

116TH CONGRESS
2D SESSION

H. R. 8481

To amend the provisions of title 5, United States Code, relating to the Federal Vacancies Reform Act of 1998, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 2020

Mr. COHEN introduced the following bill; which was referred to the Committee on Oversight and Reform

A BILL

To amend the provisions of title 5, United States Code, relating to the Federal Vacancies Reform Act of 1998, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as “Appointments Clause En-
5 forcement Act of 2020”.

6 **SEC. 2. MODIFICATIONS TO FEDERAL VACANCIES REFORM**

7 **ACT OF 1998.**

8 (a) ACTING OFFICER.—

9 (1) FIRST ASSISTANTS.—Section 3345(a) of
10 title 5, United States Code, is amended—

1 (A) in paragraph (1), by adding at the end
2 before the semi-colon the following: “, but only
3 if the individual serving in the position of first
4 assistant has occupied such position for the pe-
5 riod of 120 days immediately preceding the
6 date of the death, resignation, or beginning of
7 inability to serve (as the case may be)”; and

8 (B) by adding at the end the following:

9 “(d)(1) For purposes of this section, beginning on the
10 date that is 180 days after the date of enactment of the
11 Appointments Clause Enforcement Act of 2020, a position
12 shall be considered to be the first assistant to the office
13 with respect to which a vacancy occurs only if such posi-
14 tion has been designated by law, rule, or regulation as the
15 first assistant position.

16 “(2) With respect to any office to which this section
17 and sections 3346, 3347, 3349, 3349a, 3349b, 3349c, and
18 3349d apply that is established after the date that is 180
19 days after the date of enactment of this subsection that
20 does not have a first assistant position designated by law,
21 the head of the Executive agency at which such office is
22 located shall designate a first assistant position not later
23 than the date that is 60 days after such date of establish-
24 ment.”.

1 (2) PRESIDENTIAL APPOINTMENTS.—Section
2 3345(a) of title 5, United States Code, as amended
3 by paragraph (1), is further amended—

4 (A) in paragraph (2), by striking “who
5 serves in an office” and inserting “who serves
6 in an office within the same agency at which
7 the vacancy occurs for the period of 120 days
8 immediately preceding the date on which such
9 vacancy occurs”; and

10 (B) in paragraph (3),

11 (i) by striking “and” at the end of
12 subparagraph (A); and

13 (ii) by striking subparagraph (B) and
14 inserting the following:

15 “(B) the officer or employee occupies—

16 “(i) a career position described under
17 subparagraph (A) with a rate of pay equal
18 to or greater than the minimum rate of
19 pay payable for a position at GS–15 of the
20 General Schedule; or

21 “(ii) a position described under sub-
22 paragraph (A) that is a position in the
23 Senior Executive Service; and

24 “(C) possess the qualifications (if any) set
25 forth in law, rule, or regulation that are other-

1 wise applicable to an individual appointed by
2 the President, by and with the advice and con-
3 sent of the Senate, to occupy such office.”.

4 (3) IDENTIFICATION OF FIRST ASSISTANT POSI-
5 TION; DUTIES.—Section 3345 of title 5, United
6 States Code, as amended by paragraph (1), is fur-
7 ther amended by adding at the end the following:

8 “(e)(1) Not later than 180 days after the date of en-
9 actment of the Appointments Clause Enforcement Act of
10 2020, with respect to any office within such agency to
11 which this section and sections 3345, 3346, 3347, 3348,
12 3349a, 3349b, 3349c, and 3349d apply, the head of each
13 Executive agency shall issue regulations listing—

14 “(A) the first assistant position to such office;
15 and

16 “(B) the nondelegable duties of such office.

17 “(2) With respect to any office established after such
18 date of enactment to which this section and sections 3345,
19 3346, 3347, 3348, 3349a, 3349b, 3349c, and 3349d
20 apply, not later than 180 days after the date such office
21 is established, the head of the Executive agency at which
22 such office is located shall issue regulations containing the
23 information described under subparagraphs (A) and (B)
24 of paragraph (1).

1 “(3) If the first assistant position or nondelegable du-
2 ties are modified by law with respect to an office for which
3 regulations have been issued under paragraph (1) or (2),
4 the head of the Executive agency at which such office is
5 located shall update the regulations not later than 180
6 days after the date that such modification takes effect.”.

7 (4) VACANCY OF INSPECTOR GENERAL POSI-
8 TIONS.—Section 3345 of title 5, United States Code,
9 as amended by paragraph (3), is further amended by
10 adding at the end the following:

11 “(f)(1) Notwithstanding subsection (a), if an Inspec-
12 tor General position that requires appointment by the
13 President by and with the advice and consent of the Sen-
14 ate to be filled is vacant, the first assistant shall serve
15 as the acting Inspector General.

16 “(2) If the first assistant position is vacant, the first
17 assistant is unable or unavailable to serve as acting In-
18 spector General, or there is no first assistant position, the
19 acting Inspector General shall be appointed by chief judge
20 of United States District Court for the District of Colum-
21 bia pursuant to paragraph (3).

22 “(3) On the date an Inspector General position be-
23 comes vacant, the Chair of the Council of Inspectors Gen-
24 eral for Integrity and Efficiency shall convene a committee
25 of three Inspectors General to recommend, to the chief

1 judge, at least two candidates to serve as acting Inspector
 2 General. The committee shall submit its recommendation
 3 to the chief judge within 14 days after such date, and the
 4 chief judge shall make the appointment within 14 days
 5 of receipt of the recommendations.”.

6 (b) REASONS FOR VACANCY.—Title 5, United States
 7 Code, is amended—

8 (1) in section 3345—

9 (A) in subsection (a), by inserting “sepa-
 10 rates from the Federal service, placed on invol-
 11 untary leave,” after “resigns,”; and

12 (B) by inserting “separation from the Fed-
 13 eral service, placement on involuntary leave,”
 14 after “resignation,” in each instance; and

15 (2) in section 3348(b), by inserting “separates
 16 from the Federal service, placed on involuntary
 17 leave,” after “resigns,”.

18 (c) TIME LIMITS.—

19 (1) IN GENERAL.—Section 3346(a) of title 5,
 20 United States Code, is amended—

21 (A) by striking paragraph (1) and insert-
 22 ing the following:

23 “(1) with respect to such person serving pursu-
 24 ant to paragraph (1) of section 3345(a), for no

1 longer than 120 days beginning on the date the va-
2 cancy occurs;

3 “(2) with respect to such person serving pursu-
4 ant to paragraph (2) or (3) of such section, for no
5 longer than 60 days beginning on the date the va-
6 cancy occurs; or”.

7 (2) PRESIDENTIAL INAUGURAL TRANSITION.—
8 Section 3349a(b) of title 5, United States Code, is
9 amended—

10 (A) by striking “210-day period” and in-
11 serting “120-day or 60-day period (as the case
12 may be)”; and

13 (B) by striking “90 days” in each instance
14 and inserting “60 days”.

15 (3) CONFORMING AMENDMENTS.—

16 (A) Section 3346 of title 5, United States
17 Code, is amended—

18 (i) in subsection (b), by striking “210
19 days” in each instance and inserting “120
20 days or 60 days (as the case may be)”;
21 and

22 (ii) in subsection (c), by striking
23 “210-day period” and inserting “120-day
24 or 60-day period (as the case may be)”.

1 (B) Sections 3348(c) and 3349(b) of such
2 title is amended by striking “210-day period”
3 in each instance and inserting “120-day or 60-
4 day period (as the case may be)”.

5 (d) PRIVATE RIGHT OF ACTION.—Section 3348(d) of
6 title 5, United States Code, is amended by inserting at
7 the end the following:

8 “(3) A person harmed by such an action may
9 bring an action in an appropriate district court of
10 the United States for declaratory and injunctive re-
11 lief, including the removal of such person from the
12 acting official position. Nothing in this paragraph
13 shall be construed to supersede or otherwise limit
14 any provision of law providing employment protec-
15 tions to such person, including the provisions of
16 chapter 75.”.

17 (e) EXCLUSIVITY.—Section 3347 of title 5, United
18 States Code, is amended—

19 (1) by redesignating subsection (b) as sub-
20 section (c); and

21 (2) by inserting after subsection (a) the fol-
22 lowing:

23 “(b) Notwithstanding subsection (a), any statutory
24 provision covered under paragraph (1) of such subsection
25 that provides a mandatory order or directive to designate

1 an officer or employee to perform the functions and duties
2 of a specified office temporarily in an acting capacity shall
3 be the exclusive means for temporarily authorizing an act-
4 ing official to perform the functions and duties of such
5 office.”.

6 (f) GAO REPORTS.—Section 3349 of title 5, United
7 States Code, is amended—

8 (1) in subsection (b), by striking paragraphs
9 (1) and (2) and inserting the following:

10 “(1) the Committee on Homeland Security and
11 Governmental Affairs of the Senate;

12 “(2) the Committee on Oversight and Reform
13 of the House of Representatives;”; and

14 (2) by adding at the end the following:

15 “(c) The Comptroller General shall publish and main-
16 tain, on the public Internet website of the Government Ac-
17 countability Office, a database containing—

18 “(1) a list of each office to which this section
19 and sections 3345, 3346, 3347, 3348, 3349a,
20 3349b, and 3349c apply; and

21 “(2) with respect to any such office so listed—

22 “(A) the name of the individual occupying,
23 and the date the individual was appointed to,
24 the office;

1 “(B) if the office is vacant, the date the
2 vacancy commenced, the number of days of the
3 vacancy, and the name of the individual (if any)
4 nominated to serve in the office;

5 “(C) if the office is occupied by an acting
6 official, the name of the acting official, the date
7 on which the acting official first occupied the
8 office, and the number of days the acting offi-
9 cial has occupied the office;

10 “(D) the position designated as a first as-
11 sistant position under section 3345(d);

12 “(E) the name of the individual occupying,
13 and the date such individual was appointed to,
14 such first assistant position; and

15 “(F) a citation to the regulations issued
16 under section 3345(e), including a hyperlink (if
17 any) to such regulations.”.

18 (g) COURT-APPOINTED OFFICIALS.—

19 (1) IN GENERAL.—Subchapter III of chapter
20 33 of title 5, United States Code, is amended by in-
21 serting after section 3349d the following:

22 **“§ 3349e. Court-appointed officials removed by Presi-**
23 **dent**

24 “If an officer of an Executive agency whose appoint-
25 ment to office was made by a court, including any indi-

1 vidual appointed under section 546(d) of title 28, is re-
2 moved from such office by the President, such court shall
3 have the sole authority to appoint an individual to carry
4 out the duties of such office until the vacancy is filled.”.

5 (2) CLERICAL AMENDMENT.—The table of sec-
6 tions for such subchapter is amended by adding
7 after the item relating to section 3349d the fol-
8 lowing:

“3349e. Court-appointed officials removed by President.”.

9 (h) RULE OF CONSTRUCTION.—This Act and the
10 amendments made by this Act shall apply to any office
11 to which sections 3345, 3346, 3347, 3349, 3349a, 3349b,
12 3349c, and 3349d of title 5, United States Code, apply
13 established before, on, or after the date of enactment of
14 this Act.

15 (i) SEVERABILITY.—If any provision of this Act or
16 an amendment made by this Act, or the application of a
17 provision or amendment to any person or circumstance,
18 is held to be invalid for any reason in any court of com-
19 petent jurisdiction, the remainder of this Act and amend-
20 ments made by this Act, and the application of the provi-
21 sions and amendment to any other person or cir-
22 cumstance, shall not be affected.

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