

A BIPARTISAN PLAN TO IMPROVE THE PRESIDENTIAL
APPOINTMENTS PROCESS

TESTIMONY BEFORE THE UNITED STATES SENATE
COMMITTEE ON GOVERNMENTAL AFFAIRS

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I am delighted to appear before this committee today as a co-chair of the advisory board of The Presidential Appointee Initiative, a project of the Brookings Institution funded by The Pew Charitable Trusts. The Presidential Appointee Initiative was created precisely to address the problems raised yesterday before this committee, and we applaud your commitment to increasing the odds that talented Americans from all walks of life will accept the call to public service.

As co-chair of the Initiative's advisory board, I bring an executive branch perspective to this hearing. I was confirmed by this committee as director of the Office of Management and Budget. I appreciate how hard you worked to make my confirmation both rigorous and fair, and also applaud the speed with which the White House moved in processing my nomination. Unfortunately, too many of my colleagues in past administrations, Democratic and Republican alike, report that my experience was the exception to the rule. Indeed, I think it is fair to argue that the presidential appointments process is now on the verge of complete collapse.

Problem Statement

Let me start my assessment of the presidential appointments process with a simple point: American government was designed to be led by citizens who would step out of private life for a term of office, then return to their communities enriched by service and ready to recruit the next generation of citizen servants. The Founding Fathers believed in a democracy led by individuals who would not become so enamored of power and addicted to its perquisites that they would use government as an instrument of self-aggrandizement. They fully understood that the qualities of a president's appointments were as important to the quality of government and the public's confidence in it as the laws that its elected leaders would enact. "There is nothing I am so anxious about as good nominations," Thomas Jefferson wrote at the dawn of his presidency in 1801, "conscious that the merit as well as reputation of an administration depends as much on that as on its measures."

The Founders themselves modeled their vision of citizen service by accepting the first presidential appointments, leaving behind their farms, businesses, and law practices to accept their country's call. For many, presidential service was the least of their accomplishments. They accepted the call as an obligation of citizenship. Indeed, Jefferson did not even list his ascension to the Presidency on his epitaph. He believed his greatest service to the nation was in creating the University of Virginia.

Two hundred years later, the Founders' model of citizen service is under deep duress as more and more of the nation's most talented leaders reject the call to lead. Presidential recruiters report a rising tide of turndowns as they begin the recruiting process. The problems are particularly visible at the start of each presidential administration where the process for entering office has become a torture chamber of isolation, endless review, personal expense, and unrelenting media scrutiny. Those who survive the process enter office frustrated and fatigued, in part because they so often endure the process with little or no help, and in part because the process has become an almost insurmountable obstacle course.

The forms themselves are a briar patch of complexity as the White House Office of Presidential Personnel, Office of Government Ethics, Federal Bureau of Investigation, the separate departments and agencies, and Senate committees collect often needless information. Most appointees must fill out Standard Form 86, "Questionnaire for National Security Positions," listing every residence they have occupied, every job they have held, and the dates and purposes of every foreign trip they have taken over the past 15 years, and every appointee must fill out Standard Form 278, "Executive Branch Personnel Public Financial Disclosure Report," a form so complicated that it carries an 11-page instruction sheet. One need only read the first paragraph of the general instructions to sense the complexity:

This form consists of the front page and four Schedules. If possible, use a black ink pen or typewriter to fill out your report. You must complete each Part of all Schedules as required. If you have no information to report in any Part of a

Schedule, you should indicate “None.” If you are not required to complete Schedule B or Part II of Schedule D, you should leave it blank. Schedule A combines a report of income items with the disclosure of certain property interests. Schedule B deals with transactions in real property or certain other assets, as well as gifts and reimbursements. Schedules C and D relate to liabilities and employment relationships. After completing the first page and each Part of the Schedules (including extra sheets of any Schedule where continuation pages are required for any Part), consecutively number all pages.

Most appointees also must fill out the White House Personal Data Statement Questionnaire, the Internal Revenue Service Tax Check Waiver, the White House Permission for FBI Investigation, and the White House Consent Form for Nomination. In addition, all Senate-confirmed appointees must fill out entirely separate forms for their respective committees, almost none of which fit the categories defined by the White House or SF-278, and almost all of which change from year to year as new committee members come and go. By one recent count, a typical appointee must wade through 233 separate questions. Although the forms are burdensome for everyone, they are particularly painful for appointees to advisory committees, volunteer boards, and blue-ribbon commissions where service is part-time, genuine authority nil, and remuneration nonexistent.

Together, the sheer number of jobs to fill and the rising tide of paperwork have contributed to five basic problems with the presidential appointments process:

1. Vacancy rates are rising.

At the start of President Clinton’s second term in the spring of 1997, nearly 250, or one third, of the government’s 726 top jobs were vacant. Although the number came down as the year wore on, vacancy rates now average roughly 25 percent per year. During 1998, for example, the Federal Election Commission was unable to get a quorum to do its job monitoring election

finance, while the Food and Drug Administration operated without a commissioner for 18 straight months until last year.

2. Delays are increasing.

The length of time required to fill the top jobs has been rising steadily over the past 30 years. The average appointee in the Kennedy administration was confirmed 2.4 months after the inauguration; the average appointee in the Clinton administration was confirmed in 8.5 months. Despite Herculean efforts to accelerate this process, the Bush administration will be lucky to have a full administration in place by next November.

3. Talented Americans appear to be opting out.

Presidential recruiters report two parallel trends in the appointments process. The first is an increase in turndowns by people who have been approached for an initial review. The second is an increase in the number of reversals by candidates who accept a nomination but eventually withdraw due to delays or costs. The result is that merely identifying someone willing to endure the process takes more time, increasing the delays between the opening of an administration and the actual nomination of candidates for positions. Hence the growing vacancy rate discussed above. Although good people are still coming into government, the anecdotal evidence suggests that presidents often are “drafting” from the fifth, sixth, and seventh rounds instead of the first, second, and third. As David Gergen wrote in 1991, “If the nation is to restore a measure of civility and common purpose in meeting its domestic crises, it must find ways to end the relentless, ugly assaults upon the character of its public figures.” It is little wonder that talented people would opt out of a system that exposes every detail of their lives to the public.

4. Turnover appears to be rising.

Burned out by the process of entering office, appointees appear to be leaving office faster. A 1994 report by the General Accounting Office showed that the average length of service between 1981 and 1991 for appointees without fixed terms was only 2.1 years. Other data confirm the pattern. The Federal Aviation Administration has had seven appointed and four acting administrators over the past 15 years; the Federal Housing Administration has had 13 commissioners over the past 14 years; and the General Services Administration has had 18 administrators over the past 24 years.

5. Most importantly perhaps, the appointments process has become increasingly abusive to those who decide to serve.

Nominees report that the euphoria of being called to service is quickly replaced by the twin emotions of uncertainty and isolation. No institution in American society is so cavalier or cruel in its treatment of the very people it seeks as its leaders. Fears of making a bad appointment have created such anxiety that high level appointments are delayed for months as names are vetted.

The Founders most certainly expected the time spent in citizen service to be inconvenient, even burdensome. That was part of the obligation to serve. “In a virtuous government,” Jefferson wrote, “public offices are what they should be: burdens to those appointed to them, which it would be wrong to decline, though foreseen to bring with them intense labor and private loss.”

So noted, they did not expect the process of entering office to exact such delay and frustration. They clearly wanted presidents to make speedy nominations and the Senate to discharge its advice-and-consent function, aye or nay, with equal dispatch. Two hundred years later, it is safe to argue that the presidential appointments process is increasingly incapable of fulfilling its most basic responsibility, which is to recruit talented citizens for

government service. More and more citizens are saying no, and those who do say yes are being forced through a process that is more torturous than the Founders ever could have imagined.

Reforming the Process

The Presidential Appointee Initiative was designed not just to identify problems in the presidential appointments process, but to seek pragmatic solutions. It was toward that end that the Brookings Institution created the advisory board which I co-chair with Senator Nancy Kassebaum Baker. Our task was simple: develop an agenda of reforms that would make the process faster, fairer, and still rigorous, an agenda that would help talented Americans accept the call to service, while making sure that all candidates are fit for service.

Because I represent the executive branch view at this table, let me focus on the six recommendations that deal with changes in the White House/executive branch nominations process.

The first recommendation deals with the White House Office of Presidential Personnel, which is the primary point of contact for recruiting presidential appointees. Our recommendation is simple:

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.

Our second recommendation focuses on the morass of forms and questionnaires that all appointees must now navigate in the appointments process.

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 especially 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.

The FBI full-field investigation is another ripe candidate for reform.

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 position 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.

The ethics regulations that have accumulated over the past three decades also require some tough-minded reassessment. So we recommend that:

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-interested 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.

The salaries of presidential appointees also need careful reassessment, especially the procedures we use for setting those salaries. We recommend that:

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.

The final two recommendations address our concerns about the number and layers of political appointees.

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.

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.