



# The Federal Vacancies Reform Act of 1998

When a Senate-confirmed executive officer “dies, resigns, or is otherwise unable to perform the functions and duties of the office,” the Federal Vacancies Reform Act of 1998, also known as the Vacancies Act, authorizes an acting official to temporarily perform the duties of the vacant office. The Vacancies Act usually governs who can serve and for how long. (5 U.S.C. §§ 3345–3349c)



## What positions are covered by the Vacancies Act?

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**The Vacancies Act applies to** Senate-confirmed positions in an “Executive agency,” as defined in 5 U.S.C. § 105.
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**The Vacancies Act does not apply to**

  - a uniformed military officer (5 U.S.C. § 2104);
  - an officer of the Government Accountability Office (5 U.S.C. § 3345);
  - a federal judge serving in an Article I legislative court (5 U.S.C. § 3349c); or
  - a member of a multimember board that governs an independent establishment, government corporation, the Federal Energy Regulatory Commission, or the Surface Transportation Board (5 U.S.C. § 3349c).

## Who can serve as an acting officer under the Vacancies Act?

The first assistant, often an office’s deputy, automatically serves as acting officer. Alternatively, the President may designate certain other types of officials to serve instead. Altogether, the Vacancies Act, 5 U.S.C. § 3345, authorizes three categories of people to serve as an acting officer:

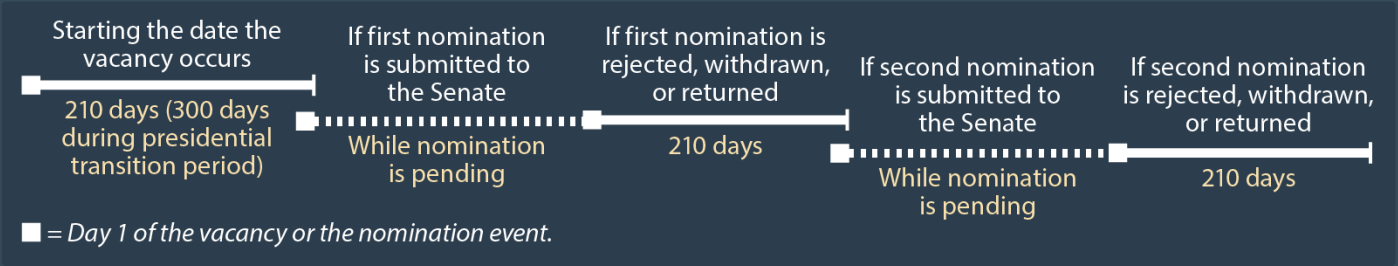
- 1 the first assistant to the office,**
- 2 a Senate-confirmed official, or**
- 3 an official who served at that agency** in a position with a pay rate of GS-15 or above for at least 90 days during the year preceding the vacancy.

**A person who has been nominated to fill the vacant position** may not serve as the acting officer unless that person


- served as the first assistant for at least 90 days during the year preceding the vacancy, or
- is a Senate-confirmed first assistant.

## How long can an acting officer serve under the Vacancies Act?

Under the Vacancies Act, 5 U.S.C. §§ 3346 and 3349a, a qualified official may serve for (1) 210 days, or 300 days during a presidential transition period, usually beginning on the date the vacancy occurs; and (2) while a first or second nomination to that office is pending, with 210-day extensions if the nomination is rejected, withdrawn, or returned.



## What are the consequences of violating the Vacancies Act?

 Unless an acting official is performing the “functions and duties” of a vacant office in compliance with the Vacancies Act, an attempt to perform the functions and duties of that office will have **no force or effect** and may not be ratified. Certain offices, such as Inspectors General, are excluded from these enforcement provisions. (5 U.S.C. § 3348)

At the same time, courts have sometimes allowed officials to perform a vacant office’s duties under **agency-specific statutes** or pursuant to a lawful **delegation**. Temporary service in these circumstances might not be subject to the Vacancies Act’s limits on who can serve and for how long.

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