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President Obama's Record in Staffing Key Agency Positions and How to Improve the Appointments Process

Anne Joseph O'Connell April 2010



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## Introduction and summary

It seemed in the month after the November 2008 election that President-elect Barack Obama was on a roll in naming top members of his administration. The first week of December, The New York Times declared that "Mr. Obama is moving more quickly to fill his administration's top ranks than any newly elected president in modern times." The roll, however, quickly halted.2

It took until the end of April 2009 to get all 15 of President Obama's cabinet secretaries confirmed. The past five presidents—Jimmy Carter, Ronald Reagan, George H.W. Bush, Bill Clinton, and George W. Bush—all filled their cabinet faster by at least a month.<sup>3</sup> Each cabinet department also has a deputy secretary, the second-ranking position. Four months into President Obama's term, one-third of these positions had not been confirmed (or in some cases nominated). It was not until August 7, when Dennis Hightower was confirmed as deputy secretary of commerce, that all departments had confirmed deputy secretaries.

Early in President Obama's second year, key positions remain empty.<sup>4</sup> As members of Congress and the president attended to health care legislation, there was no confirmed assistant secretary for legislation at the Department of Health and Human Services. As of the end of March, President Obama's nomination for that position, made in August 2009, was still pending. There was not even a nominee to head the Centers for Medicare and Medicaid Services, though it was reported in late March that President Obama intends to nominate Donald Berwick for that job.

When underwear bomber Umar Farouk Abdulmutallab tried to destroy an American passenger plane on Christmas Day, Erroll Southers had been nominated (just months before, in September) but not confirmed to direct the Transportation Security Administration. In January, Southers withdrew over statements made in a Senate hearing. On March 8, President Obama nominated retired Major General Robert Harding for the job. In late March, Harding withdrew his nomination, setting off a hunt for a third nominee.

Using data from the Office of Personnel Management and The Washington Post's "Head Count," the newspaper's appointments tracker, this report compares the current administration's staffing of Senate-confirmed positions in cabinet departments and major executive agencies at the 100 day-mark and one-year mark with the records of recent administrations. The report also provides the status of agency staffing in the current administration as of the

end of March 2010, and then assesses how much of the delay is due to lack of nominations and how much is due to the Senate confirmation process. It does not include positions in independent regulatory commissions and boards, such as the National Labor Relations Board.<sup>5</sup> In particular, our analysis reveals:

- · At the 100-day mark, in percentage terms, President Obama was doing better than the preceding two administrations. The Obama administration had in place 17.1 percent of Senate-confirmed executive agency positions after 100 days, compared to 9.5 percent for President George W. Bush and 12.6 percent for President Clinton. President George W. Bush, however, got a late start due to the 2000 election, and President Clinton's personnel efforts were roundly criticized. In absolute numbers, President Obama had approximately the same number of confirmed appointees as President Reagan, but President Obama had more positions to fill (resulting in a lower percentage of staffed positions).
- The Obama administration lagged behind all four previous administrations in percentage terms after one year. The Obama administration had in place 64.4 percent of Senate-confirmed executive agency positions after one year, compared to 86.4 for the Reagan administration, 80.1 percent for the George H.W. Bush administration, 73.8 percent for the George W. Bush administration, and 69.8 percent for the Clinton administration. In percentage terms, after one year, the Obama administration ranked last or next to last (out of the five administrations examined) in filling important positions in 10 of 16 major federal agencies.
- The Obama administration spent significant time on the nomination process but still fewer days, on average, than the three previous administrations. It took President Obama an average of 130.5 days to nominate individuals for Senate-confirmed executive agency positions in his first year, compared to 144.2 days for President George H.W. Bush, 145.2 days for President Clinton, and 142.3 days for President George W. Bush. These averages generally underestimate the length of the nomination process, as they exclude positions where there were no nominations in the first year.
- The Senate has taken longer to confirm President Obama's nominees to executive agencies than nominees submitted by the previous three administrations. The Senate took an average of 60.8 days to confirm President Obama's nominees in the administration's first year, compared to 48.9 for President Clinton, 51.5 for President George H.W. Bush, and 57.9 for President George W. Bush. The gap between the number of nominations and number of confirmations was larger for the Obama administration than any previous administration after one year. President Obama had submitted nominations for 326 cabinet department and executive agency positions after one year, and the Senate had confirmed 262 of those nominations, leaving 64 pending. There were 46 nominations pending at the end of President George W. Bush's first year and 29 pending at the end of President Clinton's.

These delays in agency staffing have detrimental consequences. Without political appointees, regulation and enforcement actions have lagged. For instance, it took until Christmas Eve to get a permanent head of the National Highway Traffic Safety Administration, a position that has seen frequent turnover in recent years. President Obama's first choice withdrew from the process under criticism that he did not favor strong enough fuel efficiency standards. Although many investigations into brakes on Toyota vehicles took place under the previous administration, a former head of NHTSA in the Carter administration contends that the nearly year-long vacancy in the Obama administration hindered reconsideration of past investigations and action on pending ones. Federal officials did not travel to Japan until this past December to press Toyota to take concerns more seriously and to report problems quickly. Major warnings and recalls soon followed in January.

In addition to agency inaction, vacancies in Senate-confirmed positions also shaped, at least in part, attacks from the left and the right on the Obama administration's use of highlevel White House staff in important policy areas. Without agency appointees in place in many positions, a number of commentators accused White House "czars," including chief presidential advisors on energy and health care, of exercising undue influence.

In the weeks before President Obama's inauguration, the Center for American Progress released the predecessor to this report, called "Let's Get It Started: What President-Elect Obama Can Learn from Previous Administrations in Making Political Appointments," which proposed six reforms, focused on the White House, to decrease the number and length of vacancies in important agency positions. This report reviews those proposals and assesses the current administration's progress:

- · The president should get executive agency officials to commit to serve for a full presidential term. Status: Unclear, seemingly poor. If a four-year commitment is not feasible, the president should obtain a two-year promise.
- · All agency leaders should receive more comprehensive and institutionalized training, similar to training available to new members of Congress. Status: Good. The General Services Administration arranged for initial trainings for senior agency officials. Because tenure of agency leaders is often short, additional trainings will need to be conducted.
- Congress should increase agency leaders' salary and benefits. Status: Fair. Given the current economic and political climate, this report does not recommend that the administration and Congress invest in fighting for better salary and benefits for agency leaders to increase their tenure. Effort could be better placed in other areas, such as comprehensive training and additional contacts between the White House and political appointees to make agency leaders feel respected and appreciated.
- The president should pay more attention to lower-level appointments in executive agencies. Status: Fair. Compared to previous administrations, the current administra-

tion has not set any records for filling jobs and often has fared poorly. There are still important positions to fill. Two strategies should be considered. First, the White House could grant waivers to the administration's ethics rules to permit former lobbyists with the requisite experience and skills to take important positions. Second, the White House could rely more on agency careerists for plausible candidates.

- The Presidential Personnel Office should plan for future appointments after initial appointees take their positions. Status: Unclear, seemingly poor. The second round of vacancies has already started. Stability in the PPO is critical to agency staffing. President Obama quickly named Don Gips, who had assisted him in hiring his Senate staff, as director.<sup>6</sup> By the end of July, however, the president had named—and the Senate had confirmed—Gips as ambassador to South Africa, leading to a second director in the first six months of the administration. If the PPO does not have sufficient resources simultaneously to fill initial vacancies and to plan for future ones, more resources need to be provided to the office.
- The president should ask political appointees in federal agencies to provide four weeks notice of resignation. Status: Unknown. For recent resignations, the PPO had plenty of notice of the appointees' departure. Tenure is typically short in cabinet department and executive agency positions; many more appointees can be expected to resign in the next two years. If it has not already done so, the White House should require advance notice of resignation.

The Senate also plays a critical role in agency appointments and has been responsible for significant delays. This report offers the following three recommendations to reduce these delays:

- The Senate should crack down on holds on agency nominations. Holds, which block the Senate from voting on a nominee unless 60 votes can be garnered for cloture, frequently have nothing to do with the nominee in question, but instead are rooted in unrelated policy disagreements between a senator and the administration. The Senate should at least eliminate holds unrelated to the nominee.
- The Senate should fast track agency nominations to some degree by imposing deadlines. Deadlines can be placed on two stages of the confirmation process: how long the relevant committee or committees can consider but not vote on a nomination and how long the Senate can consider but not vote on a nomination. Many of President Obama's nominees have languished for months, only to be approved by far more than the 60 votes needed for cloture. These uncontroversial nominees should not have to wait so long to take their positions.
- The Senate should defer in most circumstances to the White House on agency nominations. Deference should at least be granted for cabinet departments and executive

agencies. The president could attempt to force this deference by threatening to use (or actually using) recess appointments. President Obama announced 15 recess appointments in late March.

The recent special election of Sen. Scott Brown (R-MA) took away the Democrats' 60th seat, making it harder to close off debate in light of filibuster rules. Agency positions may be even more difficult to staff as a result. Making matters worse, confirmed appointees are already starting to empty out again. The deputy attorney general and the undersecretary of Agriculture for research, education and economics, for example, have already departed. The average tenure for cabinet and executive agency appointees in the past two completed administrations was 2.5 years.7

If nothing is done, we will have considerable gaps in agency leadership. Even with faster Senate confirmation times in preceding administrations, top positions in cabinet departments and executive agencies were empty or filled with acting officials between 15 and 25 percent of the time, on average, between 1977 and 2005.8 With a slowing Senate confirmation process, these figures presumably will only rise—unless action is taken.

This report offers politically feasible recommendations for both the White House and Senate, though these recommendations will take some real effort by the political branches. The White House and the Senate will have to make compromises—potentially more careerists in political positions and fewer holds on agency nominees, respectively, for example. But compromises are necessary to have a functioning and accountable modern bureaucracy. These compromises will help current Democrats, to be certain, but they will also aide subsequent administrations and Congresses, of both parties, in limiting vacancies and simplifying the appointments process. More important, confirmed and accountable leaders can help ensure that federal agencies fulfill their responsibilities to the American people, now and in the future.

# President Obama's first-year appointments record

This report first compares the current administration to the past four administrations in staffing important positions in cabinet departments and executive agencies.9 It uses new comprehensive data from the Office of Personnel Management on all Senate-confirmed and recess appointees for the previous administrations and data from *The Washington Post's* "Head Count," the newspaper's appointments tracker, for the current administration.

Specifically, the analysis of executive agency positions examines:

- The number and percentage of Senate-confirmed positions filled by the 100-day mark
- The number and percentage of Senate-confirmed positions filled by the one-year mark
- · The breakdown in appointments delays by nomination and confirmation

The report notes, where appropriate, the current status of staffing as of the end of March.

In the Center's first report on the presidential appointments process, titled "Let's Get It Started," we examined, among other items, the average amount of time to fill positions at the start of an administration. Because there are still unfilled positions in the current administration, this report cannot use that metric here. Instead, this report primarily focuses on the amount of openings that have been filled by certain dates in recent administrations. (The appendix describes the data and methodology in more detail.)

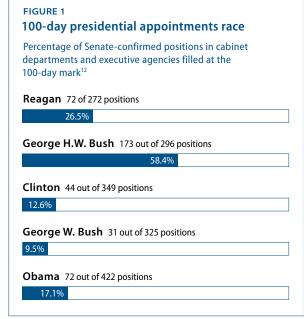
#### The 100-day mark

The 100-day mark often provides the first assessment of a new administration. No recent administration has had a majority of appointees in place that early, however. Table 1 displays the percentage of Senate-confirmed jobs actually staffed by that time for Presidents Ronald Reagan, George H.W. Bush, Bill Clinton, George W. Bush, and Barack Obama. 10 The two extremes are understandable. At the low end, President George W. Bush, as the Congressional Research Service concluded, "undoubtedly was affected by the six-week delay between the election and Bush's [sic] being declared the President-elect."11 At the high end, President George H.W. Bush benefitted from the preceding president also being a Republican; he kept some President Reagan appointees.

In percentage terms, President Obama was doing better than the preceding two administrations at the end of April; in absolute numbers, he had approximately the same number of confirmed appointees as President Reagan, but a lower percentage of slots filled (see Figure 1).

Table 1 breaks down most of these positions by agency, showing the percentage of positions filled at the 100-day mark for cabinet departments and the Environmental Protection Agency. These numbers are the most comparable across administrations because the number of positions has been relatively stable. The exception is the Department of Homeland Security, which did not exist at the start of previous administrations. At the end of April, President Obama had staffed a higher percentage of jobs in most agencies than the two preceding presidents.

Those comparisons are not surprising, given the delays produced by the 2000 election and the chaotic nature of appointments at the start of the Clinton administration.<sup>13</sup> Compared to President Reagan, President Obama's performance was sometimes better



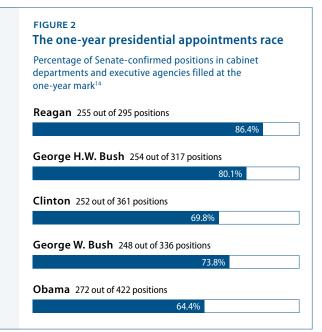
Source: Database constructed from Office of Personnel Management's Central Personnel File and The Washington Post's "Head Count" feature.

TABLE 1 The 100-day agency appointment race

Percentage of Senate-confirmed positions filled at the 100-day mark by agency<sup>14</sup>

Agency	Reagan	Bush 41	Clinton	Bush 43	Obama
Agriculture	41.7	66.7	6.7	6.7	25.0
Commerce	15.8	54.2	3.3	4.3	12.0
Defense	26.9	68.4	7.0	4.6	22.0
Education	5.9	28.6	12.5	5.9	5.6
Energy	5.3	68.8	6.3	8.3	13.0
Health and Human Services	16.7	41.7	12.5	13.3	5.0
Homeland Security/FEMA	0	100	20.0	25.0	9.5
Housing and Urban Development	40.0	20.0	25.0	7.7	6.7
Interior	14.3	61.5	6.3	8.3	11.8
Justice	30.0	57.9	4.2	4.0	34.6
Labor	30.8	58.3	6.7	20.0	5.6
State	43.5	76.0	40.0	16.7	20.5
Transportation	66.7	47.1	5.9	6.3	36.8
Treasury	53.3	40.0	22.2	15.0	8.7
Veterans Affairs	0	66.7	16.7	18.2	21.4
EPA	0	36.4	7.7	9.1	7.1

Source: Database constructed from Office of Personnel Management's Central Personnel File and The Washington Post's "Head Count" feature.



Source: Database constructed from Office of Personnel Management's Central Personnel File and The Washington Post's "Head Count" feature.

(for example, the EPA and the Department of Energy) but mostly worse (for instance, the Departments of Labor, Treasury, and Transportation).

#### The one-year mark

The one-year mark—one-quarter of a presidential term—may be a better stage to assess agency appointments as considerable time has passed since inauguration to select and confirm nominees. Figure 2 displays the percentage of Senate-confirmed jobs filled one year after inauguration. Twelve months into the administration, a majority of positions were staffed with confirmed (or recess) appointees. The current administration was lagging behind all four previous completed administrations at the one-year mark. As of the end of March, the current administration had filled 73.7 percent of the 422 positions.

As with the 100-day figures, Table 2 breaks down most of these positions by agency, showing the percentage of positions filled at the one-year mark in cabinet departments and the EPA. Again, these

TABLE 2 The one-year agency appointments race

Percentage of Senate-confirmed positions filled at the one-year mark by agency<sup>16</sup>

Agency	Reagan	Bush 41	Clinton	Bush 43	Obama
Agriculture	92.9	66.7	75.0	80.0	81.3 (81.3)
Commerce	86.4	70.8	43.3	87.0	48.0 (72.0)
Defense	89.7	80.0	57.4	93.3	64.0 (82.0)
Education	94.1	78.6	70.6	64.7	72.2 (77.8)
Energy	81.8	68.8	82.4	71.4	69.6 (69.6)
Health and Human Services	92.9	66.7	93.8	80.0	55.0 (70.0)
Homeland Security/FEMA	83.3	66.7	20.0	50.0	66.7 (85.7)
Housing and Urban Development	100	90.9	100	61.5	60.0 (73.3)
Interior	93.3	100	68.8	69.2	88.2 (88.2)
Justice	65.0	75.0	62.5	88.0	46.2 (50.0)
Labor	85.7	92.3	87.5	73.3	61.1 (72.2)
State	91.3	96.2	80.6	72.7	74.4 (76.9)
Transportation	93.3	82.4	76.5	77.8	89.5 (89.5)
Treasury	100	94.1	84.2	65.0	52.2 (73.9)
Veterans Affairs	100	90.9	75.0	75.0	57.1 (71.4)
EPA	75.0	91.7	76.9	75.0	85.7 (85.7)

Source: Database constructed from Office of Personnel Management's Central Personnel File and The Washington Post's "Head Count" feature.

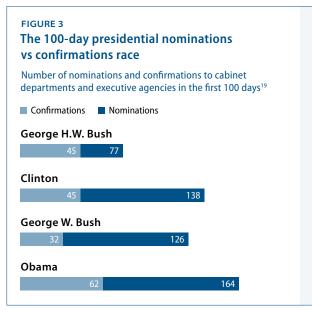
numbers are the most comparable across administrations. In percentage terms, after one year, the current administration ranked last or next to last (out of the five administrations examined) in filling important positions in 10 of 16 major agencies. In only four of the remaining agencies did this administration have the second-highest percentage of appointees in place. In no agency was this administration the quickest to fill jobs. The current administration's status as of the end of March is displayed in parentheses in the final column.

#### Nomination vs. confirmation process

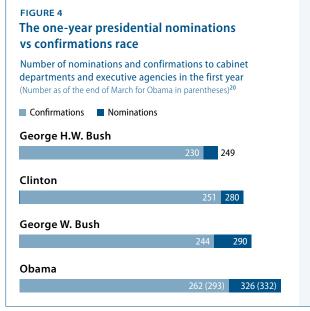
Presidents like to complain about the length of the confirmation process for their nominees.<sup>17</sup> But presidents also take time in submitting nominations to the Senate.<sup>18</sup> Because easily accessible information on nomination and confirmation dates is available only from 1987 to present, this section does not consider President Reagan in analyzing the time needed to complete both the nomination and confirmation process.

Figure 3 shows the number of nominations and confirmations in the first 100 days of Presidents George H.W. Bush, Bill Clinton, George W. Bush, and Barack Obama. Figure 4 displays the number of nominations and confirmations in the first year of those administrations. In parentheses is the number of nominations and confirmations as of the end of March for the current administration. All presidents except President George H.W. Bush had approximately 100 more nominations than confirmations at the end of April. The gap at the one-year mark has increased over time, with the current administration having the most unconfirmed nominations one year after taking office.

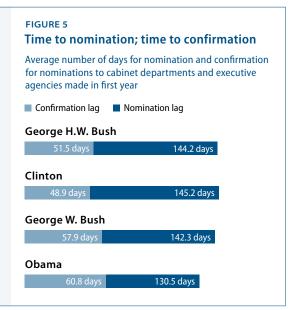
To examine the separate delays in nomination and confirmation at the start of an administration more closely, we need to look at how many days it takes presidents to nominate agency leaders, on average, and how long it takes the Senate to confirm those nominations, on average. This analysis thus excludes recess appointments that were not eventually confirmed. Figure 5 displays the average number of days for nomination and confirmation for appointees selected in the first year of the current and past three administrations, counting from inauguration.



Source: Database constructed from Office of Personnel Management's Central Personnel File and The Washington Post's "Head Count" feature



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To be clear, these averages generally underestimate the length of the nomination process because they exclude positions where there were no nominations in the first year.<sup>21</sup> They also underestimate the length of the confirmation process because they exclude nominations that were never confirmed and, in the current administration, nominations that have not yet been confirmed as of the end of March. Thus, the confirmation lag for Obama's nominees is likely the most underestimated. Even so, it was longer than any of the preceding three administrations.

Table 3 divides the aggregate figures in Figure 5 by agency for the current administration. It also indicates how many nominations have not been confirmed as of the end of March, including six individuals who were recently named to recess appointments.<sup>22</sup> None of these pending nominations is included in the average for the confirmation process. There is considerable variation by agency, with confirmation taking much longer for nominees to positions in the EPA and the Departments of Education, Health and Human Services, Justice, Labor, and Treasury selected in President Obama's first year.

**TABLE 3** The Obama administration's time to nomination and time to confirmation

Average number of days for nomination and confirmation and pending nominations in first year of current administration, by agency

Agency	Nomination lag	Confirmation lag	Pending nominations
Agriculture	92.9 days	41.5 days	0
Commerce	179.5 days	53.1 days	3
Defense	152.3 days	58.4 days	2
Education	120.1 days	74.1 days	0
Energy	134.0 days	47.6 days	3
Health and Human Services	146.5 days	89.4 days	3
Homeland Security	136.8 days	64.1 days	2
Housing and Urban Development	128.6 days	46.6 days	1
Interior	106.3 days	56.4 days	0
Justice	106.9 days	71.0 days	6
Labor	110.9 days	94.2 days	0
State	111.3 days	55.6 days	1
Transportation	145.2 days	35.6 days	2
Treasury	127.5 days	76.4 days	3
Veterans Affairs	119.8 days	44.9 days	0
EPA	117.5 days	79.0 days	1

Source: Database constructed from Office of Personnel Management's Central Personnel File and The Washington Post's "Head Count" feature.

## Consequences of leadership gaps in the Obama administration

Vacancies at federal agencies can undermine government responsiveness and accountability. Agencies without political appointees are often less able to confront important problems or handle emergencies. Without political leaders or with only acting officials who often lack the requisite authority in practice, nonpolitical workers typically will not have needed direction to enact and enforce policies. Vacancies can also undermine agency accountability and legitimacy. The public's trust in the administrative state rests, to a large degree, on agency accountability to the president and Congress, which in turn rests, in part, on the selection and oversight of agency leaders.<sup>23</sup>

These effects—agency inaction and attacks on executive accountability—can be seen in the current administration. Even with agency leaders in place, it takes time to launch new regulatory or deregulatory agendas. Without political appointees, regulation and enforcement actions can lag even further. As of the end of March, for example, there was no confirmed undersecretary of agriculture for food safety, the most important food-safety position at the U.S. Department of Agriculture. The undersecretary heads up the Food Safety Inspection Service, a public health agency that is to "ensur[e] that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and correctly labeled and packaged."24 In late January 2010, President Obama nominated Elisabeth Hagen for the job.

Without a confirmed director, the FSIS is still overseeing recalls of unsafe food. But a director would permit the agency to go beyond one-off recalls and issue wide-ranging regulations that could eliminate some of the practices leading to recalls. Right before the nomination, House Agriculture Appropriations Subcommittee Chairwoman Rosa DeLauro (D-CT) complained: "This position has been vacant for far too long and it is preventing the department from acting on critical food safety issues."25

Or consider that it took until Christmas Eve to get a permanent head of the National Highway Traffic Safety Administration, a position that has seen frequent turnover in recent years. President Obama's first choice withdrew from the process about a month later, in May, under criticism that he did not favor strong enough fuel efficiency standards. President Obama took until December to nominate David Strickland; confirmation quickly followed.

Although many investigations into brakes on Toyota vehicles took place under the previous administration, a former head of NHTSA in the Carter administration contends that the nearly year-long vacancy in the Obama administration hindered reconsideration of past investigations and action on pending ones. Federal officials did not travel to Japan until December to press Toyota to take concerns more seriously and to report problems quickly. Major warnings and recalls followed in January.26

In addition to agency inaction, vacancies in Senate-confirmed positions also shaped, at least in part, attacks on the administration's use of high-level White House staff in important policy areas. President Obama named Carol Browner to head energy and environmental issues in the White House on December 15, 2008. Although Lisa Jackson was confirmed as EPA administrator the next month, Robert Perciasepe was not confirmed as deputy EPA administrator until December 24, 2009 (the Senate received the nomination in mid-June).

These White House advisors are some of the "czars" who have been targeted by the right and the left. Before he left his nightly show on CNN, conservative host Lou Dobbs ran multiple segments criticizing these advisors, often conflating those who had been confirmed by the Senate and those who had not.<sup>27</sup> Sen. Robert Byrd (D-WV) also was displeased; he sent a letter to President Obama, in which he warned that "the rapid and easy accumulation of power by the White House staff can threaten the constitutional system of checks and balances."28

To be sure, so long as these White House advisors do not exercise independent legal authority, and there is no evidence of the use of such power, the advisors are constitutional. But their quick selection, when Senate-confirmed positions in agencies lingered, made them an easy target of criticism. If the administration had been able to point to a quicker pace in filling important Senate-confirmed agency jobs at the EPA and HHS, then perhaps the energy and environment "czar" and health "czar" would have faced fewer attacks in the early fall.

Looking backward, vacancies have therefore likely contributed to agency inaction and attacks on the administration's accountability. Looking ahead, the current political climate creates an even more troubling picture. With the recent special election of Sen. Scott Brown (R-MA), the Democrats no longer have 60 members to close off debate in the Senate. It therefore has become even harder to staff agency positions. With the midterm election approaching in November 2010, Republicans may have considerable incentive to block agency confirmations. Similarly, Senate Democrats and the White House may not be sufficiently motivated to fill agency jobs as their attention also turns to the election as well as other matters, including filling Justice John Paul Stevens's seat on the Supreme Court.

Making matters worse, jobs that are filled with confirmed appointees are already starting to empty out again. The deputy attorney general stepped down in February, after announcing his plans to resign in December.<sup>29</sup> The undersecretary of agriculture for research, education, and economics left to become head of the U.S. Agency for International Development.<sup>30</sup> As of the end of March, neither position had been filled. The average tenure for cabinet and executive agency appointees in the past two completed administrations was 2.5 years;<sup>31</sup> assuming similar tenure in the current administration, there will be many more such openings before the end of President Obama's term.

### Recommendations for the Obama administration

At the beginning of the Obama administration, the Center for American Progress published the predecessor to this report, "Let's Get It Started," which proposed six reforms to decrease the number and length of vacancies in important agency positions. The following summarizes those recommendations and assesses the administration's limited progress on those proposals. It then makes additional recommendations to improve agency staffing.

The president should get executive agency officials to commit to serve for a full presidential term

It would be easy to ask applicants to make this commitment as part of the extensive vetting form, but that has yet to happen. Status: Unclear, seemingly poor.

The unofficial vetting form at the start of the administration asked about potentially embarrassing blog posts but did not ask applicants how long they were willing to serve in the administration.<sup>32</sup> The current official application of the White House's Presidential Personnel Office does not ask individuals to commit to a certain amount of time in a government position.33

Short tenure creates more vacancies to fill. If a four-year commitment is not feasible, then the president should obtain a two-year promise. Such commitments would not be legally binding, but they may discourage appointees from using government service as a quick stepping stone to some other job in the private sector or from leaving just when they have learned the duties of their jobs. The president could still ask any official serving at his pleasure to step down at any time. Both Presidents Carter and George H.W. Bush asked their appointees to stay for a full term.34

All agency leaders should receive more comprehensive and institutionalized training similar to training available to new members of Congress

If agency leaders perform better and face less hostile oversight, they will be more likely to serve longer. This is an idea that is catching hold within the administration. Status: Good. In June 2009, the General Services Administration contracted with the Hay Group to provide trainings to top-level appointees. 35 The first meeting was for White House staff and agency heads; the second meeting was for subcabinet leaders.<sup>36</sup> But because tenure of agency leaders is often short, additional trainings will need to be conducted. President Obama should not follow previous administrations, of both parties, in ignoring the importance of appointee training.

A 2008 survey of agency appointees by the IBM Center for the Business of Government and the National Academy of Public Administration found that 45 percent of respondents had no orientation and that 33 percent felt their orientation was only somewhat effective, not very effective, or poor. Most respondents wanted more training.<sup>37</sup>

#### Congress should increase agency leaders' salary and benefits

Increased pay decreases the opportunity cost of entering public service for several years. But a substantial pay increase is unlikely to happen in upcoming budget cycles. Status: Fair.

Congress, with President George W. Bush's support, enacted across-the-board increases in agency civilian salaries of 3 percent to occur in January 2008 and of 3.9 percent to take place in January 2009. President Obama called for a 2 percent raise, the smallest percentage increase since 1975, for January 2010, which Congress passed. For next year, the president has asked for a 1.4 percent increase. 38

Given the current economic and political climate, this report does not recommend that the administration and Congress invest in fighting for better salary and benefits for agency leaders to increase their tenure. Effort could be better placed in other areas, such as comprehensive training and additional contacts between the White House and political appointees to make agency leaders feel more respected and appreciated.

#### The president should pay more attention to lower-level appointments in executive agencies

Although lower-level appointments do not grab headlines, they will be instrumental in carrying out the president's agenda and thus should be treated as presidential priorities. The Obama administration understands this, but is making only limited progress. Status: Fair.

At the 100-day mark, the current administration had filled a higher percentage of jobs in most agencies than the two preceding presidents, but that is not a significant achievement. Given the 2000 election dispute, President Bush started as president-elect six weeks later than normal. By many accounts, President Clinton oversaw a chaotic

appointments process, with top officials of the personnel effort being named as agency appointees themselves early in the process.

To be sure, President Obama did not benefit as President George H.W. Bush had from a same-party transition in the White House. Compared to President Reagan, President Obama's performance was sometimes better, but mostly worse. In percentage terms, after one year, the current administration ranked last or next to last (out of the five administrations examined) in filling important positions in 10 of 16 major federal agencies. The administration came in second for only four agencies, and never came in first. Yet for nominations it did make in the first year, it took less time, on average, to do so than the three preceding administrations.

There are still important positions to fill, including the head of TSA. The president should make these remaining nominations a priority. Two strategies should be considered. First, the White House could grant waivers to the administration's ethics rules to permit former lobbyists with the requisite experience and skills to take important positions. Second, the White House could rely more on agency careerists for plausible candidates.

The White House conceded that President Obama had trouble selecting an undersecretary of food safety because individuals who have lobbied for industry or consumer groups were excluded from the candidate pool under the administration's ethics rules.<sup>39</sup> The White House recently granted a waiver to these rules so that John Brennan, a former CIA officer and chief executive of a private intelligence firm that had contracted with the government, could assess what went wrong in the intelligence community and transportation screening in the aftermath of the Christmas Day bombing attempt on an international flight to Detroit.<sup>40</sup> There are critical positions outside of national security as well. Appointees can sever problematic financial ties. Public announcement and defense of the waivers can provide needed transparency and accountability.

In the end, over a year into his administration, President Obama chose a senior civil servant, who had joined the Agriculture Department's Food Safety and Inspection Service in 2006 and is currently its chief medical officer, for the food safety position. 41 The White House relies on a variety of individuals and organizations for suggestions in staffing top agency positions. It should continue to reach out to members of Congress, think tanks, and other organizations for skilled leaders.

The White House should also extend its traditional reach, most notably by asking the people who know the agency the best, the careerists, not only in the Senior Executive Service but also at lower levels in the agency, for assistance in staffing political positions. Career employees themselves might be interested in these slots, particularly if they are close to retirement. Even if they do not want to relinquish their job security, they may know of skilled individuals, from professional meetings, agency contacts, and other forums, who have escaped the attention of other "talent scouts."

#### The Presidential Personnel Office should plan for future appointments after initial appointees take their positions

The PPO should anticipate that each Senate-confirmed executive agency position will be filled, in many cases, by approximately two people during a presidential term. This will allow the president to respond quickly when key appointees leave. Status: Unclear, seemingly poor.

It seems unlikely with the delays in making initial selections that the PPO has made significant progress in planning for subsequent vacancies. It was announced in December that Deputy Attorney General David Ogden would step down in February. Ogden has left, but no new nomination has been submitted to the Senate. Rajiv Shah, who became undersecretary of agriculture for research, education, and economics in May, was confirmed to head the U.S. Agency for International Development at the end of 2009. No new nominee has been named for his first job.

The director of the PPO is a linchpin in the appointments process. The office's leadership already turned over once—in the first year. The first director, Don Gips, who assisted President Obama in hiring his Senate staff and who advised Obama during the transition, became ambassador to South Africa by the middle of last summer. A primary deputy moved on around the same time to become ambassador to Canada. Considerable efforts should be made to keep the current director and senior staff in place for the remainder of the term. If the PPO does not have sufficient resources simultaneously to fill initial vacancies and to plan for future ones, more resources need to be provided to the office. The second round of vacancies has already started.

In planning for this next round of vacancies, the PPO should be prepared for a wave of openings in an agency when the top official resigns. The PPO should have teams from across the administration and outside government on call that could spring into action if certain jobs become vacant—for instance, critical positions at the Treasury Department, Office of the Director of National Intelligence, the Defense Department, and the Department of Homeland Security.

#### The president should ask political appointees in federal agencies to provide four weeks notice of resignation

This notice would allow the Presidential Personnel Office to start actively vetting individuals for appointment before the presiding office holder departs. Status: Unknown.

In the two examples detailed above, the PPO had plenty of notice of the appointees' departure. 42 If it has not already done so, the White House should require advance notice of resignation. That notice will not be helpful, however, if the PPO does not have the resources and motivation to use that lead time to find new appointees.

### Recommendations for the Senate

The Senate also plays a critical role in agency appointments and has been responsible for significant delays, even more so in the current administration. The following provides recommendations to reduce these delays.

#### The Senate should crack down on holds on agency nominations

At the least, the Senate should eliminate holds unrelated to the nominee. A hold prevents the Senate from voting on a nominee unless 60 votes can be garnered for a cloture vote or until the hold is lifted. It therefore provides tremendous power to an individual senator to prevent a nominee from being confirmed.

In early February, Sen. Richard Shelby (R-AL) put a hold on dozens of nominations in the Defense and State Department. According to initial reports by the White House and Senate Majority Leader Harry Reid (D-NV), the hold affected 70 nominees. According to his spokesman early on, Sen. Shelby placed the hold on "several" nominees over the reopening of a contract for tanker refueling—which was going to be carried out in Alabama—and over funding he wants to construct a counterterrorism center in Alabama. 43 In the end, Sen. Shelby admitted to placing holds on 47 nominees. 44

These holds, now lifted, were unrelated to particular nominees. If senators have complaints about the administration's policy judgments, they can take up those complaints most directly with the White House or less directly through committee hearings and the appropriations process, all of which are legitimate ways of expressing and enacting policy disagreements. Although they should be discouraged, holds involving concerns over an appointee's qualifications or statements to the Senate may be appropriate in certain circumstances.

#### The Senate should fast track agency nominations to some degree

This could be done by imposing deadlines on two stages of the confirmation process: how long the relevant committee or committees can consider but not vote on a nomination and how long the Senate can consider but not vote on a nomination. Many of President Obama's nominees, after languishing in the Senate, have been approved, by votes far exceeding the 60 needed for cloture. For instance, Martha Johnson, who was nominated to head the General Services Administration on May 4, 2009, was confirmed February 4 on a 94-2 vote.

Both parties in the Senate are to blame. The Democrats have not made confirmation of agency leaders a sustained priority. The Republicans have placed procedural obstacles in the confirmation process, knowing that they would only delay but not stop certain nominations from going through.

The Senate should at least force the relevant committees to vote on a nomination within a set period, such as two months from when the Senate receives the nomination. Ideally, but likely much less politically feasible, the Senate should also impose a deadline on itself, for a vote on a nomination, such as three months from receipt of the nomination. The Senate operates under deadlines in other contexts—fast-track repeal of major regulations under the Congressional Review Act, for instance. It could establish deadlines in this context as well.

The Senate should defer in most circumstances to the White House on agency nominations, at least those to cabinet departments and executive agencies

Historically, the Senate has been quite deferential to the president's choices for agency leaders. Most notably, the Senate almost never has rejected a cabinet nomination. According to one study, between 1981 and 1992, the Senate did not confirm 22 percent of nominations to boards and commissions such as the SEC, 11 percent of nominations to independent agencies such as the EPA, and 9 percent of nominations to cabinet departments. 45

Of course, not acting on a nomination or withdrawing a nomination has the same effect as rejecting a nomination. Think, for example, of Dawn Johnsen, Zoe Baird, and Lani Guinier—the first nominated by President Obama to head the Office of Legal Counsel and the last two nominated by President Clinton for attorney general and assistant attorney general for civil rights, respectively. They all withdrew from consideration before a confirmation vote.

Even commentators on the right, such as Court of Appeals Judge Brett Kavanaugh, think that "using the confirmation process as a backdoor way of impeding the President's direction and supervision of the executive branch—of gumming up the works—is constitutionally irresponsible and makes our government function less efficiently and effectively."46

The president could attempt to force this deference by threatening to use (or actually using) recess appointments. President Obama threatened such action in early February, resulting in more than two dozen confirmations. 47 In late March, he announced 15 recess appointments to executive agencies and independent regulatory commissions. 48 Recess appointees are not the most desired outcome, of course, as they lack the real-world legitimacy of confirmed appointees and can serve at most about a year.

### Conclusion

We are at a critical crossroads for modern governance. We have a significant administrative state that shapes important public policy. That bureaucracy needs talented and accountable leaders. If changes to agency staffing are not made, we will have considerable gaps in agency leadership, and those gaps likely will affect Americans' everyday lives.

Even with faster Senate confirmation times in earlier administrations, top positions in cabinet departments and executive agencies were empty or filled with acting officials between 15 and 25 percent of the time, on average, between 1977 and 2005. 49 With a slowing Senate confirmation process, these figures presumably will only rise—unless action is taken.

This report offers politically realistic and achievable recommendations for both the White House and the Senate. President Obama and the executive branch can make a number of immediate improvements, with no congressional action required. This includes obtaining four- or two-year commitments from prospective nominees, giving higher priority to lower-level appointments, perhaps appointing more agency careerists, and planning for future vacancies.

The Senate also has incentive to act. Nomination holds and other delaying tactics not only stifle the executive branch; they also can interfere with the Senate's ability to conduct its business. Discussions have already started about filibuster reform. There may be opportunity for even broader reforms to boost Senate effectiveness. Cracking down on holds and setting deadlines for confirmation votes should be part of such a package.

Taking these steps will help the Obama administration, to be sure, but they also will help subsequent administrations and Congresses, of both parties, to limit vacancies and reduce the burdens of the appointments process. More important, confirmed and accountable leaders can help ensure that federal agencies fulfill their responsibilities to the American people, now and in the future.

### **Appendix**

The information on agency vacancies in this report comes from two sources. Information on the current administration is taken from The Washington Post's "Head Count," the newspaper's appointments tracker, available at http://projects.washingtonpost.com/2009/ federal-appointments/. Some missing information, such as nomination dates, was found using the Library of Congress's Presidential Nominations Database. Recess appointments announced in late March were included in counts of filled positions but were excluded in counts of confirmed positions and pending nominations.

Information on preceding administrations comes from a new database constructed by the author. The Office of Personnel Management provided the start and end dates of service of all Senate-confirmed and recess presidential appointees who worked in the federal bureaucracy sometime between January 1977 and January 2005, along with information on the position in which they served. For the three most recent completed administrations, nomination and confirmation dates were obtained from the Presidential Nominations Database. The author spent considerable time cleaning the OPM data, including, for example, merging separate observations when it was clear, from news searches or other items, that they represented one person's tenure in the same position. She also fixed some errors in The Washington Post data, using the White House's official list of nominations and confirmations, available at http://www.whitehouse.gov/briefing-room/nominations-andappointments, and the Senate's list of confirmations, available at http://www.senate.gov/ pagelayout/legislative/one item and teasers/nom confc.htm. Upon request, she can explain what changes were made to the data.

The report excludes data on appointees in independent regulatory commissions, boards, government-chartered corporations, and similar institutions. The report also excludes withdrawn nominations by the relevant times. 50 The report, except where otherwise noted, looks at Senate-confirmed positions in the following agencies in The Washington Post database and in the database created by the author from OPM's central personnel file:

- Central Intelligence Agency
- · Council of Economic Advisors
- · Council on Environmental Quality
- Department of Agriculture

- Department of Commerce (excluding the two new Senate-confirmed positions proposed in October 2009)
- · Department of Defense
- · Department of Education
- Department of Energy
- · Department of Health and Human Services
- Department of Homeland Security (for current administration only)
- · Department of Housing and Urban Development
- Department of Interior (excluding chairman of the National Indian Gaming Commission)
- Department of Justice (excluding U.S. attorneys, marshals, and parole commissioners)
- Department of Labor
- Department of State (excluding ambassadors, country specific and at large, and special representatives)
- Department of Transportation (excluding chairman of Surface Transportation Board)
- Department of Treasury
- Department of Veterans Affairs-Veterans Affairs Administration
- Environmental Protection Agency
- · Federal Emergency Management Agency
- · Federal Mediation and Conciliation Service
- · General Services Administration
- National Aeronautics and Space Administration
- Office of the Director of National Intelligence (current administration only)
- Office of Management and Budget
- Office of National Drug Control Policy
- Office of Personnel Management
- · Office of Science and Technology Policy
- · Office of the United States Trade Representative
- · Peace Corps
- Selective Service Administration
- Small Business Administration
- U.S. Arms Control and Disarmament Agency (previous administrations only)
- · U.S. Agency for International Development

Unless otherwise noted in the report, for previous administrations, a position is considered filled by a certain time if the person had started work by that time, as that is the date recorded in OPM's Central Personnel File. For the current administration, a position is considered filled if the person has been confirmed, as that is the date recorded in The Washington Post database. These dates are typically very close together. In almost all cases, an appointee starts within days of confirmation; in some cases, an appointee starts before being confirmed (as they were a recess appointee or in some other circumstance).

### **Endnotes**

- 1 Peter Baker and Helene Cooper, "Issues Pressing, Obama Fills Top Posts at a Sprint," The New York Times, December 5, 2008, p. A28.
- 2 In early January, New Mexico Gov. Bill Richardson, picked for secretary of commerce, withdrew in light of allegations that his state administration had improperly awarded contracts to a campaign contributor. Sheryl Gay Stolberg, "Richardson Won't Pursue Cabinet Post," The New York Times, January 5, 2009, p. A1. Soon thereafter, Timothy Geithner and Tom Dashchle, Obama's picks for secretaries of treasury and health and human services, respectively, publicly disclosed they had not paid certain taxes. While the Senate ultimately confirmed Geithner, Daschle pulled out several days later. Jeff Zeleny, "Daschle Ends Bid for Post: Obama Concedes Mistake," The New York Times, February 4, 2009, p. A1. In mid-February, Obama's next selection for secretary of commerce, Republican New Hampshire Sen. Judd Gregg abandoned the process, citing "irresolvable conflicts" with the president's economic stimulus proposal and with how the census would be taken, conflicts that allegedly arose in the 10 days after he was nominated. Jeff Zeleny, "Gregg Ends Bid for Commerce Job," The New York Times, February 13, 2009, p. A1. There were at least some longstanding, fundamental policy conflicts. See Jim Rutenberg, "A New Member Joins the President's Team, Though He's Not in Lockstep with It," *The New York Times*, February 4, 2009, p. A16.
- 3 President Carter finished on January 26, 1977, when the Senate confirmed Ray Marshall as secretary of labor. President Reagan finished on February 3, 1981, when the Senate confirmed Raymond Donovan as secretary of labor. President George H.W. Bush completed his cabinet on March 17, 1989, when the Senate confirmed Richard Cheney as secretary of defense, after the Senate had rejected his first choice, John Tower. President Clinton had his full cabinet on March 11, 1993, when the Senate confirmed Janet Reno as attorney general, after previous nominee Zoe Baird had withdrawn after being formally nominated. President George W. Bush's cabinet was completed on February 1, 200,1 when the Senate confirmed John Ashcroft as attorney general. Presidential Cabinet Nominations: President Jimmy Carter through President George W. Bush, available at http:// www.senate.gov/reference/resources/pdf/cabinettable.pdf.
- 4 The nation's capital is crawling with bureaucrats—and some political appointees. The official federal workforce exceeds 2.5 million employees, staffing 15 cabinet departments and a slew of other agencies from the Environmental Protection Agency to the Securities and Exchange Commission. Almost all of these workers are not politically selected. Appointees—in full-time Senateconfirmed positions, political senior executive service slots, or other political jobs—number only about 3,000. David E. Lewis, The Politics of Presidential Appointments: Political Control and Bureaucratic Performance (Princeton, NJ: Princeton University Press, 2008), p. 20, 22, and 56. The 2.5 million figure does not include military personnel but does include the postal service. There are another approximately 12 million individuals serving as uniformed military personnel or in the "unofficial" federal workforce, comprised primarily of government contractors and recipients of government grants. Paul C. Light, The New True Size of Government (Washington: The Brookings Institution, 2006), p. 8 (2005 figures). The 3,000 figure excludes foreign service and military officers who go through the Senate confirmation process when they are promoted. There are approximately 1,100 Senate-confirmed presidential agency appointments. In the 2008 Plum Book, which lists all policy and supporting positions in the federal government by agency, there are 810 Senate-confirmed positions in the 15 cabinet departments, the Executive Office of the President, the Central Intelligence Agency, the Environmental Protection Agency, the Federal Mediation and Conciliation Service, the General Services Administration, the National Aeronautics and Space Administration, the Office of Personnel Management, Peace Corps, the Selective Service Administration, the Small Business Administration, and the U.S. Agency for International Development. Senate-confirmed slots in independent regulatory commissions, boards, advisory commissions, and other agencies make up the remainder of the total. Of the 810 slots in cabinet departments and major executive agencies, U.S. marshal, U.S. attorney, and ambassador positions, along with commissioners of independent entities within these agencies (for example, the Parole Commission within the Department of Justice), make up 374 positions, leaving 436 jobs. Almost of all of these 436 positions are at-will (nonfixed-term) jobs. Some are not, such as the administrator of Federal Aviation Administration (five-year term), commissioner of the Internal Revenue Service (five-year term), and a few others. Though small relative to the entire agency workforce, the approximately 800 Senate-confirmed policy positions in cabinet departments and major executive agencies make up a thicker layer of political positions than exists in other developed countries.

- 5 The National Labor Relations Board, which adjudicates important labor disputes, is supposed to have five members. Until late March, there had been only two since the second term of President George W. Bush, leading to a Supreme Court case this term as to whether they can resolve cases when they both agree or whether they must have three members, the normal quorum, to decide, New Process Steel v. National Labor Relations Board, No. 08-1457, cert. granted November 2, 2009 (Does the NLRB have the authority to decide cases with only two sitting members, when 29 U.S.C. § 153(b) provides that "three members of the Board shall, at all times, constitute a quorum of the Board?"). In July, President Obama submitted nominations for the remaining three slots, but the Senate did not confirm any of them. In late March, President Obama named two of his nominees—Craig Becker and Mark Pearce—to recess appointments, which do not require Senate confirmation but which are limited in duration.
- 6 The White House, "President Obama Announces Intent to Nominate Key Administration Posts," Press release, June 4, 2009.
- 7 Matthew Dull and Patrick S. Roberts, "Continuity, Competence, and the Succession of Senate-Confirmed Agency Appointees, 1989–2009," Presidential Studies Quarterly 39 (2009): 436 (finding a median tenure of 2.5 years for appointees who served under President George H. W. Bush or President Clinton).
- 8 Anne Joseph O'Connell, "Vacant Offices: Delays in Staffing Top Agency Positions," Southern California Law Review 82 (2009): 962-966.
- 9 Other reports combine cabinet departments, executive agencies, and independent regulatory commissions and boards. See, for example, White House Transition Project, "Appointments Summary at First Year's End," available at http:// whitehousetransitionproject.org (comparing President Obama's staffing to the previous administration's progress). Because there are more restrictions on appointments to the last category (for instance, statutory mandates on the front end and restrictions on removal on the back end), this report focuses only on cabinet departments and executive agencies. See the appendix for more details.
- 10 For the previous administrations, a position is considered staffed if the person has started work; for the current administration, a position is considered staffed if the person has been confirmed. See the appendix for more information. The 100-day numbers for Presidents Reagan, Clinton, and George W. Bush closely track but do not perfectly match the figures generated by the Congressional Research Service from searches of a variety of data sources. Rogelio Garcia, "Nominations and Confirmations to Policy Positions in the First 100 Days of the George W. Bush, William J. Clinton, and Ronald W. Reagan Administrations" (Congressional Research Service Report No. RL31054, July 17, 2001), p. 4.
- 12 The figure has more positions for President Obama than preceding presidents for a variety of reasons. Most important, this administration has to fill a set of new positions in the first year (including at the Department of Homeland Security, Office of the Director of National Intelligence, and other agencies) that preceding presidents did not have when they took office. In addition, the author excluded positions in the Office of Personnel Management database for completed administrations that had not been filled previously (in order to eliminate new positions created after a president took office). For example, a position first staffed in 1987 is not counted for President Reagan but is counted for subsequent administrations.
- 13 Shailagh Murray, "Early Transition Decisions to Shape Obama Presidency," The Washington Post, November 5, 2008, p. A30.
- 14 For previous administrations, positions in the row labeled "Department of Homeland Security/FEMA" are just from FEMA as DHS had not been created. For the current administration, positions are from DHS, which includes FEMA. The Veterans Administration did not become a cabinet department until 1989; the pre-1989 figures are from when it was a free-standing agency.
- 15. The slight difference in the number of positions in Figures 1 and 2 is due to positions coming in and out of existence between the time periods and positions becoming open between the two time periods.

- 16 The percentage as of the end of March for President Obama is shown in parentheses in the final column. These end of March figures count a position as filled even if it later became vacant by late March (for instance, the deputy attorney general position at the Justice Department). There are only a tiny number of such cases. The results for Presidents George W. Bush and Obama differ slightly from those calculated by the White House Transition Project, presumably due to small differences in the number of positions counted for each agency. For previous administrations, positions in the row labeled "Department of Homeland Security/FEMA" are just from FEMA as DHS had not been created. For the current administration, positions are from DHS, which includes FEMA. The Veterans Administration did not become a cabinet department until 1989; the pre-1989 figures are from when it was a free-standing agency.
- 17 See, for example, San Francisco Chronicle, "Clinton Worries About Attacks on Nominees,", January 21, 1994, p. A3 (quoting President Clinton as saying, "The [confirmation] process takes too long now"); White House, Office of the Press Secretary, "President Bush Discusses Pending Presidential Nominations, Urges Senate Confirmation," Press release, February 7, 2008, available at http:// georgewbush-whitehouse.archives.gov/news/releases/2008/02/20080207-8. html (quoting President George W. Bush on pending presidential nominations to agencies and to the courts as contending, "The confirmation process has turned into a never ending political game, where everyone loses.")
- 18 The nomination and confirmation periods are, of course, related. The president makes nominations in the shadow of the confirmation process. For example, the president may take more time to nominate an official if he is worried about the Senate confirmation process. After all, the president typically does not want his nominations to fail. Future research is needed to explore the interdependencies between these periods, as well to examine how these periods for one position depend on other positions.
- 19 The numbers for George H.W. Bush differ from Figure 1 because Figure 3 looks only at nominations and confirmations in the first 100 days. President Bush kept some President Reagan appointees, which counted for the jobs being filled at the 100-day mark but not for nominations and confirmations in the same period. This difference also affects the other presidents, though to a much lesser degree. For instance, in the agencies examined in this report, President Obama kept only eight appointees from the previous administration for at-will (nonfixed-term) positions. The numbers for Presidents Clinton and George W. Bush differ slightly from Figure 1 because Figure 1 counts whether there are Senate-confirmed or recess appointees in place at the end of April, according to the OPM personnel file. That file tracks effective start dates, not confirmation dates. Figure 3 relies on dates from the Presidential Nominations database, which tracks nomination and confirmation dates. See the appendix for more information.
- 20 The numbers for George H.W. Bush differ from Figure 2 because Figure 4 looks only at nominations and confirmations in the first year. President Bush kept some President Reagan appointees, which counted for the jobs being filled at the one-year mark but not for nominations and confirmations in the same period. The numbers for Presidents Clinton and George W. Bush differ slightly from Figure 2 because Figure 2 counts whether there are Senate-confirmed or recess appointees in place one year after inauguration, relying on the OPM personnel file. That file tracks effective start dates, not confirmation dates. Figure 4 relies on dates from the Presidential Nominations database, which tracks nomination and confirmation dates. See the appendix for more information.
- 21 In some individual cases, mostly in George H.W. Bush's administration, the process is overestimated as the time is calculated from the president's inauguration, not the date of departure of the former official.
- 22 Eight of Obama's recess appointments were to cabinet departments and executive agencies. They were distributed as follows: two in Commerce, two in Homeland Security, two in Treasury, and two in the Office of the U.S. Trade Representative.
- 23 Anne Joseph O'Connell, "Let's Get It Started" (Washington: Center for American Progress, 2009), p. 11-13. To be sure, there are potential benefits from vacancies in agency positions. Delays in staffing may lead to better appointees being selected. Vacancies may also produce better agency performance if acting officials fill important positions and do those jobs well.
- 24 U.S. Department of Agriculture, "About FSIS," available at http://www.fsis.usda. gov/About\_FSIS/index.asp.
- 25 Jerry Hagstrom, "Empty Agriculture offices, including food safety, raise concerns," Congress Daily, January 12, 2010.
- 26 Associated Press, "Missed Signs in Toyota Recalls," February 6, 2010.
- 27 The author appeared on one of these shows, on October 8, 2009, to defend the legality of top White House czars but also to criticize the administration's slow pace in filling agency positions.
- 28 Amy Harder, "Obama's 'Czars': An Executive Power Grab?" Government Executive, March 13, 2009.
- 29 Charlie Savage, "Deputy Attorney General to Step Down in February," The New York Times, December 4, 2009.
- 30 Hagstrom, "Empty Agriculture offices, including food safety, raise concerns."

- 31 Dull and Roberts, "Continuity, Competence, and the Succession of Senate-Confirmed Agency Appointees, 1989-2009," p.436.
- 32 Jackie Calmes, "For a Washington Job, Be Prepared to Tell All," The New York Times, November 13, 2008, p. A1.
- 33 The White House, "Presidential Appointments—Applications," available at https://app2.whitehouse.gov/ppo/paper\_app/Presidential\_Appointments\_
- 34 Judith E. Michaels, The President's Call: Executive Leadership from FDR to George Bush (Pittsburgh, PA: University of Pittsburgh Press, 1997), p. 206. In Australia, high-level officials sign performance contracts that include length of service. Karen M. Hult, "Strengthening Presidential Decision-Marking Capacity," Presidential Studies Quarterly 31 (2000): 38.
- 35 Jason Miller, "GSA sets up presidential appointee program," Federal News Radio, June 10, 2009
- 36 Paul R. Lawrence and Mark A. Abramson, "Getting Appointees Up to Speed," Government Executive, February 17, 2010.
- 37 C. Edward DeSeve, "Speeding Up the Learning Curve: Observations from a Survey of Seasoned Political Appointees" (Washington: IBM Center for Business of Government, 2009), p. 6.
- 38 Alex M. Parker, "President's budget recommends pay parity," Government Executive, February 1, 2010; Dennis Cauchon, "For feds, more get 6-figure salaries," USA Today, December 11, 2009.
- 39 Lyndsey Layton, "Obama's pick for food safety chief surprises consumer advocates," The Washington Post, January 28, 2010; Hagstrom, "Empty Agriculture offices, including food safety, raise concerns."
- 40 Peter Baker, "Obama Aide Gets Waiver to Investigate Airline Plot," The New York Times, January 1, 2010.
- 41 Lyndsey Layton, "Obama's Pick for food safety chief surprises consumer advocates," The Washington Post, January 28, 2010.
- 42 Likewise, the Vice Chairman of the Federal Reserve Board, Donald Kohn, announced earlier this month that he would leave in June. Sewell Chan, "Vice Chairman of Fed to Retire, Letting Obama Reshape Board," The New York Times,
- 43 Kate Phillips and Jeff Zeleny, "White House Blasts Shelby Hold on Nominees," The New York Times's The Caucus blog, available at http://thecaucus.blogs.nytimes. com/2010/02/05/white-house-blasts-shelby-hold-on-nominees/.
- 44 Dana Bash, "Shelby: Blocking nominees part of life," CNN, February 26, 2010. The "blanket" hold presumably involved several traditional nominees as well as military and foreign service officer promotions that also must go through the Senate confirmation process.
- 45 Henry B. Hogue, "Presidential Appointments to Full-Time Positions on Regulatory and Other Collegial Boards and Commissions, 107th Congress" (Congressional Research Service, Report No. RL30910, 2003), p. 5.
- 46 Brett M. Kavanaugh, "Separation of Powers During the Forty-Fourth Presidency and Beyond," Minnesota Law Review 93 (2009): 1464. Judge Kavanaugh writes: "The constitutional structure does not envision the Senate confirmation process of executive officials as a tool for waging policy disputes, which are more prop $erly\ contested\ through\ legislation\ and\ appropriations.'' For\ these\ commentators$ who subscribe to a theory of a unitary executive, nominees to independent regulatory commissions and boards are a different matter. But the courts have consistently upheld the constitutionality of such independent agencies, finding that the president still can exercise his "take care" duties under Article II even if he can remove his appointees in those agencies only for cause. Even if their limited independence from the president requires slightly more Senate scrutiny, these agencies still operate in the executive branch, and deference should be given to the president's selections for them as well.
- 47 Peter Baker, "Obama Making Plans to Use Executive Power," The New York Times, February 13, 2010.
- 48 The White House, "President Obama Announces Recess Appointments to Key Administration Positions," Press release, March 27, 2010, available at http:// www.whitehouse.gov/the-press-office/president-obama-announces-recessappointments-key-administration-positions.
- 49 Anne Joseph O'Connell, "Vacant Offices: Delays in Staffing Top Agency Positions," Southern California Law Review 82 (2009): 962-966.
- 50 For instance, the nomination counts include Dawn Johnsen to head the Office of Legal Counsel, as she did not withdraw until early April. Charlie Savage, "Obama Nominee to Legal Office Withdraws," The New York Times, April 9, 2010.

#### About the author

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