



Waiting for Leadership

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

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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.”¹ 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.³ 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.⁴ 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.⁵ 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 high-level 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.⁶ 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.

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