

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To improve the process for filling vacancies at Federal agencies.

**IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.**

**S. 1494**

To amend the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to protect alien minors and to amend the Immigration and Nationality Act to end abuse of the asylum system and establish refugee application and processing centers outside the United States, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by  
\_\_\_\_\_

Viz:

1 At the appropriate place, insert the following:

2 **SEC. \_\_\_\_ . VACANCIES.**

3 Subchapter III of chapter 33 of title 5, United States

4 Code, is amended—

5 (1) in section 3345—

6 (A) by striking subsection (a) and insert-

7 ing the following:

8 “(a) If an officer of an Executive agency (including

9 the Executive Office of the President, and other than the

1 Government Accountability Office) whose appointment to  
2 office is required to be made by the President, by and with  
3 the advice and consent of the Senate, dies, resigns, is re-  
4 moved, or is otherwise unable to perform the functions and  
5 duties of the office, the President shall direct an individual  
6 to perform the functions and duties of such office in the  
7 following manner and in the following order of priority:

8           “(1) The first assistant to the office of such of-  
9           ficer, as of the date on which the vacancy arises,  
10          shall perform those functions and duties temporarily  
11          in an acting capacity subject to the time limitations  
12          of section 3346.

13           “(2) If, as of the date on which the vacancy  
14          arises, the office of the first assistant described in  
15          paragraph (1) is vacant, the President shall direct  
16          an individual who, as of that date, is serving in a  
17          position at that Executive agency and for which ap-  
18          pointment is required to be made by the President,  
19          by and with the advice and consent of the Senate,  
20          to perform those functions and duties temporarily in  
21          an acting capacity subject to the time limitations of  
22          section 3346.

23           “(3) If, as of the date on which the vacancy  
24          arises, there is no individual described in paragraph  
25          (2) serving at the Executive agency, the President

1 shall direct another officer or employee of such Ex-  
2 ecutive agency to perform those functions and duties  
3 temporarily in an acting capacity, subject to the  
4 time limitations of section 3346, if—

5 “(A) during the 365-day period preceding  
6 the date of death, resignation, or beginning of  
7 inability to serve of the applicable officer, the  
8 officer or employee served in a position in such  
9 Executive agency for not less than 90 days; and

10 “(B) the rate of pay for the position de-  
11 scribed in subparagraph (A) is equal to or  
12 greater than the minimum rate of pay payable  
13 for a position at GS-15 of the General Sched-  
14 ule.

15 “(4) If, as of the date on which the vacancy  
16 arises, no officer or employee described in paragraph  
17 (3) is serving at the Executive agency, the President  
18 shall direct an individual who, as of that date, is  
19 serving in a position for which appointment is re-  
20 quired to be made by the President, by and with the  
21 advice and consent of the Senate, at a different Ex-  
22 ecutive agency than the Executive agency to which  
23 the original vacancy relates to perform those func-  
24 tions and duties temporarily in an acting capacity  
25 subject to the time limitations of section 3346.”; and

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

2 “(d)(1) In this subsection, the term ‘rule’ has the  
3 meaning given the term in section 551.

4 “(2) Except as provided in paragraph (3), notwith-  
5 standing any other provision of law, an Executive agency  
6 with respect to which the head is an individual who is serv-  
7 ing temporarily in an acting capacity under this section  
8 may not rescind a rule that the agency issued while the  
9 head of the agency was an individual who had been ap-  
10 pointed by the President, by and with the advice and con-  
11 sent of the Senate.

12 “(3) Paragraph (2) shall not apply to an Executive  
13 agency during the period in which the nomination of a  
14 person for appointment to the position of head of that  
15 agency is pending in the Senate.”; and

16 (2) in section 3346—

17 (A) in subsection (a)—

18 (i) in paragraph (1), by striking  
19 “210” and inserting “60”; and

20 (ii) in paragraph (2)—

21 (I) by striking “subject to sub-  
22 section (b)”; and

23 (II) by striking “first or second”;

24 (B) by striking subsection (b);

1                   (C) by redesignating subsection (c) as sub-  
2                   section (b); and

3                   (D) in subsection (b), as so redesignated,  
4                   by striking “210-day” and inserting “60-day”.