

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2994
OFFERED BY MRS. CAROLYN B. MALONEY OF
NEW YORK**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Accountability for Act-
3 ing Officials Act”.

**4 SEC. 2. CLARIFICATION OF FEDERAL VACANCIES REFORM
5 ACT OF 1998.**

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

8 (1) In subsection (a)—

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

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

3 “(A) the officer or employee served in a
4 position in such agency for a period of at least
5 1 year preceding the date of death, resignation,
6 or beginning of inability to serve of the applica-
7 ble officer; and”.

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

9 “(d) For purposes of this section, a position shall be
10 considered to be the first assistant to the office with re-
11 spect to which a vacancy occurs only if such position has
12 been designated, at least 30 days before the date of the
13 vacancy, by law, rule, or regulation as the first assistant
14 position. The previous sentence shall begin to apply on the
15 date that is 180 days after the date of enactment of the
16 Accountability for Acting Officials Act.

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

20 “(1)(A) the office of such first assistant is an
21 office for which appointment is required to be made
22 by the President, by and with the advice and consent
23 of the Senate; and

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

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

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

8 “(3) Any individual directed to perform the functions
9 and duties of the vacant office temporarily in an acting
10 capacity under subsection (a)(2) or (f) shall possess the
11 qualifications (if any) set forth in law, rule, or regulation
12 that are otherwise applicable to an individual appointed
13 by the President, by and with the advice and consent of
14 the Senate, to occupy such office.”.

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

20 (d) VACANCY OF INSPECTOR GENERAL POSITIONS.—

21 (1) IN GENERAL.—Section 3345 of title 5,
22 United States Code, as amended by subsection
23 (a)(2), is further amended by adding at the end the
24 following:

1 “(f)(1) Notwithstanding subsection (a), if an Inspec-
2 tor General position that requires appointment by the
3 President by and with the advice and consent of the Sen-
4 ate to be filled is vacant, the first assistant of such posi-
5 tion shall perform the functions and duties of the Inspec-
6 tor General temporarily in an acting capacity subject to
7 the time limitations of section 3346.

8 “(2) Notwithstanding subsection (a), if for purposes
9 of carrying out paragraph (1) of this subsection, by reason
10 of absence, disability, or vacancy, the first assistant to the
11 position of Inspector General is not available to perform
12 the functions and duties of the Inspector General, an act-
13 ing Inspector General shall be appointed by the President
14 from among individuals serving in an office of any Inspec-
15 tor General, provided that—

16 “(A) during the 365-day period preceding the
17 date of death, resignation, or beginning of inability
18 to serve of the applicable Inspector General, the in-
19 dividual served in a position in an office of any In-
20 spector General for not less than 90 days; and

21 “(B) the rate of pay for the position of such in-
22 dividual is equal to or greater than the minimum
23 rate of pay payable for a position at GS-15 of the
24 General Schedule.”.

1 (2) APPLICATION.—The amendment made by
2 paragraph (1) shall apply to any vacancy first occur-
3 ring with respect to an Inspector General position on
4 or after the date of enactment of this Act.

5 (e) TESTIMONY OF ACTING OFFICIALS BEFORE CON-
6 GRESS.—Section 3345 of title 5, United States Code, as
7 amended by subsection (d)(1), is further amended by add-
8 ing at the end the following:

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

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

20 (f) TIME LIMITATION FOR PRINCIPAL OFFICES.—
21 Section 3346 of title 5, United States Code, is amended—

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

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

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

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

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

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

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

22 (h) REPORTING OF VACANCIES.—

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

25 (A) in subsection (a)—

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

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

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

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

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

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

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

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

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

3 (i) 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.”.

