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# 5 U.S. Code § 3348 - Vacant office

U.S. Code    Notes

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**(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 prohibits 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.)