

UNRAVELING THE MYSTERIES OF THE U. S. CODE

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1. What is a code of law and why do we need them?

A code of law is a private or official compilation of all permanent laws in force consolidated and classified according to subject matter (Black's Law Dictionary). We need codes of law to figure out what the current (or past) law is on a particular subject matter. Usually only general and permanent matters are placed in a code of law.

2. What is the difference between law that is general and permanent and law that is not?

Laws dealing with local matters, like name changes to public buildings, and matters that are in effect for a short period of time, like annual appropriations, are not general and permanent and thus are not placed in the U.S. Code.

3. In a code of law what is the difference between positive law and prima facie evidence of the law?

Positive law titles of a Code have been enacted with prior laws being repealed. They are "legal evidence" of the law in most courts. Titles of a Code that are prima facie ("on the face") evidence of the law have not been enacted but were compiled by codifiers and are rebuttable evidence of the law. In cases of inconsistency the individual enacted statutes prevail. On the inside cover of the U.S. Code is a list of titles with an asterisk beside those titles that are positive law titles. See also detailed listing at llsdc.org.

4. If the Revised Statutes (of 1873 and 1878) was the first codification of U.S. law is it still in force today and is it positive law or prima facie evidence of the law?

Some of the Revised Statutes is still in force today and is cited as a source statute to various sections of the U.S. Code whose titles have not been enacted into positive law. The 1878 edition of the Revised Statutes corrected errors and incorporated amending statutes enacted after December 1, 1873. The added statutory material is considered prima facie evidence of the law, but as a practical matter the entire 1878 substitute edition of the Revised Statutes is generally accepted as a source statute.

5. What led up to the creation of the U.S. Code in 1926 and what role did the West Publishing Company have in its creation?

Some events leading up to the creation of the U.S. Code included the deficiency of Congress in amending and supplementing the 70 title Revised Statutes; the publication of unofficial codes of law by private publishers; the 60 title code of law by Representative E.C. Little, chair of the House Committee on Revision of Laws, introduced and passed by the House in three separate Congresses (66th, 67th, and 68th); and finally the 1925 employment of the West Publishing and Edward Thompson companies to compile a 50 title Code using Little's work and others as a basis.

6. Why did Congress not enact the U.S. Code into positive law and have errors been found in the Code?

On April 12, 1926, in the 69th Congress, the House passed H.R. 10000, which would enact the U.S. Code into positive law and repeal most prior laws in force as of December 7, 1925 (the start of the 69th Congress), but only make it effective after June 30, 1927. Before that time the Code would be prima facie evidence of the law with enough time, hopefully, to correct any new errors found. However, because of likely errors in the law, the Senate amended H.R. 10000 so that it would only be prima facie evidence of the law. The bill was signed by the President on June 30, 1926 (Pub. L. No. 69-440, 244 Stat. Part 1). 537 errors were later found and corrected; 88 of them errors of substance.

7. Who compiles the U.S. Code and assigns new Code cites to laws, and, after 80 years of the Code, why haven't all the titles of the U.S. Code been enacted into positive law?

Since 1975, the U.S. Code has been compiled by the Office of Law Revision Counsel, an independent office in the U.S. House of Representatives with some 18 staff members. Currently about 3 full time attorneys, out of 13 in the Office, prepare and revise new titles for codification. To revise and codify non-positive law titles of the U.S. Code generally requires years of preparation. It is, of course, helpful if a title remains somewhat fixed in time and that there be sufficient attorneys with expertise. The Office also assigns Code classifications to new statutes and prepares new editions and supplements to the U.S. Code.

8. Why doesn't the Government Printing Office publish the U.S. Code annually instead of every six years?

Pursuant to a 1928 law new editions of the "Code of Laws of the United States" shall not be published oftener than once in each five years and the practice became once every six years with cumulative supplements in between. See 1 USC §202(c).

9. How many titles of the U.S. Code have been enacted into positive law and are there any substantive changes in them to what was there previously?

Beginning in 1947, specific titles of the U.S. Code have been revised, codified and enacted into law by Congress while repealing prior law. Currently, 23 titles (about half) of the Code have been enacted into positive law without any intended (usually) substantive changes. However, because statutes have to be grouped together and made consistent with one another, a considerable amount of editing is done and sometimes what appears to be a substantive change is made, like in compiling one general definition section to apply to what were formerly different statutes.

10. Is Title 26 of the U.S. Code, the Internal Revenue Code, positive law, and if not, do I still have to pay Federal income taxes?

Title 26 of the U.S. Code has not been revised, codified and enacted into positive law per se. However, the Internal Revenue Code of 1939 and the Internal Revenue Code of 1954 (now called the Internal Revenue Code of 1986 per the Tax Reform Act of 1986) were enacted into positive law, and unlike other non-positive law Titles of the USC each section of Title 26 exactly matches those of the Internal Revenue Code. Anyone who presumes to ignore the law or advises others to do so does so at their own peril.

11. How are new statutes added or assigned to parts of the U.S. Code?

Many statutes just amend other statutes and state which part of the U.S. Code is being amended or added to. New laws may also be assigned by the Law Revision Counsel as an added chapter or subchapter of a non-positive law title of the Code. The sections of the Code frequently follow the numeric order of sections of the new statute. Usually the later chapters in a USC title reflect laws enacted recently. However, new sections to related laws are also assigned to related sections even when the next number is unavailable. So one gets a Section 2a or a Section 77kkk.

12. Why are some statutory sections placed in the note area of some U.S. Code sections and are they then just as valid?

Statutory "Congressional findings," mandated studies, and official popular names to laws are often placed in the note area of a related section of a non-positive title of the U.S. Code. Also, substantive statutory material are often placed in the note area of a closely related section of a positive law title of the Code (and sometimes a non-positive law title) rather than its own section since Congress did not actually amend the title (or perhaps the Act the Code section pertains). But, regardless of where a statute is placed in the U.S. Code, if the statute is valid law, then the note reflecting it is as well.

13. **Why do some positive law titles of the U.S. Code have appendices and are these appendices positive law?**
The Law Revision Counsel may add an appendix to a positive law title of the U.S. Code because a particular new law may be closely related to the subject matter of the title, but Congress never amended the title to incorporate it. The Ethics in Government Act, for instance, is in an appendix to Title 5. The statute is positive law, but not the appendix.
14. **How do I find if recent laws have amended a specific section of the U.S. Code?**
The Office of the Law Revision Counsel maintains a table listing sections of the Code affected by recent laws so that you can find out if a new law affected a Code section of your interest or where a new statute section is assigned (<http://uscode.house.gov>).
15. **Where can I find legislative histories or reviser notes to revised and codified titles of the U.S. Code?**
Reviser notes and citations to former sections of the U.S. Code are generally included in the note area following each section of a positive law title of the Code except for Titles 1, 2, 4, and 9. The reviser notes are usually excerpts from the House Judiciary Committee report (the primary legislative history to a revised title) accompanying the legislation to codify and enact a title. The reviser note will also indicate how the section was revised (words omitted, words substituted, etc.).
16. **How do I find where a former section of the Code is now located in a revised, codified title of the Code?**
Table I of the U.S. Code and the U.S. Code Service table volume contains a list of former sections of the Code and their location in the revised titles of the Code. An applicable table is also set out at the beginning of each title of the U.S. Code (and the U.S.C.S. and U.S.C.A.) that has been enacted into positive law. The text of those former sections must generally come from earlier editions of the U.S. Code. See Table I link at llsdc.org
17. **If I have a citation to a section of an old public law how can I find out where it was placed in the U.S. Code?**
Table III of the U.S. Code and the U.S. Code Service and Table 2 of the U.S. Code Annotated contains a chronological list of statutes and their sections (including added sections in later amendments to that public law) and where they have been classified in the U.S. Code. Laws that have been subsequently revised and codified into a positive law title will show the former sections of the Code not the revised ones. See also Table III link at llsdc.org/statutes-code/. The complexity of trying to ascertain the current citation and reading of a section of a law that may have been amended many times is one of the principal reasons the U.S. Code was created.
18. **How can I find the text to Presidential executive orders laid out in the U.S. Code?**
The text of Presidential executive orders that are considered general and permanent and have not been superseded are all laid out in the note area of a related section of the U.S. Code. Those that have been superseded will only be noted and those that have been amended will be laid out as amended. Table IV of the U.S. Code and the U.S. Code Service (and Table 3 of the U.S.C.A.) shows in what section an executive order can be found and whether it was superseded or revoked. See Tab. IV at llsdc.org
19. **If a revised, codified, and enacted title of the U.S. Code omits certain provisions of a statute, is that statutory provision still valid law?**
Omitted parts of a statute that are considered unnecessary by the codifiers but have not been specifically repealed within the law enacting a positive law title of the Code (or elsewhere), are still valid law. Courts have generally stated that it is not to be inferred that Congress intended substantive or minor changes in a law unless it is clearly stated in the codified law or in a reviser's note. See related decisions at 1 U.S.C.A. / U.S.C.S. § 204 and also U.S. Code Historical Outline and Explanatory Notes on llsdc.org.

20. How can I figure out which law made a specific change to a certain section of the U.S. Code that may have been amended many times?

Generally, the note area after each section of the U.S. Code contains notes on amendments to that section made by each applicable public law in reverse chronological order (U.S.C.S. has it in chronological order). The notes will sometimes explain how the section or subsection was amended or at least what law added a specific subsection. These notes only go back as far as the 1926 U.S. Code or as far back as the law that enacted a title into positive law.

21. Why do some provisions in annual appropriations law get placed in the U.S. Code and how do they decide?

Because of the wording of a statute, like the word "hereafter," some provisions of an appropriations law are considered general and permanent and are placed in the U.S. Code. This may be true, for instance, of some sections of the "general provisions" enacted each year that speak of funds being or not being available for certain purposes. If funds are not spoken of and if it is clear that something new is being permanently established than that provision will normally be added to the U.S. Code.

22. Where can I find an up-to-date version of the U.S. Code like the up-to-date version of the Code of Federal Regulations, e-CFR, on GPO Access?

Unlike e-CFR, there is no "really" up-to-date version of the U.S. Code which incorporates into its text all changes made in recent public laws. LexisNexis, Westlaw, and other electronic services do a reasonably quick job, but even they may be weeks behind depending on the volume of laws to process. However, many online commercial services will quickly show portions of recent statutes affecting a U.S. Code section. The Law Revision Counsel's online U.S. Code, which is the source for versions on GPO Access, Cornell Law, and Findlaw, has most titles of its ASCII & PDF files up-to-date within a half year to two years with lower numeric ordered titles completed first.

23. What are the kinds of things that are included in the note area after sections of the U.S. Code?

The note area after each section of the official U.S. Code always gives statutory source citations, however, chapter numbers not public law numbers are used before 1957. In addition, the note area may also provide reviser notes for positive law sections, as well as amendment notes for sections that have been amended; explanations or references to notes in the text; cross references to other sections mentioning that section (however, this will no longer be the case after the 2000 edition); effective date notes; short title notes; mandated study notes (not after February 2004 for one time studies); statutory provision notes; and the text of related executive orders.

24. What are some of the ways that the U.S. Code (USC), the U.S. Code Annotated (USCA - West), and the U.S. Code Service (USCS - LexisNexis) differ from one another?

The USCS differs from both the official USC and the USCA by being very attentive to preserving the original language of a statute ("Act" not "Chapter," etc.) and is more likely to retain questionable material deleted from the USC and the USCA. (like 12 USC § 92, reinstated by the U.S. Supreme Court in 1993). In separate volumes it also has many other materials not included in the other services such as the text of international agreements and federal agency administrative rules of procedure. The USCS also has interpretive notes to court decisions of uncodified statutes, and to treaties, presidential proclamations and congressional resolutions. On the other hand, the USCA contains legislative history references not found in the other two. The index and headings to sections and to notes in both the USCA and USCS may read differently than that of the USC as they are often not part of a statute. Most importantly, the USCA/USCS services include extensive notes to pertinent court decisions on each section in the Code as well as reference notes to applicable CFR sections, ALR cites and other material.