

118TH CONGRESS  
1ST SESSION

# H. R. 4434

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

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 2023

Ms. PORTER (for herself, Mr. RASKIN, Mr. THOMPSON of Mississippi, Mr. SMITH of Washington, Mr. NADLER, Mr. CONNOLLY, Mr. SCHIFF, Mr. TAKANO, Mr. GRIJALVA, and Mr. HIMES) introduced the following bill; which was referred to the Committee on Oversight and Accountability

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## A BILL

To amend title 5, United States Code, to modify the provisions of that title 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 the “Accountability for Act-  
5 ing Officials Act”.

1 **SEC. 2. CLARIFICATION OF FEDERAL VACANCIES REFORM**  
2 **ACT OF 1998.**

3 (a) **ELIGIBILITY REQUIREMENTS.**—Section 3345 of  
4 title 5, United States Code, is amended as follows:

5 (1) In subsection (a)—

6 (A) in paragraph (1), by adding at the end  
7 before the semi-colon the following: “, but, and  
8 except as provided in subsection (e), only if the  
9 individual serving in the position of first assist-  
10 ant has occupied such position for a period of  
11 at least 30 days during the 365-day period pre-  
12 ceding the date of the death, resignation, or be-  
13 ginning of inability to serve”; and

14 (B) by striking subparagraph (A) of para-  
15 graph (3) and inserting the following:

16 “(A) the officer or employee served in a  
17 position in such agency for a period of at least  
18 1 year preceding the date of death, resignation,  
19 or beginning of inability to serve of the applica-  
20 ble officer; and”.

21 (2) By adding at the end the following:

22 “(d) For purposes of this section, a position shall be  
23 considered to be the first assistant to the office with re-  
24 spect to which a vacancy occurs only if such position has  
25 been designated, at least 30 days before the date of the  
26 vacancy, by law, rule, or regulation as the first assistant

1 position. The previous sentence shall begin to apply on the  
2 date that is 180 days after the date of enactment of the  
3 Accountability for Acting Officials Act.

4 “(e) The 30-day service requirement in subsection  
5 (a)(1) shall not apply to any individual who is a first as-  
6 sistant if—

7 “(1)(A) the office of such first assistant is an  
8 office for which appointment is required to be made  
9 by the President, by and with the advice and consent  
10 of the Senate; and

11 “(B) the Senate has approved the appointment  
12 of such individual to such office; or

13 “(2) the individual began serving in the position  
14 of first assistant during the 180-day period begin-  
15 ning on a transitional inauguration day (as that  
16 term is defined in section 3349a(a)).”.

17 (b) QUALIFICATIONS.—Section 3345(b) of title 5,  
18 United States Code, is amended by adding at the end the  
19 following:

20 “(3) Any individual directed to perform the functions  
21 and duties of the vacant office temporarily in an acting  
22 capacity under subsection (a)(2) or (f) shall possess the  
23 qualifications (if any) set forth in law, rule, or regulation  
24 that are otherwise applicable to an individual appointed

1 by the President, by and with the advice and consent of  
2 the Senate, to occupy such office.”.

3 (c) APPLICATION TO INDIVIDUALS REMOVED FROM  
4 OFFICE.—Paragraph (2) of section 3345(c) of title 5,  
5 United States Code, is amended by inserting after “the  
6 expiration of a term of office” the following: “or removal  
7 (voluntarily or involuntarily) from office”.

8 (d) TESTIMONY OF ACTING OFFICIALS BEFORE CON-  
9 GRESS.—Section 3345 of title 5, United States Code, is  
10 amended by adding at the end the following:

11 “(f)(1) Any individual serving as an acting officer due  
12 to a vacancy to which this section applies, or any indi-  
13 vidual who has served in such capacity and continues to  
14 perform the same or similar duties beyond the time limits  
15 described in section 3346, shall appear, at least once dur-  
16 ing any 60-day period that the individual is so serving,  
17 before the appropriate committees of jurisdiction of the  
18 House of Representatives and the Senate.

19 “(2) Paragraph (1) may be waived upon mutual  
20 agreement of the chairs and ranking members of such  
21 committees.”.

22 (e) TIME LIMITATION FOR PRINCIPAL OFFICES.—  
23 Section 3346 of title 5, United States Code, is amended—

24 (1) in subsection (a), by inserting “or as pro-  
25 vided in subsection (d)” after “sickness”; and

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

2           “(d) With respect to the vacancy of the position of  
3 head of any agency listed in subsection (b) of section 901  
4 of title 31, or any other position that is within the Presi-  
5 dent’s cabinet and to which this section applies, sub-  
6 sections (a) through (c) of this section and sections  
7 3348(c), 3349(b), and 3349a(b) shall be applied by sub-  
8 stituting ‘120’ for ‘210’ in each instance.”.

9           (f) EXCLUSIVITY.—Section 3347 of title 5, United  
10 States Code, is amended—

11           (1) by redesignating subsection (b) as sub-  
12 section (c); and

13           (2) by inserting after subsection (a) the fol-  
14 lowing:

15           “(b) Notwithstanding subsection (a), any statutory  
16 provision covered under paragraph (1) of such subsection  
17 that contains a non-discretionary order or directive to des-  
18 ignate an officer or employee to perform the functions and  
19 duties of a specified office temporarily in an acting capac-  
20 ity shall be the exclusive means for temporarily author-  
21 izing an acting official to perform the functions and duties  
22 of such office.”.

23           (g) REPORTING OF VACANCIES.—

24           (1) IN GENERAL.—Section 3349 of title 5,  
25 United States Code, is amended—

1 (A) in subsection (a)—

2 (i) by striking “immediately upon” in  
3 each instance and inserting “not later than  
4 7 days after”;

5 (ii) in paragraph (3), by striking  
6 “and” at the end;

7 (iii) in paragraph (4), by striking the  
8 period at the end and inserting “; and”;  
9 and

10 (iv) by adding at the end the fol-  
11 lowing:

12 “(5) notification of the end of the term of serv-  
13 ice of any person serving in an acting capacity and  
14 the name of any subsequent person serving in an  
15 acting capacity and the date the service of such sub-  
16 sequent person began not later than 7 days after  
17 such date.”; and

18 (B) in subsection (b), by striking “imme-  
19 diately” and inserting “not later than 14 days  
20 after the date of such determination”.

21 (2) TECHNICAL CORRECTIONS.—Paragraphs  
22 (1) and (2) of subsection (b) of such section 3349  
23 are amended to read as follows:

24 “(1) the Committee on Homeland Security and  
25 Governmental Affairs of the Senate;

1           “(2) the Committee on Oversight and Reform  
2           of the House of Representatives;”.

3           (h) VACANCIES DURING PRESIDENTIAL INAUGURAL  
4 TRANSITIONS.—Subsection (b) of section 3349a of title 5,  
5 United States Code, is amended to read as follows:

6           “(b) Notwithstanding section 3346 (except as pro-  
7 vided in paragraph (2) of this subsection) or 3348(c), with  
8 respect to any vacancy that exists on a transitional inau-  
9 guration day, or that arises during the 60-day period be-  
10 ginning on such day, the person serving as an acting offi-  
11 cer as described under section 3345 may serve in the of-  
12 fice—

13           “(1) for no longer than 300 days beginning on  
14           such day; or

15           “(2) subject to subsection 3346(b), once a first  
16           or second nomination for the office is submitted to  
17           the Senate, from the date of such nomination for the  
18           period that the nomination is pending in the Sen-  
19           ate.”.

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