 to July 14, 1868	Resignation of Henry Stanberry

<sup>3</sup> At the time of Mr. Bork's service, there were vacancies in the offices of both the Attorney General and the Deputy Attorney General, each having resigned on the same day. The office of the Associate Attorney General had not yet been created. In *United States v. Halmo*, 386 F. Supp. 593 (E.D. Wis. 1974), the court held that Mr. Bork became Acting Attorney General pursuant to 28 U.S.C. § 508(b). The court also upheld his service as Acting Attorney General for an unlimited period of time.



<i>Name</i>	<i>Dates of Service</i>	<i>Reason for Vacancy</i>
Assistant Attorney General J. Hubley Ashton	July 17, 1866 to July 23, 1866	Resignation of James Speed
Secretary of the Navy John Y. Mason <sup>4</sup>	March 18, 1848 to July 1, 1848	Resignation of Nathan Clifford

There is only one period on this list (for two-and-a-half months in late 1973) during which there was a sustained vacancy in both of the Department's two top positions. The longest absence we have documented in the office of Attorney General during which an Acting Attorney General served is approximately five months. We are aware of no other hiatus between confirmed Attorneys General in excess of five months.

THEODORE B. OLSON  
*Assistant Attorney General*  
*Office of Legal Counsel*

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<sup>4</sup> The President designated Mr. Browning, Mr. Ashton, and Mr. Mason prior to the establishment of the Department of Justice. Mr. Mason had previously served as Attorney General from March 4, 1845 until September 9, 1846.



# **APPENDIX B**



[title I, §111], Nov. 29, 1999, 113 Stat. 1535, 1501A-20.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	[Uncodified].	1950 Reorg. Plan No. 2, §5 eff. May 24, 1950, 64 Stat. 1261.

The title of the position was changed to "Assistant Attorney General for Administration" by §307 of the Act of Aug. 14, 1964, Pub. L. 88-426, 78 Stat. 432.

The words "competitive service" are substituted for "classified civil service" because the term "classified civil service" formerly used to designate the merit system established by the Civil Service Act of 1883 has become ambiguous due to the creation of the "classified" pay system. The term "competitive service" is now customarily used, and appears throughout title 5, United States Code, in place of "classified civil service".

The words "There shall be in the Department of Justice" are omitted as unnecessary as the title of the position and the fact of appointment by the Attorney General establish the location of the position in the Department of Justice.

The last 12 words of section 5 of the Reorganization Plan are omitted on authority of the Act of June 5, 1952, ch. 369, §1101 (3d proviso), 66 Stat. 121. The salary of the position is now fixed by §303(e) of the Act of Aug. 14, 1964, Pub. L. 88-426, 78 Stat. 420, which is codified in section 5316 of title 5, United States Code.

PRIOR PROVISIONS

A prior section 507, acts June 25, 1948, ch. 646, 62 Stat. 910; May 24, 1949, ch. 139, §71, 63 Stat. 100, related to duties of United States attorneys, and to supervision by the Attorney General, prior to repeal by Pub. L. 89-554, §8(a), and reenactment in sections 509 and 547 of this title by section 4(c) of Pub. L. 89-554.

AMENDMENTS

1999—Subsec. (c). Pub. L. 106-113 added subsec. (c).

§ 507A. Assistant Attorney General for National Security

(a) Of the Assistant Attorneys General appointed under section 506, one shall serve, upon the designation of the President, as the Assistant Attorney General for National Security.

(b) The Assistant Attorney General for National Security shall—

(1) serve as the head of the National Security Division of the Department of Justice under section 509A of this title;

(2) serve as primary liaison to the Director of National Intelligence for the Department of Justice; and

(3) perform such other duties as the Attorney General may prescribe.

(Added Pub. L. 109-177, title V, §506(a)(1), Mar. 9, 2006, 120 Stat. 247.)

§ 508. Vacancies

(a) In case of a vacancy in the office of Attorney General, or of his absence or disability, the Deputy Attorney General may exercise all the duties of that office, and for the purpose of section 3345 of title 5 the Deputy Attorney General is the first assistant to the Attorney General.

(b) When by reason of absence, disability, or vacancy in office, neither the Attorney General nor the Deputy Attorney General is available to exercise the duties of the office of Attorney Gen-

eral, the Associate Attorney General shall act as Attorney General. The Attorney General may designate the Solicitor General and the Assistant Attorneys General, in further order of succession, to act as Attorney General.

(Added Pub. L. 89-554, §4(c), Sept. 6, 1966, 80 Stat. 612; amended Pub. L. 95-139, §2, Oct. 19, 1977, 91 Stat. 1171.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	[Uncodified].	R.S. §347 (last sentence). 1953 Reorg. Plan No. 4, §1, eff. June 20, 1953, 67 Stat. 636.

The last sentence of R.S. §347 is cited as authority inasmuch as the function contained therein was the function transferred to the Deputy Attorney General by 1953 Reorg. Plan No. 4. The word "may" is substituted for "have the power". The words "During any period of time" are omitted as unnecessary.

PRIOR PROVISIONS

A prior section 508, acts June 25, 1948, ch. 646, 62 Stat. 910; Mar. 2, 1955, ch. 9, §2(a), 69 Stat. 10; Oct. 11, 1962, Pub. L. 87-793, §1003(a), 76 Stat. 865; Aug. 14, 1964, Pub. L. 88-426, title III, §306(a)(1), 78 Stat. 428; Oct. 6, 1964, Pub. L. 88-631, §3(b), 78 Stat. 1008, related to salaries of United States attorneys, assistant United States attorneys, and special attorneys, prior to repeal by Pub. L. 89-554, §8(a), and reenactment in section 548 of this title by section 4(c) of Pub. L. 89-554.

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-139 substituted "the Associate Attorney General shall act as Attorney General. The Attorney General may designate the Solicitor General and the Assistant Attorneys General, in further order of succession, to act as Attorney General" for "the Assistant Attorneys General and the Solicitor General, in such order of succession as the Attorney General may from time to time prescribe, shall act as Attorney General".

§ 509. Functions of the Attorney General

All functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General except the functions—

(1) vested by subchapter II of chapter 5 of title 5 in administrative law judges employed by the Department of Justice;

(2) of the Federal Prison Industries, Inc.; and

(3) of the Board of Directors and officers of the Federal Prison Industries, Inc.

(Added Pub. L. 89-554, §4(c), Sept. 6, 1966, 80 Stat. 612; amended Pub. L. 95-251, §2(a)(6), Mar. 27, 1978, 92 Stat. 183; Pub. L. 98-473, title II, §228(a), Oct. 12, 1984, 98 Stat. 2030; Pub. L. 107-273, div. A, title II, §204(d), div. B, title IV, §4003(b)(1), Nov. 2, 2002, 116 Stat. 1776, 1811.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	[Uncodified].	1950 Reorg. Plan No. 2, §1, eff. May 24, 1950, 64 Stat. 1261.

The section is restated to allow incorporation into this chapter.

[The Historical and Revision Notes for former section 507, from which this section is partially derived, is set out under section 547 of this title.]

Repairs, &c. without cost to the United States.

Other railroad companies may pass over bridge.

United States may take possession of bridge if not kept in repair, free, &c. This act may be amended.

gation of the Potomac river, in efficient working condition at all times; and that, until such time as the needful changes are made to accommodate railroad and other traffic, as contemplated by this supplement, it shall be the duty of the said Baltimore and Potomac Railroad Company to repair without delay all damages to the present bridge, and maintain it without cost to the United States: *Provided*, [That] said railroad company shall give other railroad companies the right to pass over said bridge upon such reasonable terms as may be agreed upon, or Congress prescribe.

SEC. 2. *And be it further enacted*, That if the said Baltimore and Potomac Railroad Company shall at any time neglect to keep said bridge in good repair, and free for public use for ordinary travel, the government of the United States may enter into possession of the said bridge; and Congress reserves the right to alter or amend this law.

APPROVED, June 21, 1870.

June 22, 1870.

CHAP. CL.—*An Act to establish the Department of Justice.*

Department of justice established.

Attorney-General to be the head.

Office of solicitor-general established;

of assistants of the Attorney-General. 1871, ch. 72. Post, p. 482.

Law officers of other departments, their clerks, &c. to be transferred to Department of Justice and continue under its control.

Questions of law submitted to the Attorney-General, except, &c. may be referred to subordinates, &c.

Effect of their opinions indorsed by Attorney-General.

Cases in the court of claims and Supreme Court of the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there shall be, and is hereby, established an executive department of the government of the United States, to be called the Department of Justice, of which the Attorney-General shall be the head. His duties, salary, and tenure of office shall remain as now fixed by law, except so far as they may be modified by this act.

SEC. 2. *And be it further enacted*, That there shall be in said Department an officer learned in the law, to assist the Attorney-General in the performance of his duties, to be called the solicitor-general, and who, in case of a vacancy in the office of Attorney-General, or in his absence or disability, shall have power to exercise all the duties of that office. There shall also be continued in said Department the two other officers, learned in the law, called the assistants of the Attorney-General, whose duty it shall be to assist the Attorney-General and solicitor-general in the performance of their duties, as now required by law.

SEC. 3. *And be it further enacted*, That from and after the time when this act takes effect, the solicitor of the treasury and his assistants, the solicitor of internal revenue, the solicitor and naval judge advocate general, who shall hereafter be known as the naval solicitor, and the clerks, messengers, and laborers employed in the office of the Attorney-General, and in the offices of the solicitor of the treasury, naval solicitor, and solicitor of internal revenue, and the law officer in the Department of State, now designated as the examiner of claims in said Department, shall be transferred from the Departments with which they are now associated to the Department of Justice; and said officers shall exercise their functions under the supervision and control of the head of the Department of Justice.

SEC. 4. *And be it further enacted*, That questions of law submitted to the Attorney-General for his opinion, except questions involving a construction of the Constitution of the United States, may be by him referred to such of his subordinates as he may deem appropriate, and he may require the written opinion thereon of the officer to whom the same may be referred; and if the opinion given by such officer shall be approved by the Attorney-General, such approval so indorsed thereon shall give the opinion the same force and effect as belong to the opinions of the Attorney-General.

SEC. 5. *And be it further enacted*, That whenever the Attorney-General deems it necessary, he may require the solicitor-general to argue any case in which the government is interested before the court of claims; and as to cases coming by appeal from the court of claims to

the Supreme Court of the United States, it shall be the duty of the Attorney-General and solicitor-general to conduct and argue them before that court as in other cases in which the United States is interested. And the Attorney-General may, whenever he deems it for the interest of the United States, conduct and argue any case in which the government is interested, in any court of the United States, or may require the solicitor-general or any officer of his Department to do so. And the solicitor-general, or any officer of the Department of Justice, may be sent by the Attorney-General to any State or district in the United States to attend to the interests of the United States in any suit pending in any of the courts of the United States, or in the courts of any State, or to attend to any other interest of the United States; for which service they shall receive, in addition to their salaries, their actual and necessary expenses, while so absent from the seat of government, the account thereof to be verified by affidavit.

Cases in any court of the United States.

Officers of the department may be sent to any State or district.

Actual and necessary expenses on such service to be paid.

SEC. 6. *And be it further enacted*, That whenever a question of law arises in the administration, either of the War or Navy Department, the cognizance of which is not given by statute to some other officer from whom the head of either of these Departments may require advice, the same shall be sent to the Attorney-General, to be by him referred to the proper officer in his Department provided for in this act, or otherwise disposed of as he may deem proper; and each head of any Department of the government may require the opinion of the Attorney-General on all questions of law arising in the administration of their respective Departments.

Questions of law from War or Navy Departments.

SEC. 7. *And be it further enacted*, That the duties enjoined upon the auditor of the Post-Office Department by the fourteenth section of the act entitled "An act to change the organization of the Post-Office Department, and to provide more effectually for the settlement of the accounts thereof," passed July two, eighteen hundred and thirty-six, shall hereafter be performed by some officer of the Department of Justice, to be specially designated, under the direction of the Attorney-General, who shall also have the care of prosecutions for mail depredations and penal offenses against the postal laws.

Duties of auditor of the Post-office Department. 1836, ch. 270, § 14. Vol. v. p. 82. Prosecutions for offences against postal laws, &c.

SEC. 8. *And be it further enacted*, That the Attorney-General is hereby empowered to make all necessary rules and regulations for the government of said Department of Justice, and for the management and distribution of its business.

Rules and regulations of the department.

SEC. 9. *And be it further enacted*, That the several officers hereinbefore transferred from the other Departments to the Department of Justice shall hold their respective offices until their successors are duly qualified; and the solicitor-general, and whenever vacancies occur, the assistants of the Attorney-General, and all the solicitors and assistant solicitors mentioned in this act, shall be appointed by the President, by and with the advice and consent of the Senate. All the other officers, clerks, and employees in the said Department shall be appointed and be removable by the Attorney-General.

Officers hereby transferred to hold office until, &c. Certain appointments to be made by the President; others by the Attorney-General.

SEC. 10. *And be it further enacted*, That the following annual salaries shall be paid to the officers hereinbefore mentioned: To the solicitor-general, seven thousand five hundred dollars; to each of the assistants of the Attorney-General, five thousand dollars each; to the solicitor of the internal revenue, five thousand dollars; and to the other officers the salaries and fees now allowed by law; and the Attorney-General shall be allowed a stenographic clerk, with an annual salary of two thousand dollars, and he may appoint three additional clerks of the fourth class.

Salaries. Solicitor-general. Assistants of the Attorney-General. Solicitor of internal revenue. Other officers. Stenographic clerk. Additional clerks.

SEC. 11. *And be it further enacted*, That all moneys hereafter drawn out of the treasury upon the requisition of the Attorney-General, shall be disbursed by such one of the clerks herein provided for the Attorney-General as he may designate; and so much of the first section of the

Moneys drawn by the Attorney-General, how to be disbursed.

Repeal of part of 1869, ch. 80, § 1. Vol. xi. p. 420.

Annual report of Attorney-General; when made, and to include what.

Statistics of crime.

Superintendent of treasury building to provide suitable rooms.

Attorney-General may require any officer to perform any duty required.

Opinions.

Suits and proceedings.

No fees to any other attorney or counsellor, for any service herein required.

Supervisory powers over accounts of district attorneys, &c. to be exercised by Attorney-General;

and over conduct and proceedings of attorneys of, or employed by, the United States.

Secretaries of departments not to employ attorneys or counsel at the expense of the United States; to call upon the Department of Justice.

No counsel or attorney fees to be allowed, except, &c. and upon what certificate.

Attorneys, &c. specially re-

act making appropriations, passed March three, eighteen hundred and fifty-nine, as provides that moneys drawn out of the treasury upon the requisition of the Attorney-General shall be disbursed by such disbursing officer as the Secretary of the Treasury may designate, is hereby repealed.

SEC. 12. *And be it further enacted*, That it shall be the duty of the Attorney-General to make an annual report to Congress, in January each year, of the business of the said Department of Justice, and any other matters appertaining thereto that he may deem proper, including the statistics of crime under the laws of the United States, and, as far as practicable, under the laws of the several States.

SEC. 13. *And be it further enacted*, That the superintendent of the treasury building shall provide such suitable rooms in the treasury building as may be necessary to accommodate the officers and clerks of the said Department, or, to the extent that that may be found impracticable, to provide such rooms in some other building in the vicinity of said treasury building.

SEC. 14. *And be it further enacted*, That the Attorney-General may require any solicitor or officers of the Department of Justice to perform any duty required of said Department or any officer thereof; and the officers of the law department, under the direction of the Attorney-General, shall give all opinions and render all services requiring the skill of persons learned in the law, necessary to enable the President and heads of the executive Departments, and the heads of bureaus and other officers in such Departments to discharge their respective duties; and shall, for and on behalf of the United States, procure the proper evidence for, and conduct, prosecute, or defend all suits and proceedings in the Supreme Court of the United States and in the court of claims, in which the United States, or any officer thereof, is a party or may be interested. And no fees shall be allowed or paid to any other attorney or counsel[1] or at law for any service herein required of the officers of the Department of Justice.

SEC. 15. *And be it further enacted*, That the supervisory powers now exercised by the Secretary of the Interior over the accounts of the district attorneys, marshals, clerks, and other officers of the courts of the United States, shall be exercised by the Attorney-General, who shall sign all requisitions for the advance or payment of moneys out of the treasury, on estimates or accounts, subject to the same control now exercised on like estimates or accounts by the first auditor or first comptroller of the treasury.

SEC. 16. *And be it further enacted*, That the Attorney-General shall have supervision of the conduct and proceedings of the various attorneys for the United States in the respective judicial districts, who shall make report to him of their proceedings, and also of all other attorneys and counsel[1]ors employed in any cases or business in which the United States may be concerned.

SEC. 17. *And be it further enacted*, That it shall not be lawful for the Secretary of either of the executive Departments to employ attorneys or counsel at the expense of the United States; but such Departments, when in need of counsel or advice, shall call upon the Department of Justice, the officers of which shall attend to the same; and no counsel or attorney fees shall hereafter be allowed to any person or persons, besides the respective district attorneys and assistant district attorneys, for services in such capacity to the United States, or any branch or department of the government thereof, unless hereafter authorized by law, and then only on the certificate of the Attorney-General that such services were actually rendered, and that the same could not be performed by the Attorney-General, or solicitor-general, or the officers of the department of justice, or by the district attorneys. And every attorney and counsel[1]or who



shall be specially retained, under the authority of the Department of Justice, to assist in the trial of any case in which the government is interested, shall receive a commission from the head of said Department, as a special assistant to the Attorney-General, or to some one of the district attorneys, as the nature of the appointment may require, and shall take the oath required by law to be taken by the district attorneys, and shall be subject to all the liabilities imposed upon such officers by law.

tained to receive a commission as special assistant to, &c. and shall take the oath, &c.

SEC. 18. *And be it further enacted*, That the Attorney-General shall from time to time cause to be edited and printed an edition of one thousand copies, at the government printing office, of such of the opinions of the law officers herein authorized to be given as he may deem valuable for preservation, in volumes which shall be as to the size, quality of paper, printing, and binding, of uniform style and appearance, as nearly as practicable, with the eighth volume of said opinions, published by Robert Farnham, in the year eighteen hundred and sixty-eight, which volumes shall contain proper head-notes, a complete and full index, and such foot-notes as the Attorney-General may approve. Such volumes shall be distributed in such manner as the Attorney-General may from time to time prescribe.

· Edition of the opinions of law officers to be published from time to time.

Style, &c. of volumes, and how distributed.

SEC. 19. *And be it further enacted*, That this act shall take effect and be in force from and after the first day of July, eighteen hundred and seventy.

This act when to take effect.

APPROVED, June 22, 1870.

CHAP. CLI. — *An Act to authorize the Secretary of the Treasury to issue a Register to the Schooner "Cavallo Marino."* June 22, 1870.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury is hereby authorized to issue a register to the schooner "Cavallo Marino," a vessel now lying in the harbor of Indianola, Texas, and owned by Samuel Marx.

Register to issue to schooner "Cavallo Marino."

APPROVED, June 22, 1870.

CHAP. CLII. — *An Act to incorporate the National Mutual Life Assurance Association of Washington, D. C.* June 23, 1870.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That Almon M. Clapp, Ezra B. French, Stephen J. W. Tabor, R. B. Donaldson, William A. Richardson, Jedediah H. Baxter, James M. Austin, Henry P. H. Bromwell, Aaron F. Randall, John R. Thompson, Dolson B. Searle, Joseph F. Evans, Thomas L. Tullock, Amos L. Merriman, Edward Downey, L. M. Sanders, J. W. Griffin, John W. Boteler, George S. Montrose, William Wilkinson, James O. Conner, and B. B. French, and their successors, are constituted a body corporate, by the name of "The National Life Assurance and Trust Association," and by that name may sue and be sued, plead and be impleaded, have a common seal, and have all the rights, privileges, and immunities necessary for the purposes of the corporation hereby created: *Provided*, That the said company shall be limited to the District of Columbia in the transaction of its business, and shall not establish any agency in any State except in pursuance of the laws of said State.

National Life Assurance and Trust Association incorporated;

powers, &c.

where may transact business;

SEC. 2. *And be it further enacted*, That the corporation above named shall, within one year after the passage of this act, meet and elect such officers as may be necessary to perfect the organization, and thereupon, or as soon thereafter as may be practicable, shall open books for the enrolment of members.

when to organize.

SEC. 3. *And be it further enacted*, That the objects of this association shall be the mutual insurance of the lives of the members, and the invest-

Objects of the association.

## Sec.

- 134b-1. Government evidences of indebtedness held by Post Office Department or Postal Service while agent for Treasury Department.
- 134b-2. Agreements of indemnity.
- 134c. Purchase of insurance.
- 134d. Presumption of lawful conduct.
- 134e. Rules and regulations for execution of subchapter.
- 134f. Definitions.
- 134g. Short title.
- 134h. Effective date.

## JOINT COMMITTEE ON GOVERNMENT REORGANIZATION

135. Creation and composition.
136. Powers and duties; reports.
137. Hearings; subpenas; disbursement of appropriations.
138. Officers and employees; appointment and compensation.

## COORDINATION OF FEDERAL REPORTING SERVICES

139. Declaration of Congressional policy.
- 139a. Collection of information.
- (a) Duties of Director of the Bureau of the Budget.
- (b) Designation of central collection agency.
- (c) Independent collection by an agency as prohibited.
- (d) Determination for necessity of information; hearing.
- (e) Cooperation of agencies in making information available.
- 139b. Unlawful disclosure of information; penalties; release of information to other agencies.
- 139c. Plans or forms for collecting information; submission to Director; approval.
- 139d. Rules and regulations.
- 139e. Definitions.
- 139f. Penalty for failure to furnish information.

## CENTRAL STATISTICAL COMMITTEE AND CENTRAL STATISTICAL BOARD

- 141-149. Central Statistical Committee and Central Statistical Board.

## HEALTH SERVICES FOR EMPLOYEES

150. Establishment of health service programs; conditions; review by Public Health Service; definition.

## CROSS REFERENCES

Wartime pay and allowances generally, see section 1001 et seq. of Appendix to Title 50, War.

## § 1. Application of provisions of chapter.

The provisions of this chapter shall apply to the following executive departments:

- First. The Department of State.
- Second. The Department of War.
- Third. The Department of the Treasury.
- Fourth. The Department of Justice.
- Fifth. The Post Office Department.
- Sixth. The Department of the Navy.
- Seventh. The Department of the Interior.
- Eighth. The Department of Agriculture.
- Ninth. The Department of Commerce.
- Tenth. The Department of Labor. (R. S. § 158; Feb. 9, 1889, ch. 122, § 1, 25 Stat. 659; Feb. 14, 1903, ch. 552, § 1, 32 Stat. 825; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

## § 2. Word "department."

The word "department" when used alone in this chapter, and chapters 2-11 of this title, means one of the executive departments enumerated in section

1 of this title. (R. S. § 159; Feb. 9, 1889, ch. 122, § 1, 25 Stat. 659; Feb. 14, 1903, ch. 552, § 1, 32 Stat. 825; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

## § 3. Salaries of heads of executive departments.

The compensation of the heads of executive departments who are members of the President's Cabinet shall be at the rate of \$15,000 per annum each. (R. S. § 160; Feb. 26, 1907, ch. 1635, § 4, 34 Stat. 993; Mar. 4, 1925, ch. 549, § 4, 43 Stat. 1301.)

## DERIVATION

Act Mar. 3, 1873, ch. 226, § 1, 17 Stat. 486.

## § 4. Vacancies in office of department heads; temporarily filling.

In case of the death, resignation, absence, or sickness of the head of any department, the first or sole assistant thereof shall, unless otherwise directed by the President, as provided by section 6 of this title, perform the duties of such head until a successor is appointed, or such absence or sickness shall cease. (R. S. § 177.)

## DERIVATION

Act July 23, 1868, ch. 227, § 1, 15 Stat. 168.

## § 5. Vacancies in subordinate offices.

In case of the death, resignation, absence, or sickness of the chief of any bureau, or of any officer thereof, whose appointment is not vested in the head of the department, the assistant or deputy of such chief or of such officer, or if there be none, then the chief clerk of such bureau, shall, unless otherwise directed by the President, as provided by section 6 of this title, perform the duties of such chief or of such officer until a successor is appointed or such absence or sickness shall cease. (R. S. § 178.)

## DERIVATION

Act July 23, 1868, ch. 227, § 2, 15 Stat. 168.

## § 6. Discretionary authority of President as to vacancies.

In any of the cases mentioned in sections 4 and 5 of this title except the death, resignation, absence, or sickness of the Attorney General, the President may, in his discretion, authorize and direct the head of any other department or any other officer in either department, whose appointment is vested in the President, by and with the advice and consent of the Senate, to perform the duties of the vacant office until a successor is appointed, or the sickness or absence of the incumbent shall cease. (R. S. § 179.)

## DERIVATION

Act July 23, 1868, ch. 227, § 3, 15 Stat. 168; act June 22, 1870, ch. 150, § 2, 16 Stat. 162.

## § 7. Temporary appointments to vacancies limited.

A vacancy occasioned by death or resignation must not be temporarily filled under the provisions of sections 4-6 of this title for a longer period than thirty days. (R. S. § 180; Feb. 6, 1891, ch. 113, 26 Stat. 733.)

## DERIVATION

Act July 23, 1868, ch. 227, § 3, 15 Stat. 168.

## § 8. Restriction on manner of temporary appointments to fill vacancies.

No temporary appointment, designation, or assignment of one officer to perform the duties of another,

in the cases covered by sections 4 and 5 of this title, shall be made otherwise than as provided by those sections, except to fill a vacancy happening during a recess of the Senate. (R. S. § 181.)

## DERIVATION

Act July 23, 1868, ch. 227, § 2, 15 Stat. 168.

**§ 9. Extra compensation for duties performed while filling vacancies.**

An officer performing the duties of another office, during a vacancy, as authorized by sections 4-6 of this title, is not by reason thereof entitled to any other compensation than that attached to his proper office. (R. S. § 182.)

## DERIVATION

Act July 23, 1868, ch. 227, § 3, 15 Stat. 168.

**§ 10. Commissions.**

The President is authorized to make out and deliver, after the adjournment of the Senate, commissions for all officers whose appointments have been advised and consented to by the Senate. (R. S. § 1773.)

## DERIVATION

Act Mar. 2, 1867, ch. 154, § 6, 14 Stat. 431.

**§ 11. Same; officers under Secretaries of departments.**

The commissions of all officers under the direction and control of the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Secretary of the Interior, the Postmaster General, the Secretary of Commerce, and the Secretary of Agriculture shall be made out and recorded in the respective departments under which they are to serve, and the department seal affixed thereto, any laws to the contrary notwithstanding: *Provided*, That the said seal shall not be affixed to any such commission before the same shall have been signed by the President of the United States. (Mar. 3, 1875, ch. 131, § 14, 18 Stat. 420; Mar. 28, 1896, ch. 73, 29 Stat. 75; Mar. 3, 1905, ch. 1422, 33 Stat. 990; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

**§ 12. Same; judicial officers and other officers under Attorney General.**

The commissions of all judicial officers, including marshals and attorneys of the United States, appointed by the President, by and with the advice and consent of the Senate, and all other commissions prepared prior to August 8, 1888, at the Department of State upon the requisition of the Attorney General, shall be made out and recorded in the Department of Justice, and shall be under the seal of said department and countersigned by the Attorney General, any laws to the contrary notwithstanding. The said seal shall not be affixed to any such commission before the same shall have been signed by the President of the United States. (Aug. 8, 1888, ch. 786, 25 Stat. 387.)

**§ 13. Notification of appointments.**

Whenever the President, without the advice and consent of the Senate, designates, authorizes, or employs any person to perform the duties of any office, he shall forthwith notify the Secretary of the

Treasury thereof, and the Secretary of the Treasury shall thereupon communicate such notice to the General Accounting Office. (R. S. § 9, 1774; June 10, 1921, ch. 18, §§ 301-318, 42 Stat. 23-27.)

## DERIVATION

Act Mar. 2, 1867, ch. 154, § 6, 14 Stat. 431.

**§ 14. Notification of nominations or rejections.**

The Secretary of the Senate shall, at the close of each session thereof, deliver to the Secretary of the Treasury, and to each of the Assistant Secretaries of the Treasury, and to the General Accounting Office, and to the Treasurer, and to the Bureau of the Public Debt, a full and complete list, duly certified, of all the persons who have been nominated to and rejected by the Senate during such session, and a like list of all the offices to which nominations have been made and not confirmed and filled at such session. (R. S. § 1775; June 10, 1921, ch. 18, § 304, 42 Stat. 24; Reorg. Plan No. III, § 1 (a) (4), eff. June 30, 1940, 5 Fed. Reg. 2107, 54 Stat. 1231.)

## DERIVATION

Act Mar. 2, 1867, ch. 154, § 7, 14 Stat. 431.

**§ 14a. Holding office contrary to disability clause of fourteenth amendment; quo warranto for removal.**

Whenever any person holds office, except as a member of Congress or of some State legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the Constitution, the district attorney for the district in which such person holds office shall proceed against him by writ of quo warranto, returnable to the district court of the United States in such district, and prosecute the same to the removal of such person from office. (R. S. § 1786; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

## DERIVATION

Act May 31, 1870, ch. 114, § 15, 16 Stat. 143.

**§ 15. Removal of disability imposed by the fourteenth amendment.**

The disability imposed by section three of the fourteenth amendment to the Constitution of the United States incurred prior to June 6, 1898, is hereby removed. (June 6, 1898, ch. 389, 30 Stat. 432.)

**§ 16. Oath of office:**

The oath to be taken by any person elected or appointed to any office of honor or profit either in the civil, military, or naval service, except the President of the United States shall be as follows: "I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section shall not affect the oaths prescribed on May 13, 1884, in relation to the performance of duties in special or particular subordinate offices and employments. (R. S. § 1757; May 13, 1884, ch. 46, §§ 2, 3, 23 Stat. 22.)

## DERIVATION

Act July 11, 1868, ch. 139, 15 Stat. 85; act Feb. 15, 1871, ch. 53, 16 Stat. 412.

## AMENDMENTS

1949—Act Oct. 28, 1949, substituted the "Classification Act of 1949" for the "Classification Act of 1923".

## BUREAU OF CUSTOMS

## § 281. Establishment of Bureau; Commissioner; appointment and salary.

There shall be in the Department of the Treasury a bureau to be known as the Bureau of Customs, and a Commissioner of Customs. The Commissioner of Customs shall be at the head of the Bureau of Customs, and the Commissioner of Customs shall be appointed by the Secretary of the Treasury, without regard to the civil service laws, and shall receive basic compensation at the rate of \$14,000 per annum. (As amended Oct. 15, 1949, ch. 695, § 6 (a), 63 Stat. 881.)

## AMENDMENTS

1949—Act Oct. 15, 1949, cited to text increased compensation of Commissioner from \$10,330 to \$14,000 per annum.

## EFFECTIVE DATE

The increased compensation provided for by act Oct. 15, 1949, cited to text, took effect on the first day of the first pay period which began after Oct. 15, 1949, by the provisions of section 9 of said act Oct. 15, 1949, which is set out as a note under section 3 of this title.

## TRANSFER OF FUNCTIONS

With certain specified exceptions, all functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of this title.

## §§ 281a–281c.

## TRANSFER OF FUNCTIONS

With certain specified exceptions, all functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of this title.

## § 281f. Establishment of revolving fund for Bureau of Customs.

There is established a revolving fund of \$300,000 which shall be available, without fiscal year limitation exclusively for transfer to the appropriation for collecting the revenue from customs to cover obligations of the Bureau of Customs arising from authorized reimbursable services, pending reimbursement from parties in interest: *Provided*, That amounts so transferred shall be returned to the revolving fund not later than six months after the close of the fiscal year in which transferred. (June 30, 1949, ch. 286, title I, § 101, 63 Stat. 360.)

## TRANSFER OF FUNCTIONS

With certain specified exceptions, all functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No.

26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of this title.

## BUREAU OF NARCOTICS

## § 282. Establishment of Bureau; Commissioner; appointment; salary; annual report.

There shall be in the Department of the Treasury a bureau to be known as the Bureau of Narcotics and a Commissioner of Narcotics who shall be at the head thereof. The Commissioner of Narcotics shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive basic compensation at the rate of \$14,000 per annum. The Commissioner shall make an annual report to Congress. (As amended Oct. 15, 1949, ch. 695, § 6 (a), 63 Stat. 881.)

## AMENDMENTS

1949—Act Oct. 15, 1949, cited to text, increased compensation of Commissioner from \$10,330 to \$14,000 per annum.

## EFFECTIVE DATE

The increased compensation provided for by act Oct. 15, 1949, cited to text, took effect on the first day of the first pay period which began after Oct. 15, 1949 by the provisions of section 9 of said act Oct. 15, 1949, which is set out as a note under section 3 of this title.

## TRANSFER OF FUNCTIONS

With certain specified exceptions, all functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of this title.

## §§ 282a–282c.

## TRANSFER OF FUNCTIONS

With certain specified exceptions, all functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of this title.

## Chapter 5.—DEPARTMENT OF JUSTICE

## Sec.

- 295a. Compensation of Assistant Attorneys General and Assistant Solicitor General [New].
- 300c–1. Same; salary of Associate Director [New].
- 300e. Same; employment of particular personnel [New].
- 341. Appropriations available for administrative expenses; notarial fees; meals and lodging of bailiffs in attendance upon juries [New].
- 341a. Same; transfer expenses of prisoners sent to narcotic farms [New].
- 341b. Same; investigation of United States marshals and attorneys, clerks of courts, etc. [New].
- 341c. Same; membership in International Commission of Criminal Police; expenses of unforeseen emergencies of a confidential character [New].
- 341d. Same; Immigration Service expenses [New].
- 341e. Procurement of law books, reference books, and periodicals; sale and exchange [New].
- 341f. Federal penal or correctional institutions; acquisition of adjacent land [New].
- 341g. Same; disposition of cash collections for meals, laundry, etc. [New].

### § 291. Establishment of Department.

#### TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3173, 64 Stat. 1261, set out below.

#### REORGANIZATION PLAN NO. 2 OF 1950

Eff. May 24, 1950, 15 F. R. 3173, 64 Stat. 1261

#### DEPARTMENT OF JUSTICE

##### § 1. TRANSFER OF FUNCTIONS TO THE ATTORNEY GENERAL

(a) Except as otherwise provided in subsection (b) of this section, there are hereby transferred to the Attorney General all functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department.

(b) This section shall not apply to the functions vested by the Administrative Procedure Act (60 Stat. 237) [section 1001 et seq. of this title] in hearing examiners employed by the Department of Justice, nor to the functions of the Federal Prison Industries, Inc., of the Board of Directors and officers of the Federal Prison Industries, Inc., or of the Board of Parole.

##### § 2. PERFORMANCE OF FUNCTIONS OF THE ATTORNEY GENERAL

The Attorney General may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of Justice of any function of the Attorney General, including any function transferred to the Attorney General by the provisions of this reorganization plan.

##### § 3. DEPUTY ATTORNEY GENERAL

The title of "the Assistant to the Attorney General" is hereby changed to "Deputy Attorney General."

##### § 4. ASSISTANT ATTORNEY GENERAL

There shall be in the Department of Justice one additional Assistant Attorney General, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall assist the Attorney General in the performance of his duties, and who shall receive compensation at the rate prescribed by law for other Assistant Attorneys General. The office of Assistant Solicitor General, created by section 16 (a) of the Act of June 16, 1933 (48 Stat. 307) [section 1001 et seq. of this title], is hereby abolished, but the incumbent thereof immediately prior to the taking of effect of the provisions of this reorganization plan shall without reappointment be the first Assistant Attorney General in office under the provisions of this section.

##### § 5. ADMINISTRATIVE ASSISTANT ATTORNEY GENERAL

There shall be in the Department of Justice an Administrative Assistant Attorney General, who shall be appointed, with the approval of the President, by the Attorney General under the classified civil service, who shall perform such duties as the Attorney General shall prescribe, and who shall receive compensation at the rate of \$14,000 per annum.

##### § 6. INCIDENTAL TRANSFERS

The Attorney General may from time to time effect such transfers within the Department of Justice of any of the records, property, personnel, and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of such Department as he may deem necessary in order to carry out the provisions of this reorganization plan.

#### SUBVERSIVE ACTIVITIES

An Interdepartmental Committee to consider cases of subversive activities on the part of federal employees was established within the Department of Justice by Ex.

Ord. No. 9300, Feb. 5, 1943, 8 F. R. 1701, was revoked by Ex. Ord. No. 9835, set out as a note under section 631 of this title.

### § 293. Solicitor General.

There shall be in the Department of Justice an officer learned in the law, to assist the Attorney General in the performance of his duties, called the Solicitor General, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to basic compensation at the rate of \$17,500 per annum. In case of a vacancy in the office of Attorney General, or of his absence or disability, the Solicitor General shall have power to exercise all the duties of that office. (As amended Oct. 15, 1949, ch. 695, § 3, 63 Stat. 880.)

#### AMENDMENTS

1949—Act Oct. 15, 1949, cited to text, increased compensation of Solicitor General from \$10,330 to \$17,500.

#### EFFECTIVE DATE

The increased compensation provided for by act Oct. 15, 1949, cited to text, took effect on the first day of the first pay period which began after Oct. 15, 1949, by the provisions of section 9 of said act Oct. 15, 1949, which is set out as a note under section 3 of this title.

#### TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3173, 64 Stat. 1261, set out in note under section 291 of this title.

### § 293a. Assistant Solicitor General.

#### ABOLISHMENT OF OFFICE

The office of Assistant Solicitor General, created by this section, was abolished by 1950 Reorg. Plan No. 2, § 4, eff. May 24, 1950, 15 F. R. 3173, 64 Stat. 1261, set out in note under section 291 of this title, which further provided that the incumbent of such office immediately prior to May 24, 1950, should, without reappointment, be the First Assistant Attorney General in office under the provisions of section 4 of such Plan. See, also, note under section 295 of this title.

### § 294. Deputy Attorney General.

The President is authorized to appoint, by and with the advice and consent of the Senate a Deputy Attorney General, whose basic compensation shall be at the rate of \$17,500 per annum. (As amended Oct. 15, 1949, ch. 695, § 3, 63 Stat. 880; 1950 Reorg. Plan No. 2, § 3, eff. May 24, 1950, 15 F. R. 3173, 64 Stat. 1261.)

#### AMENDMENTS

1949—Act Oct. 15, 1949, cited to text, increased compensation of the Assistant to Attorney General from \$10,330 to \$17,500 per annum.

#### EFFECTIVE DATE

The increased compensation provided for by act Oct. 15, 1949, cited to text, took effect on the first day of the first pay period which began after Oct. 15, 1949, by the provisions of section 9 of said act Oct. 15, 1949, which is set out as a note under section 3 of this title.

#### CHANGE OF TITLE

The title of "the Assistant to the Attorney General", which was the office established by this section, was changed to "Deputy Attorney General" by 1950 Reorg.

Plan No. 2, cited to text and set out in note under section 291 of this title.

#### TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3173, 64 Stat. 1261, set out in note under section 291 of this title.

#### § 295. Assistant Attorneys General.

##### TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3173, 64 Stat. 1261, set out in note under section 291 of this title.

##### FIRST ASSISTANT ATTORNEY GENERAL

The office of Assistant Solicitor General, created by section 293a of this title, was abolished by 1950 Reorg. Plan No. 2, § 4, eff. May 24, 1950, 15 F. R. 3173, 64 Stat. 1261, set out in note under section 291 of this title, which further provided that the incumbent thereof immediately prior to May 24, 1950, should, without reappointment, be the first Assistant Attorney General in office under the provisions of section 4 of such Plan.

##### ADMINISTRATIVE ASSISTANT ATTORNEY GENERAL

The office of "Administrative Assistant Attorney General" was created by 1950 Reorg. Plan No. 2, § 5, 15 F. R. 3174, 64 Stat. 1261, set out in note under section 291 of this title, which further provided that he should be appointed, with the approval of the President, by the Attorney General under the classified civil service, that he should perform such duties as the Attorney General shall prescribe, and that he should receive compensation at the rate of \$14,000 per annum.

##### ADDITIONAL ASSISTANT ATTORNEY GENERAL

An additional Assistant Attorney General, to be appointed by the President, by and with the advice and consent of the Senate, to assist the Attorney General in the performance of his duties, and to receive compensation at the rate prescribed for other Assistant Attorneys General, was provided for in 1950 Reorg. Plan No. 2, § 4, eff. May 24, 1950, 15 F. R. 3173, 64 Stat. 1261, set out in note under section 291 of this title.

#### § 295a. Compensation of Assistant Attorneys General.

The basic compensation of the Assistant Attorneys General shall be at the rate of \$15,000 per annum. (Oct. 15, 1949, ch. 695, § 5 (a), 63 Stat. 880; 1950 Reorg. Plan No. 2, § 4, eff. May 24, 1950, 15 F. R. 3173, 64 Stat. 1261.)

##### CODIFICATION

The words "and the Assistant Solicitor General" were deleted on authority of 1950 Reorg. Plan No. 2, cited to text, which abolished the office, see note set out under section 295 of this title.

##### EFFECTIVE DATE

The increased compensation provided for by act Oct. 15, 1949, cited to text, took effect on the first day of the first pay period which began after Oct. 15, 1949, by the provisions of section 9 of said act Oct. 15, 1949, which is set out as a note under section 3 of this title.

§§ 296, 298, 299.

##### TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees

of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3173, 64 Stat. 1261, set out in note under section 291 of this title.

#### § 300. Officials for detection and prosecution of crimes.

REPEATED.—Act July 9, 1947, ch. 211, title II, § 201, 61 Stat. 291; act June 3, 1948, ch. 400, title II, § 201, 62 Stat. 318; act July 20, 1949, ch. 354, title II, § 201, 63 Stat. 459; act Sept. 6, 1950, ch. 896, ch. III, title II, § 201, 64 Stat. 617; Oct. 22, 1951, ch. 533, title II, § 201, 65 Stat. 583.

##### TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3173, 64 Stat. 1261, set out in note under section 291 of this title.

§ 300a. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section, relating to authority of Federal Bureau of Investigation agents to serve warrants and make arrests, is now covered by sections 3052 and 3107 of Title 18, Crimes and Criminal Procedure.

§ 300c. Same; salary of Director.

The compensation of the Director of the Bureau shall be \$20,000 per annum so long as the position is held by the present incumbent. (As amended July 9, 1947, ch. 211, title II, § 201, 61 Stat. 291; June 3, 1948, ch. 400, title II, § 201, 62 Stat. 318; July 20, 1949, ch. 354, title II, § 201, 63 Stat. 459; Oct. 15, 1949, ch. 695, § 4, 63 Stat. 880; Sept. 6, 1950, ch. 896, ch. III, title II, § 201, 64 Stat. 617; Oct. 22, 1951, ch. 533, title II, § 201, 65 Stat. 584.)

##### AMENDMENTS

1950—Act Sept. 6, 1950, cited to text, increased the Director's compensation from \$16,000 to \$20,000 per annum.

1949—Act Oct. 15, 1949, cited to text, amended section to increase the Director's compensation from \$14,000 to \$16,000 per annum.

##### EFFECTIVE DATE

The increased compensation provided for by act Oct. 15, 1949, cited to text, took effect on the first day of the first pay period which began after Oct. 15, 1949, by the provisions of section 9 of said act Oct. 15, 1949, which is set out as a note under section 3 of this title.

##### COMPENSATION OF THE ASSOCIATE DIRECTOR OF THE F. B. I.

Section 6 (a) of act Oct. 15, 1949, ch. 695, 63 Stat. 881, increased the basic compensation of the Associate Director from \$10,330 to \$14,000 per annum.

§ 300c-1. Same; salary of Associate Director.

The compensation of the Associate Director of the Federal Bureau of Investigation hereafter shall be \$17,500 per annum. (Oct. 22, 1951, ch. 533, title VI, § 606, 65 Stat. 600.)

§ 300d. Same; availability of appropriations to pay compensation of civil service employees.

REPEATED.—Act July 9, 1947, ch. 211, title II, § 201, 61 Stat. 291; act June 3, 1948, ch. 400, title II, § 201, 62 Stat. 318; act July 20, 1949, ch. 354, title II, § 201, 63 Stat. 459; act Sept. 6, 1950, ch. 896, ch. III, title II, § 201, 64 Stat. 617; Oct. 22, 1951, ch. 533, title II, § 201, 65 Stat. 584.

**§ 300c. Same; employment of particular personnel.**

The Director of the Federal Bureau of Investigation, United States Department of Justice, hereafter is authorized without regard to section 1105 of this title to place two positions in grade GS-18, and seven positions in grade GS-17, in the General Schedule established by the Classification Act of 1949, and such positions shall be in lieu of any positions in the Federal Bureau of Investigation previously allocated under section 1105 of this title. (Oct. 22, 1951, ch. 533, title VI, § 606, 65 Stat. 600.)

**REFERENCES IN TEXT**

The Classification Act of 1949, referred to in the text, is classified to chapter 21 of this title.

**§ 301. Officials for investigation of official acts, records, and accounts of marshals, attorneys, clerks of courts, United States commissioners, referees, and trustees.****CODIFICATION**

Section not repeated in the Department of Justice Appropriation Act, 1951, act Sept. 6, 1950, ch. 896, ch. III, title II, 64 Stat. 615.

Similar provisions are now contained in section 341b of this title.

REPEATED.—Act July 9, 1947, ch. 211, title II, § 201, 61 Stat. 289; act June 3, 1948, ch. 400, title II, § 201, 62 Stat. 317; act July 20, 1949, ch. 354, title II, § 201, 63 Stat. 458.

**§ 307. Legal advice to Army and Navy Departments.****CHANGE OF NAME**

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by act July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501.

**§ 310. Conduct of legal proceedings.****CROSS REFERENCES**

Supervision by Attorney General of prosecution and defense of all litigation arising under farm housing provisions of Housing Act of 1949, see section 1480 of Title 42, the Public Health and Welfare.

**§ 311. Performance of duty by officers of Department.****TRANSFER OF FUNCTIONS**

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3173, 64 Stat. 1261, set out in note under section 201 of this title.

**§ 312. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948.**

Section, relating to counsel giving aid to district attorneys, is now covered by sections 503, 507, and 508 of Title 28, Judiciary and Judicial Procedure.

**§ 315. Appointment and oath of special attorneys.**

Every attorney specially retained under authority of the Department of Justice shall be commissioned as special assistant to the Attorney General or special attorney and shall take the oath required by law. Foreign counsel employed in special cases shall not be required to take such oath. (As amended June 25, 1948, ch. 646, § 3, 62 Stat. 985.)

**AMENDMENTS**

1948—Act June 25, 1948, cited to text, amended section by omitting provisions relating to special attorneys to

assist United States attorneys as such provisions are now covered by sections 503 and 504 of Title 28, Judiciary and Judicial Procedure.

**EFFECTIVE DATE**

Section 33 of act June 25, 1948, cited to text, provided that the amendment of this section should be effective as of Sept. 1, 1948.

**§§ 317, 318. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948.**

Section 317, relating to superintending district attorneys and marshals, is now covered by sections 507 and 547 of Title 28, Judiciary and Judicial Procedure.

Section 318, relating to accounts of district attorneys, is now covered by sections 509 and 547 of Title 28, Judiciary and Judicial Procedure.

**§ 321. Repealed. June 25, 1948, ch. 646, § 7, 62 Stat. 986, eff. Sept. 1, 1948.**

Section, relating to disbursement of judges salaries, is now covered by section 604 of revised Title 28, Judiciary and Judicial Procedure.

**§ 322. Records of office of General Counsel for the Department of the Treasury.****CODIFICATION**

Section has been transferred to section 248c of this title.

**§§ 323, 324. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948.**

Section 323, relating to bonds for suits, is now covered by section 507 of Title 28, Judiciary and Judicial Procedure.

Section 324, relating to examination of reports of district attorneys and collectors, is now covered by section 507 of Title 28, Judiciary and Judicial Procedure.

**§§ 325, 326.****TRANSFER OF FUNCTIONS**

With certain specified exceptions, all functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of this title.

**§ 327. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948.**

Section, relating to General Counsel of the Treasury prescribing rules respecting suits, is now covered by section 507 of Title 28, Judiciary and Judicial Procedure.

**§ 328. Same; report of moneys recovered.****TRANSFER OF FUNCTIONS**

With certain specified exceptions, all functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of this title.

**§§ 329-331. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948.**

Section 329, relating to General Counsel of Treasury instructing district attorneys, is now covered by sections 507 and 547 of Title 28, Judiciary and Judicial Procedure.

Section 330, relating to supervision over suits affecting national banks, is now covered by section 507 of Title 28, Judiciary and Judicial Procedure.

Section 331, relating to duties of United States attorneys, is now covered by section 507 of Title 28, Judiciary and Judicial Procedure.

§ 341. Appropriations available for administrative expenses; notarial fees; meals and lodging of bailiffs in attendance upon juries.

Appropriations now or hereafter provided for the Department of Justice shall be available for payment of (a) notarial fees, including such additional stenographic services as may be required in connection therewith in the taking of depositions, and compensation and expenses of witnesses and informants, all at such rates as may be authorized or approved by the Attorney General or his administrative assistant, and (b) when ordered by the court, actual expenses of meals and lodging for marshals, deputy marshals, or criers when acting as bailiffs in attendance upon juries. (July 28, 1950, ch. 503, § 1, 64 Stat. 380.)

#### TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department, were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3173, 64 Stat. 1261, set out in note under section 291 of this title.

§ 341a. Same; transfer expenses of prisoners sent to narcotic farms.

Appropriations now or hereafter provided for salaries and expenses of United States marshals shall be available for actual and necessary expenses incident to the transfer of prisoners in the custody of such marshals to narcotic farms. (July 28, 1950, ch. 503, § 2, 64 Stat. 380.)

§ 341b. Same; investigation of United States marshals and attorneys, clerks of courts, etc.

The Attorney General is empowered to investigate the official acts, records, and accounts of United States marshals and United States attorneys, and at the request and in behalf of the Director of the Administrative Office of the United States courts those of the clerks of the United States courts and of the district courts of Alaska, Canal Zone, and Virgin Islands, probation officers, referees, trustees and receivers in bankruptcy, United States commissioners and court reporters, for which purpose all the official papers, records, dockets, and accounts of said officers, without exception, shall be examined by agents of the Attorney General at any time. Appropriations now or hereafter provided for the examination of judicial offices shall be available for carrying out the provisions of this section. (July 28, 1950, ch. 503, § 4, 64 Stat. 380.)

§ 341c. Same; membership in International Commission of Criminal Police; expenses of unforeseen emergencies of a confidential character.

Appropriations now or hereafter provided for the Federal Bureau of Investigation shall be available for expenses of membership in the International Commission of Criminal Police and, when so specified in the appropriation concerned, for expenses of unforeseen emergencies of a confidential character,

to be expended under the direction of the Attorney General, who shall make a certificate of the amount of any such expenditure as he may think it advisable not to specify, and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended. None of the funds appropriated for the Federal Bureau of Investigation shall be used to pay the compensation of any civil-service employee. (July 28, 1950, ch. 503, § 5, 64 Stat. 380.)

§ 341d. Same; Immigration Service expenses.

Appropriations now or hereafter provided for the Immigration and Naturalization Service shall be available for payment of (a) hire of privately owned horses for use on official business, under contract with officers or employees of the Service; (b) pay of interpreters and translators who are not citizens of the United States; (c) distribution of citizenship textbooks to aliens without cost to such aliens; (d) payment of allowances (at such rate as may be specified from time to time in the appropriation Act involved) to aliens, while held in custody under the immigration laws, for work performed; and (e) when so specified in the appropriation concerned, expenses of unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General, who shall make a certificate of the amount of any such expenditure as he may think it advisable not to specify, and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended. (July 28, 1950, ch. 503, § 6, 64 Stat. 380.)

§ 341e. Procurement of lawbooks, reference books, and periodicals; sale and exchange.

In the procurement of lawbooks, books of reference, and periodicals, the Department of Justice is authorized to exchange or sell similar items and apply the exchange allowances or proceeds of sales in such cases in whole or in part payment therefor. (July 28, 1950, ch. 503, § 3, 64 Stat. 380.)

§ 341f. Federal penal or correctional institutions; acquisition of adjacent land.

When authorized in an appropriation or other law, the Attorney General may acquire land adjacent to any Federal penal or correctional institution if, in his opinion, the additional land is essential to the protection of the health or safety of the inmates of the institution. (July 28, 1950, ch. 503, § 7, 64 Stat. 381.)

§ 341g. Same; disposition of cash collections for meals, laundry, etc.

Collections in cash for meals, laundry, barber service, uniform equipment, and any other items for which payment is made originally from appropriations for the maintenance and operation of Federal penal and correctional institutions, may be deposited in the Treasury to the credit of the appropriation currently available for such items when the collection is made. (July 28, 1950, ch. 503, § 8, 64 Stat. 381.)



## Chapter 6.—POST OFFICE DEPARTMENT

## § 361. Establishment.

## EX. ORD. NO. 10154. DESIGNATION OF OFFICERS TO ACT AS POSTMASTER GENERAL

Ex. Ord. No. 10154, Aug. 23, 1950, 15 F. R. 5653, provided: By virtue of the authority vested in me by section 179 of the Revised Statutes of the United States (section 6 of this title), and as President of the United States, it is hereby ordered as follows:

In case of the death, resignation, absence, or sickness of both the Postmaster General and the Deputy Postmaster General the officer holding the position highest on the following list who is not absent or under disability to perform the duties of the office of Postmaster General shall perform the duties of that office:

1. Assistant Postmaster General in charge of the Bureau of Post Office Operations.
2. Assistant Postmaster General in charge of the Bureau of Transportation.
3. Assistant Postmaster General in charge of the Bureau of Finance.
4. Assistant Postmaster General in charge of the Bureau of Facilities.

## § 363. Assistant Postmasters General.

## CODIFICATION

Section omitted from the Code as the offices of the First, Second, Third, and Fourth Assistant Postmasters General were abolished and their functions transferred to the Postmaster General by 1949 Reorg. Plan No. 3, §§ 1 (a), 5 (b), eff. Aug. 19, 1949, 14 F. R. 5225, 63 Stat. 1066. See note set out under section 369 of this title.

## § 366. Purchasing supplies.

The Postmaster General, in making purchases for supplies necessary for the Post Office Department, shall advertise, as provided by law, and award contracts for such supplies to the lowest responsible bidder in pursuance of existing law. The Postmaster General shall have recorded in a book to be kept for that purpose a true and faithful abstract of all bids made for furnishing supplies to the Post Office Department, giving the name of the party bidding, the terms of the offer, the sum to be paid, and he shall keep on file and preserve all such bids until the end of the contract term to which they relate. Each bidder shall have the right to be present, either in person or by attorney, when the bids are opened, and shall have the right to examine and inspect all bids. All purchases, advertisements, and contracts for supplies for the Post Office Department shall be made by the Postmaster General in his name subject to his approval, and in purchasing such supplies preference shall be given to articles of domestic production and manufacture, conditions of price and quality being equal. There shall be separate proposals and separate contracts for each class of material furnished. These records shall be open at all times for the inspection of Congress, and for the inspection of those who may be interested in such contracts made, or to be made, to furnish supplies to the Post Office Department. (As amended 1949 Reorg. Plan No. 3, §§ 1 (a), 5 (a), eff. Aug. 19, 1949, 14 F. R. 5225, 63 Stat. 1066.)

## TRANSFER OF FUNCTIONS

All functions of the purchasing agent were transferred to the Postmaster General and the office of purchasing agent was abolished by 1949 Reorg. Plan No. 3, cited to text.

## § 369. Duties of Postmaster General.

## REPORTS TO SENATE AND HOUSE APPROPRIATIONS COMMITTEES DURING FISCAL YEAR 1950

Section 207 of Act June 30, 1949, ch. 286, title II, 63 Stat. 374, provided that: "During the fiscal year 1950 the Postmaster General shall make quarterly reports to the Senate and House Committees on Appropriations, showing for each quarter the amount paid from each appropriation for overtime, the number of employees receiving such overtime, and the number of hours of overtime worked by such employees, together with a statement as to the necessity for such overtime work."

## REORGANIZATION PLAN NO. 3 OF 1949

Eff. Aug. 19, 1949, 14 F. R. 5225, 63 Stat. 1066, as amended Oct. 15, 1949, ch. 695, §§ 3, 5 (a), 63 Stat. 880.

## POST OFFICE DEPARTMENT

## § 1. FUNCTIONS OF THE POSTMASTER GENERAL

(a) There are hereby transferred to the Postmaster General the functions of all subordinate officers and agencies of the Post Office Department, including the functions of each Assistant Postmaster General, the Purchasing Agent for the Post Office Department, the Comptroller, and the Bureau of Accounts.

(b) The Postmaster General is hereby authorized to delegate to any officer, employee, or agency of the Post Office Department designated by him such of his functions as he deems appropriate.

## § 2. DEPUTY POSTMASTER GENERAL

There shall be in the Post Office Department a Deputy Postmaster General, who shall be appointed by the President by and with the advice and consent of the Senate, shall perform such duties as the Postmaster General may designate, and shall receive basic compensation at the rate of \$17,500 per annum or such other compensation as may be provided by law for the under secretaries of executive departments after the date of transmittal of this reorganization plan to the Congress.

## § 3. ASSISTANT POSTMASTERS GENERAL

There shall be in the Post Office Department four Assistant Postmasters General, who shall be appointed by the President by and with the advice and consent of the Senate, shall perform such duties as the Postmaster General may designate, and shall receive basic compensation at the rate of \$15,000 per annum or such other compensation as may be provided by law for the assistant secretaries of executive departments after the date of transmittal of this reorganization plan to the Congress.

## § 4. ADVISORY BOARD

There is hereby established an Advisory Board for the Post Office Department of which the Postmaster General shall be chairman and the Deputy Postmaster General the vice chairman. The Board shall have seven additional members, representative of the public, who shall be appointed by the President by and with the advice and consent of the Senate. The members so appointed shall each receive compensation of \$50 per diem when engaged in duties as members of the Board (including travel time to and from their homes or regular places of business) and reasonable subsistence and travel expense as determined by the Postmaster General. The Board shall meet quarterly at the seat of the government in the District of Columbia, or at such other time and place as the Postmaster General shall determine, for the purpose of considering methods and policies for the improvement of the postal service, and shall advise and make recommendations to the Postmaster General with respect to such methods and policies.

## § 5. AGENCIES ABOLISHED

(a) There are hereby abolished the Bureau of Accounts in the Post Office Department (including the office of Comptroller) and the office of Purchasing Agent for the Post Office Department.

(b) The offices of First Assistant Postmaster General, Second Assistant Postmaster General, Third Assistant

63 Stat. 580.  
5 USC 171a.

(b) So much of the functions of the Secretary of Defense under section 202(b) of the National Security Act of 1947, as amended, as consists of direction, authority, and control over functions transferred by this reorganization plan is hereby abolished.

50 USC 98a.

(c) Any functions which were vested in the Army and Navy Munitions Board or which are vested in the Munitions Board with respect to serving as agent through which the Secretaries of the Army, Navy, Air Force, and Interior jointly act, under section 2 (a) of the Strategic and Critical Materials Stock Piling Act, as amended, are hereby abolished.

50 USC 404.

SEC. 6. *Abolition of National Security Resources Board.*—The National Security Resources Board (established by the National Security Act of 1947, 61 Stat. 499), including the offices of Chairman and Vice-Chairman of the National Security Resources Board, is hereby abolished, and the Director shall provide for winding up any outstanding affairs of the said Board or offices not otherwise provided for in this reorganization plan.

## REORGANIZATION PLAN NO. 4 OF 1953

Transmitted Apr.  
20, 1953.  
Effective June 20,  
1953.  
63 Stat. 203.  
5 USC 133z note.

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 20, 1953, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended.

### DEPARTMENT OF JUSTICE

SECTION 1. *Acting Attorney General.*—(a) The function with respect to exercising the duties of the office of Attorney General vested in the Solicitor General by Section 347, Revised Statutes, as amended (5 U.S.C. 293), is hereby transferred to the Deputy Attorney General, and for the purposes of Section 177, Revised Statutes (5 U.S.C. 4), the Deputy Attorney General shall be deemed to be the first assistant of the Department of Justice.

(b) During any period of time when, by reason of absence, disability, or vacancy in office, neither the Attorney General nor the Deputy Attorney General is available to exercise the duties of the office of Attorney General, the Assistant Attorneys General and the Solicitor General, in such order of succession as the Attorney General may from time to time prescribe, shall act as Attorney General.

SEC. 2. *Assistant Attorney General.*—There shall be in the Department of Justice an additional Assistant Attorney General who shall be appointed by the President, by and with the advice and consent of the Senate, who shall receive compensation at the rate prescribed by law for other Assistant Attorneys General, and who shall assist the Attorney General in the performance of his duties. The office of Assistant Attorney General in charge of customs matters created by section 30 of the act of June 10, 1890, as amended (36 Stat. 108, 5 U.S.C. 296), is hereby abolished.

**TITLE 5.—EXECUTIVE DEPARTMENTS AND GOVERNMENT OFFICERS  
AND EMPLOYEES**

Chap.		Sec.
11A.	Department of Health, Education, and Welfare [New].....	623
24.	Federal Employees' Group Life Insurance [New].....	2091
25.	Government Employees' Incentive Awards [New].....	2121
26.	Uniform Allowances [New].....	2131
27.	Disposition of Remains of Members of Uniformed Services and Accredited Personnel [New].....	2151
28.	Federal Absentee Voting Assistance [New]..	2171
29.	Federal Executives Pay Provisions [New]..	2201
30.	Civil Service Retirement Program [New]..	2251

**Chapter 1.—PROVISIONS APPLICABLE TO DEPARTMENTS AND OFFICERS GENERALLY**

Sec.	
17c.	Same; renewal by employees of Senate and House of Representatives [New].
30r.	Reserves and National Guardsmen [New]. (a) Leave of absence when on active duty or engaged in field or coast defense training. (b) Restoration of civilian position. (c) Acceptance of civilian position; pay and allowances; practice before Federal departments. (d) Status of Reserves and National Guardsmen when not on active duty, or when on active duty for training.
46d.	Collection of indebtedness of personnel resulting from erroneous payments [New].
46e.	Same; regulations [New].
59c.	Same; restriction on payment of retired pay to retired officers of Army, Navy, Marine Corps, Air Force, Coast Guard, Coast and Geodetic Survey, and Public Health Service engaged in selling war materials to Government; time limitation [New].
70a.	Allowance for expenses of obtaining notary public commission [New].
70b.	Same; availability of funds [New].
73b-5.	Payment or reimbursement of general average contributions in connection with transportation of effects; exceptions [New].
75a-1.	Conditions requisite to compulsory occupation of Government-owned quarters [New].
84d.	Civilian employees of National Guard; withholding sums for State employee retirement systems [New].
118j-1.	Federal employees; strikes against or overthrow of Government; penalties [New].
118k-3.	District of Columbia employees as employees of United States [New].
118p.	Federal employment denied persons who are disloyal or assert right to strike against Government [New].
118q.	Affidavit [New]. (a) Time to execute; prima facie evidence. (b) Emergency work.
118r.	Penalty [New].

**FEEES AND CHARGES OF FEDERAL AGENCIES**

140a.	Copy of certificate of service in Armed Forces [New].
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**§ 1. Application of provisions of chapter.**

The provisions of this title shall apply to the following executive departments:

- First. The Department of State.
- Second. The Department of Defense.
- Third. The Department of the Treasury.
- Fourth. The Department of Justice.
- Fifth. The Post Office Department.
- Sixth. The Department of the Interior.
- Seventh. The Department of Agriculture.
- Eighth. The Department of Commerce.
- Ninth. The Department of Labor.

Tenth. The Department of Health, Education, and Welfare. (As amended July 31, 1956, 5 p. m., E. D. T., ch. 802, § 1 (a), 70 Stat. 732.)

**AMENDMENTS**

1956—Act July 31, 1956, amended section to include the Department of Health, Education, and Welfare.

**APPLICABILITY OF OTHER LAWS TO DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

Section 1 (b) of act July 31, 1956, provided that: "The amendment made by subsection (a) of this section shall not be construed to make applicable to the Department of Health, Education, and Welfare any provision of law inconsistent with Reorganization Plan No. 1 of 1953 [set out as a note under section 623 of this title] or Public Law 13, 83d Congress [section 623 of this title], or to supersede or limit any function or authority of the Department of Health, Education, and Welfare, or any officer thereof, under any law in effect prior to the enactment of this Act [July 31, 1956], or prevent or limit the expenditure of funds for any such function or authority."

**§ 3. Salaries of heads of executive departments.**

**CODIFICATION**

Section, R. S. § 160; acts Feb. 26, 1907, ch. 1635, § 4, 34 Stat. 993; Mar. 4, 1925, ch. 549, § 4, 43 Stat. 1301; Oct. 15, 1949, ch. 695, § 1, 63 Stat. 880, was omitted from the Code, and is now covered by section 2201 of this title.

**§ 4. Vacancies in office of department heads; temporary filling.**

**TRANSFER OF FUNCTIONS**

All functions of all officers, agencies and employees of the Department of Agriculture were transferred, with certain exceptions, to the Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F. R. 3219, 67 Stat. 633, set out as a note under section 511 of this title.

**JUSTICE DEPARTMENT**

1953 Reorg. Plan No. 4, § 1 (a), eff. June 20, 1953, 18 F. R. 3577, set out as a note under section 291 of this title, provided that for the purposes of this section "the Deputy Attorney shall be deemed to be the first assistant of the Department of Justice."

**§ 6. Discretionary authority of President as to vacancies.**

**TRANSFER OF FUNCTIONS**

All functions of all officers, agencies and employees of the Department of Agriculture were transferred, with

certain exceptions, to the Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F. R. 3219, 67 Stat. 633, set out as a note under section 511 of this title.

**Ex. Ord. No. 10332**

Ex. Ord. 10332, Mar. 10, 1952, 17 F. R. 2083, which provided for the order of succession in the Department of Defense was revoked by Ex. Ord. No. 10495, Oct. 15, 1953, 18 F. R. 6585, set out as a note under this section.

**Ex. Ord. No. 10495. ORDER OF SUCCESSION—DEPARTMENT OF DEFENSE**

Ex. Ord. No. 10495, Oct. 15, 1953, 18 F. R. 6585, provided:

**PART I**

**SUCCESSION TO THE POSITION OF SECRETARY OF DEFENSE**

In the event of the death, disability, or absence of the Secretary of Defense, the following designated officers, in the Department of Defense, shall succeed to the position of, and act as, Secretary of Defense in the order indicated:

1. Deputy Secretary of Defense.
2. Secretary of the Army.
3. Secretary of the Navy.
4. Secretary of the Air Force.
5. Assistant Secretaries of Defense and the General Counsel of the Department of Defense, in the order fixed by their length of service as such.
6. Under Secretaries of the Army, Navy, and Air Force, in the order fixed by their length of service as such.
7. Assistant Secretaries of the Army, Navy and Air Force, in the order fixed by their length of service as such.

Precedence within a particular group between or among two or more officers having the same date of appointment shall be as determined by the Secretary of Defense at the time of appointment.

**PART II**

**SUCCESSION TO THE POSITION OF SECRETARY OF THE ARMY**

In the event of the death, disability, or absence of the Secretary of the Army, the following designated officers shall succeed to the position of, and act as, Secretary of the Army in the order indicated:

1. Under Secretary of the Army.
2. Assistant Secretaries of the Army, in the order fixed by their length of service as such.
3. Chief of Staff, United States Army.
4. Vice Chief of Staff, United States Army.
5. Chief of the United States Army Field Forces.

**PART III**

**SUCCESSION TO THE POSITION OF SECRETARY OF THE NAVY**

In the event of the death, disability, or absence of the Secretary of the Navy, the following designated officers shall succeed to the position of, and act as, Secretary of the Navy in the order indicated:

1. Under Secretary of the Navy.
2. Assistant Secretary of the Navy.
3. Assistant Secretary of the Navy for Air.
4. Chief of Naval Operations.
5. Vice Chief of Naval Operations.

**PART IV**

**SUCCESSION TO THE POSITION OF SECRETARY OF THE AIR FORCE**

In the event of the death, disability, or absence of the Secretary of the Air Force, the following designated officials shall succeed to the position of, and act as, Secretary of the Air Force in the order indicated:

1. Under Secretary of the Air Force.
2. Assistant Secretaries of the Air Force, in the order fixed by their length of service as such.
3. Chief of Staff, United States Air Force.
4. Vice Chief of Staff, United States Air Force.
5. The Senior Deputy Chief of Staff who is not absent or disabled.
6. Commanding General, Tactical Air Command.

**PART V**

Succession to office pursuant to this order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory position held by the successor.

**PART VI**

Executive Order No. 10332 of March 7, 1952, is hereby revoked.

**Ex. Ord. No. 10586. ORDER OF SUCCESSION—TREASURY DEPARTMENT**

Ex. Ord. No. 10586, Jan. 13, 1955, 20 F. R. 361, provided:

In case of the death, resignation, absence, or sickness of the Secretary of the Treasury and the Under Secretary of the Treasury, the following-designated officers of the Treasury Department shall, in the order of succession indicated, act as Secretary of the Treasury until a successor is appointed or until the absence or sickness of the incumbent shall cease:

1. Under Secretary for Monetary Affairs.
2. Assistant Secretaries, in the order fixed from time to time by the Secretary of the Treasury.
3. General Counsel.

Executive Order No. 8714 of March 18, 1941, entitled "Designating Certain Officers To Act as Secretary of the Treasury in Case of Absence or Sickness of the Secretary", is hereby revoked.

DWIGHT D. EISENHOWER

§§ 7-9, 11.

**TRANSFER OF FUNCTIONS**

All functions of all officers, agencies and employees of the Department of Agriculture were transferred, with certain exceptions, to the Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F. R. 3219, 67 Stat. 633, set out as a note under section 511 of this title.

§ 16. Oath of office.

**CROSS REFERENCES**

Allen physicians, dentists and allied specialists inducted and appointed as commissioned officers, substitution of prescribed oath for oath provided for in this section, see section 454 (1) (7) of Appendix to Title 50, War and National Defense.

Armed Forces, oath of service and obedience for non-citizens qualified for commission in medical categories, see section 455 (a) of Appendix to Title 50, War and National Defense.

§ 17c. Same; renewal by employees of Senate and House of Representatives.

No person who, upon appointment as an employee of the Senate or House of Representatives, has subscribed or hereafter subscribes to the oath of office required by section 16 of this title, shall be required to renew such oath so long as the service of such person as an employee of the Senate or House of Representatives is continuous. (Mar. 28, 1955, ch. 17, 69 Stat. 14.)

§ 22. Departmental regulations.

**TRANSFER OF FUNCTIONS**

All functions of all officers, agencies and employees of the Department of Agriculture were transferred, with certain exceptions, to the Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F. R. 3219, 67 Stat. 633, set out as a note under section 511 of this title.

**AUTHORITY OF DIRECTOR OF UNITED STATES INFORMATION AGENCY**

Exercise of authority available under this section by the Director of the United States Information Agency, see Ex. Ord. No. 10477, Aug. 3, 1953, 18 F. R. 4540, set out as a note under section 811a of Title 22, Foreign Relations and Intercourse.

**EXECUTIVE ORDER No. 9980**

Ex. Ord. No. 9980, July 27, 1948, 13 F. R. 4311, set out as a note under this section, was superseded by Ex. Ord. No. 10590, Jan. 18, 1955, 20 F. R. 409, set out as a note under section 631 of this title.

## Chapter 5.—DEPARTMENT OF JUSTICE

## § 291. Establishment of Department.

## REORGANIZATION PLAN NO. 4 OF 1953

18 F. R. 3577, 67 Stat. 636

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 20, 1953, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended [sections 133z to 133z-15 of this title].

## DEPARTMENT OF JUSTICE

## § 1. ACTING ATTORNEY GENERAL

(a) The function with respect to exercising the duties of the office of Attorney General vested in the Solicitor General by section 347, Revised Statutes, as amended [section 293 of this title], is hereby transferred to the Deputy Attorney General, and for the purposes of section 177, Revised Statutes [section 4 of this title], the Deputy Attorney General shall be deemed to be the first assistant of the Department of Justice.

(b) During any period of time when, by reason of absence, disability, or vacancy in office, neither the Attorney General nor the Deputy Attorney General is available to exercise the duties of the office of Attorney General, the Assistant Attorneys General and the Solicitor General, in such order of succession as the Attorney General may from time to time prescribe, shall act as Attorney General.

## § 2. ASSISTANT ATTORNEY GENERAL

There shall be in the Department of Justice an additional Assistant Attorney General who shall be appointed by the President, by and with the advice and consent of the Senate, who shall receive compensation at the rate prescribed by law for other Assistant Attorneys General, and who shall assist the Attorney General in the performance of his duties. The office of Assistant Attorney General in charge of customs matters created by section 30 of the act of June 10, 1890, as amended (36 Stat. 108; [section 296 of this title]), is hereby abolished.

## § 293. Solicitor General.

## TRANSFER OF FUNCTIONS

The function with respect to exercising the duties of the office of Attorney General vested in the Solicitor General by this section was transferred to the Deputy Attorney General by 1953 Reorganization Plan No. 4, § 1 (a), eff. June 20, 1953, 18 F. R. 3577, set out as a note under section 291 of this title. Section 1 (b) of said Reorg. Plan provided that the order of succession following the Deputy Attorney General be prescribed by the Attorney General.

## § 294. Deputy Attorney General.

## ACTING ATTORNEY GENERAL

The function with respect to exercising the duties of the office of Attorney General vested in the Solicitor General by section 293 of this title was transferred to the Deputy Attorney General by 1953 Reorg. Plan No. 4, § 1 (a), eff. June 20, 1953, 18 F. R. 3577, set out as a note under section 291 of this title. Said section 1 (a) also provided that for purposes of section 4 of this title "the Deputy Attorney General shall be deemed the first assistant of the Department of Justice.

## § 295. Assistant Attorneys General.

## ADDITIONAL ASSISTANT ATTORNEY GENERAL AND ORDER OF SUCCESSION

1953 Reorg. Plan No. 4, § 2, eff. June 20, 1953, 18 F. R. 3577, set out as a note under section 291 of this title, established in the Department of Justice an additional Assistant Attorney General to be appointed by the Pres-

ident, by and with the advice and consent of the Senate, to receive compensation at the rate prescribed by law for other Assistant Attorneys General, and to assist the Attorney General in the performance of his duties. Section 1 (b) of said Reorg. Plan provided that the order of succession of the Assistant Attorneys General and the Solicitor General to the duties of the Attorney General be prescribed by the Attorney General.

## § 296. Assistant Attorney General in charge of customs matters; deputy; special attorneys.

## ABOLISHMENT OF OFFICE

The office of Assistant Attorney General in charge of customs matters created by this section was abolished by 1953 Reorg. Plan No. 4, § 2, eff. June 20, 1953, 18 F. R. 3577, set out as a note under section 291 of this title.

## §§ 299, 300, 300c, 300d.

REPEATED.—Aug. 5, 1953, ch. 328, title II, § 201, 67 Stat. 373.

## Chapter 6.—POST OFFICE DEPARTMENT

## Sec.

363a. Additional Assistant Postmaster General; appointment and compensation; duties [New].

## § 363a. Additional Assistant Postmaster General; appointment and compensation; duties.

There shall be in the Post Office Department an additional Assistant Postmaster General, who shall be appointed by the President by and with the advice and consent of the Senate, shall perform such duties as the Postmaster General may designate, and shall receive compensation at the rate of \$15,000 per annum or at such other rate as may hereafter be provided by law for Assistant Postmasters General. (July 20, 1953, ch. 232, 67 Stat. 183.)

## §§ 385, 386. Omitted.

Sections, R. S. §§ 410, 411, which empowered the Postmaster General to discharge from imprisonment any person jailed on any judgment in a civil case, obtained in behalf of the Post Office Department, if it appeared that defendant had no property, with the additional provision that such release should not bar a subsequent execution against the property of the defendant on the same judgment, were omitted as obsolete.

## Chapter 7.—DEPARTMENT OF THE NAVY

## § 412. Duties of Secretary generally.

## SUCCESSION TO SECRETARY OF THE NAVY

Order of succession of officers on the death, disability or absence of the Secretary of the Navy, see Ex. Ord. No. 10495, Oct. 15, 1953, 18 F. R. 6585, set out as a note under section 171a of this title.

## § 417. Loan of scientific instruments.

## CODIFICATION

Section, act Oct. 19, 1888, c. 1210, § 3, 25 Stat. 600, which authorized the Secretary of the Navy to lend scientific instruments not in use, to persons taking observations or making investigations in connection with or for the use of, the "Signal Service", was temporary only, and has been omitted from the Code as obsolete. Said act Oct. 19, 1888 was the Deficiency Appropriation Act for the fiscal year 1888 and prior years.

## § 429. Bureaus generally, establishment and distribution of business.

## TRANSFER OF FUNCTIONS

All functions of all officers, agencies and employees of the Department of Agriculture were transferred, with cer-

## Public Law 89-554

## AN ACT

September 6, 1966  
[H. R. 10 104]

To enact title 5, United States Code, "Government Organization and Employees", codifying the general and permanent laws relating to the organization of the Government of the United States and to its civilian officers and employees.

Title 5, USC,  
Government Or-  
ganization and  
Employees.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the laws relating to the organization of the Government of the United States and to its civilian officers and employees, generally, are revised, codified, and enacted as title 5 of the United States Code, entitled "Government Organization and Employees", and may be cited as "5 U.S.C., § ", as follows:

## TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

PART	Sec.
I. THE AGENCIES GENERALLY.....	101
II. THE UNITED STATES CIVIL SERVICE COMMISSION.....	1101
III. EMPLOYEES.....	2101

### PART I—THE AGENCIES GENERALLY

CHAPTER	Sec.
1. ORGANIZATION.....	101
3. POWERS.....	301
5. ADMINISTRATIVE PROCEDURE.....	501
7. JUDICIAL REVIEW.....	701
9. EXECUTIVE REORGANIZATION.....	901

#### CHAPTER 1—ORGANIZATION

Sec.
101. Executive departments.
102. Military departments.
103. Government corporation.
104. Independent establishment.
105. Executive agency.

#### § 101. Executive departments

The Executive departments are:

The Department of State.  
The Department of the Treasury.  
The Department of Defense.  
The Department of Justice.  
The Post Office Department.  
The Department of the Interior.  
The Department of Agriculture.  
The Department of Commerce.  
The Department of Labor.  
The Department of Health, Education, and Welfare.

#### § 102. Military departments

The military departments are:

The Department of the Army.  
The Department of the Navy.  
The Department of the Air Force.

#### § 103. Government corporation

For the purpose of this title—

(1) "Government corporation" means a corporation owned or controlled by the Government of the United States; and

SEC. 4. (a) The analysis of title 28, United States Code, is amended by striking out:

"II. UNITED STATES ATTORNEYS AND MARSHALS..... 501"

and inserting in place thereof:

"II. DEPARTMENT OF JUSTICE..... 501"

(b) Part II of the subanalysis of title 28, United States Code, is amended to read as follows:

"PART II—DEPARTMENT OF JUSTICE

"31. THE ATTORNEY GENERAL.....	501
"33. FEDERAL BUREAU OF INVESTIGATION.....	531
"35. UNITED STATES ATTORNEYS.....	541
"37. UNITED STATES MARSHALS.....	561"

(c) Part II of title 28, United States Code, is amended to read as follows:

"PART II—DEPARTMENT OF JUSTICE

"CHAPTER	Sec.
"31. THE ATTORNEY GENERAL.....	501
"33. FEDERAL BUREAU OF INVESTIGATION.....	531
"35. UNITED STATES ATTORNEYS.....	541
"37. UNITED STATES MARSHALS.....	561

"CHAPTER 31—THE ATTORNEY GENERAL

"Sec.

- "501. Executive department.
- "502. Seal.
- "503. Attorney General.
- "504. Deputy Attorney General.
- "505. Solicitor General.
- "506. Assistant Attorneys General.
- "507. Assistant Attorney General for Administration.
- "508. Vacancies.
- "509. Functions of the Attorney General.
- "510. Delegation of authority.
- "511. Attorney General to advise the President.
- "512. Attorney General to advise heads of executive departments.
- "513. Attorney General to advise Secretaries of military departments.
- "514. Legal services on pending claims in departments and agencies.
- "515. Authority for legal proceedings; commission, oath, and salary for special attorneys.
- "516. Conduct of litigation reserved to Department of Justice.
- "517. Interests of United States in pending suits.
- "518. Conduct and argument of cases.
- "519. Supervision of litigation.
- "520. Transmission of petitions in Court of Claims; statement furnished by departments.
- "521. Publication and distribution of opinions.
- "522. Report of business and statistics.
- "523. Requisitions.
- "524. Appropriations for administrative expenses; notarial fees; meals and lodging of bailiffs.
- "525. Procurement of law books, reference books, and periodicals; sale and exchange.
- "526. Authority of the Attorney General to investigate United States attorneys and marshals, clerks of court, and others.

"§ 501. Executive department

"The Department of Justice is an executive department of the United States at the seat of Government.

"§ 502. Seal

"The Attorney General shall have a seal for the Department of Justice. The design of the seal is subject to the approval of the President.

**“§ 503. Attorney General**

“The President shall appoint, by and with the advice and consent of the Senate, an Attorney General of the United States. The Attorney General is the head of the Department of Justice.

**“§ 504. Deputy Attorney General**

“The President may appoint, by and with the advice and consent of the Senate, a Deputy Attorney General.

**“§ 505. Solicitor General**

“The President shall appoint in the Department of Justice, by and with the advice and consent of the Senate, a Solicitor General, learned in the law, to assist the Attorney General in the performance of his duties.

**“§ 506. Assistant Attorneys General**

“The President shall appoint, by and with the advice and consent of the Senate, nine Assistant Attorneys General, who shall assist the Attorney General in the performance of his duties.

**“§ 507. Assistant Attorney General for Administration**

“(a) The Attorney General shall appoint, with the approval of the President, an Assistant Attorney General for Administration, who shall perform such duties as the Attorney General may prescribe.

“(b) The position of Assistant Attorney General for Administration is in the competitive service.

**“§ 508. Vacancies**

“(a) In case of a vacancy in the office of Attorney General, or of his absence or disability, the Deputy Attorney General may exercise all the duties of that office, and for the purpose of section 3345 of title 5 the Deputy Attorney General is the first assistant to the Attorney General.

“(b) When, by reason of absence, disability, or vacancy in office, neither the Attorney General nor the Deputy Attorney General is available to exercise the duties of the office of Attorney General, the Assistant Attorneys General and the Solicitor General, in such order of succession as the Attorney General may from time to time prescribe, shall act as Attorney General.

**“§ 509. Functions of the Attorney General**

“All functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General except the functions—

“(1) vested by subchapter II of chapter 5 of title 5 in hearing examiners employed by the Department of Justice;

“(2) of the Federal Prison Industries, Inc.;

“(3) of the Board of Directors and officers of the Federal Prison Industries, Inc.; and

“(4) of the Board of Parole.

**“§ 510. Delegation of authority**

“The Attorney General may from time to time make such provisions as he considers appropriate authorizing the performance by any other officer, employee, or agency of the Department of Justice of any function of the Attorney General.

**“§ 511. Attorney General to advise the President**

“The Attorney General shall give his advice and opinion on questions of law when required by the President.



**“§ 512. Attorney General to advise heads of executive departments**

“The head of an executive department may require the opinion of the Attorney General on questions of law arising in the administration of his department.

**“§ 513. Attorney General to advise Secretaries of military departments**

“When a question of law arises in the administration of the Department of the Army, the Department of the Navy, or the Department of the Air Force, the cognizance of which is not given by statute to some other officer from whom the Secretary of the military department concerned may require advice, the Secretary of the military department shall send it to the Attorney General for disposition.

**“§ 514. Legal services on pending claims in departments and agencies**

“When the head of an executive department or agency is of the opinion that the interests of the United States require the service of counsel on the examination of any witness concerning any claim, or on the legal investigation of any claim, pending in the department or agency, he shall notify the Attorney General, giving all facts necessary to enable him to furnish proper professional service in attending the examination or making the investigation, and the Attorney General shall provide for the service.

**“§ 515. Authority for legal proceedings; commission, oath, and salary for special attorneys**

“(a) The Attorney General or any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought.

“(b) Each attorney specially retained under authority of the Department of Justice shall be commissioned as special assistant to the Attorney General or special attorney, and shall take the oath required by law. Foreign counsel employed in special cases are not required to take the oath. The Attorney General shall fix the annual salary of a special assistant or special attorney at not more than \$12,000.

**“§ 516. Conduct of litigation reserved to Department of Justice**

“Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice, under the direction of the Attorney General.

**“§ 517. Interests of United States in pending suits**

“The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.

**“§ 518. Conduct and argument of cases**

“(a) Except when the Attorney General in a particular case directs otherwise, the Attorney General and the Solicitor General shall con-

duct and argue suits and appeals in the Supreme Court and suits in the Court of Claims in which the United States is interested.

“(b) When the Attorney General considers it in the interests of the United States, he may personally conduct and argue any case in a court of the United States in which the United States is interested, or he may direct the Solicitor General or any officer of the Department of Justice to do so.

**“§ 519. Supervision of litigation**

“Except as otherwise authorized by law, the Attorney General shall supervise all litigation to which the United States, an agency, or officer thereof is a party, and shall direct all United States attorneys, assistant United States attorneys, and special attorneys appointed under section 543 of this title in the discharge of their respective duties.

**“§520. Transmission of petitions in Court of Claims; statement furnished by departments**

“(a) In suits against the United States in the Court of Claims founded on a contract, agreement, or transaction with an executive department or military department, or a bureau, officer, or agent thereof, or when the matter or thing on which the claim is based has been passed on and decided by an executive department, military department, bureau, or officer authorized to adjust it, the Attorney General shall send to the department, bureau, or officer a printed copy of the petition filed by the claimant, with a request that the department, bureau, or officer furnish to the Attorney General all facts, circumstances, and evidence concerning the claim in the possession or knowledge of the department, bureau, or officer.

“(b) Within a reasonable time after receipt of the request from the Attorney General, the executive department, military department, bureau, or officer shall furnish the Attorney General with a written statement of all facts, information, and proofs. The statement shall contain a reference to or description of all official documents and papers, if any, as may furnish proof of facts referred to in it, or may be necessary and proper for the defense of the United States against the claim, mentioning the department, office, or place where the same is kept or may be secured. If the claim has been passed on and decided by the department, bureau, or officer, the statement shall briefly state the reasons and principles on which the decision was based. When the decision was founded on an Act of Congress it shall be cited specifically, and if any previous interpretation or construction has been given to the Act, section, or clause by the department, bureau, or officer, it shall be set forth briefly in the statement and a copy of the opinion filed, if any, attached to it. When a decision in the case has been based on a regulation of a department or when a regulation has, in the opinion of the department, bureau, or officer sending the statement, any bearing on the claim, it shall be distinctly quoted at length in the statement. When more than one case or class of cases is pending, the defense of which rests on the same facts, circumstances, and proofs, the department, bureau, or officer may certify and send one statement and it shall be held to apply to all cases as if made out, certified, and sent in each case respectively.

**“§ 521. Publication and distribution of opinions**

“The Attorney General, from time to time—

“(1) shall cause to be edited, and printed in the Government Printing Office, such of his opinions as he considers valuable for preservation in volumes; and

“(2) may prescribe the manner for the distribution of the volumes.

Each volume shall contain headnotes, an index, and such footnotes as the Attorney General may approve.

**“§ 522. Report of business and statistics**

“The Attorney General, at the beginning of each regular session of Congress, shall report to Congress on the business of the Department of Justice for the last preceding fiscal year, and on any other matters pertaining to the Department that he considers proper, including—

“(1) a statement of the several appropriations which are placed under the control of the Department and the amount appropriated;

“(2) the statistics of crime under the laws of the United States; and

“(3) a statement of the number of causes involving the United States, civil and criminal, pending during the preceding year in each of the several courts of the United States.

**“§ 523. Requisitions**

“The Attorney General shall sign all requisitions for the advance or payment of moneys appropriated for the Department of Justice, out of the Treasury, subject to the same control as is exercised on like estimates or accounts by the General Accounting Office.

**“§ 524. Appropriations for administrative expenses; notarial fees; meals and lodging of bailiffs**

“Appropriations for the Department of Justice are available for payment of—

“(1) notarial fees, including such additional stenographic services as are required in connection therewith in the taking of depositions, and compensation and expenses of witnesses and informants, all at the rates authorized or approved by the Attorney General or the Assistant Attorney General for Administration; and

“(2) when ordered by the court, actual expenses of meals and lodging for marshals, deputy marshals, or criers when acting as bailiffs in attendance on juries.

**“§ 525. Procurement of law books, reference books, and periodicals; sale and exchange**

“In the procurement of law books, reference books, and periodicals, the Attorney General may exchange or sell similar items and apply the exchange allowances or proceeds of such sales in whole or in part payment therefor.

**“§ 526. Authority of Attorney General to investigate United States attorneys and marshals, clerks of court, and others**

“(a) The Attorney General may investigate the official acts, records, and accounts of—

“(1) the United States attorneys and marshals; and

“(2) at the request and on behalf of the Director of the Administrative Office of the United States Courts, the clerks of the United States courts and of the district courts of the Canal Zone and the Virgin Islands, probation officers, referees, trustees and receivers in bankruptcy, United States commissioners, and court reporters;

for which purpose all the official papers, records, dockets, and accounts of these officers, without exception, may be examined by agents of the Attorney General at any time.

“(b) Appropriations for the examination of judicial officers are available for carrying out this section.

### “CHAPTER 33—FEDERAL BUREAU OF INVESTIGATION

“Sec.

“531. Federal Bureau of Investigation.

“532. Director of Federal Bureau of Investigation.

“533. Investigative and other officials; appointment.

“534. Acquisition, preservation, and exchange of identification records; appointment of officials.

“535. Investigation of crimes involving Government officers and employees; limitations.

“536. Positions in excepted service.

“537. Expenses of unforeseen emergencies of a confidential nature.

#### “§ 531. Federal Bureau of Investigation

“The Federal Bureau of Investigation is in the Department of Justice.

#### “§ 532. Director of the Federal Bureau of Investigation

“The Attorney General may appoint a Director of the Federal Bureau of Investigation. The Director of the Federal Bureau of Investigation is the head of the Federal Bureau of Investigation.

#### “§ 533. Investigative and other officials; appointment

“The Attorney General may appoint officials—

“(1) to detect and prosecute crimes against the United States;

“(2) to assist in the protection of the person of the President;

and

“(3) to conduct such other investigations regarding official matters under the control of the Department of Justice and the Department of State as may be directed by the Attorney General.

This section does not limit the authority of departments and agencies to investigate crimes against the United States when investigative jurisdiction has been assigned by law to such departments and agencies.

#### “§ 534. Acquisition, preservation, and exchange of identification records; appointment of officials

“(a) The Attorney General shall—

“(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records; and

“(2) exchange these records with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions.

“(b) The exchange of records authorized by subsection (a) (2) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

“(c) The Attorney General may appoint officials to perform the functions authorized by this section.

#### “§ 535. Investigation of crimes involving Government officers and employees; limitations

“(a) The Attorney General and the Federal Bureau of Investigation may investigate any violation of title 18 involving Government officers and employees—

“(1) notwithstanding any other provision of law; and

“(2) without limiting the authority to investigate any matter

Public Law 95-139  
95th Congress

An Act

To establish within the Department of Justice the position of Associate Attorney General.

Oct. 19, 1977  
[S. 2089]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) chapter 31 of title 28, United States Code, is amended by adding immediately after section 504 the following new section:

Justice  
Department.  
Position of  
Associate  
Attorney  
General,  
establishment.  
28 USC 504a.

**“§ 504a. Associate Attorney General**

“The President may appoint, by and with the advice and consent of the Senate, an Associate Attorney General.”

(b) The section analysis at the beginning of chapter 31 of title 28, United States Code, is amended by adding immediately after

“504. Deputy Attorney General.”

the following new item:

“504a. Associate Attorney General.”

SEC. 2. Section 508(b) of chapter 31 of title 28, United States Code, is revised to read:

Vacancies.

“(b) When by reason of absence, disability, or vacancy in office, neither the Attorney General nor the Deputy Attorney General is available to exercise the duties of the office of Attorney General, the Associate Attorney General shall act as Attorney General. The Attorney General may designate the Solicitor General and the Assistant Attorneys General, in further order of succession, to act as Attorney General.”

SEC. 3. Section 5314 of chapter 53 of title 5, United States Code, is amended by adding the following item at the end thereof:

“(66) Associate Attorney General.”

Approved October 19, 1977.

LEGISLATIVE HISTORY:

SENATE REPORT No. 95-429 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 123 (1977):

Sept. 20, considered and passed Senate.

Oct. 18, considered and passed House.



# **APPENDIX C**





priorities across the Department. The unit may be known as the 'delivery unit'.

“(b) COMPOSITION.—The unit established pursuant to subsection (a) shall consist of not more than 30 individuals selected by the Secretary primarily from among individuals outside the Government who have significant experience and expertise in management consulting, organizational architecture, relationship management, or data analytics.

“(c) DUTIES.—The unit established pursuant to subsection (a) shall have the duties as follows:

“(1) To advise the Secretary on improving the implementation and delivery of policies and priorities of the Department, including making recommendations on establishing performance or implementation targets, assisting in the development of delivery plans to achieve targets, and monitoring and measuring progress.

“(2) To work across organizations, missions, and functions of the Department in order to identify obstacles to improving the implementation of policies and priorities of the Department, including organization, culture, and incentives, and to recommend options to the Secretary for addressing such obstacles.

“(d) SUNSET.—The unit established pursuant to subsection (a) shall sunset on January 31, 2021.”

REFERENCES

Pub. L. 113–291, div. A, title IX, §901(n), Dec. 19, 2014, 128 Stat. 3469, as amended by Pub. L. 115–91, div. A, title X, §1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597, provided that:

“[(1) Repealed. Pub. L. 115–91, div. A, title X, §1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597.]

“(2) ASDEIE.—Any reference to the Assistant Secretary of Defense for Operational Energy Plans and Programs or to the Deputy Under Secretary of Defense for Installations and Environment in any provision of law or in any rule, regulation, or other paper of the United States shall be deemed to refer to the Assistant Secretary of Defense for Energy, Installations, and Environment.”

REDESIGNATION OF CERTAIN POSITIONS IN OFFICE OF SECRETARY OF DEFENSE

Pub. L. 111–383, div. A, title IX, §901(a), Jan. 7, 2011, 124 Stat. 4317, provided that:

“(1) REDESIGNATION.—Positions in the Office of the Secretary of Defense are hereby redesignated as follows:

“(A) The Director of Defense Research and Engineering is redesignated as the Assistant Secretary of Defense for Research and Engineering.

“(B) The Director of Operational Energy Plans and Programs is redesignated as the Assistant Secretary of Defense for Operational Energy Plans and Programs [now Assistant Secretary of Defense for Energy, Installations, and Environment].

“(C) The Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs is redesignated as the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs.

“(2) REFERENCES.—Any reference in any law, rule, regulation, paper, or other record of the United States to an office of the Department of Defense redesignated by paragraph (1) shall be deemed to be a reference to such office as so redesignated.”

INAPPLICABILITY OF APPOINTMENT REQUIREMENT TO CERTAIN INDIVIDUALS SERVING ON EFFECTIVE DATE

Pub. L. 111–383, div. A, title IX, §901(o), Jan. 7, 2011, 124 Stat. 4327, provided that:

“(1) IN GENERAL.—Notwithstanding this section [see Tables for classification] and the amendments made by this section, the individual serving as specified in paragraph (2) on December 31, 2010, may continue to serve in the applicable position specified in that paragraph after that date without the requirement for appoint-

ment by the President, by and with the advice and consent of the Senate.

“(2) COVERED INDIVIDUALS AND POSITIONS.—The individuals and positions specified in this paragraph are the following:

“(A) In the case of the individual serving as Director of Defense Research and Engineering, the position of Assistant Secretary of Defense for Research and Engineering.

“(B) In the case of the individual serving as Director of Operational Energy Plans and Programs, the position of Assistant Secretary of Defense for Operational Energy Plans and Programs.

“(C) In the case of the individual serving as Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs, the position of Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs.”

DEFENSE ACQUISITION WORKFORCE

Pub. L. 105–85, div. A, title IX, §912(a)–(e), Nov. 18, 1997, 111 Stat. 1860, 1861, required Secretary of Defense to accomplish reductions in defense acquisition personnel positions, to report on specific acquisition positions previously eliminated, to submit an implementation plan to streamline and improve acquisition organizations, to review acquisition organizations and functions, and to require certain duties of Task Force on Defense Reform.

REDUCTION OF PERSONNEL ASSIGNED TO OFFICE OF THE SECRETARY OF DEFENSE

Pub. L. 104–201, div. A, title IX, §903, Sept. 23, 1996, 110 Stat. 2617, which provided for phased reduction of number of personnel assigned to or employed in functions in Office of the Secretary of Defense, was repealed and restated in section 143 of this title by Pub. L. 105–85, div. A, title IX, §911(d)(1), (3), Nov. 18, 1997, 111 Stat. 1859, 1860.

ORGANIZATION OF OFFICE OF THE SECRETARY OF DEFENSE

Pub. L. 104–106, div. A, title IX, §901, Feb. 10, 1996, 110 Stat. 399, as amended by Pub. L. 104–201, div. A, title IX, §903(g), Sept. 23, 1996, 110 Stat. 2618, directed the Secretary of Defense to conduct a review of the organizations and functions of the Office of the Secretary of Defense and the personnel needed to carry out those functions, and to submit to the congressional defense committees a report containing findings, conclusions, and a plan for implementing recommendations not later than Mar. 1, 1996.

Pub. L. 99–433, title I, §109, Oct. 1, 1986, 100 Stat. 999, directed the Secretary of Defense, the Secretaries of the military departments, and the Chairman of the Joint Chiefs of Staff to conduct studies of the functions and organization of the Office of the Secretary of Defense, required the Secretaries of the military departments and the Chairman of the Joint Chiefs of Staff to submit reports on their studies to the Secretary of Defense, and directed the Secretary of Defense to submit a report on the Secretary's study to Congress not later than one year after Oct. 1, 1986.

§ 132. Deputy Secretary of Defense

(a) There is a Deputy Secretary of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Deputy Secretary shall be appointed from among persons most highly qualified for the position by reason of background and experience, including persons with appropriate management experience. A person may not be appointed as Deputy Secretary of Defense within seven years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) The Deputy Secretary shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. The Deputy Secretary shall act for, and exercise the powers of, the Secretary when the Secretary dies, resigns, or is otherwise unable to perform the functions and duties of the office.

(c) The Deputy Secretary takes precedence in the Department of Defense immediately after the Secretary.

(e)<sup>1</sup> Until September 30, 2020, the Deputy Secretary of Defense shall lead the Guam Oversight Council and shall be the Department of Defense's principal representative for coordinating the interagency efforts in matters relating to Guam, including the following executive orders:

(1) Executive Order No. 13299 of May 12, 2003 (68 Fed. Reg. 25477; 48 U.S.C. note prec. 1451; relating to the Interagency Group on Insular Affairs).

(2) Executive Order No. 12788 of January 15, 1992, as amended (57 Fed. Reg. 2213; relating to the Defense Economic Adjustment Program).

(Added Pub. L. 87-651, title II, §202, Sept. 7, 1962, 76 Stat. 518, §134; amended Pub. L. 92-596, §4(1), Oct. 27, 1972, 86 Stat. 1318; Pub. L. 95-140, §1(a), Oct. 21, 1977, 91 Stat. 1172; renumbered §132 and amended Pub. L. 99-433, title I, §§101(a)(7), 110(d)(7), Oct. 1, 1986, 100 Stat. 995, 1003; Pub. L. 110-181, div. A, title IX, §§903(b), 904(a)(1), Jan. 28, 2008, 122 Stat. 273; Pub. L. 111-84, div. B, title XXVIII, §2831(a), Oct. 28, 2009, 123 Stat. 2669; Pub. L. 111-383, div. A, title IX, §901(c)(2), (m)(2), title X, §1075(b)(4), div. B, title XXVIII, §2821, Jan. 7, 2011, 124 Stat. 4321, 4326, 4369, 4465; Pub. L. 112-81, div. A, title IX, §902, Dec. 31, 2011, 125 Stat. 1532; Pub. L. 113-291, div. A, title IX, §901(k)(2), Dec. 19, 2014, 128 Stat. 3468; Pub. L. 114-328, div. A, title IX, §901(c)(4), Dec. 23, 2016, 130 Stat. 2341; Pub. L. 115-91, div. A, title IX, §910(b), Dec. 12, 2017, 131 Stat. 1517.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
134(a) .....	5:171c(a) (1st sentence).	July 26, 1947, ch. 343,
134(b) .....	5:171c(a) (less 1st sentence and last 15 words of 2d sentence).	§203(a); added Aug. 10, 1949, ch. 412, §6(a) (1st par.), 63 Stat. 581.
134(c) .....	5:171c(a) (last 15 words of 2d sentence).	

In subsection (a), the last sentence is substituted for 5 U.S.C. 171c(a) (proviso).

REFERENCES IN TEXT

Executive Order No. 13299, referred to in subsec. (e)(1), was superseded by Ex. Ord. No. 13537, Apr. 14, 2010, 75 F.R. 20237, set out as a note preceding section 1451 of Title 48, Territories and Insular Possessions.

Executive Order No. 12788, referred to in subsec. (e)(2), is set out as a note under section 2391 of this title.

PRIOR PROVISIONS

A prior section 132 was renumbered section 112 of this title.

AMENDMENTS

2017—Subsecs. (c), (d). Pub. L. 115-91, §910(b)(2), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: "The Deputy Secretary serves as the Chief Management Officer of the Department of Defense."

Pub. L. 115-91, §910(b)(1), repealed Pub. L. 114-328, §901(c)(4). See 2016 Amendment note below.

Subsec. (e). Pub. L. 115-91, §910(b)(1), repealed Pub. L. 114-328, §901(c)(4). See 2016 Amendment note below.

2016—Subsecs. (c) to (e). Pub. L. 114-328, §901(c)(4), which directed striking out subsec. (c) and redesignating subsecs. (d) and (e) as (c) and (d), respectively, was repealed by Pub. L. 115-91, §901(b)(1).

2014—Subsec. (b). Pub. L. 113-291 substituted "dies, resigns, or is otherwise unable to perform the functions and duties of the office" for "is disabled or there is no Secretary of Defense".

2011—Subsec. (a). Pub. L. 112-81 inserted "The Deputy Secretary shall be appointed from among persons most highly qualified for the position by reason of background and experience, including persons with appropriate management experience." after first sentence.

Subsec. (c). Pub. L. 111-383, §901(c)(2), struck out at end "The Deputy Secretary shall be assisted in this capacity by a Deputy Chief Management Officer, who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate."

Subsec. (d). Pub. L. 111-383, §1075(b)(4)(A), which directed redesignation of subsec. (d), as added by section 2831(a) of Pub. L. 111-84, as (e), could not be executed because of the prior amendment by Pub. L. 111-383, §901(m)(2). See below.

Pub. L. 111-383, §901(m)(2), redesignated subsec. (d) relating to duties of the Deputy Secretary of Defense relating to Guam, as (e).

Subsec. (e). Pub. L. 111-383, §2821, which directed substitution of "September 30, 2020" for "September 30, 2015" in subsec. (d), as added by section 2831(a) of Pub. L. 111-84, was executed in subsec. (e) to reflect the probable intent of Congress and the redesignation of subsec. (d) as (e) by Pub. L. 111-383, §901(m)(2). See below.

Pub. L. 111-383, §1075(b)(4), which directed redesignation of subsec. (d), as added by section 2831(a) of Pub. L. 111-84, as (e), and substitution of "Guam Oversight Council" for "Guam Executive Council", was executed by making the substitution in subsec. (e) because of the prior redesignation of subsec. (d) as (e) by Pub. L. 111-383, §901(m)(2). See below.

Pub. L. 111-383, §901(m)(2), redesignated subsec. (d) relating to duties of the Deputy Secretary of Defense relating to Guam, as (e).

2009—Subsec. (d). Pub. L. 111-84 added subsec. (d) relating to the Deputy Secretary of Defense leading the Guam Executive Council.

2008—Subsec. (a). Pub. L. 110-181, §903(b), substituted "seven" for "ten".

Subsecs. (c), (d). Pub. L. 110-181, §904(a)(1), added subsec. (c) and redesignated former subsec. (c) as (d).

1986—Pub. L. 99-433 renumbered section 134 of this title as this section and struck out "appointment; powers and duties; precedence" at end of section catchline.

1977—Pub. L. 95-140, §1(a)(4), substituted "Deputy Secretary" for "Deputy Secretaries" in section catchline.

Subsec. (a). Pub. L. 95-140, §1(a)(1), substituted "There is a Deputy Secretary" for "There are two Deputy Secretaries" and struck out "a" before "Deputy Secretary".

Subsec. (b). Pub. L. 95-140, §1(a)(2), substituted "Deputy Secretary" for "Deputy Secretaries" and "Deputy Secretary" for "Deputy Secretaries, in the order of precedence, designated by the President".

Subsec. (c). Pub. L. 95-140, §1(a)(3), substituted "The Deputy Secretary takes" for "The Deputy Secretaries take".

1972—Pub. L. 92-596 substituted "Deputy Secretaries" for "Deputy Secretary" in section catchline.

Subsec. (a). Pub. L. 92-596 substituted "There are two Deputy Secretaries of Defense" for "There is a Deputy Secretary of Defense".

Subsec. (b). Pub. L. 92-596 provided for the exercise of powers and duties consequent to the creation of a second Deputy Secretary.

Subsec. (c). Pub. L. 92-596 substituted "The Deputy Secretaries take" for "The Deputy Secretary takes".

<sup>1</sup> So in original. There is no subsec. (d).

## EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title IX, §910(b)(1), Dec. 12, 2017, 131 Stat. 1517, provided that the amendment made by section 910(b)(1) is effective on Jan. 31, 2018.

Pub. L. 115–91, div. A, title IX, §910(b)(2), Dec. 12, 2017, 131 Stat. 1518, provided that the amendment made by section 910(b)(2) is effective on Feb. 1, 2018.

## EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title IX, §901(c)(4), Dec. 23, 2016, 130 Stat. 2341, which provided that the amendment made by section 901(c)(4) was effective on Feb. 1, 2018, was repealed by Pub. L. 115–91, div. A, title IX, §910(b)(1), Dec. 12, 2017, 131 Stat. 1517.

## EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 901(c)(2), (m)(2) of Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

## ORDER OF SUCCESSION

For order of succession during any period when the Secretary has died, resigned, or is otherwise unable to perform the functions and duties of the office of Secretary, see Ex. Ord. No. 13533, Mar. 1, 2010, 75 F.R. 10163, listed in a table under section 3345 of Title 5, Government Organization and Employees.

## ASSIGNMENT OF DUTIES

Pub. L. 110–181, div. A, title IX, §904(a)(2), Jan. 28, 2008, 122 Stat. 273, as amended by Pub. L. 113–291, div. A, title IX, §901(n)(1), Dec. 19, 2014, 128 Stat. 3469; Pub. L. 115–91, div. A, title X, §1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597, provided that:

“(A) The Secretary of Defense shall assign duties and authorities relating to the management of the business operations of the Department of Defense.

“(B) The Secretary shall assign such duties and authorities to the Chief Management Officer as are necessary for that official to effectively and efficiently organize the business operations of the Department of Defense.

“(C) The Secretary shall assign such duties and authorities to the Deputy Chief Management Officer as are necessary for that official to assist the Chief Management Officer to effectively and efficiently organize the business operations of the Department of Defense.

“(D) The Deputy Chief Management Officer shall perform the duties and have the authorities assigned by the Secretary under subparagraph (C) and perform such duties and have such authorities as are delegated by the Chief Management Officer.”

*[Pub. L. 113–291, div. A, title IX, §901(n)(1), Dec. 19, 2014, 128 Stat. 3469, which had deemed references to the Deputy Chief Management Officer of the Department of Defense to be references to the Under Secretary of Defense for Business Management and Information, was repealed by Pub. L. 115–91, div. A, title X, §1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597, effective Dec. 23, 2016.]*

## ASSIGNMENT OF MANAGEMENT DUTIES AND DESIGNATION OF THE CHIEF MANAGEMENT OFFICERS OF THE MILITARY DEPARTMENTS

Pub. L. 110–181, div. A, title IX, §904(b), Jan. 28, 2008, 122 Stat. 274, as amended by Pub. L. 113–291, div. A, title IX, §901(n)(1), Dec. 19, 2014, 128 Stat. 3469; Pub. L. 115–91, div. A, title X, §1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597, provided that:

“(1) The Secretary of a military department shall assign duties and authorities relating to the management of the business operations of such military department.

“(2) The Secretary of a military department, in assigning duties and authorities under paragraph (1) shall designate the Under Secretary of such military department to have the primary management responsibility for business operations, to be known in the performance of such duties as the Chief Management Officer.

“(3) The Secretary shall assign such duties and authorities to the Chief Management Officer as are necessary for that official to effectively and efficiently organize the business operations of the military department concerned.

“(4) The Chief Management Officer of each military department shall promptly provide such information relating to the business operations of such department to the Chief Management Officer and Deputy Chief Management Officer of the Department of Defense as is necessary to assist those officials in the performance of their duties.”

*[Pub. L. 113–291, div. A, title IX, §901(n)(1), Dec. 19, 2014, 128 Stat. 3469, which had deemed references to the Deputy Chief Management Officer of the Department of Defense to be references to the Under Secretary of Defense for Business Management and Information, was repealed by Pub. L. 115–91, div. A, title X, §1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597, effective Dec. 23, 2016.]*

## § 132a. Chief Management Officer

(a) APPOINTMENT AND QUALIFICATIONS.—(1) There is a Chief Management Officer of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(2) The Chief Management Officer shall be appointed from among persons who have an extensive management or business background and experience with managing large or complex organizations. A person may not be appointed as Chief Management Officer within seven years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) RESPONSIBILITIES.—Subject to the authority, direction, and control of the Secretary of Defense and the Deputy Secretary of Defense, the Chief Management Officer shall perform such duties and exercise such powers as the Secretary or the Deputy Secretary may prescribe, including the following:

(1) Serving as the chief management officer of the Department of Defense with the mission of managing enterprise business operations and shared services of the Department of Defense.

(2) Serving as the principal advisor to the Secretary and the Deputy Secretary on establishing policies for, and directing, all enterprise business operations of the Department, including planning and processes, business transformation, performance measurement and management, and business information technology management and improvement activities and programs, including the allocation of resources for enterprise business operations and unifying business management efforts across the Department.

(3) Exercising authority, direction, and control over the Defense Agencies and Department of Defense Field Activities providing shared business services for the Department that are designated by the Secretary or the Deputy Secretary for purposes of this paragraph.

(4) As of January 1, 2019—

(A) serving as the Chief Information Officer of the Department for purposes of section 2222 of this title;

(B) administering the responsibilities and duties specified in sections 11315 and 11319 of title 40, section 3506(a)(2) of title 44, and sec-

ANNUAL ASSESSMENT OF FORCE READINESS

Pub. L. 103-160, div. A, title III, §376, Nov. 30, 1993, 107 Stat. 1637, provided for an annual assessment of readiness and capability of the Armed Forces by the Chairman of the Joint Chiefs of Staff to be submitted to Congress not later than March 1 of each of 1994, 1995, and 1996 and for interim assessments between annual submissions in the event of a significant change in readiness or capability of the Armed Forces.

REPORT OF CHAIRMAN OF JOINT CHIEFS OF STAFF ON ROLES AND MISSIONS OF ARMED FORCES

Pub. L. 102-484, div. A, title IX, §901, Oct. 23, 1992, 106 Stat. 2469, provided for the Secretary of Defense to transmit to Congress a copy of the first report relating to the roles and missions of the Armed Forces that was submitted by the Chairman of the Joint Chiefs of Staff under subsec. (b) of this section after Jan. 1, 1992, and directed the Chairman to include in the report comments and recommendations.

TRANSITION PROVISIONS

Pub. L. 99-433, title II, §204(a), (b), Oct. 1, 1986, 100 Stat. 1011, provided dates for establishment of the uniform system of evaluating the preparedness of each unified and specified combatant command and for submission of the first report.

§ 154. Vice Chairman

(a) APPOINTMENT.—(1) There is a Vice Chairman of the Joint Chiefs of Staff, appointed by the President, by and with the advice and consent of the Senate, from the officers of the regular components of the armed forces.

(2) The Chairman and Vice Chairman may not be members of the same armed force. However, the President may waive the restriction in the preceding sentence for a limited period of time in order to provide for the orderly transition of officers appointed to serve in the positions of Chairman and Vice Chairman.

(3) The Vice Chairman serves at the pleasure of the President for a term of two years and may be reappointed in the same manner for two additional terms. However, in time of war there is no limit on the number of reappointments.

(b) REQUIREMENT FOR APPOINTMENT.—(1) The President may appoint an officer as Vice Chairman of the Joint Chiefs of Staff only if the officer—

(A) has the joint specialty under section 661 of this title; and

(B) has completed a full tour of duty in a joint duty assignment (as defined in section 664(f)<sup>1</sup> of this title) as a general or flag officer.

(2) The President may waive paragraph (1) in the case of an officer if the President determines such action is necessary in the national interest.

(c) DUTIES.—The Vice Chairman performs the duties prescribed for him as a member of the Joint Chiefs of Staff and such other duties as may be prescribed by the Chairman with the approval of the Secretary of Defense.

(d) FUNCTION AS ACTING CHAIRMAN.—When there is a vacancy in the office of Chairman or in the absence or disability of the Chairman, the Vice Chairman acts as Chairman and performs the duties of the Chairman until a successor is appointed or the absence or disability ceases.

(e) SUCCESSION AFTER CHAIRMAN AND VICE CHAIRMAN.—When there is a vacancy in the of-

fices of both Chairman and Vice Chairman or in the absence or disability of both the Chairman and the Vice Chairman, or when there is a vacancy in one such office and in the absence or disability of the officer holding the other, the President shall designate a member of the Joint Chiefs of Staff to act as and perform the duties of the Chairman until a successor to the Chairman or Vice Chairman is appointed or the absence or disability of the Chairman or Vice Chairman ceases.

(f) GRADE AND RANK.—The Vice Chairman, while so serving, holds the grade of general or, in the case of an officer of the Navy, admiral and outranks all other officers of the armed forces except the Chairman. The Vice Chairman may not exercise military command over the Joint Chiefs of Staff or any of the armed forces.

(Added Pub. L. 99-433, title II, §201, Oct. 1, 1986, 100 Stat. 1008; amended Pub. L. 100-456, div. A, title V, §519(a)(1), Sept. 29, 1988, 102 Stat. 1972; Pub. L. 102-484, div. A, title IX, §911(b)(1), Oct. 23, 1992, 106 Stat. 2473; Pub. L. 114-328, div. A, title IX, §921(d)(1), (2), Dec. 23, 2016, 130 Stat. 2354.)

AMENDMENT OF SUBSECTION (a)

*Pub. L. 114-328, div. A, title IX, §921(d), Dec. 23, 2016, 130 Stat. 2354, provided that, effective on Jan. 1, 2021, and applicable to individuals appointed as Vice Chairman of the Joint Chiefs of Staff on or after that date, subsection (a) of this section is amended as follows:*

*(1) in paragraph (3), by striking “for a term of two years” and all that follows and inserting “for a single term of four years, beginning on October 1 of an odd-numbered year, except that the term may not begin in the same year as the term of a Chairman. In time of war, there is no limit on the number of reappointments.”; and*

*(2) by adding at the end the following new paragraph:*

*“(4)(A) The Vice Chairman shall not be eligible for promotion to the position of Chairman or any other position in the armed forces.*

*“(B) The President may waive subparagraph (A) if the President determines such action is necessary in the national interest.”*

*See 2016 Amendment notes below.*

REFERENCES IN TEXT

Section 664(f) of this title, referred to in subsec. (b)(1)(B), was redesignated as section 664(d) of this title by Pub. L. 114-328, div. A, title V, §510(g)(1), Dec. 23, 2016, 130 Stat. 2111.

AMENDMENTS

2016—Subsec. (a)(3). Pub. L. 114-328, §921(d)(1), substituted “for a single term of four years, beginning on October 1 of an odd-numbered year, except that the term may not begin in the same year as the term of a Chairman. In time of war, there is no limit on the number of reappointments.” for “for a term of two years and may be reappointed in the same manner for two additional terms. However, in time of war there is no limit on the number of reappointments.”

Subsec. (a)(4). Pub. L. 114-328, §921(d)(2), added par. (4).

1992—Subsec. (c). Pub. L. 102-484, §911(b)(1)(A), substituted “the duties prescribed for him as a member of the Joint Chiefs of Staff and such other” for “such”.

Subsecs. (f), (g). Pub. L. 102-484, §911(b)(1)(B), (C), redesignated subsec. (g) as (f) and struck out former sub-

<sup>1</sup> See References in Text note below.

sec. (f) which read as follows: “PARTICIPATION IN JCS MEETINGS.—The Vice Chairman may participate in all meetings of the Joint Chiefs of Staff, but may not vote on a matter before the Joint Chiefs of Staff except when acting as Chairman.”

1988—Subsec. (b)(1)(B). Pub. L. 100-456 substituted “completed a full tour of duty in a joint duty assignment (as defined in section 664(f) of this title)” for “served in at least one joint duty assignment (as defined under section 668(b) of this title)”.

#### EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114-328, div. A, title IX, §921(d)(3), Dec. 23, 2016, 130 Stat. 2354, provided that: “The amendments made by this subsection [amending this section] shall take effect on January 1, 2021, and shall apply to individuals appointed as Vice Chairman of the Joint Chiefs of Staff on or after that date.”

#### EXTENSION OF TERM OF OFFICE OF VICE CHAIRMAN OF JOINT CHIEFS OF STAFF

Pub. L. 100-526, title I, §107, Oct. 24, 1988, 102 Stat. 2625, authorized President to extend until June 1, 1989, term of office of officer serving as Vice Chairman of Joint Chiefs of Staff for term which began on Feb. 6, 1987.

#### WAIVER OF QUALIFICATIONS FOR APPOINTMENT AS VICE CHAIRMAN OF JOINT CHIEFS OF STAFF

Pub. L. 99-433, title II, §204(c), Oct. 1, 1986, 100 Stat. 1011, authorized President, until Oct. 1, 1990, to waive certain requirements otherwise applicable for appointment of an officer as Vice Chairman of Joint Chiefs of Staff.

### § 155. Joint Staff

(a) APPOINTMENT OF OFFICERS TO JOINT STAFF.—(1) There is a Joint Staff under the Chairman of the Joint Chiefs of Staff. The Joint Staff assists the Chairman and, subject to the authority, direction, and control of the Chairman, the other members of the Joint Chiefs of Staff in carrying out their responsibilities.

(2) Officers of the armed forces (other than the Coast Guard) assigned to serve on the Joint Staff shall be selected by the Chairman in approximately equal numbers from—

- (A) the Army;
- (B) the Navy and the Marine Corps; and
- (C) the Air Force.

(3) Selection of officers of an armed force to serve on the Joint Staff shall be made by the Chairman from a list of officers submitted by the Secretary of the military department having jurisdiction over that armed force. Each officer whose name is submitted shall be among those officers considered to be the most outstanding officers of that armed force. The Chairman may specify the number of officers to be included on any such list.

(b) DIRECTOR.—The Chairman of the Joint Chiefs of Staff, after consultation with the other members of the Joint Chiefs of Staff and with the approval of the Secretary of Defense, may select an officer to serve as Director of the Joint Staff.

(c) MANAGEMENT OF JOINT STAFF.—The Chairman of the Joint Chiefs of Staff manages the Joint Staff and the Director of the Joint Staff. The Joint Staff shall perform such duties as the Chairman prescribes and shall perform such duties under such procedures as the Chairman prescribes.

(d) OPERATION OF JOINT STAFF.—The Secretary of Defense shall ensure that the Joint Staff is independently organized and operated so that the Joint Staff supports the Chairman of the Joint Chiefs of Staff in meeting the congressional purpose set forth in the last clause of section 2 of the National Security Act of 1947 (50 U.S.C. 3002) to provide—

- (1) for the unified strategic direction of the combatant forces;
- (2) for their operation under unified command; and
- (3) for their integration into an efficient team of land, naval, and air forces.

(e) PROHIBITION OF FUNCTION AS ARMED FORCES GENERAL STAFF.—The Joint Staff shall not operate or be organized as an overall Armed Forces General Staff and shall have no executive authority. The Joint Staff may be organized and may operate along conventional staff lines.

(f) TOUR OF DUTY OF JOINT STAFF OFFICERS.—(1) An officer who is assigned or detailed to permanent duty on the Joint Staff may not serve for a tour of duty of more than four years. However, such a tour of duty may be extended with the approval of the Secretary of Defense.

(2) In accordance with procedures established by the Secretary of Defense, the Chairman of the Joint Chiefs of Staff may suspend from duty and recommend the reassignment of any officer assigned to the Joint Staff. Upon receipt of such a recommendation, the Secretary concerned shall promptly reassign the officer.

(3) An officer completing a tour of duty with the Joint Staff may not be assigned or detailed to permanent duty on the Joint Staff within two years after relief from that duty except with the approval of the Secretary.

(4) Paragraphs (1) and (3) do not apply—

- (A) in time of war; or
- (B) during a national emergency declared by the President or Congress.

(g) COMPOSITION OF JOINT STAFF.—(1) The Joint Staff is composed of all members of the armed forces and civilian employees assigned or detailed to permanent duty in the executive part of the Department of Defense to perform the functions and duties prescribed under subsections (a) and (c).

(2) The Joint Staff does not include members of the armed forces or civilian employees assigned or detailed to permanent duty in a military department.

(Added Pub. L. 99-433, title II, §201, Oct. 1, 1986, 100 Stat. 1009; amended Pub. L. 100-180, div. A, title XIII, §1314(b)(2), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101-510, div. A, title IX, §902, Nov. 5, 1990, 104 Stat. 1620; Pub. L. 102-484, div. A, title IX, §911(b)(2), Oct. 23, 1992, 106 Stat. 2473; Pub. L. 103-35, title II, §202(a)(8), May 31, 1993, 107 Stat. 101; Pub. L. 113-291, div. A, title X, §1071(c)(1), Dec. 19, 2014, 128 Stat. 3508; Pub. L. 114-328, div. A, title IX, §903(b)(1), Dec. 23, 2016, 130 Stat. 2344.)

#### AMENDMENT OF SECTION

*Pub. L. 114-328, div. A, title IX, §903(b), Dec. 23, 2016, 130 Stat. 2344, provided that, effective Dec. 31, 2019, this section is amended by adding at the end the following new subsection:*

with any other element of the intelligence community.”

**EFFECTIVE DATE**

For Determination by President that section take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 3001 of this title.

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 3001 of this title.

**§ 3026. Deputy Directors of National Intelligence**

**(a) Principal Deputy Director of National Intelligence**

(1) There is a Principal Deputy Director of National Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) In the event of a vacancy in the position of Principal Deputy Director of National Intelligence, the Director of National Intelligence shall recommend to the President an individual for appointment as Principal Deputy Director of National Intelligence.

(3) Any individual nominated for appointment as Principal Deputy Director of National Intelligence shall have extensive national security experience and management expertise.

(4) The individual serving as Principal Deputy Director of National Intelligence shall not, while so serving, serve in any capacity in any other element of the intelligence community.

(5) The Principal Deputy Director of National Intelligence shall assist the Director of National Intelligence in carrying out the duties and responsibilities of the Director.

(6) The Principal Deputy Director of National Intelligence shall act for, and exercise the powers of, the Director of National Intelligence during the absence or disability of the Director of National Intelligence or during a vacancy in the position of Director of National Intelligence.

**(b) Deputy Directors of National Intelligence**

(1) There may be not more than four Deputy Directors of National Intelligence who shall be appointed by the Director of National Intelligence.

(2) Each Deputy Director of National Intelligence appointed under this subsection shall have such duties, responsibilities, and authorities as the Director of National Intelligence may assign or are specified by law.

**(c) Military status of Director of National Intelligence and Principal Deputy Director of National Intelligence**

(1) Not more than one of the individuals serving in the positions specified in paragraph (2) may be a commissioned officer of the Armed Forces in active status.

(2) The positions referred to in this paragraph are the following:

- (A) The Director of National Intelligence.
- (B) The Principal Deputy Director of National Intelligence.

(3) It is the sense of Congress that, under ordinary circumstances, it is desirable that one of the individuals serving in the positions specified in paragraph (2)—

(A) be a commissioned officer of the Armed Forces, in active status; or

(B) have, by training or experience, an appreciation of military intelligence activities and requirements.

(4) A commissioned officer of the Armed Forces, while serving in a position specified in paragraph (2)—

(A) shall not be subject to supervision or control by the Secretary of Defense or by any officer or employee of the Department of Defense;

(B) shall not exercise, by reason of the officer's status as a commissioned officer, any supervision or control with respect to any of the military or civilian personnel of the Department of Defense except as otherwise authorized by law; and

(C) shall not be counted against the numbers and percentages of commissioned officers of the rank and grade of such officer authorized for the military department of that officer.

(5) Except as provided in subparagraph (A) or (B) of paragraph (4), the appointment of an officer of the Armed Forces to a position specified in paragraph (2) shall not affect the status, position, rank, or grade of such officer in the Armed Forces, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of such status, position, rank, or grade.

(6) A commissioned officer of the Armed Forces on active duty who is appointed to a position specified in paragraph (2), while serving in such position and while remaining on active duty, shall continue to receive military pay and allowances and shall not receive the pay prescribed for such position. Funds from which such pay and allowances are paid shall be reimbursed from funds available to the Director of National Intelligence.

(July 26, 1947, ch. 343, title I, §103A, as added Pub. L. 108-458, title I, §1011(a), Dec. 17, 2004, 118 Stat. 3656.)

**CODIFICATION**

Section was formerly classified to section 403-3a of this title prior to editorial reclassification and renumbering as this section.

**EFFECTIVE DATE**

For Determination by President that section take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 3001 of this title.

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 3001 of this title.

**§ 3027. National Intelligence Council**

**(a) National Intelligence Council**

There is a National Intelligence Council.

**(b) Composition**

(1) The National Intelligence Council shall be composed of senior analysts within the intelligence community and substantive experts from the public and private sector, who shall be appointed by, report to, and serve at the pleasure of, the Director of National Intelligence.

“(2) for years to come, Americans will look back at this event as a defining point in the history of the United States;

“(3) it is vitally important that the United States memorialize all the events that led to the raid so that future generations will have an official record of the events that transpired before, during, and as a result of the operation; and

“(4) preserving this history now will allow the United States to have an accurate account of the events while those that participated in the events are still serving in the Government.

“(c) REPORT ON THE OPERATION THAT KILLED OSAMA BIN LADEN.—Not later than 90 days after the completion of the report being prepared by the Center for the Study of Intelligence that documents the history of and lessons learned from the raid that resulted in the death of Osama bin Laden, the Director of the Central Intelligence Agency shall submit such report to the congressional intelligence committees.

“(d) PRESERVATION OF RECORDS.—The Director of the Central Intelligence Agency shall preserve any records, including intelligence information and assessments, used to generate the report described in subsection (c).”

[For definitions of “intelligence community” and “congressional intelligence committees” as used in section 414 of Pub. L. 112-87, set out above, see section 2 of Pub. L. 112-87, set out as a note under section 3003 of this title.]

ANNUAL REPORT ON FOREIGN COMPANIES INVOLVED IN THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION THAT RAISE FUNDS IN THE UNITED STATES CAPITAL MARKETS

Pub. L. 107-306, title VIII, § 827, Nov. 27, 2002, 116 Stat. 2430, required Director of Central Intelligence to submit annual report on foreign companies involved in the proliferation of weapons of mass destruction that raised or attempted to raise funds in the United States capital markets, prior to repeal by Pub. L. 108-177, title III, § 361(e), Dec. 13, 2003, 117 Stat. 2625.

EXECUTIVE ORDER NO. 13355

Ex. Ord. No. 13355, Aug. 27, 2004, 69 F.R. 53593, which related to strengthened management of the Intelligence Community, was revoked by Ex. Ord. No. 12333, § 3.6, Dec. 4, 1981, 46 F.R. 59954, as amended by Ex. Ord. No. 13470, § 4(j), July 30, 2008, 73 F.R. 45341, set out as a note under section 3001 of this title.

**§ 3037. Deputy Director of the Central Intelligence Agency**

**(a) Deputy Director of the Central Intelligence Agency**

There is a Deputy Director of the Central Intelligence Agency who shall be appointed by the President.

**(b) Duties**

The Deputy Director of the Central Intelligence Agency shall—

(1) assist the Director of the Central Intelligence Agency in carrying out the duties and responsibilities of the Director of the Central Intelligence Agency; and

(2) during the absence or disability of the Director of the Central Intelligence Agency, or during a vacancy in the position of Director of the Central Intelligence Agency, act for and exercise the powers of the Director of the Central Intelligence Agency.

(July 26, 1947, ch. 343, title I, § 104B, as added Pub. L. 111-259, title IV, § 423(a), Oct. 7, 2010, 124 Stat. 2727.)

CODIFICATION

Section was formerly classified to section 403-4c of this title prior to editorial reclassification and renumbering as this section.

EFFECTIVE DATE

Pub. L. 111-259, title IV, § 423(c), Oct. 7, 2010, 124 Stat. 2728, provided that: “The amendments made by this section [enacting this section and amending section 5314 of Title 5, Government Organization and Employees] shall apply on the earlier of—

“(1) the date of the appointment by the President of an individual to serve as Deputy Director of the Central Intelligence Agency pursuant to section 104B of the National Security Act of 1947 [50 U.S.C. 3037], as added by subsection (a), except that the individual administratively performing the duties of the Deputy Director of the Central Intelligence Agency as of the date of the enactment of this Act [Oct. 7, 2010] may continue to perform such duties until the individual appointed to the position of Deputy Director of the Central Intelligence Agency assumes the duties of such position; or

“(2) the date of the cessation of the performance of the duties of the Deputy Director of the Central Intelligence Agency by the individual administratively performing such duties as of the date of the enactment of this Act.”

**§ 3038. Responsibilities of Secretary of Defense pertaining to National Intelligence Program**

**(a) In general**

Consistent with sections 3023 and 3024 of this title, the Secretary of Defense, in consultation with the Director of National Intelligence, shall—

(1) ensure that the budgets of the elements of the intelligence community within the Department of Defense are adequate to satisfy the overall intelligence needs of the Department of Defense, including the needs of the chairman<sup>1</sup> of the Joint Chiefs of Staff and the commanders of the unified and specified commands and, wherever such elements are performing governmentwide functions, the needs of other departments and agencies;

(2) ensure appropriate implementation of the policies and resource decisions of the Director by elements of the Department of Defense within the National Intelligence Program;

(3) ensure that the tactical intelligence activities of the Department of Defense complement and are compatible with intelligence activities under the National Intelligence Program;

(4) ensure that the elements of the intelligence community within the Department of Defense are responsive and timely with respect to satisfying the needs of operational military forces;

(5) eliminate waste and unnecessary duplication among the intelligence activities of the Department of Defense; and

(6) ensure that intelligence activities of the Department of Defense are conducted jointly where appropriate.

**(b) Responsibility for performance of specific functions**

Consistent with sections 3023 and 3024 of this title, the Secretary of Defense shall ensure—

<sup>1</sup> So in original. Probably should be capitalized.





# **APPENDIX D**



that, with respect to any services or benefits referred to in subsection (a), it is not feasible to identify an estimated dollar amount to be obligated for furnishing such services or benefits only to veterans described in that subsection for any fiscal year, the Secretary of Veterans Affairs and the Secretary of Labor shall, with respect to an appropriation request for such fiscal year relating to such services or benefits, report to the Committees on Veterans' Affairs of the Senate and the House of Representatives the reasons for the infeasibility. The report shall be submitted contemporaneously with the budget submission for such fiscal year. The report shall specify (1) the information, systems, equipment, or personnel that would be required in order for it to be feasible for the Secretary of Veterans Affairs or the Secretary of Labor to identify such amount, and (2) the actions to be taken in order to ensure that it will be feasible to make such an estimate in connection with the submission of the budget request for the next fiscal year."

#### INFORMATION AND TRAINING CONCERNING AIDS PREVENTION

Pub. L. 100-322, title I, §123, May 20, 1988, 102 Stat. 504, as amended by Pub. L. 102-83, §6(j)(2), Aug. 6, 1991, 105 Stat. 409; Pub. L. 102-531, title III, §312(c), Oct. 27, 1992, 106 Stat. 3504, provided that:

"(a) **INFORMATION PROGRAM.**—The Secretary of Veterans Affairs shall establish and carry out an information program relating to the acquired immune deficiency syndrome (hereinafter in this section referred to as 'AIDS'). The information program shall be for employees and consultants of the Department of Veterans Affairs, for other persons providing services in Department of Veterans Affairs facilities to beneficiaries of programs administered by the Department of Veterans Affairs, and for such beneficiaries.

"(b) **REQUIRED ELEMENTS OF INFORMATION PROGRAM.**—In conducting the program under subsection (a), the Secretary shall—

"(1) develop, in consultation with the Surgeon General of the United States and the Director of the Centers for Disease Control and Prevention, publications and other materials containing information on AIDS, including information on the prevention of infection with the human immunodeficiency virus;

"(2) provide for periodic dissemination of publications (including the Surgeon General's Report on AIDS) and other materials containing such information;

"(3) make publications and other suitable materials containing such information readily available in Department of Veterans Affairs health-care facilities and such other Department of Veterans Affairs facilities as the Secretary considers appropriate; and

"(4) disseminate information (including the Surgeon General's Report on AIDS) on the risk of transmission of the human immunodeficiency virus, and information on preventing the transmission of such virus, to Department of Veterans Affairs substance abuse treatment personnel, to each person being furnished treatment by the Department of Veterans Affairs for drug abuse, and to each person receiving care or services from the Department of Veterans Affairs whom the Secretary believes to be at high risk for AIDS.

"(c) **TRAINING IN AIDS PREVENTION.**—The Secretary shall establish and carry out a program that provides for education, training, and other activities (including continuing education and infection control programs) regarding AIDS and the human immunodeficiency virus designed to improve the effectiveness and safety of all health-care personnel and all health-care support personnel involved in the furnishing of care under programs administered by the Department of Veterans Affairs."

#### EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to Secretary of Veterans Affairs, see Parts 1,

2, and 27 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

#### § 304. Deputy Secretary of Veterans Affairs

There is in the Department a Deputy Secretary of Veterans Affairs, who is appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary shall perform such functions as the Secretary shall prescribe. Unless the President designates another officer of the Government, the Deputy Secretary shall be Acting Secretary of Veterans Affairs during the absence or disability of the Secretary or in the event of a vacancy in the office of Secretary.

(Added Pub. L. 102-83, §2(a), Aug. 6, 1991, 105 Stat. 379.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 210(d) of this title and in section 3(a) of Pub. L. 100-527, known as the Department of Veterans Affairs Act, prior to repeal by Pub. L. 102-83, §§2(a), 3(3).

#### ORDER OF SUCCESSION

For order of succession during any period when both Secretary and Deputy Secretary of Veterans Affairs are unable to perform functions and duties of office of Secretary, see Ex. Ord. No. 13247, Dec. 18, 2001, 66 F.R. 66271, listed in a table under section 3345 of Title 5, Government Organization and Employees.

#### § 305. Under Secretary for Health

(a)(1) There is in the Department an Under Secretary for Health, who is appointed by the President, by and with the advice and consent of the Senate.

(2) The Under Secretary for Health shall be appointed without regard to political affiliation or activity and solely—

(A) on the basis of demonstrated ability in the medical profession, in health-care administration and policy formulation, or in health-care fiscal management; and

(B) on the basis of substantial experience in connection with the programs of the Veterans Health Administration or programs of similar content and scope.

(b) The Under Secretary for Health is the head of, and is directly responsible to the Secretary for the operation of, the Veterans Health Administration.

(c)(1) Whenever a vacancy in the position of Under Secretary for Health occurs or is anticipated, the Secretary shall establish a commission to recommend individuals to the President for appointment to the position.

(2) A commission established under this subsection shall be composed of the following members appointed by the Secretary:

(A) Three persons representing clinical care and medical research and education activities affected by the Veterans Health Administration.

(B) Two persons representing veterans served by the Veterans Health Administration.

(C) Two persons who have experience in the management of veterans health services and research programs, or programs of similar content and scope.

essary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.

While it is not possible at this time to calculate the reduction in expenditures which will result from this plan, it can safely be predicted that it will produce substantial savings. I am confident that this reorganization plan will constitute a significant improvement in Federal business practice and will bring about an important increase in efficiency in housing Government agencies.

HARRY S TRUMAN.

EX. ORD. NO. 13538. ESTABLISHING THE PRESIDENT'S MANAGEMENT ADVISORY BOARD

Ex. Ord. No. 13538, Apr. 19, 2010, 75 F.R. 20895, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Establishment.* There is established within the General Services Administration (GSA) the President's Management Advisory Board (PMAB).

SEC. 2. *Mission.* (a) The PMAB shall provide the President and the President's Management Council (PMC) advice and recommendations on effective strategies for the implementation of best business practices on matters related to Federal Government management and operation, with a particular focus on productivity, the application of technology, and customer service.

(b) The functions of the PMAB shall be advisory only.

SEC. 3. *Membership.* (a) The PMAB shall consist of not more than 18 members, one of whom shall be the Deputy Director for Management of the Office of Management and Budget (DDM). The remaining 17 members shall be appointed by the President from among distinguished citizens from outside the Federal Government who are qualified on the basis of a proven record of sound judgment in leading or governing large, complex, or innovative private sector corporations or entities and a wealth of top-level business experience in the areas of executive management, audit and finance, human resources and compensation, customer service, streamlining operations, and technology. Each of these 17 members may serve as a representative of his or her industry, trade group, public interest group, or other organization or group. The composition of the PMAB shall reflect the views of diverse stakeholders.

(b) The DDM shall serve as Chair of the PMAB. The Chair shall convene and preside at meetings of the PMAB, determine its agenda, and direct its work.

(c) Members appointed by the President shall serve for a term of 2 years and shall be eligible for reappointment. Members may continue to serve after the expiration of their terms until the appointment of a successor.

SEC. 4. *Administration.* (a) The General Services Administration shall provide funding and administrative support for the PMAB to the extent permitted by law and within existing appropriations.

(b) All executive departments, agencies, and offices shall provide information and assistance to the PMAB as the Chair may request for purposes of carrying out the PMAB's functions, to the extent permitted by law.

(c) The PMAB shall have a staff headed by an Executive Director, who shall be a full-time or permanent part-time Federal employee appointed by the Chair. The Executive Director shall serve as the Designated Federal Officer in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (FACA).

(d) Members of the PMAB shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701-5707), consistent with the availability of funds.

SEC. 5. *Termination.* The PMAB shall terminate 2 years after the date of this order unless extended by the President.

SEC. 6. *General Provisions.* (a) Insofar as the FACA may apply to the PMAB, any functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Administrator of General Services in accordance with the guidelines that have been issued by the Administrator of General Services.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EXTENSION OF TERM OF PRESIDENT'S MANAGEMENT ADVISORY BOARD

Term of the President's Management Advisory Board extended until Sept. 30, 2013, by Ex. Ord. No. 13591, Nov. 23, 2011, 76 F.R. 74623, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 302. Administrator and Deputy Administrator

(a) ADMINISTRATOR.—The Administrator of General Services is the head of the General Services Administration. The Administrator is appointed by the President with the advice and consent of the Senate. The Administrator shall perform functions subject to the direction and control of the President.

(b) DEPUTY ADMINISTRATOR.—The Administrator shall appoint a Deputy Administrator of General Services. The Deputy Administrator shall perform functions designated by the Administrator. The Deputy Administrator is Acting Administrator of General Services during the absence or disability of the Administrator and, unless the President designates another officer of the Federal Government, when the office of Administrator is vacant.

(Pub. L. 107-217, Aug. 21, 2002, 116 Stat. 1072.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
302 .....	40:751(b), (c).	June 30, 1949, ch. 288, title I, § 101(b), (c), 63 Stat. 379.

§ 303. Federal Acquisition Service

(a) ESTABLISHMENT.—There is established in the General Services Administration a Federal Acquisition Service. The Administrator of General Services shall appoint a Commissioner of the Federal Acquisition Service, who shall be the head of the Federal Acquisition Service.

(b) FUNCTIONS.—Subject to the direction and control of the Administrator of General Services, the Commissioner of the Federal Acquisition Service shall be responsible for carrying out functions related to the uses for which the Acquisition Services Fund is authorized under section 321 of this title, including any functions that were carried out by the entities known as the Federal Supply Service and the Federal

the Secretary of Health and Human Services with respect to the exercise of such functions immediately preceding the vesting of such functions in such Commissioner, and actions of such Commissioner shall have the same force and effect as when exercised by such Secretary."

#### RULES OF CONSTRUCTION

Pub. L. 103-296, title I, § 109, Aug. 15, 1994, 108 Stat. 1489, provided that:

"(a) REFERENCES TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—Whenever any reference is made in any provision of law (other than this title [see Tables for classification] or a provision of law amended by this title), regulation, rule, record, or document to the Department of Health and Human Services with respect to such Department's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act [subchapter II of this chapter] or the supplemental security income program under title XVI of such Act [subchapter XVI of this chapter] or other functions performed by the Social Security Administration pursuant to section 105(a)(2) of this Act [set out above], such reference shall be considered a reference to the Social Security Administration.

"(b) REFERENCES TO THE SECRETARY OF HEALTH AND HUMAN SERVICES.—Whenever any reference is made in any provision of law (other than this title or a provision of law amended by this title), regulation, rule, record, or document to the Secretary of Health and Human Services with respect to such Secretary's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act or the supplemental security income program under title XVI of such Act or other functions performed by the Commissioner of Social Security pursuant to section 105(a)(2) of this Act, such reference shall be considered a reference to the Commissioner of Social Security.

"(c) REFERENCES TO OTHER OFFICERS AND EMPLOYEES.—Whenever any reference is made in any provision of law (other than this title or a provision of law amended by this title), regulation, rule, record, or document to any other officer or employee of the Department of Health and Human Services with respect to such officer or employee's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act or the supplemental security income program under title XVI of such Act or other functions performed by the officer or employee of the Social Security Administration pursuant to section 105(a)(2) of this Act, such reference shall be considered a reference to the appropriate officer or employee of the Social Security Administration."

#### § 901a. Repealed. Aug. 28, 1950, ch. 809, title IV, § 401(b), 64 Stat. 558

Section, act Aug. 10, 1939, ch. 666, title IX, § 908, 53 Stat. 1402, placed Social Security Board under direction and supervision of Federal Security Administrator.

#### § 902. Commissioner; Deputy Commissioner; other officers

##### (a) Commissioner of Social Security

(1) There shall be in the Administration a Commissioner of Social Security (in this subchapter referred to as the "Commissioner") who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Commissioner shall be compensated at the rate provided for level I of the Executive Schedule.

(3) The Commissioner shall be appointed for a term of 6 years, except that the initial term of office for Commissioner shall terminate January 19, 2001. In any case in which a successor does

not take office at the end of a Commissioner's term of office, such Commissioner may continue in office until the entry upon office of such a successor. A Commissioner appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term. An individual serving in the office of Commissioner may be removed from office only pursuant to a finding by the President of neglect of duty or malfeasance in office.

(4) The Commissioner shall be responsible for the exercise of all powers and the discharge of all duties of the Administration, and shall have authority and control over all personnel and activities thereof.

(5) The Commissioner may prescribe such rules and regulations as the Commissioner determines necessary or appropriate to carry out the functions of the Administration. The regulations prescribed by the Commissioner shall be subject to the rulemaking procedures established under section 553 of title 5.

(6) The Commissioner may establish, alter, consolidate, or discontinue such organizational units or components within the Administration as the Commissioner considers necessary or appropriate, except that this paragraph shall not apply with respect to any unit, component, or provision provided for by this chapter.

(7) The Commissioner may assign duties, and delegate, or authorize successive redelegations of, authority to act and to render decisions, to such officers and employees of the Administration as the Commissioner may find necessary. Within the limitations of such delegations, redelegations, or assignments, all official acts and decisions of such officers and employees shall have the same force and effect as though performed or rendered by the Commissioner.

(8) The Commissioner and the Secretary of Health and Human Services (in this subchapter referred to as the "Secretary") shall consult, on an ongoing basis, to ensure—

(A) the coordination of the programs administered by the Commissioner, as described in section 901 of this title, with the programs administered by the Secretary under subchapters XVIII and XIX of this chapter; and

(B) that adequate information concerning benefits under such subchapters XVIII and XIX of this chapter is available to the public.

##### (b) Deputy Commissioner of Social Security

(1) There shall be in the Administration a Deputy Commissioner of Social Security (in this subchapter referred to as the "Deputy Commissioner") who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Deputy Commissioner shall be appointed for a term of 6 years, except that the initial term of office for the Deputy Commissioner shall terminate January 19, 2001. In any case in which a successor does not take office at the end of a Deputy Commissioner's term of office, such Deputy Commissioner may continue in office until the entry upon office of such a successor. A Deputy Commissioner appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term.

(3) The Deputy Commissioner shall be compensated at the rate provided for level II of the Executive Schedule.

(4) The Deputy Commissioner shall perform such duties and exercise such powers as the Commissioner shall from time to time assign or delegate. The Deputy Commissioner shall be Acting Commissioner of the Administration during the absence or disability of the Commissioner and, unless the President designates another officer of the Government as Acting Commissioner, in the event of a vacancy in the office of the Commissioner.

**(c) Chief Actuary**

(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5.

**(d) Chief Financial Officer**

There shall be in the Administration a Chief Financial Officer appointed by the Commissioner in accordance with section 901(a)(2) of title 31.

**(e) Inspector General**

There shall be in the Administration an Inspector General appointed by the President, by and with the advice and consent of the Senate, in accordance with section 3(a) of the Inspector General Act of 1978.

(Aug. 14, 1935, ch. 531, title VII, §702, 49 Stat. 636; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(c), (d), 64 Stat. 558; Pub. L. 98-369, div. B, title VI, §2663(j)(2)(C)(i), (l)(1), July 18, 1984, 98 Stat. 1170, 1171; Pub. L. 103-296, title I, §102, Aug. 15, 1994, 108 Stat. 1465; Pub. L. 104-121, title I, §103(e)(1), Mar. 29, 1996, 110 Stat. 851.)

REFERENCES IN TEXT

Levels I and II of the Executive Schedule, referred to in subsecs. (a)(2) and (b)(3), are set out in sections 5312 and 5313, respectively, of Title 5, Government Organization and Employees.

Section 3(a) of the Inspector General Act of 1978, referred to in subsec. (e), is section 3(a) of Pub. L. 95-452, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1996—Subsecs. (c) to (e). Pub. L. 104-121 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1994—Pub. L. 103-296 amended section generally. Prior to amendment, section read as follows: "The Secretary shall perform the duties imposed upon him by this chapter and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemploy-

ment compensation, accident compensation, and related subjects."

1984—Pub. L. 98-369, §2663(l)(1), substituted "Secretary" for "Administrator".

Pub. L. 98-369, §2663(j)(2)(C)(i), which directed the substitution of "Health and Human Services" for "Health, Education, and Welfare", could not be executed because "Health, Education, and Welfare" did not appear in text.

1950—Act Aug. 28, 1950, substituted "Administrator" for "Board" and "him" for "it".

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-121, title I, §103(e)(2), Mar. 29, 1996, 110 Stat. 851, provided that: "The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Mar. 29, 1996]."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

ISSUANCE BY COMMISSIONER OF SOCIAL SECURITY OF RECEIPTS TO ACKNOWLEDGE SUBMISSION OF REPORTS OF CHANGES IN WORK OR EARNINGS STATUS OF DISABLED BENEFICIARIES

Pub. L. 108-203, title II, §202, Mar. 2, 2004, 118 Stat. 509, provided that: "Effective as soon as possible, but not later than 1 year after the date of the enactment of this Act [Mar. 2, 2004], until such time as the Commissioner of Social Security implements a centralized computer file recording the date of the submission of information by a disabled beneficiary (or representative) regarding a change in the beneficiary's work or earnings status, the Commissioner shall issue a receipt to the disabled beneficiary (or representative) each time he or she submits documentation, or otherwise reports to the Commissioner, on a change in such status."

DEMONSTRATION PROJECTS RELATING TO ACCOUNTABILITY FOR TELEPHONE SERVICE CENTER COMMUNICATIONS

Pub. L. 101-508, title V, §5108, Nov. 5, 1990, 104 Stat. 1388-269, directed Secretary of Health and Human Services to develop and carry out demonstration projects designed to implement certain accountability procedures in not fewer than 3 telephone service centers operated by the Social Security Administration, provided that such projects commence not later than 180 days after Nov. 5, 1990, and remain in operation for not less than 1 year and not more than 3 years, and directed Secretary to submit to Congress a written report on the progress of the demonstration projects not later than 90 days after the termination of the project.

TELEPHONE ACCESS TO SOCIAL SECURITY ADMINISTRATION

Pub. L. 103-296, title III, §302, Aug. 15, 1994, 108 Stat. 1518, directed Comptroller General of the United States to submit to Congress, not later than Jan. 31, 1996, report and study of telephone access to local offices of the Social Security Administration, based on independent assessment of Social Security Administration's use of innovative technology (including attendant call and voice mail) to increase public telephone access to local offices of the Administration.

Pub. L. 101-508, title V, §5110, Nov. 5, 1990, 104 Stat. 1388-272, provided that:

“(a) **REQUIRED MINIMUM LEVEL OF ACCESS TO LOCAL OFFICES.**—In addition to such other access by telephone to offices of the Social Security Administration as the Secretary of Health and Human Services may consider appropriate, the Secretary shall maintain access by telephone to local offices of the Social Security Administration at the level of access generally available as of September 30, 1989.

“(b) **TELEPHONE LISTINGS.**—The Secretary shall make such requests of local telephone utilities in the United States as are necessary to ensure that the listings subsequently maintained and published by such utilities for each locality include the address and telephone number for each local office of the Social Security Administration to which direct telephone access is maintained under subsection (a) in such locality. Such listing may also include information concerning the availability of a toll-free number which may be called for general information.

“(c) **REPORT BY SECRETARY.**—Not later than January 1, 1993, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report which—

“(1) assesses the impact of the requirements established by this section on the Social Security Administration's allocation of resources, workload levels, and service to the public, and

“(2) presents a plan for using new, innovative technologies to enhance access to the Social Security Administration, including access to local offices.

“(d) **GAO REPORT.**—The Comptroller General of the United States shall review the level of telephone access by the public to the local offices of the Social Security Administration. The Comptroller General shall file an interim report with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate describing such level of telephone access not later than 120 days after the date of the enactment of this Act [Nov. 5, 1990] and shall file a final report with such Committees describing such level of access not later than 210 days after such date.

“(e) **EFFECTIVE DATE.**—The Secretary of Health and Human Services shall meet the requirements of subsections (a) and (b) as soon as possible after the date of the enactment of this Act but not later [than] 180 days after such date.”

**REPORT REGARDING NOTICES IN LANGUAGES OTHER THAN ENGLISH**

Pub. L. 101-239, title X, §10306(b), Dec. 19, 1989, 103 Stat. 2484, directed Secretary of Health and Human Resources, not later than Jan. 1, 1991, to submit a report to Congress relating to procedures of Social Security Administration for issuing notices in languages other than English.

**STUDY CONCERNING ESTABLISHMENT OF SOCIAL SECURITY ADMINISTRATION AS AN INDEPENDENT AGENCY**

Pub. L. 98-21, title III, §338, Apr. 20, 1983, 97 Stat. 132, as amended by Pub. L. 98-369, div. B, title VI, §2662(h)(1), July 18, 1984, 98 Stat. 1160, established, under authority of Committee on Ways and Means of the House of Representatives and Committee on Finance of the Senate, a Joint Study Panel on the Social Security Administration to undertake a study of removing Social Security Administration from Department of Health and Human Services and establishing it as an independent agency in the executive branch with its own independent administrative structure, including possibility of such a structure headed by a board appointed by the President, by and with the advice and consent of the Senate, and to submit, not later than Apr. 1, 1984, a report of the findings of the study, and provided that the Panel would expire 30 days after the date of the submission of the report.

**EARNINGS SHARING IMPLEMENTATION REPORT**

Pub. L. 98-21, title III, §343, Apr. 20, 1983, 97 Stat. 136, directed Secretary of Health and Human Services to de-

velop, in consultation with Committee on Finance of the Senate and Committee on Ways and Means of the House of Representatives, proposals for earnings sharing legislation (i.e., proposals that combined earnings of a husband and wife during period of their marriage be divided equally and shared between them for social security benefit purposes) and report such proposals to such committees not later than July 1, 1984.

**UNIVERSAL COVERAGE OF SOCIAL SECURITY PROGRAMS; STUDY AND REPORT TO PRESIDENT AND CONGRESS RESPECTING SCOPE, ALTERNATIVES, ETC.; CONSULTATION BY SECRETARY**

Pub. L. 95-216, title III, §311, Dec. 20, 1977, 91 Stat. 1531, as amended by 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783, directed Secretary of Health, Education, and Welfare to undertake as soon as possible after Dec. 20, 1977, a thorough study with respect to extent of coverage under old-age, survivors, and disability insurance programs and under programs established by subchapter XVIII of this chapter and submit a report on findings of such study not later than 2 years after Dec. 20, 1977.

**PROPOSALS FOR ELIMINATION OF DEPENDENCY AND SEX DISCRIMINATION UNDER SOCIAL SECURITY PROGRAM; STUDY AND REPORT TO CONGRESS**

Pub. L. 95-216, title III, §341, Dec. 20, 1977, 91 Stat. 1548, directed Secretary of Health, Education, and Welfare, in consultation with the Task Force on Sex Discrimination, to make a detailed study of proposals to eliminate dependency as a factor in the determination of entitlement to spouse's benefits under the program established under subchapter II of this chapter and of proposals to bring about equal treatment for men and women in any and all respects under such program and submit a report to Congress within 6 months of Dec. 20, 1977.

**§ 903. Social Security Advisory Board**

**(a) Establishment of Board**

There shall be established a Social Security Advisory Board (in this section referred to as the “Board”).

**(b) Functions of Board**

On and after the date the Commissioner takes office, the Board shall advise the Commissioner on policies related to the old-age, survivors, and disability insurance program under subchapter II of this chapter, the program of special benefits for certain World War II veterans under subchapter VIII of this chapter, and the supplemental security income program under subchapter XVI of this chapter. Specific functions of the Board shall include—

(1) analyzing the Nation's retirement and disability systems and making recommendations with respect to how the old-age, survivors, and disability insurance program and the supplemental security income program, supported by other public and private systems, can most effectively assure economic security;

(2) studying and making recommendations relating to the coordination of programs that provide health security with programs described in paragraph (1);

(3) making recommendations to the President and to the Congress with respect to policies that will ensure the solvency of the old-age, survivors, and disability insurance program, both in the short-term and the long-term;

(4) making recommendations with respect to the quality of service that the Administration provides to the public;





# **APPENDIX E**



(1) “agency”, “employee”, and “international organization” have the meanings given them by section 3581 of this title; and

(2) “detail” means the assignment or loan of an employee to an international organization without a change of position from the agency by which he is employed to an international organization.

(b) The head of an agency may detail, for a period of not more than 5 years, an employee of his agency to an international organization which requests services, except that under special circumstances, where the President determines it to be in the national interest, he may extend the 5-year period for up to an additional 3 years.

(c) An employee detailed under subsection (b) of this section is deemed, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits, an employee of the agency from which detailed, and he is entitled to pay, allowances, and benefits from funds available to that agency. The authorization and payment of these allowances and other benefits from appropriations available therefor is deemed to comply with section 5536 of this title.

(d) Details may be made under subsection (b) of this section—

(1) without reimbursement to the United States by the international organization; or

(2) with agreement by the international organization to reimburse the United States for all or part of the pay, travel expenses, and allowances payable during the detail, and the reimbursement shall be credited to the appropriation, fund, or account used for paying the amounts reimbursed.

(e) An employee detailed under subsection (b) of this section may be paid or reimbursed by an international organization for allowances or expenses incurred in the performance of duties required by the detail, without regard to section 209 of title 18.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425; Pub. L. 91-175, pt. V, §502(a), Dec. 30, 1969, 83 Stat. 825.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a) .....	5 U.S.C. 2331.	Aug. 28, 1958, Pub. L. 85-795, §2, 72 Stat. 959.
(b)-(e) .....	5 U.S.C. 2332.	Aug. 28, 1958, Pub. L. 85-795, §3, 72 Stat. 959.

In subsection (a)(2), the words “without a change of position from the agency by which he is employed to an international organization” are substituted for “without the employee’s transfer from the Federal agency by which he is employed” to eliminate the necessity of carrying into this section the definition of “transfer” appearing in former section 2331(5).

In subsection (e), the words “section 209 of title 18” are substituted for “section 1914 of title 18” on authority of the Act of Oct. 23, 1962, Pub. L. 87-849, §2, 76 Stat. 1126.

Other definitions appearing in former section 2331 are omitted from this section as inappropriate but are carried into section 3581.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1969—Subsec. (b). Pub. L. 91-175 substituted “5” for “3” and inserted provision enabling President, regard-

ing an agency employee detailed to an international organization for 5 years, to extend the 5-year period for up to an additional 3 years.

DETAILS TO INTERNATIONAL ORGANIZATIONS

For provisions concerning the providing for details of Federal employees to international organizations and the delegation of Presidential authority, concerning the extension of a detail under this section, to the Secretary of State, see Ex. Ord. No. 11552, Aug. 24, 1970, 35 F.R. 13569, set out as a note under section 3584 of this title.

§ 3344. Details; administrative law judges

An agency as defined by section 551 of this title which occasionally or temporarily is insufficiently staffed with administrative law judges appointed under section 3105 of this title may use administrative law judges selected by the Office of Personnel Management from and with the consent of other agencies.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425; Pub. L. 95-251, §2(a)(1), (b)(2), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1010 (4th sentence).	June 11, 1946, ch. 324, §11 (4th sentence), 60 Stat. 244.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

Pub. L. 95-251 substituted references to administrative law judges for references to hearing examiners in section catchline and wherever appearing in text.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 3345. Acting officer

(a) If an officer of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office—

(1) the first assistant to the office of such officer shall perform the functions and duties of the office temporarily in an acting capacity subject to the time limitations of section 3346;

(2) notwithstanding paragraph (1), the President (and only the President) may direct a person who serves in an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate, to perform the functions and duties of the vacant office temporarily in an acting capacity subject to the time limitations of section 3346; or

(3) notwithstanding paragraph (1), the President (and only the President) may direct an

officer or employee of such Executive agency to perform the functions and duties of the vacant office temporarily in an acting capacity, subject to the time limitations of section 3346, if—

(A) during the 365-day period preceding the date of death, resignation, or beginning of inability to serve of the applicable officer, the officer or employee served in a position in such agency for not less than 90 days; and

(B) the rate of pay for the position described under subparagraph (A) is equal to or greater than the minimum rate of pay payable for a position at GS-15 of the General Schedule.

(b)(1) Notwithstanding subsection (a)(1), a person may not serve as an acting officer for an office under this section, if—

(A) during the 365-day period preceding the date of the death, resignation, or beginning of inability to serve, such person—

(i) did not serve in the position of first assistant to the office of such officer; or

(ii) served in the position of first assistant to the office of such officer for less than 90 days; and

(B) the President submits a nomination of such person to the Senate for appointment to such office.

(2) Paragraph (1) shall not apply to any person if—

(A) such person is serving as the first assistant to the office of an officer described under subsection (a);

(B) the office of such first assistant is an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate; and

(C) the Senate has approved the appointment of such person to such office.

(c)(1) Notwithstanding subsection (a)(1), the President (and only the President) may direct an officer who is nominated by the President for reappointment for an additional term to the same office in an Executive department without a break in service, to continue to serve in that office subject to the time limitations in section 3346, until such time as the Senate has acted to confirm or reject the nomination, notwithstanding adjournment sine die.

(2) For purposes of this section and sections 3346, 3347, 3348, 3349, 3349a, and 3349d, the expiration of a term of office is an inability to perform the functions and duties of such office.

(Added Pub. L. 105-277, div. C, title I, § 151(b), Oct. 21, 1998, 112 Stat. 2681-611; amended Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814.)

#### REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(3)(B), is set out under section 5332 of this title.

#### PRIOR PROVISIONS

A prior section 3345, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425; Pub. L. 100-398, § 7(a)(1), (2), Aug. 17, 1988, 102 Stat. 988, provided for details to office of head of Executive agency or military department, prior to repeal by Pub. L. 105-277, div. C, title I, § 151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681-611, 2681-616, effective 30 days after Oct. 21, 1998.

#### AMENDMENTS

2004—Subsec. (a). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in introductory provisions.

#### EFFECTIVE DATE

Pub. L. 105-277, div. C, title I, § 151(d), Oct. 21, 1998, 112 Stat. 2681-616, provided that:

“(1) EFFECTIVE DATE.—Subject to paragraph (2), this section [enacting this section and sections 3346 to 3349d of this title, repealing former sections 3345 to 3349 of this title, and enacting provisions set out as a note under section 3301 of this title] and the amendments made by this section shall take effect 30 days after the date of enactment of this section [Oct. 21, 1998].

“(2) APPLICATION.—

“(A) IN GENERAL.—This section shall apply to any office that becomes vacant after the effective date of this section.

“(B) IMMEDIATE APPLICATION OF TIME LIMITATION.—Notwithstanding subparagraph (A), for any office vacant on the effective date of this section, the time limitations under section 3346 of title 5, United States Code (as amended by this section) shall apply to such office. Such time limitations shall apply as though such office first became vacant on the effective date of this section.

“(C) CERTAIN NOMINATIONS.—If the President submits to the Senate the nomination of any person after the effective date of this section for an office for which such person had been nominated before such date, the next nomination of such person after such date shall be considered a first nomination of such person to that office for purposes of sections 3345 through 3349 and section 3349d of title 5, United States Code (as amended by this section).”

#### EX. ORD. NO. 13472. EXECUTIVE BRANCH RESPONSIBILITIES WITH RESPECT TO ORDERS OF SUCCESSION

Ex. Ord. No. 13472, Sept. 11, 2008, 73 F.R. 53353, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy.* It is the policy of the Federal Government to ensure that each executive branch agency can perform its essential functions and remain an effectively functioning part of the Federal Government under all conditions. Accordingly, each agency shall take all appropriate actions to establish, maintain, and, as necessary, revise an order of succession, or to propose presidential action to establish or revise an order of succession.

SEC. 2. *Definitions.* As used in this order:

(a) “agency” means:

(i) an executive agency as defined in section 105 of title 5, United States Code, other than the Government Accountability Office; and

(ii) the United States Postal Service and the Postal Regulatory Commission; and

(b) “order of succession” means a list of officials by position who shall act as and perform the functions and duties of the office of the head of the agency in the event that the office-holder has died, resigned, or otherwise become unable to perform the functions and duties of the office. “Order of succession” does not include any order, rule, memorandum, or other document delegating or partially delegating the authority of an office.

SEC. 3. *Orders of Succession Requiring Presidential Action.*

(a) Each agency for which presidential action is required to establish an order of succession shall draft a proposed order of succession if no such order exists and, not later than 30 days from the date of this order, send such proposed draft order to the Counsel to the President for review and comment.

(b) Each agency described in subsection 3(a) of this order shall send any proposed updates or revisions to

the agency's order of succession to the Counsel to the President for review and comment.

(c) Upon completion of the requirements set forth by subsections (a) or (b) of this section with respect to a proposed order, the agency shall submit the proposed order to the Office of Management and Budget in accordance with Executive Order 11030, as amended.

**SEC. 4. Orders of Succession Not Requiring Presidential Action.** (a) Each agency for which presidential action is not required to establish an order of succession because of the agency's existing legal authority shall establish and maintain such order in accordance with applicable law and any applicable guidance issued by the President or the Secretary of Homeland Security, including the laws and guidance regarding continuity plans and programs for the executive branch.

(b) Each agency described in subsection 4(a) of this order shall update and revise its order of succession as necessary. Before implementing any revisions to its order of succession, such agency shall send the proposed revisions to the Counsel to the President for review and comment.

(c) Not later than 30 days from the date of this order, and not later than 7 days from the issuance date of any subsequent final revision to an existing order of succession, each agency described in subsection 4(a) of this order shall provide a copy of its order of succession to the Counsel to the President, the Assistant to the President for Homeland Security and Counterterrorism, and the Director of the Office of Management and Budget.

**SEC. 5. General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) Nothing in this order shall be construed to delegate the President's authority under the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, to designate individuals to perform the functions and duties of a vacant office temporarily in an acting capacity.

(c) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

#### EXECUTIVE DOCUMENTS

Provisions relating to the exercise of Presidential authorities to designate an order of succession for executive agencies and offices are contained in the following:

##### COUNCIL ON ENVIRONMENTAL QUALITY

Memorandum of President of the United States, Jan. 13, 2017, 82 F.R. 7627.

Memorandum of President of the United States, Mar. 13, 2015, 80 F.R. 14289, revoked by Memorandum of President of the United States, § 3, Jan. 13, 2017, 82 F.R. 7627.

Memorandum of President of the United States, Sept. 18, 2008, 73 F.R. 54487, revoked by Memorandum of President of the United States, § 3, Mar. 13, 2015, 80 F.R. 14289.

##### DEPARTMENT OF AGRICULTURE

Ex. Ord. No. 13612, May 21, 2012, 77 F.R. 31153.

Ex. Ord. No. 13542, May 13, 2010, 75 F.R. 27921, revoked by Ex. Ord. No. 13612, § 3, May 21, 2012, 77 F.R. 31154.

Ex. Ord. No. 13241, Dec. 18, 2001, 66 F.R. 66258, as amended by Ex. Ord. No. 13261, § 4(a), Mar. 19, 2002, 67 F.R. 13243; Ex. Ord. No. 13484, § 1, 2, Jan. 9, 2009, 74 F.R. 2285, revoked by Ex. Ord. No. 13542, § 3, May 13, 2010, 75 F.R. 27922.

Ex. Ord. No. 11957, Jan. 13, 1977, 42 F.R. 3295, revoked by Ex. Ord. No. 13241, § 4, Dec. 18, 2001, 66 F.R. 66259.

##### DEPARTMENT OF COMMERCE

Ex. Ord. No. 13613, May 21, 2012, 77 F.R. 31155.

Ex. Ord. No. 13242, Dec. 18, 2001, 66 F.R. 66260, as amended by Ex. Ord. No. 13261, § 4(b), Mar. 19, 2002, 67 F.R. 13243, revoked by Ex. Ord. No. 13613, § 3, May 21, 2012, 77 F.R. 31155.

Ex. Ord. No. 11880, Oct. 2, 1975, 40 F.R. 46089, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617; Ex. Ord. No. 12998, Apr. 5, 1996, 61 F.R. 15873, revoked by Ex. Ord. No. 13242, § 4, Dec. 18, 2001, 66 F.R. 66261.

##### DEPARTMENT OF DEFENSE

Ex. Ord. No. 13533, Mar. 1, 2010, 75 F.R. 10163.

Ex. Ord. No. 13394, Dec. 22, 2005, 70 F.R. 76665, revoked by Ex. Ord. No. 13533, § 3, Mar. 1, 2010, 75 F.R. 10164.

Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, revoked by Ex. Ord. No. 13394, § 5, Dec. 22, 2005, 70 F.R. 76666.

##### DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ex. Ord. No. 13461, Feb. 15, 2008, 73 F.R. 9437.

Ex. Ord. No. 13250, Dec. 28, 2001, 67 F.R. 1597, as amended by Ex. Ord. No. 13261, § 4(h), Mar. 19, 2002, 67 F.R. 13244, revoked by Ex. Ord. No. 13461, § 4, Feb. 15, 2008, 73 F.R. 9438.

##### DEPARTMENT OF HOMELAND SECURITY

For order of succession within the Department of Homeland Security, see Ex. Ord. No. 13286, § 88, Feb. 28, 2003, 68 F.R. 10632, as amended, set out as a note under section 111 of Title 6, Domestic Security.

##### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Ex. Ord. No. 13243, Dec. 18, 2001, 66 F.R. 66262, as amended by Ex. Ord. No. 13261, § 4(c), Mar. 19, 2002, 67 F.R. 13244.

Ex. Ord. No. 11274, Mar. 30, 1966, 31 F.R. 5243, as amended by Pub. L. 101-509, title V, § 529 [title I, § 112(c)], Nov. 5, 1990, 104 Stat. 1427, 1454, revoked by Ex. Ord. No. 13243, § 4, Dec. 18, 2001, 66 F.R. 66263.

##### DEPARTMENT OF JUSTICE

Ex. Ord. No. 13787, Mar. 31, 2017, 82 F.R. 16723.

Ex. Ord. No. 13775, Feb. 9, 2017, 82 F.R. 10697, revoked by Ex. Ord. No. 13787, § 3, Mar. 31, 2017, 82 F.R. 16723.

Ex. Ord. No. 13762, Jan. 13, 2017, 82 F.R. 7619, revoked by Ex. Ord. No. 13775, § 3, Feb. 9, 2017, 82 F.R. 10697.

Ex. Ord. No. 13557, Nov. 4, 2010, 75 F.R. 68679, revoked by Ex. Ord. No. 13762, § 3, Jan. 13, 2017, 82 F.R. 7619.

Ex. Ord. No. 13481, Dec. 9, 2008, 73 F.R. 75531, revoked by Ex. Ord. No. 13557, § 3, Nov. 4, 2010, 75 F.R. 68679.

Memorandum of President of the United States, Dec. 8, 2006, 71 F.R. 74753, superseded by Ex. Ord. No. 13481, § 3, Dec. 9, 2008, 73 F.R. 75531.

##### DEPARTMENT OF LABOR

Ex. Ord. No. 13755, Dec. 23, 2016, 81 F.R. 96329.

Ex. Ord. No. 13245, Dec. 18, 2001, 66 F.R. 66268, as amended by Ex. Ord. No. 13261, § 4(e), Mar. 19, 2002, 67 F.R. 13244, revoked by Ex. Ord. No. 13755, § 3, Dec. 23, 2016, 81 F.R. 96329.

Ex. Ord. No. 10513, Jan. 19, 1954, 19 F.R. 369, revoked by Ex. Ord. No. 13245, § 4, Dec. 8, 2001, 66 F.R. 66269.

##### DEPARTMENT OF STATE

Ex. Ord. No. 13251, Dec. 28, 2001, 67 F.R. 1599, as amended by Ex. Ord. No. 13261, § 4(i), Mar. 19, 2002, 67 F.R. 13244.

Ex. Ord. No. 12343, Jan. 27, 1982, 47 F.R. 4225, revoked by Ex. Ord. No. 13251, § 4, Dec. 28, 2001, 67 F.R. 1599.

##### DEPARTMENT OF THE AIR FORCE

Ex. Ord. No. 12909, Apr. 22, 1994, 59 F.R. 21909.

##### DEPARTMENT OF THE ARMY

Ex. Ord. No. 12908, Apr. 22, 1994, 59 F.R. 21907.

## DEPARTMENT OF THE INTERIOR

Ex. Ord. No. 13244, Dec. 18, 2001, 66 F.R. 66267, as amended by Ex. Ord. No. 13261, §4(d), Mar. 19, 2002, 67 F.R. 13244.

Ex. Ord. No. 11487, Oct. 6, 1969, 34 F.R. 15593, as amended by Pub. L. 101-509, title V, §529 [title I, §112(c)], Nov. 5, 1990, 104 Stat. 1427, 1454, revoked by Ex. Ord. No. 13244, §4, Dec. 18, 2001, 66 F.R. 66267.

## DEPARTMENT OF THE NAVY

Ex. Ord. No. 12879, Nov. 8, 1993, 58 F.R. 59929.

## DEPARTMENT OF THE TREASURY

Ex. Ord. No. 13735, Aug. 12, 2016, 81 F.R. 54709.

Ex. Ord. No. 13246, Dec. 18, 2001, 66 F.R. 66270, as amended by Ex. Ord. No. 13261, §4(f), Mar. 19, 2002, 67 F.R. 13244, revoked by Ex. Ord. No. 13735, §4, Aug. 12, 2016, 81 F.R. 54709.

Ex. Ord. No. 11822, Dec. 10, 1974, 39 F.R. 43275, revoked by Ex. Ord. No. 13246, §4, Dec. 18, 2001, 66 F.R. 66270.

## DEPARTMENT OF TRANSPORTATION

Ex. Ord. No. 13485, Jan. 9, 2009, 74 F.R. 2287.

## DEPARTMENT OF VETERANS AFFAIRS

Ex. Ord. No. 13736, Aug. 12, 2016, 81 F.R. 54711.

Ex. Ord. No. 13247, Dec. 18, 2001, 66 F.R. 66271, as amended by Ex. Ord. No. 13261, §4(g), Mar. 19, 2002, 67 F.R. 13244, revoked by Ex. Ord. No. 13736, §3(a), (b), Aug. 12, 2016, 81 F.R. 54711.

Memorandum of President of the United States, Feb. 12, 2003, 68 F.R. 10141, revoked by Ex. Ord. No. 13736, §3(d), Aug. 12, 2016, 81 F.R. 54711.

## ENVIRONMENTAL PROTECTION AGENCY

Ex. Ord. No. 13763, Jan. 13, 2017, 82 F.R. 7621.

Ex. Ord. No. 13737, Aug. 12, 2016, 81 F.R. 54713, revoked by Ex. Ord. No. 13763, §3, Jan. 13, 2017, 82 F.R. 7622.

Ex. Ord. No. 13614, May 21, 2012, 77 F.R. 31157, revoked by Ex. Ord. No. 13737, §3, Aug. 12, 2016, 81 F.R. 54714.

Ex. Ord. No. 13261, Mar. 19, 2002, 67 F.R. 13243, as amended by Ex. Ord. No. 13344, July 7, 2004, 69 F.R. 41747, revoked by Ex. Ord. No. 13614, §3, May 21, 2012, 77 F.R. 31157, amended by Ex. Ord. No. 13736, §3(b), Aug. 12, 2016, 81 F.R. 54711.

## FEDERAL BUREAU OF INVESTIGATION

Memorandum of President of the United States, Feb. 9, 2007, 72 F.R. 7343.

## FEDERAL EMERGENCY MANAGEMENT AGENCY

Memorandum of President of the United States, Nov. 26, 2002, 67 F.R. 79513, terminated upon the transfer of the authorities, functions, personnel, and assets of the Federal Emergency Management Agency to the Department of Homeland Security.

## FEDERAL MEDIATION AND CONCILIATION SERVICE

Memorandum of President of the United States, Jan. 13, 2017, 82 F.R. 7629.

Memorandum of President of the United States, Dec. 23, 2016, 81 F.R. 96333.

Memorandum of President of the United States, Oct. 17, 2014, 79 F.R. 63803.

## GENERAL SERVICES ADMINISTRATION

Memorandum of President of the United States, Sept. 20, 2013, 78 F.R. 59161.

## MILLENNIUM CHALLENGE CORPORATION

Memorandum of President of the United States, May 21, 2012, 77 F.R. 31161.

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Memorandum of President of the United States, Jan. 16, 2009, 74 F.R. 4099.

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Memorandum of President of the United States, Dec. 23, 2016, 81 F.R. 96331.

Memorandum of President of the United States, May 21, 2012, 77 F.R. 31163, revoked by Memorandum of President of the United States, §3, Dec. 23, 2016, 81 F.R. 96331.

## NATIONAL ENDOWMENT FOR THE ARTS

Memorandum of President of the United States, Dec. 23, 2016, 81 F.R. 96335.

## NATIONAL ENDOWMENT FOR THE HUMANITIES

Memorandum of President of the United States, Aug. 12, 2016, 81 F.R. 54717.

## OFFICE OF MANAGEMENT AND BUDGET

Ex. Ord. No. 13615, May 21, 2012, 77 F.R. 31159.

Ex. Ord. No. 13370, Jan. 13, 2005, 70 F.R. 3137, revoked by Ex. Ord. No. 13615, §3, May 21, 2012, 77 F.R. 31159.

## OFFICE OF PERSONNEL MANAGEMENT

Memorandum of President of the United States, Aug. 12, 2016, 81 F.R. 54715.

Memorandum of President of the United States, May 21, 2012, 77 F.R. 31165, revoked by Memorandum of President of the United States, §3, Aug. 12, 2016, 81 F.R. 54715.

Memorandum of President of the United States, May 5, 2005, 70 F.R. 28773, superseded by Memorandum of President of the United States, May 21, 2012, 77 F.R. 31165.

Memorandum of President of the United States, Mar. 11, 2003, 68 F.R. 12281, superseded by Memorandum of President of the United States, May 5, 2005, 70 F.R. 28773.

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Memorandum of President of the United States, Jan. 13, 2017, 82 F.R. 7625.

Memorandum of President of the United States, Aug. 5, 2009, 74 F.R. 39871, revoked by Memorandum of President of the United States, §3, Jan. 13, 2017, 82 F.R. 7625.

## OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Memorandum of President of the United States, Sept. 20, 2013, 78 F.R. 59159.

Memorandum of President of the United States, Mar. 8, 2011, 76 F.R. 13499, revoked by Memorandum of President of the United States, §4, Sept. 20, 2013, 78 F.R. 59159.

Memorandum of President of the United States, Oct. 3, 2008, 73 F.R. 58869, revoked by Memorandum of President of the United States, §5, Mar. 8, 2011, 76 F.R. 13499.

Memorandum of President of the United States, Dec. 20, 2005, 70 F.R. 76375, superseded by Memorandum of President of the United States, §4, Oct. 3, 2008, 73 F.R. 58869.

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Memorandum of President of the United States, Feb. 20, 2007, 72 F.R. 8085.

## OVERSEAS PRIVATE INVESTMENT CORPORATION

Memorandum of President of the United States, June 6, 2011, 76 F.R. 33613.

Memorandum of President of the United States, Jan. 16, 2009, 74 F.R. 4101, revoked by Memorandum of President of the United States, §3, June 6, 2011, 76 F.R. 33613.

## PENSION BENEFIT GUARANTY CORPORATION

Memorandum of President of the United States, Feb. 1, 2013, 78 F.R. 8953.

Memorandum of President of the United States, Dec. 9, 2008, 73 F.R. 75533, superseded by Memorandum of President of the United States, §3, Feb. 1, 2013, 78 F.R. 8953.

## SOCIAL SECURITY ADMINISTRATION

Memorandum of President of the United States, Dec. 23, 2016, 81 F.R. 96337.

Memorandum of President of the United States, Oct. 17, 2014, 79 F.R. 63805, revoked by Memorandum of President of the United States, §3, Dec. 23, 2016, 81 F.R. 96337.

Memorandum of President of the United States, Oct. 17, 2008, 73 F.R. 62845, revoked by Memorandum of President of the United States, §3, Oct. 17, 2014, 79 F.R. 63805.

Memorandum of President of the United States, Apr. 17, 2006, 71 F.R. 20333, superseded by Memorandum of President of the United States, §3, Oct. 17, 2008, 73 F.R. 62845.

UNITED STATES AGENCY FOR INTERNATIONAL  
DEVELOPMENT

Memorandum of President of the United States, Dec. 9, 2008, 73 F.R. 75535.

UNITED STATES SECTION, INTERNATIONAL BOUNDARY AND  
WATER COMMISSION, UNITED STATES AND MEXICO

Memorandum of President of the United States, Aug. 31, 2009, 74 F.R. 45533.

### § 3346. Time limitation

(a) Except in the case of a vacancy caused by sickness, the person serving as an acting officer as described under section 3345 may serve in the office—

(1) for no longer than 210 days beginning on the date the vacancy occurs; or

(2) subject to subsection (b), once a first or second nomination for the office is submitted to the Senate, from the date of such nomination for the period that the nomination is pending in the Senate.

(b)(1) If the first nomination for the office is rejected by the Senate, withdrawn, or returned to the President by the Senate, the person may continue to serve as the acting officer for no more than 210 days after the date of such rejection, withdrawal, or return.

(2) Notwithstanding paragraph (1), if a second nomination for the office is submitted to the Senate after the rejection, withdrawal, or return of the first nomination, the person serving as the acting officer may continue to serve—

(A) until the second nomination is confirmed; or

(B) for no more than 210 days after the second nomination is rejected, withdrawn, or returned.

(c) If a vacancy occurs during an adjournment of the Congress sine die, the 210-day period under subsection (a) shall begin on the date that the Senate first reconvenes.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-612.)

PRIOR PROVISIONS

A prior section 3346, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426, provided for details to subordinate offices, prior to repeal by Pub. L. 105-277, div. C, title I, §151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681-611, 2681-616, effective 30 days after Oct. 21, 1998. See section 3345 of this title.

EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105-277, set out as a note under section 3345 of this title.

### § 3347. Exclusivity

(a) Sections 3345 and 3346 are the exclusive means for temporarily authorizing an acting of-

ficial to perform the functions and duties of any office of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) for which appointment is required to be made by the President, by and with the advice and consent of the Senate, 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.

(b) Any statutory provision providing general authority to the head of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) to delegate duties statutorily vested in that agency head to, or to reassign duties among, officers or employees of such Executive agency, is not a statutory provision to which subsection (a)(1) applies.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-613; amended Pub. L. 106-31, title V, §5011, May 21, 1999, 113 Stat. 112; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 3347, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426, provided for Presidential authority relating to details, prior to repeal by Pub. L. 105-277, div. C, title I, §151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681-611, 2681-616, effective 30 days after Oct. 21, 1998. See section 3345 of this title.

AMENDMENTS

2004—Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in introductory provisions of subsec. (a) and in subsec. (b).

1999—Subsec. (b). Pub. L. 106-31 substituted “subsection (a)(1)” for “subsection (a)(2)”.

EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105-277, set out as a note under section 3345 of this title.

### § 3348. Vacant office

(a) In this section—

(1) the term “action” includes any agency action as defined under section 551(13); and

(2) the term “function or duty” means any function or duty of the applicable office that—

(A)(i) is established by statute; and

(ii) is required by statute to be performed by the applicable officer (and only that officer); or

(B)(i)(I) is established by regulation; and

(II) is required by such regulation to be performed by the applicable officer (and only that officer); and

(ii) includes a function or duty to which clause (i)(I) and (II) applies, and the applicable regulation is in effect at any time during the 180-day period preceding the date on which the vacancy occurs.

(b) Unless an officer or employee is performing the functions and duties in accordance with sections 3345, 3346, and 3347, if an officer of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office—

(1) the office shall remain vacant; and

(2) in the case of an office other than the office of the head of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office), only the head of such Executive agency may perform any function or duty of such office.

(c) If the last day of any 210-day period under section 3346 is a day on which the Senate is not in session, the second day the Senate is next in session and receiving nominations shall be deemed to be the last day of such period.

(d)(1) An action taken by any person who is not acting under section 3345, 3346, or 3347, or as provided by subsection (b), in the performance of any function or duty of a vacant office to which this section and sections 3346, 3347, 3349, 3349a, 3349b, and 3349c apply shall have no force or effect.

(2) An action that has no force or effect under paragraph (1) may not be ratified.

(e) This section shall not apply to—

(1) the General Counsel of the National Labor Relations Board;

(2) the General Counsel of the Federal Labor Relations Authority;

(3) any Inspector General appointed by the President, by and with the advice and consent of the Senate;

(4) any Chief Financial Officer appointed by the President, by and with the advice and consent of the Senate; or

(5) an office of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) if a statutory provision expressly prohibits the head of the Executive agency from performing the functions and duties of such office.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-613; amended Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

#### PRIOR PROVISIONS

A prior section 3348, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426; Pub. L. 100-398, §7(b), Aug. 17, 1988, 102 Stat. 988, provided for time limitations relating to details, prior to repeal by Pub. L. 105-277, div. C, title I, §151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681-611, 2681-616, effective 30 days after Oct. 21, 1998. See section 3346 of this title.

#### AMENDMENTS

2004—Subsec. (b). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in two places.

Subsec. (e)(5). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

#### EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105-277, set out as a note under section 3345 of this title.

#### § 3349. Reporting of vacancies

(a) The head of each Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) shall submit to the Comptroller General of the United States and to each House of Congress—

(1) notification of a vacancy in an office to which this section and sections 3345, 3346, 3347, 3348, 3349a, 3349b, 3349c, and 3349d apply and the date such vacancy occurred immediately upon the occurrence of the vacancy;

(2) the name of any person serving in an acting capacity and the date such service began immediately upon the designation;

(3) the name of any person nominated to the Senate to fill the vacancy and the date such nomination is submitted immediately upon the submission of the nomination; and

(4) the date of a rejection, withdrawal, or return of any nomination immediately upon such rejection, withdrawal, or return.

(b) If the Comptroller General of the United States makes a determination that an officer is serving longer than the 210-day period including the applicable exceptions to such period under section 3346 or section 3349a, the Comptroller General shall report such determination immediately to—

(1) the Committee on Governmental Affairs of the Senate;

(2) the Committee on Government Reform and Oversight of the House of Representatives;

(3) the Committees on Appropriations of the Senate and House of Representatives;

(4) the appropriate committees of jurisdiction of the Senate and House of Representatives;

(5) the President; and

(6) the Office of Personnel Management.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-614; amended Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

#### PRIOR PROVISIONS

A prior section 3349, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426, provided for restrictions relating to details to fill vacancies, prior to repeal by Pub. L. 105-277, div. C, title I, §151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681-611, 2681-616, effective 30 days after Oct. 21, 1998. See section 3347 of this title.

#### AMENDMENTS

2004—Subsec. (a). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in introductory provisions.

#### CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by



Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

#### EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105-277, set out as a note under section 3345 of this title.

#### § 3349a. Presidential inaugural transitions

(a) In this section, the term “transitional inauguration day” means the date on which any person swears or affirms the oath of office as President, if such person is not the President on the date preceding the date of swearing or affirming such oath of office.

(b) With respect to any vacancy that exists during the 60-day period beginning on a transitional inauguration day, the 210-day period under section 3346 or 3348 shall be deemed to begin on the later of the date occurring—

- (1) 90 days after such transitional inauguration day; or
- (2) 90 days after the date on which the vacancy occurs.

(Added Pub. L. 105-277, div. C, title I, § 151(b), Oct. 21, 1998, 112 Stat. 2681-615.)

#### EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105-277, set out as a note under section 3345 of this title.

#### § 3349b. Holdover provisions

Sections 3345 through 3349a shall not be construed to affect any statute that authorizes a person to continue to serve in any office—

- (1) after the expiration of the term for which such person is appointed; and
- (2) until a successor is appointed or a specified period of time has expired.

(Added Pub. L. 105-277, div. C, title I, § 151(b), Oct. 21, 1998, 112 Stat. 2681-615.)

#### EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105-277, set out as a note under section 3345 of this title.

#### § 3349c. Exclusion of certain officers

Sections 3345 through 3349b shall not apply to—

- (1) any member who is appointed by the President, by and with the advice and consent of the Senate to any board, commission, or similar entity that—
  - (A) is composed of multiple members; and
  - (B) governs an independent establishment or Government corporation;

(2) any commissioner of the Federal Energy Regulatory Commission;

(3) any member of the Surface Transportation Board; or

(4) any judge appointed by the President, by and with the advice and consent of the Senate, to a court constituted under article I of the United States Constitution.

(Added Pub. L. 105-277, div. C, title I, § 151(b), Oct. 21, 1998, 112 Stat. 2681-615.)

#### EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105-277, set out as a note under section 3345 of this title.

#### § 3349d. Notification of intent to nominate during certain recesses or adjournments

(a) The submission to the Senate, during a recess or adjournment of the Senate in excess of 15 days, of a written notification by the President of the President's intention to submit a nomination after the recess or adjournment shall be considered a nomination for purposes of sections 3345 through 3349c if such notification contains the name of the proposed nominee and the office for which the person is nominated.

(b) If the President does not submit a nomination of the person named under subsection (a) within 2 days after the end of such recess or adjournment, effective after such second day the notification considered a nomination under subsection (a) shall be treated as a withdrawn nomination for purposes of sections 3345 through 3349c.

(Added Pub. L. 105-277, div. C, title I, § 151(b), Oct. 21, 1998, 112 Stat. 2681-615.)

#### EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105-277, set out as a note under section 3345 of this title.

### SUBCHAPTER IV—TRANSFERS

#### § 3351. Preference eligibles; transfer; physical qualifications; waiver

In determining qualifications of a preference eligible for transfer to another position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

Distillers and refiners to be deemed manufacturers, and subject to tax 1868, ch 41, § 4  
Ante, p. 59

manufacturer or his agent or agents at the passage of this act, and unsold, shall be collected; but distillers and refiners of mineral oils shall be considered as manufacturers and subject to the tax on sales provided for in the fourth section of the act "to exempt certain manufacturers from internal tax, and for other purposes," approved March thirty-first, eighteen hundred and sixty-eight.

APPROVED, July 20, 1868.

July 23, 1868

CHAP. CCXXVI. — *An Act to construct a Wagon Road from West Point to Cornwall Landing, all in the County of Orange, State of New York.*

Government labor to aid in building wagon road from West Point to Cornwall Landing.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the superintendent of the military academy at West Point be authorized and directed to use the labor in the employ of the United States government at that post, when not otherwise employed, in building and constructing a wagon road from West Point to Cornwall Landing, in the county of Orange, said road to be located under the direction of the said superintendent, over land now belonging or hereafter to be ceded to the government of the United States for that purpose.

APPROVED, July 23, 1868.

July 23, 1868.

CHAP. CCXXVII. — *An Act to authorize the temporary Supplying of Vacancies in the Executive Departments.*

In case of the death, absence, &c of head of any executive department, who to perform the duties,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in case of the death, resignation, absence, or sickness of the head of any executive department of the government, the first or sole assistant thereof shall, unless otherwise directed by the President of the United States, as is hereinafter provided, perform the duties of such head until a successor be appointed, or such absence or sickness shall cease.

of chief of bureau, &c. except, &c

SEC. 2. *And be it further enacted,* That in case of the death, resignation, absence, or sickness of the chief of any bureau, or of any officer thereof, except commissioner of patents, whose appointment is not in the head of any executive department, the deputy of such chief or of such officer, or if there be no deputy, then the chief clerk of such bureau, shall, unless otherwise directed by the President of the United States, as is hereinafter provided, perform the duties of such chief or of such officer until a successor be appointed or such absence or sickness shall cease.

No appointment to be made except to fill a vacancy happening during a recess of the Senate

And no appointment, designation, or assignment otherwise than as is herein provided, in the cases mentioned in the first, second, and third sections of this act, shall be made except to fill a vacancy happening during the recess of the Senate.

Head of other executive department, &c may be directed to perform duties;

SEC. 3. *And be it further enacted,* That in any of the cases hereinbefore mentioned it shall be lawful for the President of the United States, in his discretion, to authorize and direct the head of any other executive department or other officer in either of those departments whose appointment is, by and with the advice and consent of the Senate, vested in the President, to perform the duties of the office vacant as aforesaid until a successor be appointed, or the sickness or absence of the incumbent shall cease :

but for not more than ten days, &c.

*Provided,* That nothing in this act shall authorize the supplying as aforesaid a vacancy for a longer period than ten days when such vacancy shall be occasioned by death or resignation, and the officer so performing the duties of the office temporarily vacant shall not be entitled to extra compensation therefor : *And provided also,* That in case of the death, resignation, absence, or sickness of the commissioner of patents, the duties of said commissioner, until a successor be appointed or such absence or sickness shall cease, shall devolve upon the examiner-in-chief in said office oldest in length of commission.

Commissioner of patents.

SEC. 4. *And be it further enacted*, That all acts heretofore passed on the subject of temporarily supplying vacancies in the executive departments, or which empower the President to authorize any person or persons to perform the duties of the head of any executive department, or of any officer in either of the departments, in case of a vacancy therein or inability of such head of a department or officer to discharge the duties of his office, and all laws inconsistent with the provisions of this act, be, and the same are hereby, repealed.

Repeal of inconsistent laws.

APPROVED, July 23, 1868.

CHAP. CCXXVIII. — *An Act making a Grant of Land to the State of Minnesota to aid in the Improvement of the Navigation of the Mississippi River.* July 23, 1868.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and hereby is, granted to the State of Minnesota, for the purpose of aiding said State in constructing and completing a lock and dam at Meeker's island, (so called,) in the Mississippi River, in said State, and thereby facilitating the navigation of the Mississippi River between the falls of St. Anthony and the mouth of the Minnesota River, two hundred thousand acres of public lands, to be selected in alternate odd-numbered sections by an agent to be appointed by the governor of said State, subject to the approval of the Secretary of the Interior: *Provided*, That said lands shall be selected from the public lands lying within the limits of the said State of Minnesota, and that not more than one section thereof shall be selected in any one township: *Provided further*, That said selections shall not be made from any lands containing mines of gold, silver, cinnabar, or copper, nor from any lands to which rights of pre-emption or homestead have attached.

Land grant to Minnesota to build a lock and dam, to aid the navigation of the Mississippi River.

Lands, how to be selected,

not to be from certain lands;

SEC. 2. *And be it further enacted*, That said lands so granted shall be subject to the disposal of the legislature of said State for the purposes mentioned in the first section of this act, and no other; and the said lock and dam shall be and remain forever a public highway, free from any toll or charge of any kind whatever; and the said legislature shall have power to pass all needful rules and regulations that may be necessary to fully carry out the purposes of this act.

how to be disposed of.

Lock and dam to be a public highway.

SEC. 3. *And be it further enacted*, That the work shall be done under the direction of the engineer department of the United States, according to the plan and estimate submitted by Major-General Warren, and that if said lock and dam are not constructed within two years from and after the date of the acceptance and disposition of this grant by the legislature of the said State, the lands hereby granted shall revert to the United States.

Work, how to be performed.

Lands to revert to the United States, if, &c

Lands, when to be open to actual settlers, and on what terms.

SEC. 4. *And be it further enacted*, That at any time after the selection of the said lands, and subsequent to the completion of said lock and dam, the lands hereby granted shall be open for settlement by actual settlers upon paying to the State of Minnesota a price not exceeding one dollar and twenty-five cents per acre for the same, which shall be paid by the State to the company who may construct said lock and dam.

SEC. 5. *And be it further enacted*, That if at any time prior to the completion of the said lock and dam the government of the United States shall make an appropriation in money sufficient to construct said lock and dam, then the grant of lands herein made shall revert to the United States: *Provided*, That this act shall have no effect on lands already granted for railroad purposes.

If sufficient appropriation is made to complete the dam, lands to revert.

Proviso.

APPROVED, July 23, 1868.

## Public Law 89-554

## AN ACT

September 6, 1966  
[H. R. 10 104]

To enact title 5, United States Code, "Government Organization and Employees", codifying the general and permanent laws relating to the organization of the Government of the United States and to its civilian officers and employees.

Title 5, USC,  
Government Or-  
ganization and  
Employees.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the laws relating to the organization of the Government of the United States and to its civilian officers and employees, generally, are revised, codified, and enacted as title 5 of the United States Code, entitled "Government Organization and Employees", and may be cited as "5 U.S.C., § ", as follows:

## TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

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### PART I—THE AGENCIES GENERALLY

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#### CHAPTER 1—ORGANIZATION

Sec.
101. Executive departments.
102. Military departments.
103. Government corporation.
104. Independent establishment.
105. Executive agency.

#### § 101. Executive departments

The Executive departments are:

The Department of State.  
The Department of the Treasury.  
The Department of Defense.  
The Department of Justice.  
The Post Office Department.  
The Department of the Interior.  
The Department of Agriculture.  
The Department of Commerce.  
The Department of Labor.  
The Department of Health, Education, and Welfare.

#### § 102. Military departments

The military departments are:

The Department of the Army.  
The Department of the Navy.  
The Department of the Air Force.

#### § 103. Government corporation

For the purpose of this title—

(1) "Government corporation" means a corporation owned or controlled by the Government of the United States; and

counsel for the conduct of litigation in which the United States, an agency, or employee thereof is a party, or is interested, or for the securing of evidence therefor, but shall refer the matter to the Department of Justice. This section does not apply to the employment and payment of counsel under section 1037 of title 10.

**§ 3107. Employment of publicity experts; restrictions**

Appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose.

**§ 3108. Employment of detective agencies; restrictions**

An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the government of the District of Columbia.

**§ 3109. Employment of experts and consultants; temporary or intermittent**

(a) For the purpose of this section—

(1) “agency” has the meaning given it by section 5721 of this title; and

(2) “appropriation” includes funds made available by statute under section 849 of title 31.

(b) When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services. Services procured under this section are without regard to—

(1) the provisions of this title governing appointment in the competitive service;

(2) chapter 51 and subchapter III of chapter 53 of this title; and

(3) section 5 of title 41, except in the case of stenographic reporting services by an organization.

However, an agency subject to chapter 51 and subchapter III of chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section 5332 of this title only when specifically authorized by the appropriation or other statute authorizing the procurement of the services.

**CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT**

**SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT**

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3301. Civil service; generally.

3302. Competitive service; rules.

3303. Competitive service; recommendations of Senators or Representatives.

3304. Competitive service; examinations.

3305. Competitive service; examinations; when held.

3306. Competitive service; departmental service; apportionment.

3307. Competitive service; maximum-age requirement; restriction on use of appropriated funds.

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3309. Preference eligibles; examinations; additional points for.

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3311. Preference eligibles; examinations; crediting experience.

Sec.

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- 3346. Details; to subordinate offices.
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- 3362. Promotion; effect of incentive award.
- 3363. Preference eligibles; promotion; physical qualifications; waiver.
- 3364. Promotion; substitute employees in the postal field service.

### SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

#### § 3301. Civil service; generally

The President may—

- (1) prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service;
- (2) ascertain the fitness of applicants as to age, health, character, knowledge, and ability for the employment sought; and
- (3) appoint and prescribe the duties of individuals to make inquiries for the purpose of this section.

#### § 3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

- (1) necessary exceptions of positions from the competitive service; and

(2) necessary exceptions from the provisions of sections 2951, 3304(a), 3306(a)(1), 3321, 7152, 7153, 7321, and 7322 of this title. Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules.

**§ 3303. Competitive service; recommendations of Senators or Representatives**

An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant.

**§ 3304. Competitive service; examinations**

(a) The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, for—

(1) open, competitive examinations for testing applicants for appointment in the competitive service which are practical in character and as far as possible relate to matters that fairly test the relative capacity and fitness of the applicants for the appointment sought; and

(2) noncompetitive examinations when competent applicants do not compete after notice has been given of the existence of the vacancy.

(b) An individual may be appointed in the competitive service only if he has passed an examination or is specifically excepted from examination under section 3302 of this title. This subsection does not take from the President any authority conferred by section 3301 of this title that is consistent with the provisions of this title governing the competitive service.

(c) Notwithstanding a contrary provision of this title or of the rules and regulations prescribed under this title for the administration of the competitive service, an individual who served—

(1) for at least 3 years in the legislative branch in a position in which he was paid by the Secretary of the Senate or the Clerk of the House of Representatives; or

(2) for at least 4 years as a secretary or law clerk, or both, to a justice or judge of the United States;

acquires a competitive status for transfer to the competitive service if he is involuntarily separated without prejudice from the legislative or judicial branch, passes a suitable noncompetitive examination, and transfers to the competitive service within 1 year of the separation from the legislative or judicial branch. For the purpose of this subsection, an individual who has served for at least 2 years in a position in the legislative branch described by paragraph (1) of this subsection and who is separated from that position to enter the armed forces is deemed to have held that position during his service in the armed forces.

(d) Employees at any place outside the District of Columbia where the President or a Civil Service Commission board of examiners directs that examinations be held shall allow the reasonable use of public buildings for, and in all proper ways facilitate, holding the examinations.

**§ 3305. Competitive service; examinations; when held**

(a) The Civil Service Commission shall hold examinations for the competitive service at least twice a year in each State and territory or possession of the United States where there are individuals to be examined.

(b) The Commission shall hold an examination for a position to which an appointment has been made within the preceding 3 years, on the application of an individual who qualifies as a preference eligible under section 2108(3)(B)–(F) of this title. The examination shall be held during the quarter following the application.

**§ 3306. Competitive service; departmental service; apportionment**

(a) (1) The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that appointments in the departmental service in the District of Columbia be apportioned among the States, territories and possessions of the United States, and the District of Columbia on the basis of population as ascertained at the last census.

(2) Paragraph (1) of this subsection does not apply to a preference eligible, but he may be required to furnish evidence of residence and domicile.

(b) An application for examination for appointment in the departmental service in the District of Columbia shall be accompanied by—

(1) a certificate under the seal of an official of the county and State of which the applicant claims to be a resident, that the applicant was a legal or voting resident of the State when he made the application and had been for at least 1 year before making the application; or

(2) a statement of the applicant under oath setting forth his legal or voting residence for 1 year before making the application, accompanied by letters from three reputable citizens of the State in which residence is claimed corroborating the statement.

This subsection does not apply to an employee serving in the competitive service with competitive status who seeks promotion or appointment to another position.

**§ 3307. Competitive service; maximum-age requirement; restriction on use of appropriated funds**

Appropriated funds may not be used to pay an employee who establishes a maximum-age requirement for entrance into the competitive service.

**§ 3308. Competitive service; examinations; educational requirements prohibited; exceptions**

The Civil Service Commission or other examining agency may not prescribe a minimum educational requirement for an examination for the competitive service except when the Commission decides that the duties of a scientific, technical, or professional position cannot be performed by an individual who does not have a prescribed minimum education. The Commission shall make the reasons for its decision under this section a part of its public records.

**§ 3309. Preference eligibles; examinations; additional points for**

A preference eligible who receives a passing grade in an examination for entrance into the competitive service is entitled to additional points above his earned rating, as follows—

(1) a preference eligible under section 2108(3)(B)–(F) of this title—10 points; and

(2) a preference eligible under section 2108(3)(A) of this title—5 points.



**§ 3310. Preference eligibles; examinations; guards, elevator operators, messengers, and custodians**

In examinations for positions of guards, elevator operators, messengers, and custodians in the competitive service, competition is restricted to preference eligibles as long as preference eligibles are available.

**§ 3311. Preference eligibles; examinations; crediting experience**

In examinations for the competitive service in which experience is an element of qualification, a preference eligible is entitled to credit—

(1) for service in the armed forces when his employment in a similar vocation to that for which examined was interrupted by the service; and

(2) for all experience material to the position for which examined, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he received pay therefor.

**§ 3312. Preference eligibles; physical qualifications; waiver**

In determining qualifications of a preference eligible for examination for, appointment in, or reinstatement in the competitive service, the Civil Service Commission or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Commission or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

**§ 3313. Competitive service; registers of eligibles**

The names of applicants who have qualified in examinations for the competitive service shall be entered on appropriate registers or lists of eligibles in the following order—

(1) for scientific and professional positions in GS-9 or higher, in the order of their ratings, including points added under section 3309 of this title; and

(2) for all other positions—

(A) disabled veterans who have a compensable service-connected disability of 10 percent or more, in order of their ratings, including points added under section 3309 of this title; and

(B) remaining applicants, in the order of their ratings, including points added under section 3309 of this title.

The names of preference eligibles shall be entered ahead of others having the same rating.

**§ 3314. Registers; preference eligibles who resigned**

A preference eligible who resigns, on request to the Civil Service Commission, is entitled to have his name placed again on all registers for which he may have been qualified, in the order named by section 3313 of this title.

**§ 3315. Registers; preference eligibles furloughed or separated**

(a) A preference eligible who has been separated or furloughed without delinquency or misconduct, on request, is entitled to have his name placed on appropriate registers and employment lists for every position for which his qualifications have been established, in the order named by section 3313 of this title. This subsection applies to regis-

ters and employment lists maintained by the Civil Service Commission, an Executive agency, or the government of the District of Columbia.

(b) The Commission may declare a preference eligible who has been separated or furloughed without pay under section 7512 of this title to be entitled to the benefits of subsection (a) of this section.

#### **§ 3316. Preference eligibles; reinstatement**

On request of an appointing authority, a preference eligible who has resigned or who has been dismissed or furloughed may be certified for, and appointed to, a position for which he is eligible in the competitive service, an Executive agency, or the government of the District of Columbia.

#### **§ 3317. Competitive service; certification from registers**

(a) The Civil Service Commission shall certify enough names from the top of the appropriate register to permit a nominating or appointing authority who has requested a certificate of eligibles to consider at least three names for appointment to each vacancy in the competitive service.

(b) When an appointing authority, for reasons considered sufficient by the Commission, has three times considered and passed over a preference eligible who was certified from a register, certification of the preference eligible for appointment may be discontinued. However, the preference eligible is entitled to advance notice of discontinuance of certification.

#### **§ 3318. Competitive service; selection from certificates**

(a) The nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under section 3317(a) of this title, unless objection to one or more of the individuals certified is made to, and sustained by, the Civil Service Commission for proper and adequate reason under regulations prescribed by the Commission.

(b) An appointing authority who passes over a preference eligible on a certificate and selects an individual who is not a preference eligible shall file written reasons with the Commission for passing over the preference eligible. The Commission shall make these reasons a part of the record of the preference eligible. The Commission may require the submission of more detailed information in support of the passing over of the preference eligible. The Commission shall determine the sufficiency or insufficiency of the reasons submitted and shall send its findings to the appointing authority. The appointing authority shall comply with the findings of the Commission. The preference eligible or his representative, on request, is entitled to a copy of—

- (1) the reasons submitted by the appointing authority; and
- (2) the findings of the Commission.

(c) When three or more names of preference eligibles are on a reemployment list appropriate for the position to be filled, a nominating or appointing authority may appoint from a register of eligibles established after examination only an individual who qualifies as a preference eligible under section 2108(3)(B)–(F) of this title.

#### **§ 3319. Competitive service; selection; members of family restriction**

(a) When two or more members of a family are employed in the competitive service, another member of the same family is not eligible for appointment in the competitive service.

(b) Subsection (a) of this section does not apply to a preference eligible.

**§ 3320. Excepted service; government of the District of Columbia; selection**

The nominating or appointing authority shall select for appointment to each vacancy in the excepted service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections 3308-3318 of this title. This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

**§ 3321. Competitive service; probation; period of**

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that there shall be a period of probation before an appointment in the competitive service becomes absolute.

**§ 3322. Competitive service; temporary appointments after age 70**

An individual who has reached his 70th birthday may be appointed to a position in the competitive service only on a temporary basis.

**§ 3323. Automatic separations; reappointment; reemployment of annuitants**

(a) An individual who reaches the retirement age prescribed for automatic separation applicable to him may not be continued in the civil service or in the government of the District of Columbia. An individual separated on account of age under a statute or regulation providing for retirement on account of age is not eligible for appointment in the civil service or in the government of the District of Columbia. The President, when in his judgment the public interest so requires, may except an individual from this subsection by Executive order. This subsection does not apply to an individual named by a statute providing for the continuance of the individual in the civil service or in the government of the District of Columbia.

(b) Notwithstanding other statutes, an annuitant as defined by section 8331 of this title receiving annuity from the Civil Service Retirement and Disability Fund is not barred by reason of his retired status from employment in an appointive position for which he is qualified. An annuitant so reemployed serves at the will of the appointing authority.

(c) Notwithstanding subsection (a) of this section, a Foreign Service officer retired under section 1001 or 1002 of title 22 or a Foreign Service staff officer or employee retired under section 1063 of title 22 is not barred by reason of his retired status from employment in a position in the civil service for which he is qualified. An annuitant so reemployed serves at the will of the appointing authority.

(d) Notwithstanding subsection (a) of this section, the Chief of Engineers of the Army, under section 569a of title 33, may employ a retired employee whose expert assistance is needed in connection with river and harbor or flood control works. There shall be deducted from the pay of an employee so reemployed an amount equal to the annuity or retired pay allocable to the period of actual employment.

**§ 3324. Appointments at GS-16, 17, and 18**

(a) An appointment to a position in GS-16, 17, or 18 may be made only on approval of the qualifications of the proposed appointee by

the Civil Service Commission. This section does not apply to a position—

- (1) provided for in section 5108(c)(2) of this title;
- (2) to which appointment is made by the President;
- (3) to which appointment is made by the Librarian of Congress; or
- (4) the incumbent of which is paid from—
  - (A) appropriations for the Executive Office of the President under the headings “The White House Office”, “Special Projects”, “Council of Economic Advisers”, “National Security Council”, and “Office of Emergency Planning”, or
  - (B) funds appropriated to the President under the heading “Emergency Fund for the President” by the Treasury, Post Office, and Executive Office Appropriation Act, 1966, or a later statute making appropriations for the same purpose.

79 Stat. 202.

(b) The Commission may prescribe regulations necessary for the administration of this section.

**§ 3325. Appointments to scientific and professional positions**

(a) Positions established under section 3104 of this title are in the competitive service. However, appointments to the positions are made without competitive examination on approval of the qualifications of the proposed appointee by the Civil Service Commission or its designee for this purpose.

(b) This section does not apply to positions established under section 3104(a)(7) of this title.

**§ 3326. Appointments of retired members of the armed forces to positions in the Department of Defense**

(a) For the purpose of this section, “member” and “Secretary concerned” have the meanings given them by section 101 of title 37.

(b) A retired member of the armed forces may be appointed to a position in the civil service in or under the Department of Defense (including a nonappropriated fund instrumentality under the jurisdiction of the armed forces) during the period of 180 days immediately after his retirement only if—

- (1) the proposed appointment is authorized by the Secretary concerned or his designee for the purpose, and, if the position is in the competitive service, after approval by the Civil Service Commission;
- (2) the minimum rate of basic pay for the position has been increased under section 5303 of this title; or
- (3) a state of national emergency exists.

(c) A request by appropriate authority for the authorization, or the authorization and approval, as the case may be, required by subsection (b)(1) of this section shall be accompanied by a statement which shows the actions taken to assure that—

- (1) full consideration, in accordance with placement and promotion procedures of the department concerned, was given to eligible career employees;
- (2) when selection is by other than certification from an established civil service register, the vacancy has been publicized to give interested candidates an opportunity to apply;
- (3) qualification requirements for the position have not been written in a manner designed to give advantage to the retired member; and
- (4) the position has not been held open pending the retirement of the retired member.

**§ 3327. Postmasters; standards for determination of qualifications**

In evaluating the qualifications of applicants for positions of postmaster, the Civil Service Commission shall give, with respect to each applicant, due and appropriate consideration to experience in the postal field service, including seniority, length of service, level of difficulty and responsibility of work, attendance, awards and commendations, and performance rating.

**SUBCHAPTER II—OATH OF OFFICE**

**§ 3331. Oath of office**

An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section does not affect other oaths required by law.

**§ 3332. Officer affidavit; no consideration paid for appointment**

An officer, within 30 days after the effective date of his appointment, shall file with the oath of office required by section 3331 of this title an affidavit that neither he nor anyone acting in his behalf has given, transferred, promised, or paid any consideration for or in the expectation or hope of receiving assistance in securing the appointment.

**§ 3333. Employee affidavit; loyalty and striking against the Government**

(a) Except as provided by subsection (b) of this section, an individual who accepts office or employment in the Government of the United States or in the government of the District of Columbia shall execute an affidavit within 60 days after accepting the office or employment that his acceptance and holding of the office or employment does not or will not violate section 7311 of this title. The affidavit is prima facie evidence that the acceptance and holding of office or employment by the affiant does not or will not violate section 7311 of this title.

(b) An affidavit is not required from an individual employed by the Government of the United States or the government of the District of Columbia for less than 60 days for sudden emergency work involving the loss of human life or the destruction of property. This subsection does not relieve an individual from liability for violation of section 7311 of this title.

**SUBCHAPTER III—DETAILS**

**§ 3341. Details; within Executive or military departments**

(a) The head of an Executive department or military department may detail employees among the bureaus and offices of his department, except employees who are required by law to be exclusively engaged on some specific work.

(b) Details under subsection (a) of this section may be made only by written order of the head of the department, and may be for not

more than 120 days. These details may be renewed by written order of the head of the department, in each particular case, for periods not exceeding 120 days.

**§ 3342. Details; field to departmental service prohibited**

An employee in the field service may not be detailed for duty in an Executive department in the District of Columbia. This section does not prohibit—

- (1) temporary details for duty connected with the position of the employee detailed;
- (2) details specially provided by law; or
- (3) the detail of one employee of the Bureau of Customs for duty in the Department of the Treasury in the District of Columbia.

**§ 3343. Details; to international organizations**

(a) For the purpose of this section—

- (1) “agency”, “employee”, and “international organization” have the meanings given them by section 3581 of this title; and
- (2) “detail” means the assignment or loan of an employee to an international organization without a change of position from the agency by which he is employed to an international organization.

(b) The head of an agency may detail, for a period of not more than 3 years, an employee of his agency to an international organization which requests services.

(c) An employee detailed under subsection (b) of this section is deemed, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits, an employee of the agency from which detailed, and he is entitled to pay, allowances, and benefits from funds available to that agency. The authorization and payment of these allowances and other benefits from appropriations available therefor is deemed to comply with section 5536 of this title.

(d) Details may be made under subsection (b) of this section—

- (1) without reimbursement to the United States by the international organization; or
- (2) with agreement by the international organization to reimburse the United States for all or part of the pay, travel expenses, and allowances payable during the detail, and the reimbursement shall be credited to the appropriation, fund, or account used for paying the amounts reimbursed.

(e) An employee detailed under subsection (b) of this section may be paid or reimbursed by an international organization for allowances or expenses incurred in the performance of duties required by the detail, without regard to section 209 of title 18.

**§ 3344. Details; hearing examiners**

An agency as defined by section 551 of this title which occasionally or temporarily is insufficiently staffed with hearing examiners appointed under section 3105 of this title may use hearing examiners selected by the Civil Service Commission from and with the consent of other agencies.

**§ 3345. Details; to office of head of Executive or military department**

When the head of an Executive department or military department dies, resigns, or is sick or absent, his first assistant, unless otherwise directed by the President under section 3347 of this title, shall perform the duties of the office until a successor is appointed or the absence or sickness stops.

**§ 3346. Details; to subordinate offices**

When an officer of a bureau of an Executive department or military department, whose appointment is not vested in the head of the department, dies, resigns, or is sick or absent, his first assistant, unless otherwise directed by the President under section 3347 of this title, shall perform the duties of the office until a successor is appointed or the absence or sickness stops.

**§ 3347. Details; Presidential authority**

Instead of a detail under section 3345 or 3346 of this title, the President may direct the head of another Executive department or military department or another officer of an Executive department or military department, whose appointment is vested in the President, by and with the advice and consent of the Senate, to perform the duties of the office until a successor is appointed or the absence or sickness stops. This section does not apply to a vacancy in the office of Attorney General.

**§ 3348. Details; limited in time**

A vacancy caused by death or resignation may be filled temporarily under section 3345, 3346, or 3347 of this title for not more than 30 days.

**§ 3349. Details; to fill vacancies; restrictions**

A temporary appointment, designation, or assignment of one officer to perform the duties of another under section 3345 or 3346 of this title may not be made otherwise than as provided by those sections, except to fill a vacancy occurring during a recess of the Senate.

## SUBCHAPTER IV—TRANSFERS

**§ 3351. Preference eligibles; transfer; physical qualifications; waiver**

In determining qualifications of a preference eligible for transfer to another position in the competitive service, an Executive agency, or the government of the District of Columbia, the Civil Service Commission or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Commission or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate, except an appointment made under section 3311 of title 39.

## SUBCHAPTER V—PROMOTION

**§ 3361. Promotion; competitive service; examination**

An individual may be promoted in the competitive service only if he has passed an examination or is specifically excepted from examination under section 3302 of this title. This section does not take from the President any authority conferred by section 3301 of this title that is consistent with the provisions of this title governing the competitive service.

**§ 3362. Promotion; effect of incentive award**

An agency, in qualifying and selecting an employee for promotion, shall give due weight to an incentive award under chapter 45 of this

title. For the purpose of this section, “agency” and “employee” have the meanings given them by section 4501 of this title.

**§ 3363. Preference eligibles; promotion; physical qualifications; waiver**

In determining qualifications of a preference eligible for promotion to another position in the competitive service, an Executive agency, or the government of the District of Columbia, the Civil Service Commission or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Commission or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate, except an appointment made under section 3311 of title 39.

**§ 3364. Promotion; substitute employees in the postal field service**

When substitute employees in the postal field service are appointed on the same day, each is entitled to be promoted to the regular force in the order in which his name appeared on the register from which he was originally appointed, if of the required sex, eligible, and willing to accept, unless the vacancy on the regular force is filled by transfer or reinstatement.

**CHAPTER 35—RETENTION PREFERENCE, RESTORATION, AND REEMPLOYMENT**

**SUBCHAPTER I—RETENTION PREFERENCE**

Sec.

3501. Definitions; application.

3502. Order of retention.

3503. Transfer of functions.

3504. Preference eligibles; retention; physical qualifications; waiver.

**SUBCHAPTER II—RESTORATION AFTER ACTIVE DUTY OR TRAINING DUTY**

Sec.

3551. Restoration; Reserves and National Guardsmen.

**SUBCHAPTER III—REINSTATEMENT OR RESTORATION AFTER SUSPENSION OR REMOVAL FOR NATIONAL SECURITY**

Sec.

3571. Reinstatement or restoration; individuals suspended or removed for national security.

**SUBCHAPTER IV—REEMPLOYMENT AFTER SERVICE WITH AN INTERNATIONAL ORGANIZATION**

Sec.

3581. Definitions.

3582. Rights of transferring employees.

3583. Computations.

3584. Regulations.



\*Public Law 105-277  
105th Congress

An Act

Making omnibus consolidated and emergency appropriations for the fiscal year ending September 30, 1999, and for other purposes.

Oct. 21, 1998

[H.R. 4328]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

DIVISION A—OMNIBUS CONSOLIDATED APPROPRIATIONS

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the several departments, agencies, corporations and other organizational units of the Government for the fiscal year 1999, and for other purposes, namely:

SEC. 101. (a) For programs, projects or activities in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, provided as follows, to be effective as if it had been enacted into law as the regular appropriations Act:

AN ACT Making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1999, and for other purposes.

Omnibus  
Consolidated and  
Emergency  
Supplemental  
Appropriations  
Act, 1999.

Agriculture,  
Rural  
Development,  
Food and Drug  
Administration,  
and Related  
Agencies  
Appropriations  
Act, 1999.

TITLE I

AGRICULTURAL PROGRAMS

PRODUCTION, PROCESSING, AND MARKETING

OFFICE OF THE SECRETARY

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Office of the Secretary of Agriculture, and not to exceed \$75,000 for employment under 5 U.S.C. 3109, \$2,836,000: *Provided*, That not to exceed \$11,000 of this amount, along with any unobligated balances of representation funds in the Foreign Agricultural Service, shall be available for official reception and representation expenses, not otherwise provided for, as determined by the Secretary: *Provided further*, That none of the funds appropriated or otherwise made available by this Act may be used to pay the salaries and expenses of personnel of the Department of Agriculture to carry out section 793(c)(1)(C) of Public Law 104-127: *Provided further*, That none of the funds made available by this Act may be used to enforce section 793(d) of Public Law 104-127.

\*Note: This is a typeset print of the original hand enrollment as signed by the President on October 21, 1998. The text is printed without corrections.

cases, matters, and proceedings as if such chapter were continued in effect after April 1, 1999.

(c) This section shall take effect on October 1, 1998.

SEC. 150. (a) EXTENSION OF AGREEMENT FOR STATE OF MISSISSIPPI.—The Secretary of the Interior shall offer to reinstate the Memorandum of Agreement between the Mississippi Department of Wildlife Conservation and the United States Fish and Wildlife Service concerning the framework closing dates for the 1979–1980 through 1981–1982 duck hunting seasons, executed in November 1979, for the 1998–1999 duck hunting season in the State of Mississippi, except that—

(1) the duck hunting season shall end on January 31, 1999; and

(2) the total number of days for the duck hunting season in the State of Mississippi shall not exceed 51 days.

(b) EXTENSION OF AGREEMENT TO OTHER STATES.—At the request of any other State represented on the Lower-Region Regulations Committee of the Mississippi Flyway Council, the Secretary of the Interior shall extend the agreement described in subsection (a) to that State for the 1998–1999 duck hunting season if the State agrees to reduce the total number of days of the duck hunting season in the State to the extent necessary to result in no net increase in the duck harvest in the State for that season.

**SEC. 151. FEDERAL VACANCIES AND APPOINTMENTS.**

(a) SHORT TITLE.—This section may be cited as the “Federal Vacancies Reform Act of 1998”.

(b) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended by striking sections 3345 through 3349 and inserting the following:

**“§ 3345. Acting officer**

“(a) If an officer of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office—

“(1) the first assistant to the office of such officer shall perform the functions and duties of the office temporarily in an acting capacity subject to the time limitations of section 3346;

“(2) notwithstanding paragraph (1), the President (and only the President) may direct a person who serves in an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate, to perform the functions and duties of the vacant office temporarily in an acting capacity subject to the time limitations of section 3346; or

“(3) notwithstanding paragraph (1), the President (and only the President) may direct an officer or employee of such Executive agency to perform the functions and duties of the vacant office temporarily in an acting capacity, subject to the time limitations of section 3346, if—

“(A) during the 365-day period preceding the date of death, resignation, or beginning of inability to serve of

Federal  
Vacancies  
Reform Act of  
1998.  
5 USC 3301 note.

the applicable officer, the officer or employee served in a position in such agency for not less than 90 days; and

“(B) the rate of pay for the position described under subparagraph (A) is equal to or greater than the minimum rate of pay payable for a position at GS-15 of the General Schedule.

“(b)(1) Notwithstanding subsection (a)(1), a person may not serve as an acting officer for an office under this section, if—

“(A) during the 365-day period preceding the date of the death, resignation, or beginning of inability to serve, such person—

“(i) did not serve in the position of first assistant to the office of such officer; or

“(ii) served in the position of first assistant to the office of such officer for less than 90 days; and

“(B) the President submits a nomination of such person to the Senate for appointment to such office.

“(2) Paragraph (1) shall not apply to any person if—

“(A) such person is serving as the first assistant to the office of an officer described under subsection (a);

“(B) the office of such first assistant is an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate; and

“(C) the Senate has approved the appointment of such person to such office.

“(c)(1) Notwithstanding subsection (a)(1), the President (and only the President) may direct an officer who is nominated by the President for reappointment for an additional term to the same office in an Executive department without a break in service, to continue to serve in that office subject to the time limitations in section 3346, until such time as the Senate has acted to confirm or reject the nomination, notwithstanding adjournment sine die.

“(2) For purposes of this section and sections 3346, 3347, 3348, 3349, 3349a, and 3349d, the expiration of a term of office is an inability to perform the functions and duties of such office.

#### “§ 3346. Time limitation

“(a) Except in the case of a vacancy caused by sickness, the person serving as an acting officer as described under section 3345 may serve in the office—

“(1) for no longer than 210 days beginning on the date the vacancy occurs; or

“(2) subject to subsection (b), once a first or second nomination for the office is submitted to the Senate, from the date of such nomination for the period that the nomination is pending in the Senate.

“(b)(1) If the first nomination for the office is rejected by the Senate, withdrawn, or returned to the President by the Senate, the person may continue to serve as the acting officer for no more than 210 days after the date of such rejection, withdrawal, or return.

“(2) Notwithstanding paragraph (1), if a second nomination for the office is submitted to the Senate after the rejection, withdrawal, or return of the first nomination, the person serving as the acting officer may continue to serve—

“(A) until the second nomination is confirmed; or

“(B) for no more than 210 days after the second nomination is rejected, withdrawn, or returned.

“(c) If a vacancy occurs during an adjournment of the Congress sine die, the 210-day period under subsection (a) shall begin on the date that the Senate first reconvenes.

**“§ 3347. Exclusivity**

“(a) Sections 3345 and 3346 are the exclusive means for temporarily authorizing an acting official to perform the functions and duties of any office of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) for which appointment is required to be made by the President, by and with the advice and consent of the Senate, 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.

“(b) Any statutory provision providing general authority to the head of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) to delegate duties statutorily vested in that agency head to, or to reassign duties among, officers or employees of such Executive agency, is not a statutory provision to which subsection (a)(2) applies.

**“§ 3348. Vacant office**

“(a) In this section—

“(1) the term ‘action’ includes any agency action as defined under section 551(13); and

“(2) the term ‘function or duty’ means any function or duty of the applicable office that—

“(A)(i) is established by statute; and

“(ii) is required by statute to be performed by the applicable officer (and only that officer); or

“(B)(i)(I) is established by regulation; and

“(II) is required by such regulation to be performed by the applicable officer (and only that officer); and

“(ii) includes a function or duty to which clause (i) (I) and (II) applies, and the applicable regulation is in effect at any time during the 180-day period preceding the date on which the vacancy occurs.

“(b) Unless an officer or employee is performing the functions and duties in accordance with sections 3345, 3346, and 3347, if an officer of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office—

“(1) the office shall remain vacant; and

“(2) in the case of an office other than the office of the head of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office), only the head of such Executive agency may perform any function or duty of such office.

“(c) If the last day of any 210-day period under section 3346 is a day on which the Senate is not in session, the second day the Senate is next in session and receiving nominations shall be deemed to be the last day of such period.

“(d)(1) An action taken by any person who is not acting under section 3345, 3346, or 3347, or as provided by subsection (b), in the performance of any function or duty of a vacant office to which this section and sections 3346, 3347, 3349, 3349a, 3349b, and 3349c apply shall have no force or effect.

“(2) An action that has no force or effect under paragraph (1) may not be ratified.

“(e) This section shall not apply to—

“(1) the General Counsel of the National Labor Relations Board;

“(2) the General Counsel of the Federal Labor Relations Authority;

“(3) any Inspector General appointed by the President, by and with the advice and consent of the Senate;

“(4) any Chief Financial Officer appointed by the President, by and with the advice and consent of the Senate; or

“(5) an office of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) if a statutory provision expressly prohibits the head of the Executive agency from performing the functions and duties of such office.

#### “§ 3349. Reporting of vacancies

“(a) The head of each Executive agency (including the Executive Office of the President, and other than the General Accounting Office) shall submit to the Comptroller General of the United States and to each House of Congress—

“(1) notification of a vacancy in an office to which this section and sections 3345, 3346, 3347, 3348, 3349a, 3349b, 3349c, and 3349d apply and the date such vacancy occurred immediately upon the occurrence of the vacancy;

“(2) the name of any person serving in an acting capacity and the date such service began immediately upon the designation;

“(3) the name of any person nominated to the Senate to fill the vacancy and the date such nomination is submitted immediately upon the submission of the nomination; and

“(4) the date of a rejection, withdrawal, or return of any nomination immediately upon such rejection, withdrawal, or return.

“(b) If the Comptroller General of the United States makes a determination that an officer is serving longer than the 210-day period including the applicable exceptions to such period under section 3346 or section 3349a, the Comptroller General shall report such determination immediately to—

“(1) the Committee on Governmental Affairs of the Senate;

“(2) the Committee on Government Reform and Oversight of the House of Representatives;

“(3) the Committees on Appropriations of the Senate and House of Representatives;

“(4) the appropriate committees of jurisdiction of the Senate and House of Representatives;

“(5) the President; and

“(6) the Office of Personnel Management.

**“§ 3349a. Presidential inaugural transitions**

“(a) In this section, the term ‘transitional inauguration day’ means the date on which any person swears or affirms the oath of office as President, if such person is not the President on the date preceding the date of swearing or affirming such oath of office.

“(b) With respect to any vacancy that exists during the 60-day period beginning on a transitional inauguration day, the 210-day period under section 3346 or 3348 shall be deemed to begin on the later of the date occurring—

“(1) 90 days after such transitional inauguration day; or

“(2) 90 days after the date on which the vacancy occurs.

**“§ 3349b. Holdover provisions**

“Sections 3345 through 3349a shall not be construed to affect any statute that authorizes a person to continue to serve in any office—

“(1) after the expiration of the term for which such person is appointed; and

“(2) until a successor is appointed or a specified period of time has expired.

**“§ 3349c. Exclusion of certain officers**

“Sections 3345 through 3349b shall not apply to—

“(1) any member who is appointed by the President, by and with the advice and consent of the Senate to any board, commission, or similar entity that—

“(A) is composed of multiple members; and

“(B) governs an independent establishment or Government corporation;

“(2) any commissioner of the Federal Energy Regulatory Commission;

“(3) any member of the Surface Transportation Board; or

“(4) any judge appointed by the President, by and with the advice and consent of the Senate, to a court constituted under article I of the United States Constitution.

**“§ 3349d. Notification of intent to nominate during certain recesses or adjournments**

“(a) The submission to the Senate, during a recess or adjournment of the Senate in excess of 15 days, of a written notification by the President of the President’s intention to submit a nomination after the recess or adjournment shall be considered a nomination for purposes of sections 3345 through 3349c if such notification contains the name of the proposed nominee and the office for which the person is nominated.

“(b) If the President does not submit a nomination of the person named under subsection (a) within 2 days after the end

of such recess or adjournment, effective after such second day the notification considered a nomination under subsection (a) shall be treated as a withdrawn nomination for purposes of sections 3345 through 3349c.”

(c) TECHNICAL AND CONFORMING AMENDMENT.—

(1) TABLE OF SECTIONS.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the matter relating to subchapter III and inserting the following:

“SUBCHAPTER III—DETAILS, VACANCIES, AND APPOINTMENTS

“3341. Details; within Executive or military departments.

“[3342. Repealed.]

“3343. Details; to international organizations.

“3344. Details; administrative law judges.

“3345. Acting officer.

“3346. Time limitation.

“3347. Exclusivity.

“3348. Vacant office.

“3349. Reporting of vacancies.

“3349a. Presidential inaugural transitions.

“3349b. Holdover provisions relating to certain independent establishments.

“3349c. Exclusion of certain officers.

“3349d. Notification of intent to nominate during certain recesses or adjournments.”.

(2) SUBCHAPTER HEADING.—The subchapter heading for subchapter III of chapter 33 of title 5, United States Code, is amended to read as follows:

“SUBCHAPTER III—DETAILS, VACANCIES, AND APPOINTMENTS”

(d) EFFECTIVE DATE AND APPLICATION.—

5 USC 3345 note.

(1) EFFECTIVE DATE.—Subject to paragraph (2), this section and the amendments made by this section shall take effect 30 days after the date of enactment of this section.

(2) APPLICATION.—

(A) IN GENERAL.—This section shall apply to any office that becomes vacant after the effective date of this section.

(B) IMMEDIATE APPLICATION OF TIME LIMITATION.—Notwithstanding subparagraph (A), for any office vacant on the effective date of this section, the time limitations under section 3346 of title 5, United States Code (as amended by this section) shall apply to such office. Such time limitations shall apply as though such office first became vacant on the effective date of this section.

(C) CERTAIN NOMINATIONS.—If the President submits to the Senate the nomination of any person after the effective date of this section for an office for which such person had been nominated before such date, the next nomination of such person after such date shall be considered a first nomination of such person to that office for purposes of sections 3345 through 3349 and section 3349d of title 5, United States Code (as amended by this section).

## TITLE II—FISHERIES

American Fisheries Act.

### Subtitle I—Fishery Endorsements

#### SEC. 201. SHORT TITLE.

This title may be cited as the “American Fisheries Act”.

46 USC 2101 note.