

**THE UNITED STATES CODE—
WHAT IT IS ... WHAT IT ISN'T ... AND WHAT IT COULD BE**

What the Code Is

As the preface of the 2018 Edition of the United States Code states, "[t]he United States Code is the official codification of the general and permanent laws of the United States." The Code was created in 1926 to address the need for an updated, authoritative, and useful consolidation of Federal laws.

Section 1 of the Act of June 30, 1926, ch. 712, provided that the 50 subject-matter titles of the original Code that were set forth in the 1926 Act were "intended to embrace the laws of the United States, general and permanent in their nature." Section 2(a) of that Act went on to provide that the Code was to "establish prima facie" such laws, but that the Code did not repeal or amend any existing law or enact any new law.

The evidentiary status of some portions of the Code began to change with the enactment of the Act of July 30, 1947, ch. 388, 61 Stat. 633, which enacted title 1 of the Code into positive law and repealed the prior laws that had been editorially codified in title 1. 1 U.S.C. 204 continued the approach taken in 1926 that the text of the Code serves to "establish prima facie" the laws that it contained, but also recognized a different standard for titles that have been enacted into positive law:

In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia, and of each State, Territory, or insular possession of the United States—

(a) United States Code.—The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, **establish prima facie** the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: *Provided, however,* That whenever titles of such Code shall have been enacted into positive law the text thereof shall be **legal evidence** of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States. [emphases added]

Since 1947, a total of 27 titles (those marked with an asterisk on the home page) have been enacted into positive law, also repealing the laws which were restated in them. The text of the enumerated sections in those 27 titles is "legal evidence" of the law under 1 U.S.C. 204(a). Text from laws set out as statutory notes under sections of positive law titles and text from laws set

out as sections or statutory notes in any of the other titles of the Code establish the law "prima facie".

What the Code Isn't

The United States Code is not an unofficial version of the law, nor is it merely a digest or synopsis of the law. Pursuant to 2 U.S.C. 285a, "[t]he principal purpose of the Office shall be to develop and keep current an **official** and **positive codification** of the laws of the United States" [emphases added]. The scope of such codification in the Code does not extend to all laws that have ever been enacted and published in the Statutes at Large, even if some of those laws still have ongoing effect. Pursuant to the original mission expressed in 1926, only the general and permanent laws of the United States form the basis of the Code.

With respect to the use of the term "establish prima facie" in 1 U.S.C. 204, the Supreme Court has expressed the view that "the very meaning of 'prima facie' is that the Code cannot prevail over the Statutes at Large when the two are inconsistent." *Stephan v. United States*, 319 U.S. 423, 426 (1943); *United States v. Welden*, 377 U.S. 95, 98 n. 4 (1964). In light of 1 U.S.C. 204, it cannot be maintained that the text of a provision as set forth in the Code is conclusive evidence of the text of such provision. However, such text is presumed to be correct, subject to rebuttal if it is shown to be incorrect.

Moreover, the standard for the text of Code sections in titles that have been enacted into positive law is "legal evidence", thus giving those sections the same evidentiary standard as the Statutes at Large (1 U.S.C. 112). While the possibility of introducing a discrepancy between the Code text and the Statutes at Large is acknowledged, it is a considerable overgeneralization to say that "the Code is not the law". Furthermore, any discrepancies that are found in the Code are corrected both online and in print once they have been pointed out.

What the Code Could Be

In the debate in the House on the passage of the 1926 Act that contained the text of the original Code, Rep. Roy G. Fitzgerald, Chairman of the former House Committee on Revision of the Laws, made it clear that the passage of the Act was only the first step toward the eventual enactment of all titles in the Code as positive law:

[I]t is the hope, as time shows the code to be a correct and complete statement of the law, that there will be more chance of both branches of Congress passing an act which will cause the code officially to supersede and positively repeal all other legislation. ... If this committee, of which I have the honor to be chairman, retains the confidence of the House, it is our intention to present from time to time different titles of this code with real

revisions, so that the obsolete material may be cut out and the law may be stated tersely and clearly. (67 Cong Rec. 12074 (June 26, 1926))

First in the list of the functions of the OLRC, as set forth in 2 U.S.C. 285b(1), is this:

To prepare, and submit to the Committee on the Judiciary one title at a time, a **complete** compilation, restatement, and revision of the general and permanent laws of the United States which conforms to the understood policy, intent, and purpose of the Congress in the original enactments, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections both of substance and of form, separately stated, **with a view to the enactment of each title as positive law**. [emphases added]

The text of Code sections in titles of the Code that have been enacted into positive law has the status of "legal evidence". There are other benefits to positive law codification as well, including an improved organization of the law, the correction of technical errors, reconciliation of contradictory laws, and the ability to amend the Code directly rather than the underlying law that has been included in the Code (see the Positive Law Codification tab on the Code website). With the vision as expressed by Rep. Fitzgerald and 2 U.S.C. 285b(1) still in view, the OLRC continues to pursue multiple projects to create new positive-law titles in the Code and to improve existing titles.

Further Thoughts

Although our discussion of the United States Code and the Statutes at Large could get lost in the niceties of legal presumptions and the evidentiary weight to be accorded certain documents, it is necessary to remind ourselves of why the Code exists at all. In this day and age, it is all too easy to run by the need for an updated, authoritative, and useful consolidation of Federal laws. The United States Code exists to enable the general and permanent provisions of Federal statutory law to be findable and accessible.

For example, let's take one section compiled in the United States Code. Section 1886 of the Social Security Act is classified to the Code at 42 U.S.C. 1395ww. Since its enactment in 1982, that section has been amended over 40 times. Those amendments range from adding whole subsections to the section, to redesignating certain provisions of a subunit of the section as some other subunit and adding additional provisions to it, to a voluminous number of amendments to strike certain language and insert other language at particular places in the section. Requiring a member of the bar or of the general populace to locate all these changes to this section of a law in the thousands and thousands of pages of the Statutes at Large would make access to this

section impractical. And section 1886 of the Social Security Act is only one of tens of thousands of sections compiled in the United States Code.

The point is that an accurate, authoritative, and thoughtful Code is a practical necessity. In 1926, the general and permanent Federal statutory law could be compiled in a single volume. Today, it comprises over 40 volumes. Without the Code, Federal statutory law is inaccessible and unworkable. Oftentimes, technical discussions about the evidentiary weight accorded to various documents and sound bite-driven overstatements about its importance completely ignore this basic fact.