



FOREWORD

The Founding Fathers believed that the quality of a president's appointments had a direct bearing on the nation's survival. "There is nothing I am so anxious about as good nominations," Thomas Jefferson wrote in 1801, "conscious that the merit as well as reputation of an administration depends as much on that as on its measures."

More than 200 years later, the merit and reputation of an administration still depend on the willingness of talented Americans to accept the call to service. The jobs may be stressful, the pay is often less than an appointee could have earned in the private sector, and the public scrutiny is unrelenting, but presidential service is still essential to the nation's survival.

Unfortunately, there is ample evidence that the process for both nominating and confirming talented citizens to presidential service is failing at its most basic tasks. According to research conducted by The Presidential

Appointee Initiative, and available at its website, www.appointee.brookings.org, virtually every measure suggests that the process is on the verge of collapse:

- ★ Delays are increasing. More than half of the 435 senior-level first-term Reagan, Bush, and Clinton administration appointees interviewed by The Presidential Appointee Initiative in 1999-2000 said their appointments took more than five months to complete, compared to just one-sixth of the individuals who served in the Kennedy, Johnson, Nixon, Ford, and Carter administrations.
- ★ Confusion and embarrassment are also increasing. Two-fifths of the Reagan, Bush, and Clinton appointees described the appointments process as confusing, and a quarter called it embarrassing.
- ★ All stages of the process have become more burdensome. The Reagan, Bush, and Clinton appointees said that the process took longer than necessary at every turn, from the president's personal approval of their nomination to final Senate confirmation.

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- ★ Both the executive and legislative branches need to improve their procedures. Nearly half of the Reagan, Bush, and Clinton appointees said the Senate made the process an ordeal, and a third made the same criticism of the White House.

These trends have not gone unnoticed among potential appointees. According to other research conducted by The Presidential Appointee Initiative, America's civic and corporate leaders have been watching the appointments process over the past few years and are troubled by what they read in the press and see in the personal experiences of friends and colleagues. They are, in fact, much more likely to regard the process as confusing, embarrassing, and unfair than those who have actually served in office. They are also more concerned about the way the Senate and the White House approach confirmations, believing that both branches have turned the process into something of an ordeal.

None of this means that talented Americans have lost their willingness to serve. The nation's civic and corporate leaders still see presidential service as both an honor and an opportunity to make a great impact on behalf of their country. Yet, if the spirit of service is still strong, the process

for actually bringing talented citizens into governing now borders on collapse, and must be reformed.

That is why the advisory board of The Presidential Appointee Initiative developed the reform agenda presented here. Some of the reforms could be implemented immediately by executive order, others by simple changes in Senate rules, and still others through legislation. But whether embraced as a package or implemented one at a time, the reforms would help restore a measure of dignity and honor to what is arguably the most important recruitment process the nation has.

The agenda could not have been completed without the commitment of the advisory board's co-chairs, distinguished public servants, former Senator Nancy Kassebaum Baker and former Office of Management and Budget Director Franklin D. Raines, the leadership of Brookings Vice President and Director of Governmental Studies, Paul C. Light, and the wise counsel of G. Calvin Mackenzie, Distinguished Presidential Professor of American Government at Colby College, who guided the development of the reform agenda as adviser to The Presidential Appointee Initiative.

They have all been well served by the staff of The Presidential Appointee Initiative, which is led by its executive director, Sandra Stencel, its associate director, Carole Plowfield, and its support team of Erin Murphy, Michael Hafken, and Suzanne Morse. All deserve our thanks. So does The Pew Charitable Trusts, which provided the generous support to create The Presidential Appointee Initiative.

The opinions expressed here are those of The Presidential Appointee Initiative and its advisory board and do not necessarily reflect the views of The Pew Charitable Trusts.

Michael H. Armacost
President, The Brookings Institution



CO-CHAIRS' INTRODUCTION

For more than a year the staff and advisory board of The Presidential Appointee Initiative have been gathering and analyzing information about the presidential appointments process. Those studies include detailed empirical analysis of past presidential transitions, the history of the appointments process, and the evolution of the Senate confirmation process; a survey of a representative sample of appointees from the Reagan, Bush, and Clinton administrations; and a survey of leading Americans who represent the types of individuals who typically would be considered as candidates for presidential appointments. This has been the most sweeping study and assessment of the presidential appointments process ever undertaken.

From all of those analyses, there now emerges our major enterprise: an agenda for reform. We offer here a small number of recommendations that we believe can substantially improve the process by which candidates for presidential appointments are selected, vetted, and confirmed.

Our research shows that the appointments process is too slow. It is buried in excesses of redundant and unnecessary information. It too often mistreats the very people the federal government must recruit to manage its complex activities.

It doesn't have to be this way. We believe that careful consideration of these proposals can lead to enlightened action by the president and the Senate to fix much of what is wrong with the appointments process.

The urgency of this task could not be greater. Like all of its recent predecessors, the new administration is caught in a morass of outdated and irrational procedures and requirements as it seeks to fill its top ranks. What the Eisenhower and Kennedy administrations were able to complete in a few months will likely take all of President George W. Bush's first year. That's not good enough. We believe that the proposals offered here provide a roadmap for those seeking a way out of the appointments maze. We hope those with

authority to effect these changes will carefully consider our proposals for doing so.

Before turning to the agenda, we wish to express our gratitude to the members of PAI's advisory board, whose names are listed at the end of this report. All of them reviewed and commented on this study. Readers should not presume that every advisory board member agrees with every word here, but their support for the thrust of these recommendations and understanding of the dire need for reform of the appointments process are unanimous.

The Honorable Nancy Kassebaum Baker

Former Republican Senator from Kansas
Co-Chair, The Presidential Appointee Initiative
Advisory Board

Franklin D. Raines

Chairman and CEO, Fannie Mae
Former Director of the Office of Management and Budget
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TO FORM A GOVERNMENT A BIPARTISAN PLAN TO IMPROVE THE PRESIDENTIAL APPOINTMENTS PROCESS

Few elements of American politics cause so much consternation and such widespread complaint as the operations of the contemporary presidential appointments process. The number of positions filled by appointment grows steadily. More of those positions than ever before require the confirmation of the Senate. The time it takes to fill those positions lengthens steadily. Nominees are subjected to investigations and interrogatories that are deeply invasive, take months to complete, and rarely yield information that sheds significant light on their fitness for public service. The caustic politics of our time make appointments an inviting target for those who wish to shape public policy, settle old scores, or bargain with the incumbent administration.

As a consequence, the appointments process lumbers along slowly and fitfully while vacancies accumulate in the executive and judicial branches and the work of government is impeded. The situation grows increasingly intolerable, and the time has come for sweeping improvements in the oper-

ation of the political appointments process. Reasonable people may disagree on the precise nature of the reforms that must be made, but we believe the following suggestions focus on the critical problem areas and promise real improvement in the way we fill the senior, non-elected positions in the federal government.

Streamline the Recruitment and the Nomination Processes

It is hard to imagine a set of recruitment and induction procedures less hospitable and inviting than those now used to bring political appointees into the federal government. From selection to confirmation, the process often takes a half year or more and requires the most exhaustive and invasive scrutiny of the personal lives and personal finances of nominees. Talented Americans decline the honor of public service with increased frequency. Some accept, then later withdraw in frustration. Almost all who

enter the process acquire a deep distaste for its impositions and costs.

Even more troublesome is the low yield of all this invasive scrutiny. We constantly confuse ethics vetting with vetting for national security concerns, personal character, and political qualifications. So we end up with the national security investigators making inquiries into the business dealings, political affairs, and personal lives of presidential appointees. An apparatus designed principally to protect the national security is used to assess personal qualities for which it is a blunt and often useless instrument. Personal and political vetting are better left to the White House.

We ask far too much of candidates for appointed positions and get far too little of value from the arduous inquisition to which we subject them. Much can be done to simplify and shorten the recruitment and nomination processes without any loss of useful information or diminution of integrity in the public service.



RECOMMENDATION I

The Congress should enact legislation to establish a permanent Office of Presidential Personnel in the Executive Office

of the President and to authorize staff levels sufficient to recruit the president's appointees efficiently and to provide them with transition assistance and orientation. This should include some career employees who retain appropriate records from one administration to the next and who are experts in the operations of all aspects of the appointments process.

As a practical matter, there has been an office of presidential personnel since 1970. Earlier permutations and analogs can be traced back to the Eisenhower administration. No modern president can function without an effective staff agency overseeing the chief executive's personnel recruitment responsibilities.

But too little attention has been paid to the form and operation of the office of presidential personnel. It has always lacked an adequate institutional memory. Staff turnover is often too high to produce any stability in performance. And staff size is often too small to meet the steady demands of recruiting hundreds of political appointees every year and shepherding them through the appointments process.

It is time now to formalize and institutionalize this critically important component of the contemporary presidency. The Congress created a Bureau of the Budget in 1921 and moved it into the new Executive Office of the President (EOP) in 1939. In subsequent years it created a Council of Economic Advisers, a National Security Council, and other statutory elements of the EOP. The Bureau of the Budget became the Office of Management and Budget more than three decades ago. But Congress has never focused on the management of the presidential appointments process. We believe the time has come to establish a formal Office of Presidential Personnel with authority to employ staff adequate to its needs, including some career staff who would remain as administrations change to provide professional supervision of the systems and information that now affect every president's personnel-selection efforts.

The costs of inexperienced personnel management are too high. Every president should be free to designate his own subordinates to supervise the recruitment of appointees for his or her administration. But those designees will be much better able to serve the president who chooses them if they are supported by an institutional structure and staff of adequate size and skill.



RECOMMENDATION 2

The president should order all departments and agencies to simplify and standardize the information-gathering forms used in the presidential appointments process. The Senate should require its committees to do so as well. The president should then order the General Services Administration to develop and maintain on-line, interactive access to all such forms and questionnaires for persons who are going through the presidential appointments process.

The Presidential Transition Act of 2000 requires the Office of Government Ethics (OGE) to “conduct a study and submit a report on improvements to the financial disclosure process for Presidential nominees.” That is a welcome undertaking. The forms and questionnaires imposed on candidates for presidential appointments have grown like Topsy over the past two decades and now drown them in a bewildering, duplicative, and often irrelevant flood of invasive questions and information requirements. We hope that OGE's recommendations will call for a significant reduction and simplification of this part of the appointments process and for the employment of common and consistent data elements by the agencies and Senate committees that create forms and questionnaires. We especial-

ly hope that OGE's simplification efforts will reduce the amount and detail of information required of nominees to only that which is necessary to detect a potential conflict of interest.

To further facilitate appointee responses to legitimate information demands, we urge the General Services Administration to develop and maintain a secure website at which nominees can find all of the forms and all of the guidance they need to complete them. We also believe that this website should be interactive so that nominees can complete their information requirements electronically. Those who select presidential appointees and those who confirm them need to know some things about the people they consider. But we have fallen into the unfortunate practice of replacing or compounding effective and incisive personal interviews with endless forms and questionnaires. Current information demands on nominees greatly exceed anyone's need to know, and the process of information gathering is embarrassingly inefficient. Corrective action is long overdue.



RECOMMENDATION 3

The president should issue an executive order reducing the number of positions for which FBI full-field investigations are required and adapting the length and depth of full-field investigations to the legitimate security concerns of each position where they continue to be required.

President Eisenhower ordered the first FBI full-field investigations for presidential appointees during the height of the McCarthy period. The order was a response to the heated national security concerns of the time. The immediate concerns abated, but the full-field investigations have survived into our own time. Now they are carried out in greater detail than ever before for virtually all presidential appointments. They slow the appointments process, they deter good people from entering public service, they are sometimes misused, and they rarely yield information that affects appointment decisions in any significant way.

It is time to reduce the number of positions for which such investigations are conducted to those with genuine national security impacts. And where such investigations are a reasonable requirement, the form of the investigation should be adapted to the particular character of the posi-

tion for which it is being conducted. The FBI has better things to do than to conduct elaborate full-field investigations on people who have accepted part-time appointments to federal boards and commissions, people who have no decision-making authority, or people who will deal with policies that have little or no national security implications. The task of recruiting talented public servants will be eased and hastened by the proper utilization of this instrument of limited necessity.

RECOMMENDATION 4

Congress should undertake a comprehensive review of the ethics requirements currently imposed on political appointees. Its goal should be to strike an appropriate balance between legitimate concerns for the integrity of those who hold these important positions and the need to eliminate unnecessarily intrusive or complex requirements that deter talented Americans from entering public service.

Sometimes political reforms produce unintended consequences that outweigh their benefits and their good intentions. In the aftermath of Watergate, the American people hungered for some assurance that their leaders were not corrupt, that national politics was protected from self-inter-

ested schemers. The Ethics in Government Act of 1978 was a logical response to that set of public demands. We have now had more than two decades of experience under that Act, and its requirements have been augmented on several occasions by amendments or by other ethics legislation.

We now have an Office of Government Ethics, designated agency ethics officials and inspectors general in every department and agency, a Merit Systems Protection Board, and a Public Integrity Office in the Justice Department — all engaged in an effort to make the federal government scandal-proof. Much of the work of these agencies contributes to the establishment and maintenance of high ethical standards for government employees. But it is time to ask if some of this isn't overkill, if the resources and effort committed to ethics regulation do not now exceed the need.

More importantly, we must ask whether the increasingly draconian standards for public disclosure of personal finances, for avoidance of conflicts of interest, and for constraints on post-employment activity by former public servants have produced recruiting and retention burdens that outweigh the potential benefits of those measures.

We believe these questions need answers and that it is an appropriate time for the Congress to conduct a broad review of the impacts of all of our ethics laws and regulatory apparatus to assess their impact not only on the integrity of government officials, but also on the ability of government to recruit and retain the kind of talented leaders it so urgently needs.



RECOMMENDATION 5

The Congress should amend the Postal Revenue and Federal Salary Act of 1967 to ensure annual changes in executive-level salaries equal to changes in the Consumer Price Index.

Few endeavors are as politically thorny for a democratic government as setting the salaries of its top leaders. The tendency is to let salaries slide, often through periods in which little or no increase is enacted, then to realize that government salaries have fallen behind and to seek to make a large and politically hazardous catch-up increase.

We believe there has to be a better way to manage this task and we think it is to tie congressional and executive-level salaries to the Consumer Price Index. Those salaries would

increase, not in fits and starts, but through regular cost-of-living adjustments. All government pension programs, including Social Security, now function this way and, while less formal in its application, the process of adjusting civil service salaries is similarly related to changes in consumer prices. We see no reason why a system that works reasonably well for the tens of millions of Americans whose incomes are subject to annual cost-of-living adjustments cannot also serve the needs of legislators and presidential appointees.

Government salaries will never be fully competitive with those in the private sector — or even in other parts of the public sector — from which many presidential appointees are recruited. But we should seek to ensure that government salaries at least keep pace with inflation. Indexing those salaries would serve that purpose and eliminate much of the agony that now accompanies efforts to adjust executive and congressional salaries.

Strengthen and Stabilize the Confirmation Process

The Senate confirmation process is longer, much more complex, and filled with more political potholes than ever before. Perhaps that is no surprise in an era when divided government is normal and partisan divisions are broader than they have been in decades.

But a hostile political environment is only part of the problem. More troublesome, but also more subject to correction, is the expanded utilization of procedures and practices that unnecessarily delay the confirmation process and create inviting opportunities for small groups of Senators, sometimes even for individual Senators, to thwart action by Senate majorities. Practices intended to be used only in the most extreme cases of concern about nominees' qualifications are now routinely employed on both sides of the aisle, often simply to use nominees as hostages in political conflict over larger policy issues or legislative efforts.

The accumulated effect of these practices is deeply injurious to the federal government's ability to recruit and retain talented leaders in the executive and judicial branches. The

following steps, we believe, will help to set the confirmation process on a sounder and more sensible foundation.

RECOMMENDATION 6

The Congress should enact legislation providing that Senate confirmation only be required of appointments of judges, ambassadors, executive-level positions in the departments and agencies, and promotions of officers to the highest rank (O-10) in each of the service branches.

Confirmation of appointments is a constitutional duty of the Senate and a valuable component of the government's responsibility to ensure the fitness and diversity of those who serve in the highest administrative and judicial offices. But the application of the confirmation requirement now extends to many thousands of positions, only a relatively small number of which benefit from the full attention or careful scrutiny of the Senate.

We believe that this is an appropriate time for the Congress to do something it has never done: to review the entire scope of Senate confirmation responsibilities and to scale those responsibilities down to only those positions that are appropriate to its collective attention. We see no value, for

example, in the continued requirement that all military, foreign service, and public health service promotions be subject to Senate confirmation. Nor do we believe there is sufficient justification for Senate confirmation of part-time appointments to the government's many boards and commissions.

The Senate's participation in the appointments process is most valuably applied to positions of genuine management authority and to the judicial and ambassadorial positions for which it has constitutional responsibilities. A simpler, more focused set of confirmation obligations can only yield a more efficient and more consistent performance of the Senate's confirmation responsibilities.

RECOMMENDATION 7

The Senate should adopt a rule that limits the imposition of "holds" by all Senators to a total of no more than 14 days on any single nominee.

Few features of the modern appointments process are as troublesome as the Senate practice that permits any single Senator to delay indefinitely the confirmation of a nominee. Senators are under no obligation to announce the rea-

sons for their holds nor to place only holds that are directly related to concerns about the individual's fitness to serve in the office to which nominated. With ever greater frequency in recent years, holds have been used to make well-qualified nominees hostages to some other dispute between the Senator placing the hold and the administration. The harmful consequences to efficient government management and to individual nominees are obvious.

We recognize that there may be times when Senators want to know more about a nominee and may require more time to gather information. In such cases, placing a temporary hold on a nomination may be useful. But we believe the Senate needs to limit the duration of these holds to ensure that they don't unduly delay the confirmation process nor unduly complicate the lives of the nominees in that process. A simple time limit on the total length of holds on any single nomination would better balance the legitimate needs of all parties to the confirmation process.

RECOMMENDATION 8

The Senate should adopt a rule that mandates a confirmation vote on every nominee no later than the 45th day after receipt of a nomination. The rule should permit any Senator,

at the end of 45 days, to make a point of order calling for a vote on a nomination. A majority of the Senate may postpone the confirmation vote until a subsequent date.

The average length of time required to confirm presidential appointees has been growing steadily in recent years. While there are many reasons for this, few of them are directly related to the task of reviewing and assessing the qualifications of nominees. But these delays impede the ability of presidents to manage the government and of courts to process their caseloads efficiently. Equally important, long confirmation delays leave nominees in an extended and awkward limbo. Nominees withdrawing in the midst of such long confirmation delays has been a more common phenomenon in recent years than ever before.

We believe that this is an appropriate time for the Senate to impose a firmer discipline on the confirmation process by establishing through Senate rule an expectation that any nomination would receive a confirmation vote by the full Senate no later than 45 days after receipt. Under such a procedure any Senator could call for a vote at that time, a vote that could be postponed only by vote of a majority of the Senate.

This would permit the Senate, in extraordinary circumstances, to take more than 45 days before voting on confirmation. But it would establish a standard review period and offer a mechanism for any Senator to request a confirmation vote at the end of a time long enough for careful review of all but the most complex nominations.

RECOMMENDATION 9

The Senate should adopt a rule that permits nominations to be reported out of committee without a hearing, upon the written concurrence of a majority of committee members of each party.

For most of American history, nominations were reported to the floor of the Senate without any formal hearings by its committees. The practice of holding hearings began to emerge in the second decade of the 20th century. Even then, it was common for hearings to occur in executive session or without the nominee present. The current practice of formal public confirmation hearings on nearly all appointments, with the nominee present, is a relatively recent development.

But with the growing number of presidential appointments subject to Senate confirmation, a heavy burden falls on the Senate to arrange and schedule hundreds of confirmation hearings each year. Scheduling conflicts often lead to unnecessary delays in confirmation. Many nominations provoke no controversy whatsoever. With the lengthy questionnaires nominees now complete and the individual meetings they typically have with senators and committee staff, hearings are sometimes unnecessary. And public hearings force nominees and staff from the agencies to which they are nominated to spend long hours preparing, usually for questions that are never asked.

Clearly the Senate should hold public confirmation hearings whenever there is a justification for that: unresolved concerns about a nominee's qualifications, a desire by several committee members to engage the nominee in a discussion of his or her future duties, some charge against a nominee that the nominee seeks to rebut. But for a great many nominations, none of these conditions obtain, and confirmation hearings are little more than a time-consuming ritual. We believe that no good purpose is served by these rituals, certainly not one that justifies the delays they often impose on confirmation. It would be better for the Senate to hold public confirmation

hearings only when there is a valid reason for so doing. We believe that written expression of that desire from the majority of each party's members on a committee would be an appropriate indication of the need for a public hearing.

Reduce the Number and Layers of Political Appointees

The appointments process suffers from system overload. There are too many political appointees and too many of those require confirmation by the Senate. This burdens every stage in the appointments process, especially during presidential transitions, diminishes leadership momentum, and causes widespread vacancies in key executive positions.

But more than that, the entire senior executive level of the federal government has evolved into an advanced state of structural irrationality. The senior management levels of government are now heavily freighted with layer after layer of deputies and assistants and deputy assistants and assistant deputies and so on. Lines of authority and responsibility are blurred to the vanishing point. In this organizational morass, new policy and management initiatives often disappear along the tortuous route to implementation.

This is a problem larger than the scope of our inquiry, but we believe that reducing the number of presidential appointees would be a valuable inspiration for broader reform of the senior management levels of every agency and department.

RECOMMENDATION 10

The Congress should enact legislation requiring each department and agency to recommend a plan for reducing the number and layers of political appointees by one-third. Such reductions, wherever feasible, should limit political appointments requiring Senate confirmation to the assistant secretary level and above in each department and to the top three levels only in independent agencies. Schedule C and other non-confirmed political appointees should be similarly reduced in number.

RECOMMENDATION 11

The Congress should grant the president renewed executive reorganization authority for the limited and specific purpose of de-layering the senior management levels, both career and political, of all executive departments and agencies.

Reducing the number and layers of political appointees is a critical step in any effort to improve the performance of the appointments process. The number of political appointees has grown steadily and dramatically in recent decades. In the Cabinet departments alone, appointees in the top five executive positions grew in number from 196 in 1961 to 774 in 1998.

No one ever argued that the federal government would work better with thousands of political appointees filling its top and middle-management layers. That, however, has been the unintended consequence of years of accumulation of independent and disjointed legislative and administrative decisions.

The growth in the number of political appointees also is a response to failures in the civil service system, especially in the flexibility and responsiveness of the Senior Executive Service. The civil service system and the Senior Executive Service now need broad reform. But too often the executive departments and agencies or their overseers in Congress have turned to political appointees when they felt hemmed in by the rigidities of an antiquated civil service structure.

Solving this problem is not simple. No two departments are the same. Management patterns and needs vary widely. Each department operates in a unique political milieu. So there is no one-size-fits-all prescription for reducing the number of political appointees.

We believe that the best approach is for the Congress to adopt a formula, or a set of standards, and to delegate to each department and agency — and to the president — initial responsibility for meeting those standards or implementing the formula. We further believe that such a formula should have two broad elements:

First, there should be a target for government-wide reductions in the number of managerial layers in each agency and department and a broad goal for overall reduction in the number of presidential appointees.

Second, we believe that the Congress should impose limits on the penetration of political appointees into the management layers of executive departments and agencies. Layering throughout government has become a growing source of management difficulty. The proliferation and ever-deeper penetration of political appointees contribute

to this problem. We believe that the establishment of clear lines below which there should be no political appointees is both good management and a genuine source of relief for an overburdened presidential appointments process.



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