

(Added Pub. L. 89-554, §4(c), Sept. 6, 1966, 80 Stat. 618.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	28 U.S.C. 504(c).	[None].

1948 ACT

Prior section 504.—Based on section 315 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees, title 28, U.S.C., 1940 ed., §482, and sections 643 and 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (R.S. §§366, 769; June 24, 1898, ch. 495, §1, 30 Stat. 487; Apr. 12, 1900, ch. 191, §34, 31 Stat. 85; Apr. 30, 1900, ch. 339, §86, 31 Stat. 158; Mar. 3, 1909, ch. 269, §1, 35 Stat. 838; Jan. 7, 1913, ch. 6, 37 Stat. 648; Mar. 2, 1917, ch. 145, §41, 39 Stat. 965; Mar. 4, 1921, ch. 161, §1, 41 Stat. 1412; July 9, 1921, ch. 42, §313, 42 Stat. 119; Feb. 12, 1925, ch. 220, 43 Stat. 890; Apr. 17, 1930, ch. 174, 46 Stat. 170; Mar. 26, 1938, ch. 51, §2, 52 Stat. 118).

Section consolidates parts of sections 315 of title 5, U.S.C., 1940 ed., and 643 and 863 of title 48, both U.S.C., 1940 ed., with section 482 of title 28, U.S.C., 1940 ed. It is recommended that said section 315 be amended so as to omit those provisions relating to special attorneys to assist “district attorneys” which were used as part of the basis for this section, as other parts of said section 315, relating to special assistants to the Attorney General, and to foreign counsel, are to remain in title 5.

Words “United States attorney” were substituted for district attorney, and reference to District of Columbia was omitted. (See reviser’s note under section 501 [now 541] of this title.)

Reference to the territories in said section 482, was also omitted as covered by provisions of title 48, U.S.C., 1940 ed., Territories and Insular Possessions. See sections 109 and 112 of such title applicable to United States attorney in Alaska, and 1353 applicable in the Canal Zone, and 1405y applicable in the Virgin Islands.

The provision as to the tenure of the assistant United States attorneys and special attorneys is new. Existing law contains no provision as to tenure or removal of such officials. While the Supreme Court has held that the power of removal of executive officials is incident to the power of appointment, this section expressly provides for removal. See *Meyers v. United States*, 1926 (47 S.Ct. 21, 272 U.S. 52, 71 L.Ed. 160).

Said section 315 contained a provision that special attorneys appointed to assist United States attorneys should take the same oath required of the latter. This section was extended to assistant United States attorneys, respecting whom no provision existed as to oaths.

A portion of section 863 of title 48, U.S.C., 1940 ed., is retained in said title 48. For remainder of said section 863, see Distribution Table. Other provisions of section 643 of such title are incorporated in sections 133, 501 [now 541], and 541 [see 561] of this title.

Other changes were made in phraseology.

Editorial Notes

PRIOR PROVISIONS

A prior section 544, acts June 25, 1948, ch. 646, 62 Stat. 911; Sept. 2, 1958, Pub. L. 85-856, 72 Stat. 1104, related to bonds of United States marshals, prior to repeal by Pub. L. 89-554, §8(a), and reenactment in section 564 of this title by section 4(c) of Pub. L. 89-554.

§ 545. Residence

(a) Each United States attorney shall reside in the district for which he is appointed, except that these officers of the District of Columbia, the Southern District of New York, and the

Eastern District of New York may reside within 20 miles thereof. Each assistant United States attorney shall reside in the district for which he or she is appointed or within 25 miles thereof. The provisions of this subsection shall not apply to any United States attorney or assistant United States attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district. Pursuant to an order from the Attorney General or his designee, a United States attorney or an assistant United States attorney may be assigned dual or additional responsibilities that exempt such officer from the residency requirement in this subsection for a specific period as established by the order and subject to renewal.

(b) The Attorney General may determine the official stations of United States attorneys and assistant United States attorneys within the districts for which they are appointed.

(Added Pub. L. 89-554, §4(c), Sept. 6, 1966, 80 Stat. 618; amended Pub. L. 95-530, §1, Oct. 27, 1978, 92 Stat. 2028; Pub. L. 96-91, Oct. 25, 1979, 93 Stat. 700; Pub. L. 103-322, title XXXII, §320932, Sept. 13, 1994, 108 Stat. 2135; Pub. L. 109-177, title V, §501(a), Mar. 9, 2006, 120 Stat. 246.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	28 U.S.C. 505.	[None].

In subsection (a), the word “shall” is substituted for “must”. The word “thereof” is substituted for “of the District”.

1948 ACT

Prior section 505.—Based on title 28, U.S.C., 1940 ed., §524 (June 20, 1874, ch. 328, §2, 18 Stat. 109; May 28, 1896, ch. 252, §§8, 12, 29 Stat. 181, 183; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 14, 1941, ch. 203, §§1, 2, 55 Stat. 251).

The provisions of section 524 of title 28, U.S.C., 1940 ed., that the United States attorney shall give his personal attention to the duties of his office and declaring the office of United States attorney vacant upon his removal from his district or neglect of duty, were omitted as unnecessary and inconsistent with section 507(b) [now 519] of this title, charging the Attorney General with the duty of supervising the United States attorneys in the performance of their duties.

The provision permitting the United States attorney and his assistants to reside within twenty miles of the District of Columbia was added because of the relatively small and congested area of the District, as a result of which few Federal officers are appointed from the District or reside therein. Also the residence requirement of this section has no relation to domicile or voting residence nor does it affect the citizenship or residence status of District of Columbia officeholders in the several States from which appointed.

Only citizens of Hawaii resident therein at least 3 years preceding appointment may be appointed as United States Attorneys for the district of Hawaii. See section 501 [now 541] of this title.

Other provisions of section 524 of title 28, U.S.C., 1940 ed., were incorporated in sections 541 [see 561] and 751 of this title.

Changes were made in phraseology.

Editorial Notes

PRIOR PROVISIONS

A prior section 545, act June 25, 1948, ch. 646, 62 Stat. 911, related to vacancies in the office of the United

States Marshal, prior to repeal by Pub. L. 89-554, §8(a), and reenactment in section 565 of this title by section 4(c) of Pub. L. 89-554.

1948 ACT

Prior section 506.—Based on title 28, U.S.C., 1940 ed., §511 (R.S. §793; June 24, 1898, ch. 495, §2, 30 Stat. 487; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167).

Words “United States attorney” were substituted for “district attorney.” (See Reviser’s Note under section 501 [now 541] of this title.)

Words “The Supreme Court of the Territory, and the district court of the United States for the District of Columbia” were omitted as obsolete. This section, as revised, applies to all districts enumerated in chapter 5 of this title. There were no provisions respecting vacancies in Hawaii and Puerto Rico. Therefore this section remedies this situation and establishes a uniform method to fill interim vacancies.

Words “and a copy shall be entered on the journal of the court” after “filed in the clerk’s office of said court”, in section 511 of title 28, U.S.C., 1940 ed., were omitted as unnecessary.

The provisions of section 511 of title 28, U.S.C., 1940 ed., relating to marshals, are incorporated in sections 544 and 545 [see Prior Provisions notes under those sections] of this title.

Changes were made in phraseology.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-177 inserted at end “Pursuant to an order from the Attorney General or his designee, a United States attorney or an assistant United States attorney may be assigned dual or additional responsibilities that exempt such officer from the residency requirement in this subsection for a specific period as established by the order and subject to renewal.”

1994—Subsec. (a). Pub. L. 103-322 struck out “and assistant United States attorney” after “Each United States attorney” and inserted after first sentence “Each assistant United States attorney shall reside in the district for which he or she is appointed or within 25 miles thereof.”

1979—Subsec. (a). Pub. L. 96-91 inserted provisions authorizing the United States attorney and the assistant United States attorneys for the Eastern District of New York to reside outside the district but within 20 miles thereof.

1978—Subsec. (a). Pub. L. 95-530 inserted provision that this subsection not apply to any United States attorney or assistant United States attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-177, title V, §501(b), Mar. 9, 2006, 120 Stat. 246, provided that: “The amendment made by subsection (a) [amending this section] shall take effect as of February 1, 2005.”

§ 546. Vacancies

(a) Except as provided in subsection (b), the Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant.

(b) The Attorney General shall not appoint as United States attorney a person to whose appointment by the President to that office the Senate refused to give advice and consent.

(c) A person appointed as United States attorney under this section may serve until the earlier of—

(1) the qualification of a United States attorney for such district appointed by the President under section 541 of this title; or

(2) the expiration of 120 days after appointment by the Attorney General under this section.

(d) If an appointment expires under subsection (c)(2), the district court for such district may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.

(Added Pub. L. 89-554, §4(c), Sept. 6, 1966, 80 Stat. 618; amended Pub. L. 99-646, §69, Nov. 10, 1986, 100 Stat. 3616; Pub. L. 109-177, title V, §502, Mar. 9, 2006, 120 Stat. 246; Pub. L. 110-34, §2, June 14, 2007, 121 Stat. 224.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	28 U.S.C. 506.	[None].

Editorial Notes

PRIOR PROVISIONS

A prior section 546, act June 25, 1948, ch. 646, 62 Stat. 911, related to death of a marshal, prior to repeal by Pub. L. 89-554, §8(a), and reenactment in section 566 of this title by section 4(c) of Pub. L. 89-554.

AMENDMENTS

2007—Subsecs. (c), (d). Pub. L. 110-34 added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows: “A person appointed as United States attorney under this section may serve until the qualification of a United States Attorney for such district appointed by the President under section 541 of this title.”

2006—Subsecs. (c), (d). Pub. L. 109-177 added subsec. (c) and struck out former subsecs. (c) and (d) which related to length of service of a United States attorney appointed under this section and appointment of a United States attorney by a district court after expiration of a previous appointment, respectively.

1986—Pub. L. 99-646 amended section generally. Prior to amendment, section read as follows: “The district court for a district in which the office of United States attorney is vacant may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-34, §3, June 14, 2007, 121 Stat. 224, provided that:

“(a) IN GENERAL.—The amendments made by this Act [amending this section] shall take effect on the date of enactment of this Act [June 14, 2007].

“(b) APPLICATION.—

“(1) IN GENERAL.—Any person serving as a United States attorney on the day before the date of enactment of this Act [June 14, 2007] who was appointed under section 546 of title 28, United States Code, may serve until the earlier of—

“(A) the qualification of a United States attorney for such district appointed by the President under section 541 of that title; or

“(B) 120 days after the date of enactment of this Act.

“(2) EXPIRED APPOINTMENTS.—If an appointment expires under paragraph (1), the district court for that district may appoint a United States attorney for that district under section 546(d) of title 28, United States Code, as added by this Act.”