

**Who is Chair of the Federal Reserve Board when the position is vacant?**  
**The law provides for a Chair pro tempore selected by the Board itself**

Scott G. Alvarez  
Former General Counsel  
Board of Governors of the Federal Reserve System

The Chair of the Federal Reserve Board is considered by many to be one of the most powerful officials in Government. Financial markets move when the Chair speaks, Congress seeks the Chair's insights and advice regarding the economy, and the press and the public follow the Chair's every word. It is not unusual for a Fed Chair to be stopped by folks seeking autographs and selfies. Being Chair of the Board is certainly a prestigious and influential position.

But what happens if the term of the Chair expires without a duly invested replacement and there is, consequently, no Chair? The Board's legal obligations and its legal ability to fulfill the many duties assigned by statute are not reduced or inhibited in any way by the lack of a Chair of the Board. The Board must and may continue to act to set and implement monetary policy, review bank mergers, supervise banking organizations and carry out its other duties assigned to it by law.

The current Fed Chair, Jerome Powell, has said that, if his term as Chair expires without a presidentially selected and Senate confirmed replacement, he expects to continue to serve as Chair pro tempore until a new Chair is duly appointed in accordance with the Federal Reserve Act. That is an unassailable legal position.

The Chair of the Board of Governors of the Federal Reserve System has only a few responsibilities assigned by statute.<sup>1</sup> Importantly, the Chair has no

---

<sup>1</sup> By statute, the Chair presides over meetings of the Board, and--subject to the supervision of the full Board--is the active executive officer for the Board. 12 USC 242. The Chair is required to testify twice each year regarding the economy and the policies and actions of the Board and the FOMC to meet monetary policy objectives established by Congress. 12 USC 225b. The Chair has authority to call meetings of the FOMC (as do any three members of the FOMC). 12 USC 263. The Chair is also responsible for selecting the Inspector General for the Board and the CFPB. 5 USC 415(c). As explained below, the Chair conducts other functions that are assigned by the Board to the Chair.

unilateral policy-making or rulemaking authority.<sup>2</sup> Rather, the key to the prestige and influence of the position is largely based on the leadership skills and intellectual talents of the person named to the position, and from the authority granted by the Board to the Chair to speak on behalf of the Board. And, if elected by the FOMC to be Chair of that body, to speak for the FOMC.<sup>3</sup> While individual Governors often speak their own minds on monetary, regulatory or other policy, the public need for a single voice to speak for a Board and a Committee comprised of many voices has caused the public to focus on one voice—the Chair—to make sense of policy directions, decisions, and sometimes other conflicting voices.

The legal responsibilities of the Board of Governors and its Chair are mostly contained in the Federal Reserve Act (FRA). The FRA establishes a Board of Governors comprised of seven members (called Governors) who are appointed by the President, by and with the consent of the Senate. Members of the Board are appointed for 14-year terms, staggered so that only one term expires every second year.<sup>4</sup> By statute, a Governor may be removed only by the President and only for cause.<sup>5</sup> The Chair, and two Vice Chairs (one of which is the Vice Chair for Supervision), are also appointed by the President and also require the advice and consent of the Senate.<sup>6</sup> The Chair and Vice Chairs must be selected from among the sitting members of the Board of Governors and serve in those positions for terms of four years.<sup>7</sup>

So what happens if there is no Chair?

It is natural to look to the Vice Chair to fill the role of Chair. Indeed, the FRA provides that, in the “absence” of the Chair, the Vice Chair of the Board is authorized to preside at Board meetings.<sup>8</sup> But the term “absence” has generally been read to cover only situations when, for example, the Chair is unable to attend

---

<sup>2</sup> 12 USC 248.

<sup>3</sup> The FOMC chooses its own Chair from among its members. While the FOMC has traditionally chosen the Chair of the Board to also be the Committee Chair, that is not required by law and the Committee may choose any of its members—which by law include all members of the Board and five Presidents of Reserve Banks determined by statute--to be FOMC Chair.

<https://www.federalreserve.gov/frs/rules/section-3-chair-and-vice-chair.htm>

<sup>4</sup> 12 USC 241, 242.

<sup>5</sup> 12 USC 242.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> 12 USC 244.

the Board meeting due to illness or another temporary absence, and not to cover a “vacancy” in the position of the Chair.

Moreover, the FRA makes no further mention of duties of the Vice Chair and does not authorize the Vice Chair of the Board to automatically take on any other duties of the Chair, unlike in some other Federal statutes that provide that the Vice Chair of a Board or Commission might act as Chair in all respects in the absence or vacancy of a Chair.<sup>9</sup> And the one duty assigned to the Vice Chair under the FRA—to preside over meetings of the Board in the “absence” of the Chair—is strictly ministerial.

Because the FRA does not provide for a robust Vice Chair in the event the Chair’s term has expired without a duly appointed replacement, the Board has in the past followed several paths to address a vacancy in the Chair position. In several instances, the Chair has simply carried on without any action until the new Chair is duly appointed, confirmed and installed.<sup>10</sup> Indeed, the Board’s Legal Division has long advised that a Board member may continue to act in the position of the Chair after the expiration of their term as Chair based on the “holdover” provision of the FRA.<sup>11</sup> Section 10(2) of the FRA provides that “[u]pon the expiration of their terms of office, members of the Board shall continue to serve until their successors are appointed and have qualified.”<sup>12</sup> This provision is broadly worded and is contained in the same provision that provides for the appointment and terms of office of the Chair. It provides a strong basis for a Board Chair to hold over once their term as Chair has expired until a new Chair is duly appointed and installed.

The Board has on several occasions relied on a combination of the “holdover” provision and Board action to confirm the selection of one of its members (always the Chair whose term as Chair has expired) to exercise the duties

---

<sup>9</sup> See, e.g., 16 USC 792 (Federal Power Commission).

<sup>10</sup> For example, in August 1987, Chair Paul Volcker carried on the duties of the Chair until the installation of Alan Greenspan, some 5 days from the expiration of Volcker’s term as Chair.

<sup>11</sup> See Letter to Marriner S. Eccles, from J.P Dreibelbis, July 17, 1939, at <https://fraser.stlouisfed.org/archival-collection/marriner-s-eccles-papers-1343/letter-mr-eccles-465981>; See also Chairmanship of the Federal Reserve Board, 124 Congressional Record – Senate at 4416 (February 23, 1978) (Board of Governors Staff Opinion). <https://www.congress.gov/95/crecb/1978/02/23/GPO-CRECB-1978-pt4-2-1.pdf>

<sup>12</sup> 12 USC 242. See Chairmanship of the Federal Reserve Board, 124 Congressional Record – Senate at 4416 (February 23, 1978) (Board of Governors Staff Opinion). <https://www.congress.gov/95/crecb/1978/02/23/GPO-CRECB-1978-pt4-2-1.pdf>

of a Chair pro tempore until the new (or often the same) Chair is legally installed with a fresh four-year term.<sup>13</sup>

The authority of the Board to select one of its members to carry on the duties of the Chair as Chair pro tempore is clear and unassailable. The FRA specifically grants the Board authority to delegate any of its functions (other than monetary and credit policymaking and rulemaking functions that must be handled by the Board itself) to any member of the Board and to certain others.<sup>14</sup> The Board uses this authority to delegate and prescribe the duties of the Chair in supervising the organization and its staff. However, the Board has retained final authority over major decisions regarding the organization and overall staffing of the Board, such as creation of new officer positions, the appointment of new officers, the salary structure for Board staff, overall budget decisions, and delegations of authority to staff and Federal Reserve Banks, which are made by vote of the full Board—not by the Chair unilaterally.<sup>15</sup>

Thus, without a duly appointed Chair, selected by the President with the advice and consent of the Senate, the Board itself is fully authorized by the FRA to vote to delegate to a member of the Board any or all of the duties of the Chair. That includes speaking for the Board and explaining the policies and decisions taken by the Board.<sup>16</sup>

The position that the President may unilaterally appoint a Chair pro tempore is no longer legally supportable. In early 1978, the Office of Legal Counsel (OLC) of the DOJ considered the narrow question whether a sitting Chair could “holdover” in the position as Chair after expiration of the Chair’s term—that is, continue to act as Chair without any action by the Board or the President. The

---

<sup>13</sup> For example, the Board elected Alan Greenspan to serve as Chair pro tempore from the expiration of his term as Chair on March 2, 1996, until he was again duly appointed and confirmed as Chair on June 20, 1996. Similarly, Jerome Powell was elected by the Board as Chair pro tempore from the expiration of his first term as Chair on February 4, 2022, until his appointment and confirmation to a new term as Chair on May 23, 2022.

<sup>14</sup> 12 USC 248.

<sup>15</sup> The FRA assigns authority to the Board as a whole—not the Chair—to hire staff and set staff salaries, to construct and maintain its offices, and to assess the Reserve Banks for its expenses. See 12 USC 243, 244. The Board, in turn, may delegate these functions to the Chair. 12 USC 248.

<sup>16</sup> It is up to the House of Representatives and the Senate to determine, in the event that there is no duly appointed and confirmed Chair, who these respective bodies will accept to provide the semi-annual report on the economy.

OLC took the view that the Chair could not holdover and, consequently advised that the President “should” appoint a Chair pro tempore.<sup>17</sup>

While the OLC opinion fails to cite authority for its recommendation that the President should select a Chair pro tempore, it likely was relying on the state of the law at the time the advice was given. At the time the OLC reviewed the President’s authority in 1978, the FRA granted the President unilateral authority to select a Chair of the Board of Governors from among its members. However, the FRA was changed, effective beginning in 1979, to eviscerate the basis for that authority.<sup>18</sup> Beginning in 1979, Congress revoked the unilateral authority of the President to select the Board Chair and required that the selection of Board Chair be made by the President only with the advice and consent of the Senate.<sup>19</sup>

This change in the FRA is critically important to the decision on how the Federal Reserve will be governed in the event the position of Chair becomes vacant today.<sup>20</sup> Several recent Federal court decisions have found that, absent clear congressional authorization, neither the US Constitution nor other law appears to authorize the President to unilaterally appoint an acting member or acting chair of an agency where either the US Constitution or Congress has required the President to obtain the advice and consent of the Senate for the original appointment, as is the case with the Federal Reserve Board members and the Fed Chair.<sup>21</sup> Thus, the

---

<sup>17</sup> <https://www.justice.gov/olc/opinion/status-chairmanship-federal-reserve-board-if-president%E2%80%99s-nominee-has-not-been-confirmed>

<sup>18</sup> See Pub. L. 95-188, Title II, section 204(a); 91 Stat. 1888.

<sup>19</sup> 12 USC 242.

<sup>20</sup> In 1983, President Reagan was advised that he could make an emergency selection of a Fed Chair pro tempore for a period measured in weeks, not months. Importantly, that advice was provided not by the DOJ, but by the President’s White House counsel and considered only the legal question whether the Fed Chair could “holdover” as Chair—not whether the Board could delegate the functions of the Chair to a member of the Board. While that opinion noted the OLC’s 1978 opinion, it did not take account of the important change in the law that became effective in 1979 after the OLC opinion was drafted. In the end, the President did not act on the White House counsel’s advice and Chair Volcker did in fact holdover as Chair for several days pending confirmation of his replacement, Alan Greenspan.

<https://www.reaganlibrary.gov/public/digitallibrary/smf/counsel/roberts/box-025/40-485-6908381-025-021-2017.pdf>.

<sup>21</sup> See Aviel v. Gor, 780 F. Supp. 3d 1 (DDC, 2025); Aviel v Gor, No. 25-5105, 2025 WL 1600446 (DC Cir, June 5, 2025) (Katsas, concurring) (Rao, dissenting); Rural Development Innovations Limited v. Marocco, No. 25-1631, 2025 WL 1807818 (DDC, July 1, 2025) and (DDC, March 13, 2026); and Perlmutter v Blanche, No. 25-5285, 2025 WL 2627965 (DC Cir, Sept 10, 2025). See also Williams v Phillips, 360 F.Supp 1363 (DC Cir. 1973)(holding that the

current provisions of the FRA and relevant court precedents would seem to leave little doubt that the President may not legally choose an acting Fed Chair without the advice and consent of the Senate.

While the President may not legally fill a gap in the position of Fed Chair without approval of the Senate, the FRA provides a strong basis for filling the gap. Under the terms of the FRA, the Chair may holdover temporarily as Chair until a new Chair is duly appointed by the President and confirmed by the Senate. In addition—or in tandem—the Board may exercise its broad and express authority under the FRA to delegate its organizational and other functions (other than rulemaking and monetary and credit policy decisions) to any member of the Board, allowing the Board to choose its own Chair pro tempore to fill the gap in handling the duties of the Chair in the event the position is vacant. These legal authorities are clearly provided by statute and not in doubt. And combining these two authorities allows the Board members by vote to remove uncertainty about the organization of the Federal Reserve Board and adds force to the statements and actions of the Board’s Chair pro tempore.

---

President may not evade a Senate confirmation requirement through a temporary appointment and noting that, if the US Constitution or the Congress has by implication provided the President authority to make appointments without Senate confirmation, that authority may be exercised only in an emergency and for short periods measured in weeks, not months).