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Alberto R. Gonzales
The White House

TO:

Chairman Meserve

FOR SIGNATURE OF : ** GRN ** CRC NO: 01-0171

DESC:

Agency Reporting Requirements Under the Vacancies Reform Act

ROUTING:

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Craig
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Cyr, OGC

DATE: 03/26/01

ASSIGNED TO: CONTACT:

HR Bird

SPECIAL INSTRUCTIONS OR REMARKS:

For Appropriate Action.

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THE WHITE HOUSE

WASHINGTON

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 ag

RE: AGENCY REPORTING REQUIREMENTS UNDER THE VACANCIES REFORM ACT

DATE: MARCH 21, 2001

CC: OFFICE OF PRESIDENTIAL PERSONNEL
GENERAL ACCOUNTING OFFICE

The purpose of this memorandum is to provide guidance to the federal executive departments and agencies and the units of the Executive Office of the President concerning the reporting requirements imposed by the Vacancies Reform Act (the "Act"), 5 U.S.C. §§ 3345-3349d. This memorandum is not a comprehensive guide to all of the Act's provisions, but is intended to provide practical guidance on the reporting process.

If you require more detailed guidance on the Act's other provisions, or if you have any questions about this memorandum, please contact Rachel Brand, Assistant Counsel to the President, at (202) 456-7909, or Jeff Singdahlsen at the Office of Legal Counsel, Department of Justice, at (202) 514-1858. A copy of the Act is attached to this Memorandum as Exhibit C.

I. Overview of the Vacancies Reform Act's provisions

The Vacancies Reform Act provides rules governing the designation of officials to serve temporarily in an acting capacity when vacancies occur in certain executive agency positions.

A. Agencies and Positions Covered by the Act

The Act covers only positions that require presidential nomination and Senate confirmation, *i.e.*, PAS positions, within "executive agencies." Most entities within the executive branch, including the Executive Office of the President, the military departments, independent agencies, and government corporations, are "executive agencies" for purposes of the Act. However, the Act contains several specific exceptions. Positions on any board or commission that has multiple members and that governs an independent agency or government corporation are exempt.[1]

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[1] Therefore, members of the Federal Election Commission, the Federal Communications Commission, the Tennessee Valley Authority, and many other boards and commissions within the executive branch are excluded from the Act's requirements. However, the exception only applies to the *members* of multiple-member commissions or boards, not to other PAS positions within those agencies. Thus, for example, although the members of the National Science Board

Positions for which another statute designates who shall serve as an acting officer,[2] or for which another statute specifically authorizes the President, a court, or the head of an executive department to designate an acting officer, are also exempt. Other specifically exempted positions include the following: officers of the General Accounting Office, 5 U.S.C. § 3345(a); FERC commissioners, 5 U.S.C. § 3349c(2); Surface Transportation Board members, 5 U.S.C. § 3349c(3); and judges appointed to courts created under Article I of the Constitution, *e.g.*, administrative courts within executive agencies, 5 U.S.C. § 3349c(4).[3]

The agency head or general counsel of each agency is responsible for determining whether that agency is subject to the Act's requirements at all and, if so, which positions within that agency are covered by the Act.

B. Limitations on the Tenure of Acting Officers

The tenure of any acting officer serving in a position covered by the Act is limited to 210 days beginning on the date the vacancy occurs. This period is extended by 90 days for vacancies occurring within 60 days of the inauguration of a new President. The Act relaxes these time restrictions in specific circumstances, such as when the President has submitted a formal nomination to the Senate. *See* 5 U.S.C. §§ 3346, 3348(c), 3349a.

C. Who May Be Designated as an Acting Officer

The Act also places restrictions on who may serve as an acting officer in covered positions. By default, the person serving in the position of "first assistant" to the covered position may serve as acting officer unless the President directs otherwise. With respect to some covered positions, it may be unclear what position constitutes the "first assistant" position. For more guidance in such cases, please contact the Office of Counsel to the President or the Office of Legal Counsel.

Notwithstanding the default rule, the President may designate someone other than the first assistant to serve as acting officer if the designee meets certain requirements. For example, the President may designate anyone who is currently serving in a PAS position in an agency to serve as acting officer in another position in that agency or another agency. The President may also

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(which governs the National Science Foundation) are not covered by the Act, the offices of Director and Deputy Director of the National Science Foundation, both of which are PAS positions but not board member positions, are covered by the Act.

[2] For example, because 28 U.S.C. § 508 governs who shall act as Attorney General in the case of a vacancy, 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.

[3] The provisions of 5 U.S.C. § 3348, which invalidate the actions of any person who purports to serve as an acting officer in a covered position, but who is not properly designated to serve as such, do not apply to the following: the general counsel of the NLRA; the general counsel of the FLRA; any inspector general appointed by the President and confirmed by the Senate; and any chief financial officer appointed by the President and confirmed by the Senate. *See* 5 U.S.C. § 3348(e). The Act's reporting requirements *do* apply to these positions.

designate an officer or employee of the agency in which the vacancy exists to be acting officer so long as: the designee has served in his or her position in the agency for at least 90 days within the last year; and the rate of pay for the position in which the designee has been serving is equal to or greater than the minimum rate of pay for a GS-15-level federal employee. *See* 5 U.S.C. § 3345.

II. Reporting Requirements of the Vacancies Reform Act

Each agency to which the Act applies must "immediately" provide written notification to Congress and the GAO whenever any of the following events occur:

(1) A vacancy occurs in any position covered by the Vacancies Reform Act;
(2) An individual becomes an acting officer in any position covered by the Act;
(3) The President sends a nomination to the Senate for any position covered by the Act;
(4) A presidential nomination for any covered position is rejected by the Senate, withdrawn from Senate consideration, or returned by the Senate to the President.

See 5 U.S.C. § 3349(a).[4]

Whenever one of these events occurs, the agency must send separate notifications to the Speaker of the House of Representatives, the President of the Senate, and the Comptroller General of the United States.[5] The GAO has created a standardized reporting form, which is available on-line at www.gao.gov and should be used by all agencies for notifications both to the GAO and to Congress.

The recent change in Administration has created many vacancies and has resulted in many persons serving in an acting capacity. According to the GAO, however, very few vacancy reports have been submitted since the beginning of the current Administration. It seems likely, therefore, that there are many unreported vacancies. The agency head or general counsel in each agency should determine which covered positions within that agency are currently vacant, and for which of those positions acting officers have been designated or nominations have been submitted to the Senate. Reporting forms should be completed accordingly and submitted immediately.

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[4] The standardized reporting form created by the GAO asks the reporting agency to designate which event the form reports. One of the stated options is "discontinuation of service in acting role." The statute does not require agencies to report discontinuations of service in an acting role (as opposed to initiations of service in an acting role), but the GAO requests this for informational purposes. It is within the discretion of the general counsel or equivalent officer at each agency whether to submit reports on such occasions.

[5] In the previous Administration, agencies forwarded written notifications to the Office of Presidential Personnel, which forwarded them to the appropriate recipients. This procedure will be discontinued in the current Administration; agencies are responsible for submitting forms directly to Congress and the GAO.

The procedure for submitting written notifications to Congress and the GAO is as follows:

1. **The designated officer in each agency completes the standardized reporting form.** Each agency is responsible for designating an employee to complete and submit reports. The standardized reporting form may be downloaded from the GAO's website, www.gao.gov. A blank form is attached to this memorandum as Exhibit A.

2. **The designated agency official creates four copies, *two with original signatures.*** The rules of the House and Senate require forms to be submitted with original signatures. Therefore, the submitting official must execute two original copies of each report.

3. **Submission of Forms to Senate, House of Representatives, and GAO.**
   a) One copy of the form, *with original signature*, must be submitted to the President of the Senate:

      The Honorable Richard B. Cheney
      Office of the President of the Senate
      United States Senate
      Washington, D.C. 20510

   b) One copy of the form, *with original signature*, must be submitted to the Speaker of the House of Representatives:

      Office of the Speaker
      The Honorable Dennis Hastert
      House of Representatives
      Washington, D.C. 20515

   c) One photocopy of the form must be submitted to the Comptroller General of the United States:

      Comptroller General of the United States
      Attn: Kathleen Wannisky
      441 G Street, N.W.
      Washington, D.C. 20548

   d) One courtesy copy should be submitted to the Office of Presidential Personnel:

      Office of Presidential Personnel
      Attn: Katja Bullock
      Eisenhower Executive Office Building, Room 131
      Washington, D.C. 20502

EXHIBIT A

Attached is the standardized form for reporting vacancies, nominations, designations of acting officers, and withdrawals, rejections, or returns of nominations.

This form is also available from the General Accounting Office at www.gao.gov. Copies with original signatures must be submitted to both the Speaker of the House and the President of the Senate, and a photocopy must be submitted to the Comptroller General of the United States. In addition, a courtesy copy must be submitted to the Office of Presidential Personnel.

Submission Under the Federal Vacancies Reform Act

Addressees

O President of the United States Senate
O Speaker of the U.S. House of Representatives
O Comptroller General of the United States

This Report Provides Notification of:

O Vacancy
O Designation of acting officer
O Nomination
O Action on nomination
O Change in previously submitted reported information
O Discontinuation of service in acting role (date: _____)

Name of Department or Agency and Any Suborganization

Vacancy Title		Date Vacancy Began
Name of Acting Officer	Date Service Began	Authority for Acting Designation if Other Than Vacancies Act _____
Name of Nominee for Position		Date Nomination Submitted
Action on Nomination: O Confirmed O Rejected, withdrawn, returned		Date of Action

Agency Contact

Name and Title

Contact's Address

Contact's Phone Number	Contact's E-Mail Address

Submitted By

Name and Title	Telephone Number
Signature	Date

For Congressional Use Only

Committee of Jurisdiction

Date Received

For GAO Use Only

GAO Control Number

2/8/00

EXHIBIT B

Agencies Subject to Reporting Requirements of Vacancies Reform Act

Note: This list includes agencies that likely have obligations under the Act. However, this list is not necessarily exhaustive; the agency head or general counsel of each agency is responsible for determining whether that agency has responsibilities under the Act. Moreover, this list does not take into account whether the specific statutes pertaining to a particular agency provide a mechanism for filling vacancies in certain positions within that agency, in which case the Act would not apply to vacancies in those particular positions. The agency head or general counsel of each agency is responsible for making that determination.

1. Executive Office of the President
    a) OMB
    b) Council of Economic Advisers
    c) Council on Environmental Quality
    d) U.S.T.R.
    e) Office of Science and Technology Policy
    f) Office of National Drug Control Policy
2. Department of Agriculture
3. Department of Commerce
4. Department of Defense
    Note: Each of the departments of the armed services is included.
5. Department of Education
6. Department of Energy
7. Department of Health and Human Services
8. Department of Housing and Urban Development
9. Department of the Interior
10. Department of Justice
11. Department of Labor
12. Department of State
13. Department of Transportation
14. Department of the Treasury
15. Department of Veterans Affairs
16. Broadcasting Board of Governors
17. Central Intelligence Agency
18. Corporation for National and Community Service
19. Environmental Protection Agency
20. Equal Employment Opportunity Commission
21. Export-Import Bank of the United States
22. Federal Deposit Insurance Corporation
23. Federal Emergency Management Agency
24. Federal Mediation and Conciliation Service
25. General Services Administration
26. National Aeronautics and Space Administration
27. National Archives and Records Administration

28. National Commission on Libraries and Information Science
29. National Foundation for the Arts and Humanities
30. National Science Foundation
31. Office of Government Ethics
32. Office of Navajo and Hopi Indian Relocation
33. Office of Personnel Management
34. Office of Special Counsel
35. Overseas Private Investment Corporation
36. Peace Corps
37. Selective Service System
38. Small Business Administration
39. Social Security Administration
40. Trade and Development Agency
41. U.S. Agency for International Development

EXHIBIT C

Attached is a copy of the Vacancies Reform Act of 1998, 5 U.S.C. §§ 3345-3349d.

Service: **LEXSTAT®**
TOC: United States Code Service; Code, Const, Rules, Conventions & Public Laws : / . . . / : SUBCHAPTER III. DETAILS, VACANCIES, AND APPOINTMENTS : **§ 3345. Acting officer**
Citation: **5 usc 3345**

5 USCS § 3345

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*** CURRENT THROUGH P.L. 106-580, APPROVED 12/29/00 ***

TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES
PART III. EMPLOYEES
SUBPART B. EMPLOYMENT AND RETENTION
CHAPTER 33. EXAMINATION, SELECTION, AND PLACEMENT
SUBCHAPTER III. DETAILS, VACANCIES, AND APPOINTMENTS

5 USCS § 3345 (2000)

§ 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 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.

HISTORY:
(Added Oct. 21, 1998, P.L. 105-277, Div C, Title I, § 151(b), 112 Stat. 2681-611.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 USC Sec. 4	R.S. Sec. 177.

The words "Executive department" are substituted for "department" as the definition of "department" applicable to this section is coextensive with the definition of "Executive department" in 5 USCS § 101.
The words "or military department" are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), located at 5 USCS § 301 note.
This section was part of title IV of the Revised Statutes. Act July 26, 1947, ch 343, § 201 (d), as added Aug. 10, 1949, ch 412, § 4, 63 Stat. 579 (former 5 USC § 171-1), which provides "Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense" is omitted from this title but is not repealed.
Standard changes are made to conform with the definitions applicable and the style of this title.

Explanatory notes:
A prior § 3345 (Act Sept. 6, 1966, P.L. 89-554, § 1, 80 Stat. 425; Aug. 17, 1988, P.L. 100-398, § 7(a)(1), (2), 102 Stat. 988) was repealed by Act Oct. 21, 1998, P.L. 105-277, Div C, Title I, § 151(b), 112 Stat. 2681-611, effective and applicable as provided by § 151(d) of such Act, which appears as a note to this section. Such section provided for details to office of head of Executive agency or military department.

Effective date of section:
This section took effect 30 days after enactment, pursuant to § 151(d)(1) of Division C of Act Oct. 21, 1998, P.L. 105-277, which appears as a note to this section.

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Citation: **5 usc 3345**
Section: **5 USCS § 3346**

5 USCS § 3346

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TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES
PART III. EMPLOYEES
SUBPART B. EMPLOYMENT AND RETENTION
CHAPTER 33. EXAMINATION, SELECTION, AND PLACEMENT
SUBCHAPTER III. DETAILS, VACANCIES, AND APPOINTMENTS

5 USCS § 3346 (2000)

§ 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.

HISTORY:
(Added Oct. 21, 1998, P.L. 105-277, Div C, Title I, § 151(b), 112 Stat. 2681-612.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 USC Sec. 5	R.S. Sec. 178.

The words "his first assistant" are substituted for "the assistant or deputy of such chief or of such officer, or if there be none, then the chief clerk of such bureau". A chief of a bureau is

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Citation: **5 usc 3345**
Section: **5 USCS § 3347**

5 USCS § 3347

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SUBCHAPTER III. DETAILS, VACANCIES, AND APPOINTMENTS

5 USCS § 3347 (2000)

§ 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)(1) applies.

HISTORY:
(Added Oct. 21, 1998, P.L. 105-277, Div C, Title I, § 151(b), 112 Stat. 2681-613; May 21, 1999, P.L. 106-31, Title V, § 5011, 113 Stat. 112.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 USC Sec. 6	R.S. Sec. 179.

The words "in his discretion", "vacant", and "incumbent" are omitted as surplusage. The words "Executive department" are substituted for "department" as the definition of

5 USCS § 3348

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SUBCHAPTER III. DETAILS, VACANCIES, AND APPOINTMENTS

5 USCS § 3348 (2000)

§ 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.

HISTORY:
(Added Oct. 21, 1998, P.L. 105-277, Div C, Title I, § 151(b), 112 Stat. 2681-613.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 USC Sec. 7	R.S. Sec. 180. Feb. 6, 1891, ch 113, 26 Stat. 733.

Standard changes are made to conform with the definitions applicable and the style of this title.

Explanatory notes:
A prior § 3348 (Act Sept. 6, 1966, P.L. 89-554, § 1, 80 Stat. 426; Aug. 17, 1988, P.L. 100-398, § 7(b), 102 Stat. 988) was repealed by Act Oct. 21, 1998, P.L. 105-277, Div C, Title I, § 151(b), 112 Stat. 2681-611, effective and applicable as provided by § 151(d) of such Act, which appears as 5 USCS § 3345 note. Such section provided for limitation of details with respect to time.

Effective date of section:
This section took effect 30 days after enactment, pursuant to § 151(d)(1) of Division C of Act Oct. 21, 1998, P.L. 105-277, which appears as 5 USCS § 3345 note.

Other provisions:
Applicability of section. For provisions relating to applicability of this section, see § 151(d)(2) of Division C of Act Oct. 21, 1998, P.L. 105-277, which appears as 5 USCS § 3345 note.

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Citation: **5 usc 3345**
Section: **5 USCS § 3349**

5 USCS § 3349

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*** CURRENT THROUGH P.L. 106-580, APPROVED 12/29/00 ***

TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES
PART III. EMPLOYEES
SUBPART B. EMPLOYMENT AND RETENTION
CHAPTER 33. EXAMINATION, SELECTION, AND PLACEMENT
SUBCHAPTER III. DETAILS, VACANCIES, AND APPOINTMENTS

5 USCS § 3349 (2000)

§ 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 Reqresentatives;
(4) the appropriate committees of jurisdiction of the Senate and House of Representatives;
(5) the President; and
(6) the Office of Personnel Management.

HISTORY:
(Added Oct. 21, 1998, P.L. 105-277, Div C, Title I, § 151(b), 112 Stat. 2681-614.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Derivation	U.S. Code	Revised Statutes and Statutes at Large

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Section: **5 USCS § 3349a**

5 USCS § 3349a

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5 USCS § 3349a (2000)

§ 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.

HISTORY:
(Added Oct. 21, 1998, P.L. 105-277, Div C, Title I, § 151(b), 112 Stat. 2681-615.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:
This section took effect 30 days after enactment, pursuant to § 151(d)(1) of Division C of Act Oct. 21, 1998, P.L. 105-277, which appears as 5 USCS § 3345 note.

Other provisions:
Applicability of section. For provisions relating to applicability of this section, see § 151(d)(2) of Division C of Act Oct. 21, 1998, P.L. 105-277, which appears as 5 USCS § 3345 note.

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5 USCS § 3349b

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5 USCS § 3349b (2000)

§ 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.

HISTORY:
(Added Oct. 21, 1998, P.L. 105-277, Div C, Title I, § 151(b), 112 Stat. 2681-615.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:
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Other provisions:
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5 USCS § 3349c

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5 USCS § 3349c (2000)

§ 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.

HISTORY:
(Added Oct. 21, 1998, P.L. 105-277, Div C, Title I, § 151(b), 112 Stat. 2681-615.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:
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Other provisions:
Applicability of section. For provisions relating to applicability of this section, see § 151(d)(2) of Division C of Act Oct. 21, 1998, P.L. 105-277, which appears as 5 USCS § 3345 note.

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Section: **5 USCS § 3349d**

5 USCS § 3349d

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5 USCS § 3349d (2000)

§ 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.

HISTORY:
(Added Oct. 21, 1998, P.L. 105-277, Div C, Title I, § 151(b), 112 Stat. 2681-615.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:
This section took effect 30 days after enactment, pursuant to § 151(d)(1) of Division C of Act Oct. 21, 1998, P.L. 105-277, which appears as 5 USCS § 3345 note.

Other provisions:
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