



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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Acting Officials Under the Vacancies Act

What is the Vacancies Act?

More than 1200 positions across the federal government require nomination by the President and Senate confirmation. For many of these “PAS” positions, the Federal Vacancies Reform Act of 1998 (Vacancies Act) permits certain individuals to perform their functions and duties temporarily when vacancies occur (5 U.S.C. §§ 3345–3349d).

Note: Agency-specific statutes may also provide for temporary leadership.

Which positions does the Vacancies Act cover?

The Vacancies Act covers PAS positions primarily in cabinet departments and single-headed executive agencies (5 U.S.C. § 3349c).

Who can temporarily fill a covered position?

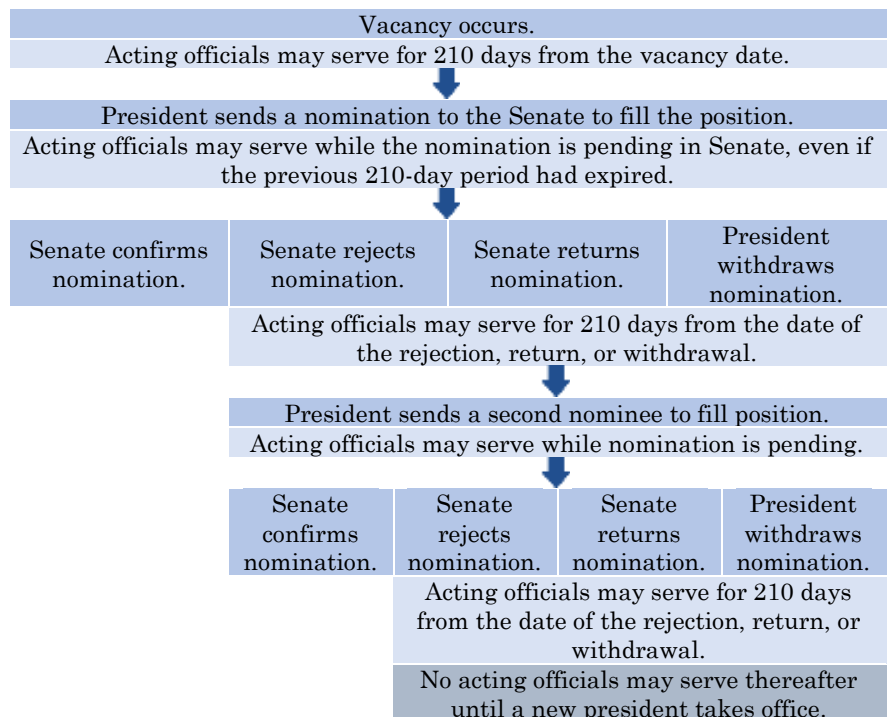
By default, the “first assistant” to a vacant PAS office becomes the acting officer. The Vacancies Act also permits the following to serve in an acting capacity: (1) another PAS official, or (2) an officer or employee from the same agency who has worked at the agency for at least 90 days in the year before the vacancy occurred and earns at least a GS-15 salary. The Vacancies Act also provides for another category of acting officials: holdover appointees. (5 U.S.C. § 3345).

Except for certain first assistants or as permitted by another statute, presidential nominees for a position ordinarily may not fill that position in an acting capacity (5 U.S.C. §§ 3345, 3347). For a list of agency-specific statutes, see Appendix A to Anne Joseph O’Connell, [Acting Agency Officials and Delegations of Authority](#) (Dec. 2019).

How long can acting officials serve?

As a general rule, acting officials can fill a covered position for up to 210 days from when the vacancy occurs or while a nomination is pending in the Senate (5 U.S.C. § 3346). *Note:* If a vacancy arises due to “sickness,” acting officials may serve until the sick PAS officer recovers (5 U.S.C. § 3346(a)).

Vacancies During a President’s Term



Vacancies Upon Transitional Presidential Inauguration

For vacancies that occur within 60 days after a transitional inauguration day (i.e., a new president takes office), the 210-day period begins on the later of (a) 90 days after a transitional inauguration day or (b) 90 days after the vacancy occurs (5 U.S.C. § 3349a).

Additional Resources

ACUS Rec. [2019-7](#), *Acting Agency Officials and Delegations of Authority*
Anne Joseph O’Connell, [Acting Agency Officials and Delegations of Authority](#) (Dec. 2019)
[Guidance on Application of Federal Vacancies Reform Act of 1998](#), 23 Op. O.L.C. 60 (1999)
Valerie. C. Brannon, [The Vacancies Act: A Legal Overview](#) (CRS July 2018)
[Federal Vacancies Reform Act](#) (Govt. Accountability Office)