



Fixed Term and “For Cause” Removal Provisions

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Unless otherwise specified in law, presidential appointees to executive branch positions serve for an indeterminate period of time and [can usually be removed by the President at any time](#) for any reason (or no stated reason). Congress has periodically chosen to set a specific (or fixed) term of office for a particular position, restrict the President’s power of removal for a particular position, or both. By itself, a fixed term—that establishes a given period as the normal or expected tenure of an appointee—might inhibit, but not prevent, the removal of an incumbent by the President. Lacking protection from removal, incumbents in such positions may remain subject to close guidance and direction from the President.

“For cause” removal provisions typically state that the President can remove an appointee only for specified reasons—such as inefficiency, neglect of duty, or malfeasance in office—rather than for policy differences. When used in combination with fixed terms, such provisions appear to have more clearly inhibited removal of an officeholder and thus have given such offices considerable independence from the President’s direction and influence. The degree of independence that might result has been related to the specific provisions employed. (See [Table 1](#).) Also, an appointee might choose to adhere closely to the President’s policymaking preferences for political or policy reasons regardless of any for-cause provisions.

Congress has most often used the combination of fixed term and for-cause removal provisions to give members of regulatory collegial bodies (often referred to as boards and commissions) [a level of independence from presidential direction and influence over policymaking and implementation that is greater than that of other federal agencies](#). One rationale provided for such independence is to support the principle of separation of powers by insulating from executive direction the [exercise](#) of quasi-legislative (rulemaking) and quasi-judicial (adjudicatory) powers often vested in these agencies. Another rationale is an assumption that greater independence decreases the influence of political considerations and permits subject matter [experts](#) to apply relevant technical knowledge to complex issues and make better policies.

As a matter of historical practice, members of most regulatory commissions and boards have been either explicitly insulated or implicitly understood to be protected from removal unless a higher (“for cause”) threshold is met. The constitutional foundation for this practice, which is not uniformly provided for in statute, has long been subject to [nuanced federal court interpretation](#). The Supreme Court upheld for-cause tenure protections as applied to the Federal Trade Commission (FTC) in the 1935 decision of

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Humphrey's Executor v. United States, but the Court has [scrutinized](#) that opinion in more recent cases, rejecting structural innovations such as independent agencies led by a single, tenure-protected director.

The validity of some statutory removal protections is now the subject of [litigation in federal courts](#). Members of at least eight of the boards and commissions listed in the table below have [filed lawsuits](#) in federal court challenging their removal—without cause—by President Trump. Most of these cases are temporarily stayed as the Supreme Court, in *Slaughter v. Trump*, considers whether the statutory removal protections for members of the FTC are unconstitutional “and, if so, whether *Humphrey's Executor v. United States*, [] should be overruled.” FTC commissioners have been [protected](#) from removal except for “inefficiency, neglect of duty, or malfeasance in office” since 1914. In *Slaughter*, the Trump Administration did not assert that the existing statutory criteria for removal had been met. Instead, the Administration has taken the [position](#), as it has in other similar cases, that the applicable for-cause tenure protections violate the separation of powers, and so the President may remove FTC commissioners at will.

In another pending case, *Trump v. Cook*, the Court is considering what protections for-cause provisions actually provide. *Cook* involves the removal of a member of the Federal Reserve System Board of Governors. Unlike the other removal cases referenced above, the Trump Administration did not question the constitutionality of the governor’s statutory removal protections. Instead, the Administration [asserts](#) that the President’s removal was made “for cause” after allegations emerged that the governor had engaged in mortgage fraud prior to taking office. The governor, on the other hand, [argues](#) that the President has failed to identify any legally sufficient cause for the removal, and, even if he had, the removal is invalid because Governor Cook received neither notice of her termination nor an opportunity to present her defense.

CRS has identified 33 executive branch collegial bodies with at least one full-time member appointed by the President and confirmed by the Senate. The enabling acts for 16 of these entities include for-cause removal provisions for members, as shown in [Table 1](#).

Table 1. Statutory Provisions with Collegial Body Member Removal Limits

Position	Length of Term	Statute
Member, Chemical Safety and Hazard Investigation Board	5 years	42 U.S.C. §7412(r)(6)(B)
Commissioner, Consumer Product Safety Commission	7 years	15 U.S.C. §2053(a)
Commissioner, Federal Energy Regulatory Commission	5 years	42 U.S.C. §7171(b)(1)
Member, Federal Labor Relations Authority	5 years	5 U.S.C. §7104(b)
Commissioner, Federal Maritime Commission	5 years	46 U.S.C. §46101(b)(5)
Commissioner, Federal Mine Safety and Health Review Commission	6 years	30 U.S.C. §823(b)(1)
Member, Federal Reserve System Board of Governors	14 years	12 U.S.C. §242
Commissioner, Federal Trade Commission	7 years	15 U.S.C. §41
Member, Merit Systems Protection Board	7 years	5 U.S.C. §1202(d)
Member, National Labor Relations Board	5 years	29 U.S.C. §153(a)
Member, National Mediation Board	3 years	45 U.S.C. §154
Member, National Transportation Safety Board	5 years	49 U.S.C. §1111(c)
Commissioner, Nuclear Regulatory Commission	5 years	42 U.S.C. §5841(e)
Commissioner, Occupational Safety and Health Review Commission	6 years	29 U.S.C. §661(b)

Commissioner, Postal Regulatory Commission	6 years	39 U.S.C. §502(a)
Member, Surface Transportation Board	5 years	49 U.S.C. §1301(b)(3)

Source: CRS, based on *U.S. Code* provisions cited above.

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