

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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 118q.	Aug. 9, 1955, ch. 690, §2, 69 Stat. 624.
.....	[Uncodified].	June 29, 1956, ch. 479, §3 (as applicable to the Act of Aug. 9, 1955, ch. 690, §2, 69 Stat. 624), 70 Stat. 453.

The section is restated for clarity and to conform to the style of section 3332.

In subsection (a), the words “after August 9, 1955” are omitted as executed. The words “if the affidavit is executed prior to acceptance of such office or employment” are omitted as unnecessary. The words “From and after July 1, 1956”, appearing in the Act of June 29, 1956, are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

### SUBCHAPTER III—DETAILS, VACANCIES, AND APPOINTMENTS

#### Editorial Notes

##### AMENDMENTS

1998—Pub. L. 105-277, div. C, title I, §151(c)(2), Oct. 21, 1998, 112 Stat. 2681-616, substituted “DETAILS, VACANCIES, AND APPOINTMENTS” for “DETAILS” as subchapter heading.

#### Statutory Notes and Related Subsidiaries

##### FEDERAL ROTATIONAL CYBER WORKFORCE PROGRAM

Pub. L. 117-149, June 21, 2022, 136 Stat. 1289, provided that:

#### “SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Federal Rotational Cyber Workforce Program Act of 2021’.

#### “SEC. 2. DEFINITIONS.

“In this Act:

“(1) AGENCY.—The term ‘agency’ has the meaning given the term ‘Executive agency’ in section 105 of title 5, United States Code, except that the term does not include the Government Accountability Office.

“(2) COMPETITIVE SERVICE.—The term ‘competitive service’ has the meaning given that term in section 2102 of title 5, United States Code.

“(3) COUNCILS.—The term ‘Councils’ means—

“(A) the Chief Human Capital Officers Council established under section 1303 of the Chief Human Capital Officers Act of 2002 [Pub. L. 107-296, title XIII] (5 U.S.C. 1401 note); and

“(B) the Chief Information Officers Council established under section 3603 of title 44, United States Code.

“(4) CYBER WORKFORCE POSITION.—The term ‘cyber workforce position’ means a position identified as having information technology, cybersecurity, or other cyber-related functions under section 303 of the Federal Cybersecurity Workforce Assessment Act of

2015 [Pub. L. 114-113, div. N, title III] (5 U.S.C. 301 note).

“(5) DIRECTOR.—The term ‘Director’ means the Director of the Office of Personnel Management.

“(6) EMPLOYEE.—The term ‘employee’ has the meaning given the term in section 2105 of title 5, United States Code.

“(7) EMPLOYING AGENCY.—The term ‘employing agency’ means the agency from which an employee is detailed to a rotational cyber workforce position.

“(8) EXCEPTED SERVICE.—The term ‘excepted service’ has the meaning given that term in section 2103 of title 5, United States Code.

“(9) ROTATIONAL CYBER WORKFORCE POSITION.—The term ‘rotational cyber workforce position’ means a cyber workforce position with respect to which a determination has been made under section 3(a)(1).

“(10) ROTATIONAL CYBER WORKFORCE PROGRAM.—The term ‘rotational cyber workforce program’ means the program for the detail of employees among rotational cyber workforce positions at agencies.

“(11) SECRETARY.—The term ‘Secretary’ means the Secretary of Homeland Security.

#### “SEC. 3. ROTATIONAL CYBER WORKFORCE POSITIONS.

“(a) DETERMINATION WITH RESPECT TO ROTATIONAL SERVICE.—

“(1) IN GENERAL.—The head of each agency may determine that a cyber workforce position in that agency is eligible for the rotational cyber workforce program, which shall not be construed to modify the requirement under section 4(b)(3) that participation in the rotational cyber workforce program by an employee shall be voluntary.

“(2) NOTICE PROVIDED.—The head of an agency shall submit to the Director—

“(A) notice regarding any determination made by the head of the agency under paragraph (1); and

“(B) for each position with respect to which the head of the agency makes a determination under paragraph (1), the information required under subsection (b)(1).

“(b) PREPARATION OF LIST.—The Director, with assistance from the Councils and the Secretary, shall develop a list of rotational cyber workforce positions that—

“(1) with respect to each such position, to the extent that the information does not disclose sensitive national security information, includes—

“(A) the title of the position;

“(B) the occupational series with respect to the position;

“(C) the grade level or work level with respect to the position;

“(D) the agency in which the position is located;

“(E) the duty location with respect to the position; and

“(F) the major duties and functions of the position; and

“(2) shall be used to support the rotational cyber workforce program.

“(c) DISTRIBUTION OF LIST.—Not less frequently than annually, the Director shall distribute an updated list developed under subsection (b) to the head of each agency and other appropriate entities.

#### “SEC. 4. ROTATIONAL CYBER WORKFORCE PROGRAM.

“(a) OPERATION PLAN.—

“(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act [June 21, 2022], and in consultation with the Councils, the Secretary, representatives of other agencies, and any other entity as the Director determines appropriate, the Director shall develop and issue a Federal Rotational Cyber Workforce Program operation plan providing policies, processes, and procedures for a program for the detailing of employees among rotational cyber workforce positions at agencies, which may be incorporated into and implemented through mechanisms in existence on the date of enactment of this Act.

“(2) UPDATING.—The Director may, in consultation with the Councils, the Secretary, and other entities as the Director determines appropriate, periodically update the operation plan developed and issued under paragraph (1).

“(b) REQUIREMENTS.—The operation plan developed and issued under subsection (a) shall, at a minimum—

“(1) identify agencies for participation in the rotational cyber workforce program;

“(2) establish procedures for the rotational cyber workforce program, including—

“(A) any training, education, or career development requirements associated with participation in the rotational cyber workforce program;

“(B) any prerequisites or requirements for participation in the rotational cyber workforce program; and

“(C) appropriate rotational cyber workforce program performance measures, reporting requirements, employee exit surveys, and other accountability devices for the evaluation of the program;

“(3) provide that participation in the rotational cyber workforce program by an employee shall be voluntary;

“(4) provide that an employee shall be eligible to participate in the rotational cyber workforce program if the head of the employing agency of the employee, or a designee of the head of the employing agency of the employee, approves of the participation of the employee;

“(5) provide that the detail of an employee to a rotational cyber workforce position under the rotational cyber workforce program shall be on a non-reimbursable basis;

“(6) provide that agencies may agree to partner to ensure that the employing agency of an employee that participates in the rotational cyber workforce program is able to fill the position vacated by the employee;

“(7) require that an employee detailed to a rotational cyber workforce position under the rotational cyber workforce program, upon the end of the period of service with respect to the detail, shall be entitled to return to the position held by the employee, or an equivalent position, in the employing agency of the employee without loss of pay, seniority, or other rights or benefits to which the employee would have been entitled had the employee not been detailed;

“(8) provide that discretion with respect to the assignment of an employee under the rotational cyber workforce program shall remain with the employing agency of the employee;

“(9) require that an employee detailed to a rotational cyber workforce position under the rotational cyber workforce program in an agency that is not the employing agency of the employee shall have all the rights that would be available to the employee if the employee were detailed under a provision of law other than this Act from the employing agency to the agency in which the rotational cyber workforce position is located;

“(10) provide that participation by an employee in the rotational cyber workforce program shall not constitute a change in the conditions of the employment of the employee; and

“(11) provide that an employee participating in the rotational cyber workforce program shall receive performance evaluations relating to service in the rotational cyber workforce program in a participating agency that are—

“(A) prepared by an appropriate officer, supervisor, or management official of the employing agency, acting in coordination with the supervisor at the agency in which the employee is performing service in the rotational cyber workforce position;

“(B) based on objectives identified in the operation plan with respect to the employee; and

“(C) based in whole or in part on the contribution of the employee to the agency in which the employee performed such service, as communicated

from that agency to the employing agency of the employee.

“(c) PROGRAM REQUIREMENTS FOR ROTATIONAL SERVICE.—

“(1) IN GENERAL.—An employee serving in a cyber workforce position in an agency may, with the approval of the head of the agency, submit an application for detail to a rotational cyber workforce position that appears on the list developed under section 3(b).

“(2) OPM APPROVAL FOR CERTAIN POSITIONS.—An employee serving in a position in the excepted service may only be selected for a rotational cyber workforce position that is in the competitive service with the prior approval of the Office of Personnel Management, in accordance with section 300.301 of title 5, Code of Federal Regulations, or any successor thereto.

“(3) SELECTION AND TERM.—

“(A) SELECTION.—The head of an agency shall select an employee for a rotational cyber workforce position under the rotational cyber workforce program in a manner that is consistent with the merit system principles under section 2301(b) of title 5, United States Code.

“(B) TERM.—Except as provided in subparagraph (C), and notwithstanding section 3341(b) of title 5, United States Code, a detail to a rotational cyber workforce position shall be for a period of not less than 180 days and not more than 1 year.

“(C) EXTENSION.—The Chief Human Capital Officer of the agency to which an employee is detailed under the rotational cyber workforce program may extend the period of a detail described in subparagraph (B) for a period of 60 days unless the Chief Human Capital Officer of the employing agency of the employee objects to that extension.

“(4) WRITTEN SERVICE AGREEMENTS.—

“(A) IN GENERAL.—The detail of an employee to a rotational cyber workforce position shall be contingent upon the employee entering into a written service agreement with the employing agency under which the employee is required to complete a period of employment with the employing agency following the conclusion of the detail that is equal in length to the period of the detail.

“(B) OTHER AGREEMENTS AND OBLIGATIONS.—A written service agreement under subparagraph (A) shall not supersede or modify the terms or conditions of any other service agreement entered into by the employee under any other authority or relieve the obligations between the employee and the employing agency under such a service agreement. Nothing in this subparagraph prevents an employing agency from terminating a service agreement entered into under any other authority under the terms of such agreement or as required by law or regulation.

#### “SEC. 5. REPORTING BY GAO.

“Not later than the end of the third fiscal year after the fiscal year in which the operation plan under section 4(a) is issued, the Comptroller General of the United States shall submit to Congress a report assessing the operation and effectiveness of the rotational cyber workforce program, which shall address, at a minimum—

“(1) the extent to which agencies have participated in the rotational cyber workforce program, including whether the head of each such participating agency has—

“(A) identified positions within the agency that are rotational cyber workforce positions;

“(B) had employees from other participating agencies serve in positions described in subparagraph (A); and

“(C) had employees of the agency request to serve in rotational cyber workforce positions under the rotational cyber workforce program in participating agencies, including a description of how many such requests were approved; and

“(2) the experiences of employees serving in rotational cyber workforce positions under the rotational cyber workforce program, including an assessment of—

“(A) the period of service;

“(B) the positions (including grade level and occupational series or work level) held by employees before completing service in a rotational cyber workforce position under the rotational cyber workforce program;

“(C) the extent to which each employee who completed service in a rotational cyber workforce position under the rotational cyber workforce program achieved a higher skill level, or attained a skill level in a different area, with respect to information technology, cybersecurity, or other cyber-related functions; and

“(D) the extent to which service in rotational cyber workforce positions has affected intra-agency and interagency integration and coordination of cyber practices, functions, and personnel management.

#### “SEC. 6. SUNSET.

“Effective 5 years after the date of enactment of this Act [June 21, 2022], this Act is repealed.”

#### ANNUAL REPORT TO CONGRESS ON EMPLOYEES OR MEMBERS OF ARMED SERVICES DETAILED TO EXECUTIVE AGENCIES; EXEMPTIONS

Pub. L. 103-329, title VI, §619, Sept. 30, 1993, 108 Stat. 2420, which directed each Executive agency detailing personnel submit an annual report to Senate and House Committees on Appropriations on all employees or members of armed services detailed to Executive agencies, listing grade, position, and offices of each person detailed and agency to which each such person was detailed, with exemptions for certain intelligence agencies, terminated, effective May 15, 2000, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 151 of House Document No. 103-7. Similar provisions were contained in the following prior appropriations acts:

Pub. L. 103-123, title VI, §617, Oct. 28, 1993, 107 Stat. 1263.

Pub. L. 102-393, title VI, §619, Oct. 6, 1992, 106 Stat. 1769; repealed by Pub. L. 104-66, title III, §3001(h), Dec. 21, 1995, 109 Stat. 734.

Pub. L. 102-141, title VI, §619, Oct. 28, 1991, 105 Stat. 871.

Pub. L. 101-509, title VI, §616, Nov. 5, 1990, 104 Stat. 1474.

Pub. L. 101-136, title VI, §616, Nov. 3, 1989, 103 Stat. 819.

Pub. L. 100-440, title VI, §616, Sept. 22, 1988, 102 Stat. 1754.

Pub. L. 100-202, §101(m) [title VI, §621], Dec. 22, 1987, 101 Stat. 1329-390, 1329-427.

#### § 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)(1) 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.

(2) The 120-day limitation in paragraph (1) for details and renewals of details does not apply to the Department of Defense in the case of a detail—

(A) made in connection with the closure or realignment of a military installation pursuant to a base closure law or an organizational restructuring of the Department as part of a reduction in the size of the armed forces or the civilian workforce of the Department; and

(B) in which the position to which the employee is detailed is eliminated on or before the date of the closure, realignment, or restructuring.

(c) For purposes of this section, the term “base closure law” has the meaning given such term in section 101(a)(17) of title 10.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424; Pub. L. 104-106, div. A, title X, §1033(a), Feb. 10, 1996, 110 Stat. 429; Pub. L. 109-163, div. A, title X, §1056(a)(4), Jan. 6, 2006, 119 Stat. 3439.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 38.	R.S. §166. May 28, 1896, ch. 252, §3, 29 Stat. 179.

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 section 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), which is set out in the reviser’s note for section 301.

The word “detail” is coextensive with and is substituted for “alter the distribution”. The word “clerks” is omitted as included in “employees”. The words “as he may find it necessary and proper to do” and “from time to time” are omitted as surplusage.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579 (former 5 U.S.C. 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 as outlined in the preface to the report.

#### Editorial Notes

##### AMENDMENTS

2006—Subsec. (c). Pub. L. 109-163 amended subsec. (c) generally. Prior to amendment, subsec. (c) defined the terms “base closure law” and “military installation” for purposes of this section.

1996—Subsec. (b). Pub. L. 104-106 designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 104-106, §1033(a)(2), added subsec. (c).

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE OF 1996 AMENDMENT**

Pub. L. 104-106, div. A, title X, § 1033(b), Feb. 10, 1996, 110 Stat. 430, provided that: “The amendments made by subsection (a) [amending this section] apply to details made before the date of the enactment of this Act [Feb. 10, 1996] but still in effect on that date and details made on or after that date.”

**TRANSFER OF APPROPRIATED FUNDS; FUNDING OF DETAILED EMPLOYEES**

For restriction on availability of funds for salaries of employees reassigned on temporary detail basis to another position without independent approval by head of employing department or agency, see section 515(3) of Pub. L. 103-333, set out as a note under section 1301 of Title 31, Money and Finance.

**[§ 3342. Repealed. Pub. L. 102-378, § 2(13)(A), Oct. 2, 1992, 106 Stat. 1347]**

Section, added Pub. L. 101-416, § 2(a)(1), Oct. 12, 1990, 104 Stat. 902, related to Federal participants in executive exchange programs.

A prior section 3342, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425, which prohibited details of employees from field service to Executive department in District of Columbia except for temporary duty, details specifically provided for by law, or detailing of one employee from Bureau of Customs for duty in District of Columbia, was repealed by Pub. L. 89-762, § 1(a), Nov. 5, 1966, 80 Stat. 1312.

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE OF REPEAL**

Section repealed effective Oct. 1, 1991, see section 9(b)(3) of Pub. L. 102-378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.

**§ 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 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.

**Editorial Notes****AMENDMENTS**

1969—Subsec. (b), Pub. L. 91-175 substituted “5” for “3” and inserted provision enabling President, regarding an agency employee detailed to an international organization for 5 years, to extend the 5-year period for up to an additional 3 years.

**Executive Documents****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.

**Editorial Notes**

## 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.

**Statutory Notes and Related Subsidiaries**

## 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.)

**Editorial Notes**

## 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.

**Statutory Notes and Related Subsidiaries**

## 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).”

### Executive Documents

#### 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 DESIGNATING ORDERS OF SUCCESSION

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, Sept. 6, 2019, 84 F.R. 48227, as corrected Sept. 16, 2019, 84 F.R. 48549.

Memorandum of President of the United States, Jan. 13, 2017, 82 F.R. 7627, revoked by Memorandum of President of the United States, § 3, Sept. 6, 2019, 84 F.R. 48227.

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, re-

voked by Ex. Ord. No. 13242, §4, Dec. 18, 2001, 66 F.R. 66261.

#### DEPARTMENT OF DEFENSE

Ex. Ord. No. 13963, Dec. 10, 2020, 85 F.R. 81331.  
 Ex. Ord. No. 13533, Mar. 1, 2010, 75 F.R. 10163, revoked by Ex. Ord. No. 13963, §3, Dec. 10, 2020, 85 F.R. 81332.  
 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. 13915, Apr. 14, 2020, 85 F.R. 21733.  
 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, revoked by Ex. Ord. No. 13915, §4, Apr. 14, 2020, 85 F.R. 21734.  
 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. 13973, Jan. 8, 2021, 86 F.R. 3733.  
 Ex. Ord. No. 13763, Jan. 13, 2017, 82 F.R. 7621, revoked by Ex. Ord. No. 13973, §3, Jan. 8, 2021, 86 F.R. 3734.  
 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. 2, 2020, 85 F.R. 55585.  
 Memorandum of President of the United States, Sept. 20, 2013, 78 F.R. 59161, revoked by Memorandum of President of the United States, §3, Sept. 2, 2020, 85 F.R. 55585.

#### 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, Dec. 10, 2020, 85 F.R. 81775.

Memorandum of President of the United States, Aug. 12, 2016, 81 F.R. 54715, revoked by Memorandum of President of the United States, §3, Dec. 10, 2020, 85 F.R. 81775.

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, Apr. 2, 2020, 85 F.R. 19637.

Memorandum of President of the United States, Feb. 1, 2013, 78 F.R. 8953, revoked by Memorandum of President of the United States, §3, Apr. 2, 2020, 85 F.R. 19637.

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.

#### UNITED STATES INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

Memorandum of President of the United States, Jan. 8, 2021, 86 F.R. 2949.

### § 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.)

### Editorial Notes

#### 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.

#### Statutory Notes and Related Subsidiaries

##### 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 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 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.)

#### Editorial Notes

##### 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)”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such ef-

fective 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 pro-

hibits 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.)

#### Editorial Notes

##### 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”.

#### Statutory Notes and Related Subsidiaries

##### 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.)

#### Editorial Notes

##### 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.

#### Statutory Notes and Related Subsidiaries

##### 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. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

##### 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.)

**Statutory Notes and Related Subsidiaries****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.)

**Statutory Notes and Related Subsidiaries****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.)

**Statutory Notes and Related Subsidiaries****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.)

**Statutory Notes and Related Subsidiaries****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.

**§ 3349e. Presidential explanation of failure to nominate an inspector general**

If the President fails to make a formal nomination for a vacant inspector general position that requires a formal nomination by the President to be filled within the period beginning on the later of the date on which the vacancy occurred or on which a nomination is rejected, withdrawn, or returned, and ending on the day that is 210 days after that date, the President shall communicate, within 30 days after the end of such period and not later than June 1 of each year thereafter, to the appropriate congressional committees, as defined in section 12 of the Inspector General Act of 1978 (5 U.S.C. App.)<sup>1</sup>—

- (1) the reasons why the President has not yet made a formal nomination; and
- (2) a target date for making a formal nomination.

(Added Pub. L. 117-263, div. E, title LII, §5221(a), Dec. 23, 2022, 136 Stat. 3234.)

**Editorial Notes****REFERENCES IN TEXT**

Section 12 of the Inspector General Act of 1978, referred to in text, is section 12 of Pub. L. 95-452, which was set out in the Appendix to this title and was repealed and restated as section 401 of this title by Pub. L. 117-286, §§3(b), 7, Dec. 27, 2022, 136 Stat. 4207, 4361. For definition of “appropriate congressional committees”, see Amendments Not Shown in Text note set out under section 401 of this title.

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE**

Pub. L. 117-263, div. E, title LII, §5221(c), Dec. 23, 2022, 136 Stat. 3234, provided that: “The amendment made by subsection (a) [enacting this section] shall take effect—

- “(1) on the date of enactment of this Act [Dec. 23, 2022] with respect to any vacancy first occurring on or after that date; and
- “(2) on the day that is 210 days after the date of enactment of this Act with respect to any vacancy that occurred before the date of enactment of this Act.”

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

## 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426; Pub. L. 94-183, §2(4), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95-454, title IX, §906(a)(2), (3), 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. 854 (1st 2 sentences, so much as relates to transfer).	June 27, 1944, ch. 287, §5 (1st 2 sentences, so much as relates to transfer), 58 Stat. 388.

The section is restated to conform to section 3312.

The words “in the competitive service, an Executive agency, or the government of the District of Columbia” are added on authority of former sections 851, 858, and 869, which are carried into this title. The last sentence is added on authority of former section 869.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

**Editorial Notes**

## AMENDMENTS

1978—Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively.

1975—Pub. L. 94-183 struck out “, except an appointment made under section 3311 of title 39” after “or made with the advice and consent of, the Senate”.

**Statutory Notes and Related Subsidiaries**

## 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.

**§ 3352. Preference in transfers for employees making certain disclosures**

(a) Subject to the provisions of subsections (d) and (e), in filling a position within any Executive agency, the head of such agency may give preference to any employee of such agency, or any other Executive agency, to transfer to a position of the same status and tenure as the posi-

tion of such employee on the date of applying for a transfer under subsection (b) if—

- (1) such employee is otherwise qualified for such position;
- (2) such employee is eligible for appointment to such position; and
- (3) the Merit Systems Protection Board makes a determination under the provisions of chapter 12 that a prohibited personnel action described under section 2302(b)(8) was taken against such employee.

(b) An employee who meets the conditions described under subsection (a)(1), (2), and (3) may voluntarily apply for a transfer to a position, as described in subsection (a), within the Executive agency employing such employee or any other Executive agency.

(c) If an employee applies for a transfer under the provisions of subsection (b) and the selecting official rejects such application, the selecting official shall provide the employee with a written notification of the reasons for the rejection within 30 days after receiving such application.

(d) An employee whose application for transfer is rejected under the provisions of subsection (c) may request the head of such agency to review the rejection. Such request for review shall be submitted to the head of the agency within 30 days after the employee receives notification under subsection (c). Within 30 days after receiving a request for review, the head of the agency shall complete the review and provide a written statement of findings to the employee and the Merit Systems Protection Board.

(e) The provisions of subsection (a) shall apply with regard to any employee—

- (1) for no more than 1 transfer;
- (2) for a transfer from or within the agency such employee is employed at the time of a determination by the Merit Systems Protection Board that a prohibited personnel action as described under section 2302(b)(8) was taken against such employee; and
- (3) no later than 18 months after such a determination is made by the Merit Systems Protection Board.

(f) Notwithstanding the provisions of subsection (a), no preference may be given to any employee applying for a transfer under subsection (b), with respect to a preference eligible (as defined under section 2108(3)) applying for the same position.

(Added Pub. L. 101-12, §5(a), Apr. 10, 1989, 103 Stat. 32.)

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE

Section effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as an Effective Date of 1989 Amendment note under section 1201 of this title.

## 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 sec-