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ELIMINATING THE BOTTLENECKS: STREAMLINING THE NOMINATIONS PROCESS

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

OF THE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

MARCH 2, 2011

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ELIMINATING THE BOTTLENECKS: STREAMLINING THE NOMINATIONS PROCESS

WEDNESDAY, MARCH 2, 2011

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Collins, and Brown.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. The hearing will come to order. Good morning and thank you for coming here. This is one of those topics and hearings that attracts not much public attention, but is actually greatly in the public interest. So if we six, and everyone else in the room can agree, I think it will be good for America.

I thought I would start with a bit of history. In 1789, on a single day, the Senate of the United States took up and confirmed 101 executive nominations President Washington had sent up just 2 days earlier. I guess there was one rejected, and the President, our first President, complained—politely, I'm sure—to the Senate about the one that he did not get confirmed. But 101 nominations confirmed 2 days after they were sent to the Senate.

My history does not go back this far, but I bet they performed as well as the thousands and thousands of nominations since that have taken months and months and months to get to confirmation. And, of course, that is why we are here.

Modern presidents of both parties, I am sure, would sigh at that story of Washington's experience with envy. Nowadays the process by which a person is selected, vetted, nominated, considered, and confirmed by the Senate has become—in the words of one scholar—"nasty and brutish, without being short."

One hundred days into President Obama's Administration, only 14 percent of the Senate-confirmed positions in his Administration had been filled. After 18 months, 25 percent of these positions were still vacant. And this is not an aberration, of course, or an anomaly: The timetables for putting in place a leadership team across the government have been pretty much the same each of the last three times there has been a change of occupant in the White House.

We have known about this problem a long time, but failed to act.

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In recent history, in 2001, under the former Chairman of this Committee, Senator Fred Thompson, we held hearings on "The State of the Presidential Appointment Process" and recommended legislation, which did not pass.

In 2003, a bipartisan commission headed by Paul Volcker recommended ways to speed up the nominations process. That got nowhere.

And in 2004, to put it in a different context, the 9/11 Commission said the delays in getting a new government up and running actually pose a threat to our national security, and in its report it also recommended ways to speed up the process.

Well, after years of talk, it may well be that the time for change has finally arrived and we will have bipartisan support. This is one of those things where "it ain't over until it is over." So while I am encouraged, I am not confident yet.

And the reason for the change is that in January, Majority Leader Harry Reid and Minority Leader Mitch McConnell established a working group together on executive nominations and appointed Senators Charles Schumer and Lamar Alexander—Chairman and Ranking Member, respectively, of the Rules Committee—to lead it. These two colleagues of ours have been working on draft legislation, and Senator Collins and I have been working with them on it, and we hope to introduce the legislation shortly.

The nature of the problem really is known certainly to people in this room, and, therefore, I am going to put my full statement in the record, which documents the problem in specific numbers.

The legislation that we are working on will eliminate Senate confirmation for several categories of presidential appointments, freeing up the Senate to concentrate on the more important policymaking nominees.

It will also raise and, I think, answer some other questions. Can we simplify, standardize, and centralize the forms and documentation required by both the White House and the Senate so a nominee is not stretched out with duplicative paperwork and information requests?

And second, since we know that there will be a flood of nominations with each new Administration, can we create what might be called a "surge" capacity by temporarily adding personnel to the White House Office of Presidential Personnel and perhaps the Federal Bureau of Investigation (FBI) to handle vetting and background checks more efficiently?

In the past, the reason nominations reform legislation has stalled is, I think, evident and not really acceptable. And it is because of the perceived fears of some of our colleagues in the Senate, particularly chairs and ranking members, that they would be giving up some of their jurisdiction and authority if there were fewer nominations that came before them. The truth is that some of these nominations that are confirmed by the Senate not only should not be but, frankly, it is a waste of the Committee's time to spend on them when we could and should be doing work on legislation.

Nothing in the legislation that Senators Schumer, Alexander, Collins, and I are working on together will weaken in any way the important constitutional role the Senate has to advise and consent.

And if I may end with a little history as well, Gouverneur Morris, who was one of the architects of the Constitution, said when speaking in favor of the Advice and Consent Clause: "As the President was to nominate, there would be responsibility. And as the Senate was to concur, there would be security."

Those essential national goals and principles for our government will be unaffected by the kinds of changes, which are actually relatively modest, that we are talking about. But I hope and believe that we can get these changes accomplished this year.

Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman.

The Chairman is certainly correct that rarely do we take on an issue where it is of such intrinsic importance to the way government functions and yet appears to be of little interest to the press and the public despite that importance.

One of the most significant responsibilities of U.S. Senators is set forth in Article II, Section 2 of our Constitution. It requires that the Senate provide its advice and consent on nominations made by the President.

The 82-word Appointments Clause, as it is commonly known, provides the President with the authority to determine who, in his judgment, is best qualified to serve in the most senior and critical positions across the Executive Branch. It also requires that we, the Senators, exercise our independent judgment and experience to determine if nominees have the necessary qualifications and character to serve our Nation in these important positions of public trust.

The confirmation process must be thorough enough for the Senate to fulfill its constitutional duty, but it should not be so onerous as to deter qualified people from public service. And I fear that is what is happening today.

Countless studies have been written and many experts have opined on how to improve the process—from the Brownlow Commission in 1937 to, as the Chairman has mentioned, the 9/11 Commission in 2004.

Let me say that there are two areas in particular where I think improvements should be made. The first is to reduce the sheer number of positions subject to Senate confirmation.

For example, why is it that the public affairs officials in some major departments and agencies are subject to Senate confirmation when they are not carrying out any policy role?

In this regard, the National Commission on the Public Service, commonly known as the Volcker Commission, gathered some very illuminating statistics. When President Kennedy came to office, he had 286 positions to fill with the titles of Secretary, Deputy Secretary, Under Secretary, Assistant Secretary, and Administrator. By the end of the Clinton Administration, there were 914 positions with those titles.

Today, according to the Congressional Research Service (CRS), there are more than 1,200 positions appointed by the President that require the advice and consent of the Senate. So there has

been an enormous explosion in the number of positions that are now subject to Senate confirmation.

This large number of positions requiring confirmation leads to long delays in selecting, vetting, and nominating these appointees. Consequently, administrations can go for months without key officials in many agencies. And when political appointees are finally in place, their median tenure is only about 2½ years.

A second area ripe for reform, in my view, is to develop a consistent, common form for nominees to complete in order to streamline the process, save time, and increase accuracy. This also would reduce the cost and burden on nominees.

If these two areas could be reformed, substantial time will be saved, and key leadership posts at our Federal agencies will not be vacant for nearly as long.

National security reasons also compel attention to this problem. As the Chairman has pointed out, the 9/11 Commission identified this gap, and the National Journal has noted that "[p]eriods of political transition are, by their very nature, chaotic" and that "terrorists strike when they believe governments will be caught off guard." Both the 1993 bombing of the World Trade Center and the attacks on September 11, 2001, occurred within 8 months of a change in presidential administrations, and the March 2004 attacks at Madrid occurred 3 days before Spain's national elections.

Now, during this mid-term period—2 years away from a presidential election—we have the opportunity once and for all to streamline the process. This can help ensure that the next presidential transition, whether it occurs 2 years from now or 6 years from now, will be as smooth as possible, thwarting the terrorists' belief that they will be able to "catch us off guard."

While we must deliver on our duty to provide advice and consent, reforms are clearly needed to improve the effective operation of government. We all want the most qualified individuals possible to serve our Nation. We should, therefore, ensure that the process is not so unnecessarily burdensome that key leadership posts do not go unfilled for long stretches of time. And most of all, we need to reform the process so that good people whose talents and energy we need do not become so discouraged that they give up on their goal of serving the public.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Collins, for that statement.

Thanks to the witnesses. We have a great group of witnesses this morning who bring real experience and insight to the topic. So let us go right to Clay Johnson, who is a former Deputy Director for Management at the Office of Management and Budget (OMB). Thanks for being here.

TESTIMONY OF HON. CLAY JOHNSON III,[1] FORMER DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET

Mr. JOHNSON. Thank you, Mr. Chairman and Ranking Member Collins.

[1] The prepared statement of Mr. Johnson appears in the Appendix on page 25.

Chairman LIEBERMAN. Coming back from Texas, right?

Mr. JOHNSON. That is right. I congratulate and commend you all for taking this up so seriously. This is something that Mr. Stier and I and others have been working on and have wanted to be involved in helping to fix for a long period of time. And I sense, as I suspect you all do, that this might be just such an opportunity. There seems to be interest on both sides of the aisle, at all levels of leadership—the Senate, several different committees, and Senators Reid and McConnell—and so let us know today and later how we can help you all get as much done as possible.

My encouragement to you is that, as you think about different reforms, you pay particular attention to the reforms that can impact, as you have suggested in your opening remarks, the capability, the capacity, and the ability of a new Administration to put the Cabinet and sub-Cabinet in place by the August recess, and perhaps the 93, 100, 125, or so of the most time sensitive of those positions in place by April.

It does not mean that the Senate must confirm everybody that the new President sends up, but that the Senate should accept or reject, vote up or down that person so that the new Administration can move on. It does not mean that the new Administration should nominate the appropriate number of people regardless of quality. The emphasis is on quality. The emphasis is on the Senate being the Senate and fulfilling its constitutional responsibilities, but to do it with a great deal of attention to whether we have the capacity to get this done, if everybody is so inclined, by April 1, or by August 1? And I think the two key words are "ability" and "capacity."

One of the things I have found out in the last year or so as I have worked on the Rockefeller Foundation and Aspen Institute Commission on this subject, is that previous White Houses have never had the capacity to actually nominate enough people to the Senate in the period of time suggested to where it was even possible for the 100 most time sensitive, most important positions of a new Administration, regardless of which positions they were, to be in place by April 1, or the top 400 or so by August.

I point out in my written statement that the staffing of the Office of Presidential Personnel in the White House is really largely a function of tradition. Presidential Personnel is given a certain amount of money to hire a certain number of people, a total of about 30, and that means they can hire about seven or eight commissioned officers, and they, really smart, working really hard, can nominate enough people to get through the Senate, with lots of debate, 230 or 240 people by the first part of August—not because that is the goal. That is because that is the budget they were given. So the idea of having a surge capacity in that period of time is a really strong concept.

I just talked about how it might be manifested in the White House where some monies within the White House budget be reallocated—or it has even been suggested that some private monies be raised if there is not enough money in the White House budget, to make it possible for the White House to hire additional people for a 6-month period of time, to get it done.

The FBI, the Office of Government Ethics (OGE), and Diplomatic Security agree that they can surge. They do not need additional re-

sources to create extra capacity in that first 6 months, but they need to know that this is really important. They need to know that the White House wants them to reallocate and move their people around. The FBI would not pull people away from doing traditional FBI work, nor would the Diplomatic Security pull their people away from securing our diplomats around the world. But they would do less re-investigation work and do almost exclusively investigation work—the same thing with the Office of Government Ethics—and they can do that for about 6 months. They cannot maintain that capacity without additional resources for 9 months, 12 months, 2 years, but they can for 6 months. It is really only the White House that I believe does not have the resources to create that surge capacity for a 6-month period of time.

Another important factor that is critical, I think, to creating the ability and capacity to get those 100 most important positions filled by April 1, and 400 by the August recess, is to get the background information on all the nominees to the potential vetters quickly. Right now a nomination comes to the Senate, and Clay Johnson from Texas is nominated to do something. That is what the Senate starts with. Meanwhile, there is a file this thick in the White House with every possible piece of relevant information on that person, Mr. Johnson, and yet none of that is made available to the Senate. That is dumb. I mean, it is just tradition. It is separation of powers, whatever, but it serves no purpose at all. And yet something like a standard form or a smart form or some combination of those things I believe and am highly confident can be developed to get most of the background information the Senate needs to begin their vetting, with the nomination.

Same thing with the FBI and the Office of Government Ethics. All three of those, including Diplomatic Security, all four of those vetting organizations say one of the things that when everybody is trying to do something 2, 3, or 4 weeks faster during that first 6 months of an Administration, it takes 10 days to 2½ weeks to get the basic background information before vetting can even begin. That is critical time that the Senate, the White House, and the country needs to get our people in place faster and minimize the risks associated with those key positions being vacant. And I think both of those issues, surge capacity and getting information to the vetters very quickly, those are mechanical kinds of things. They do not call for the Senate to stop being the Senate. They do not call for anybody to lower quality standards. They call for managing the process, structuring the process differently than happens today, and I think those are process kinds of things. Those are things we can address, I am highly confident, and I am confident that the two of you and Senators Schumer, Alexander, Reid, and McConnell are just the people we need to lead this effort, and I commend you for taking it up.

Thank you.

Chairman LIEBERMAN. Thank you. That was great, very practical and helpful.

Max Stier, welcome. He is the President and Chief Executive Officer of Partnership for Public Service.

TESTIMONY OF MAX STIER,[1] PRESIDENT AND CHIEF EXECUTIVE OFFICER, PARTNERSHIP FOR PUBLIC SERVICE

Mr. STIER. Thank you very much for having me here. It is a pleasure, and especially to be with Mr. Johnson. He has been someone who has been a great partner. I have enjoyed working with him, and it is terrific that he is keeping his aura on this issue since he is really in many ways uniquely positioned to understand many of the challenges that are involved here.

I am told—and I do not actually watch TV—that there is supposedly a show called "Wipeout," which is essentially an obstacle course where people try to run through it and all these crazy things happen to them. Sitting here, I am thinking that maybe we should create a new reality TV show that looks at the political appointments process and presents that as the new entertainment. But judging from the audience, we may be in trouble, if that is what we try to do here. [Laughter.]

So I think you are clearly right. This is a critical issue that receives really very little attention, and without going through any number of stories that demonstrates the critical nature of this, I really wanted to focus on 10 recommendations, my top 10 list of things that you might consider, some are things that you are already looking at, as well as some of the things that Mr. Johnson has already mentioned, but at least hopefully a framework more that you can look at as well.

From where we sit at the Partnership for Public Service, we believe there are two primary or root causes of management dysfunction in the Executive Branch. The first is you have short-term political leaders that do not align against the long-term needs of the organizations that they are running. If you are a political appointee, Senator Collins, as you mentioned, you have 2½ years in office, if you are lucky. You are going to be focusing on crisis management and policy development, not on the long-term health of the organization that you are running. And, clearly, the shorter that time period, the shorter the runway, the harder it is for you to focus on long-term issues that, in fact, have great consequence.

Second, we do not have real-time information on performance typically in government, and those two factors combined make it worse because those political leaders can actually hide from their impact on the organizations that they run during their tenure, because the likelihood is that the damage that they have caused is going to be a lagging indicator of public failure that takes place once they are long gone.

The issue that is, I think, quite at center here really is that leadership one. Do you have the leadership in place with a long enough tenure and the right folks to make sure that government is operating correctly? And this is the most vital moment of all, as you have already stated.

So I think there are 10 critical things that Congress can do right now, and clearly this is not a problem that the Senate has created. This is a problem, though, that the Senate can help fix.

So first—and you have already obviously hit this one—is reduce the absolute number of Senate-confirmed positions. That would be

[1] The prepared statement of Mr. Stier appears in the Appendix on page 35.

an incredible achievement. And, clearly, if you are talking about 400 or a third of them, that would be massive. Not all the Senate-confirmed positions are the same, so if you are dealing with the boards, that is great. But in truth, the ones that are going to have greatest impact on management in government are the ones that are actually in the chain of command in the Executive Branch, the ones that actually have a field of control over some significant aspect of government activity. So to the extent that you can focus attention on those, that would matter a great deal.

And, clearly, to the extent that you can help prevent future harm from occurring, that would matter too. With the creation of the Department of Homeland Security (DHS), we now have 20 Senate-confirmed positions in that agency alone. And, again, the tendency is always to add, very rarely to subtract. So one would be to reduce those numbers, and that is hugely powerful.

Second, I would argue that you should go even further and think not just about converting them from Senate-confirmed positions, but think about whether you might even make some of them not just political positions but convert them into term appointments or career positions. And, specifically, I am thinking about the management positions themselves.

I just came this morning from a breakfast at which a former comptroller was there for government, and she was saying that a bunch of folks were meeting about the Chief Financial Officer (CFO) Act, and they were talking about why is this a political position, that it really ought to be a career position. And I would argue to you that instead of just making these political, not Senate confirmed, make the CFOs, the Chief Information Officers (CIOs), the Chief Administrative Officers (CAOs), a lot of these management positions, make them career or term appointments that have a performance contract, and that will give you that longer-run wait and will allow you to have a set of folks that are around long enough to make sure that government is managed appropriately.

Now, there is a downside. I think there is a legitimate argument on the other side, which says if you make them career or term appointments, then they will not be part of the core team. The political team will not actually respect them. But you know what? I think that is a trade-off we ought to take, because the flip side of that is we do not have any long-term focus on the management issues that we need. And we see a repeat cycle where a new group of political appointees eventually get an office, they figure out what is going on, they develop a plan, and guess what? They are out the door already. So that would be two.

Three is a timetable for confirmation, and this is something that, I think, Mr. Johnson is spot on. The truth of the matter is we do need that surge capacity, but when that incoming Administration is focusing on the myriad of things that it needs to do, it is not prioritizing getting the appointments out to you because it does not know what the demands are. It has not been told, that if you are going to be able to have your government in place on day one, we will have a bargain with you. You provide us the names by a date certain—January 1, December 15, whatever it is that the Senate determines—and then if you do that, we will do exactly what Mr. Johnson described. We will make sure that you have an oppor-

tunity to have these folks heard from. And that would be a game changer. It would have enormous impact on actually what the incoming Administration focuses on and where they put their actual resources.

So my view is it should be the top 50 by day one. Right now tradition holds that there is an effort to get the Cabinet in on day one. To me that is not good enough. You know, again, President Reagan had 78 by the first 100 days, President Obama only 65. We are not moving despite the fact that the world is moving much faster, challenges are much more pronounced. We need to change the goalposts here. We need to move them forward. And to do that, you need to offer a timetable. I would respectfully argue that would make a very big difference.

Four, cap the number of political appointees at individual agencies, not simply government-wide. So here is a problem that I think is quite—again, not noticed by quite pronounced. There is a cap of 10 percent for non-career Senior Executive Service (SES) overall for political appointments in government, but you see some agencies like the Department of Education where the number is 20 percent. Frankly, oftentimes it is viewed as a dumping ground, and it has enormous implications on the management of those organizations. If you talk to folks that are there, you will hear that. And what you ought to have, I believe, is a cap on individual agencies in addition to the overall government cap, and that would make a very big difference. Look at DHS, it has 61 non-career SES, 102 Schedule C's, and the Schedule C's are also highly problematic.

Five, something that I think you are looking at. If it has to be a Senate-confirmed position, can you actually have something that is an expedite process? So where it is non-controversial, it does not have to go through committee. So it permits the Senate confirmation process to go forward, but does not require the same level of investment that you make in some of the other reviews that you do.

Six would be the streamlined forms that Mr. Johnson described, and I think that is a terrific idea, and time matters.

One additional thought I would put on top of that would be to say is there a possibility of looking not just at making the process electronic, but actually trying to improve the process. So the danger sometimes is to say, well, we can put it all on the Web, but I think it is also an opportune time to look at the method itself, and you may be able to make improvements there.

Seven, we need a single source of information about the status of political appointments, in particular Senate-confirmed appointments. So most folks are now going to the *Washington Post* which stopped publishing this in September. Well, why isn't there a government Web site that tells you in real time, where folks are in the process, ultimately who is responsible. Has the Administration not put forward the names to the Senate? It should be a one-stop shop rather than individual committees where the information is right now.

Eight, more resources that Mr. Johnson already identified. I think that would make a huge difference, particularly on the White House side.

Nine, we need changes to the security clearance process. One of my favorite examples of this is Mike McConnell. Thirty-five years of security clearances, polygraph tests, you name it. He gets nominated to be the Director of National Intelligence (DNI). Guess what? They decide to do a new security clearance for Mike McConnell all over again from scratch. So there are all kinds of ways in which that process could be improved as well.

And tenth, this is going to take us a little bit more off course, but the truth of the matter is that there are two things that are critical here: Who you pick and how you prepare them. I do not know if Vince Lombardi said it, but he should have. But we are focusing on who you pick. The preparation piece of the political appointments is broken. You have a whole ton of folks that are coming in. They do not understand government. They do not understand how to manage government or the people that they are responsible for. They do not operate as a team. And we need to see an up-front investment much larger than has occurred previously in that orientation, in that preparation process. Again, it may not be the topic for today, but I hope you will come back to this because I think it is absolutely vital.

So thank you for the great work that you are doing here. Obviously, this Committee already passed some legislation earlier last year. That was, I think, really important in helping provide resources at the front end of the transition process. And, again, you are doing just an incredibly important thing here. So thank you.

Chairman LIEBERMAN. Thank you, Mr. Stier. That was excellent. Obviously, a number of those can be accomplished by administrative action and do not require legislation, a number of your top 10.

Mr. STIER. I will pester them, too.

Chairman LIEBERMAN. Yes. I do not know that you are going to replace David Letterman with the Top Ten List, but that was good. [Laughter.]

It is great to see Dr. Bob Dove again, who was our Parliamentarian for years and who has a lot to offer on this subject. So thank you for being here.

TESTIMONY OF ROBERT B. DOVE, PH.D.,[1] FORMER PARLIAMENTARIAN OF THE U.S. SENATE

Mr. DOVE. Well, thank you, Mr. Chairman. My perspective actually is a little different. I came to the Senate floor as part of the Parliamentarian's Office in 1966, and so I have watched leaders over the years. The first two leaders that I watched were Senator Mike Mansfield of Montana and Senator Everett Dirksen of Illinois. And my perspective is that the Senate is basically a personality-driven institution, and the two most important personalities on the Senate floor are the Majority Leader and the Minority Leader. And that is one of the reasons that I am so encouraged by the fact that the present Majority Leader, Senator Reid, and the present Minority Leader, Senator McConnell, have come together and appointed two Senators who have already shown their ability to work together, Senators Schumer and Alexander, to deal with this issue.

[1] The prepared statement of Mr. Dove appears in the Appendix on page 43.

It is an important issue, but it is an issue that has some political ramifications that I have watched over the years. Nominations have on occasion become a very convenient tool of Senators to push a political agenda that often has absolutely nothing to do with the nomination. And I know that Senators are loath to give up a power position. That is the reason they come to the Senate. And I appreciate that.

So I do not think that this will all be easy. I have seen over the time that I have been on the Senate floor a situation where a Senator from Alaska basically tried to blackmail a Senator from Washington over a nomination with the idea that the Senator from Washington, Henry "Scoop" Jackson at the time, should support his attempt to get onto a committee that existed then, the Joint Committee on Atomic Energy. That failed. But also the nomination failed because the Senator from Alaska continued his filibuster in that situation.

So, I have seen in a sense the political side of the nomination process, and the fact that only the Senate deals with nominations gives Members of the Senate a unique ability to exercise that kind of political power.

I watched, as I say, for 35 years on the Senate floor as various leaders dealt with the whole issue of nominations. Probably the most powerful leader that I watched in that period was Senator Robert Byrd of West Virginia. And, indeed, Senator Byrd in the late 1970s was being frustrated over the whole issue of getting to nominations, because it used to be in the Senate that you got to nominations first by going to executive session, and then making a debatable motion to go to the nomination, as you now have to make a debatable motion to go to legislation, and then you had another debate on the nomination itself. And Senator Byrd was successful in setting in the late 1970s a precedent that eliminated one of those filibusters. It is now possible for a leader to make a non-debatable, non-divisible motion to proceed to any nomination on the executive calendar, thus cutting in half the number of filibusters.

So I have seen, as I say, over the years how leaders have dealt with the whole issue of the nomination process. I do not think they have solved it yet, but they have dealt with it, in the case of Senator Byrd, successfully eliminating one filibuster involving nominations. But I do not think you are going to take out the whole issue of politics from nominations. A nomination which I well remember occurred when President Lyndon Johnson was in office, and he sent to the Senate the nomination of a totally unqualified person to be a Federal district judge with the letter supporting it from Senator Robert Kennedy as a kind of payback, as it were. And it worked. That nomination failed in a very embarrassing vote on the Senate floor.

This kind of thing is part of the Senate. Politics is part of the Senate. And you will, I think, have to deal with that issue as well in terms of solving this problem.

I applaud the proposals. I think there probably are way too many positions right now that require Senate confirmation, and reducing that number would be appropriate. But also, having watched from a particular vantage point how the politics plays out, that is not

going to be removed from the system, and there will be, I think, interesting fights over nominations based on the politics in the future as there have been in the past.

Chairman LIEBERMAN. That was great. We ought to get together and just swap stories, Mr. Dove. [Laughter.]

That was quite realistic. Forgive me, I am going to try to do this quickly, but way back, I cosponsored—it was in the 1990s—with a Republican colleague a measure—and others did, too—to have a Congressional Medal in honor of a particular American who had passed away. It had a hard time in the House for various reasons. It finally made it to the Senate toward the end of the session. We found out that there was a Democratic Senator holding up the movement on this medal. So my Republican colleague said, "Please go see him." So I did, and I said, "Do you have anything against this man?" "Oh, no, no." "What is the problem?" "Well, your Republican cosponsor, is holding up a nomination that I am concerned about"—I think it was for the Securities and Exchange Commission (SEC); it was no small matter—"and I am not going to approve his medal for this person unless"—and I went back to the Republican Chairman, and he let that nomination go. [Laughter.]

And the medal was passed.

Mr. DOVE. That is the way the Senate works.

Chairman LIEBERMAN. That is the way the Senate works. So it is actually an important cautionary note. We should start the question round, and we will have 7-minute rounds.

There is a lot we can fix here, but there is a lot that is just plain human and part of the Senate that will always intervene in the advice and consent process.

Let me ask you if you have thought about this, and I will begin with you, Mr. Dove. Are there other things such as the change that Senator Byrd made that the Senate can do, do you think, to improve its own processes and the nominations process overall? In other words, understanding that there will always be the kind of politics we are talking about, once a nomination gets to us, after all it has gone through and hopefully we expedite it, is there anything more you would suggest we think about to expedite it?

Mr. DOVE. Well, I will tell you that when I went into the Parliamentarian's Office, the Parliamentarian at the time, Floyd Riddick, gave me some advice, and he said, "The rules of the Senate are perfect. And if they are all changed tomorrow, they are still perfect." [Laughter.]

I have tried to follow that advice. I try not to make suggestions about how to change the rules of the Senate. I think that is above my pay grade. I am sure there are things that could improve the process, but I just am not comfortable getting into those kind of suggestions.

Chairman LIEBERMAN. I understand. I referred during my opening statement to the 9/11 Commission, and, in fact, in the Intelligence Reform and Terrorism Prevention Act of 2004, we did enact provisions that expedited completion of background investigations for the president-elect's nominees for high-level national security positions before Inauguration Day. It also in another way made an important that threat information go to the president-elect as soon as possible after the election.

I wanted to ask Mr. Stier or Mr. Johnson to comment. The Obama transition was the first, obviously, in which these provisions were in effect. In your report last year, Mr. Stier, on presidential transitions, did you find that the new provisions helped the President get his national security team in place more quickly and perhaps to ensure that they were better prepared to govern from opening day?

Mr. STIER. I think absolutely yes, they did use those provisions, although there is an interesting discrepancy between the McCain campaign and the Obama campaign in that, then-Senator Obama had literally over a hundred folks go through the security clearance process; whereas, my understanding from the McCain campaign is they had five. So it was a very useful tool but, again, one dependent upon a campaign understanding the importance of it.

Chairman LIEBERMAN. So that it worked in that way, but, of course, the numbers—it worked in terms of the key national security positions, nominees in the Obama transition. But, of course, as you have said, the total number of nominees moved at the beginning of the Obama Administration was actually lower.

Mr. STIER. Correct, in the first 100 days.

Chairman LIEBERMAN. Yes.

Mr. STIER. Again, I do not mean to flog this too hard, but I do think it is one of the most important things that you could really do, would be to create a timetable, a set of expectations on the campaigns or at that point the president-elect's perspective of what they need to do in order to have their team in place. And I think, frankly, they did a lot of great things, and they prepared a lot. There were a lot of reasons why they wound up——

Chairman LIEBERMAN. Right.

Mr. STIER. They had personnel heads that shifted twice in the process. But I think that they were not shooting for a high target. They were not shooting for the target of having the 50 top positions in by day one and 100 by that first 100 days. They were not organizing their resourcing in order to achieve that, and, therefore, while they used this authority, it was not to that end objective.

Chairman LIEBERMAN. So I take it that your thought about the top 100 by April 1, and the top 400 by August 1, is kind of a device of the basic idea that the 9/11 legislation imposed on the top people in national security.

Mr. JOHNSON. Yes, it is—and the 100 is a number out of the air. It is more than 50, more than 25, and not 200. And every President would have a different 100 positions depending on what is going on in the world. But it is a nice number to shoot for by 100 days or April 1.

A comment about the background checks before the inauguration or before the election. If I am not mistaken, what was authorized was a background check that would give the person a top secret security clearance, which meant that the person—as soon as the candidate was the president-elect, those 100 people or 125 people could get the same top secret information and be available to advise the president-elect on national security matters. It did not authorize a background check worthy of being nominated to the Senate for a Senate-confirmed position. Those are two different things.

So it provided the president-elect with—it surrounded him with lots of advisers who had access to the same information.

Chairman LIEBERMAN. Right.

Mr. JOHNSON. And you would rather have that FBI background check to begin with, but the background check required that a White House would want to do and the Senate would want to look at before the person was nominated—or taken up for consideration for confirmation is not begun with that legislation.

Chairman LIEBERMAN. Good point. What kind of process would you establish and do you think it makes sense to try to do it in law for selecting the top 100 or top 400, or whatever the number turned out to be?

Mr. JOHNSON. I think a president-elect would identify the positions that he or she were going to try to concentrate on first and indicate that to the Senate leadership. The Senate leadership might have some suggestions—only suggestions. They cannot direct the President what to do.

Chairman LIEBERMAN. Right.

Mr. JOHNSON. But they might add and subtract some. But have a dialogue at the beginning about what those positions are, and in effect, commit informally the Administration to work on those with the highest priority and commit the Senate informally to be prepared to receive those and to take them up with some expedition. But it would not obligate either party to do it.

Chairman LIEBERMAN. Right.

Mr. JOHNSON. Again, for whatever reason—politics, people being people, the Senate being the Senate—they may not want it to pass them. They may not want to go that fast.

Chairman LIEBERMAN. Right.

Mr. JOHNSON. Or they might want to go faster. But it calls for a dialogue and some discussion and some prioritization which drives everything else. It drives how fast the FBI works. It drives the staffing of the Office of Presidential Personnel. It will drive the resources that the committees allocate to this kind of work in that first 90 days, 120 days.

Chairman LIEBERMAN. It is a really good idea. In other words, it goes beyond the obvious, which is any President would want at the top, Defense, Treasury, State, etc., to forcing a prioritization a little further down, and then putting Congress or the Senate on notice that that was the goal, with nothing mandatory about it.

Mr. JOHNSON. Right.

Chairman LIEBERMAN. Most important of all, I think it creates priorities.

My time is up in this round. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

Let me start by thanking our witnesses for their excellent testimony and thanking Mr. Dove for throwing the cold water of reality on why logical reforms are so difficult to implement and to get through the Senate.

The Chairman made a very important point that I want to go back to, and that is that the Administration, this or a previous one or any administration, has the ability to expedite the process, and that is often overlooked when we heap blame on the Senate for being slow to get nominees through the confirmation process.

The fact is in many, perhaps most cases, the majority of the time spent in the nomination and confirmation process occurs before the nomination is even submitted to the Senate. And one reason for the lengthy process is that recent Administrations—actually, it goes all the way back to the Eisenhower Administration—have required full field FBI investigations for all nominees. And, Mr. Stier, when you referred to Mike McConnell, that was an excellent point. Here is an individual who has had the very highest level of security clearance for many years in many different jobs, and yet we start all over again as if he has held none of these positions.

The other issue is that the FBI investigation is not scaled to the level of security responsibilities of the position for which the person is nominated. Thus, the individual who is nominated to be the Assistant Secretary for Public Affairs at the Department of Housing and Urban Development (HUD) has to go through exactly the same FBI check as the individual nominated to be the Secretary of Homeland Security. And that does not make sense to me.

I want to start with Mr. Johnson on this. Is there a way to scale the extent of the FBI investigation so it more nearly matches the responsibilities of the position?

Mr. JOHNSON. There is and I think it happens today. It did with the George W. Bush Administration. I remember Fred Fielding, who was the clearance counsel during the transition, set it up, and then Al Gonzales as White House counsel set it up where there was a scaling. The way they scaled it was, every question was answered, but for the most important positions there were, I would say, 20 in-person interviews. For a lower level position, there were maybe 15 in-person interviews or 5 in-person interviews and 10 phone interviews. And in others further down, there were only ten interviews. There was a scaling in terms of how much data verification there was, which is the time-consumer. It is not that they only filled out sections 1 through 3 here and they had to fill out the whole form over here. It is how much verification there was.

It is up to the White House—the White House determines how detailed the investigation is. So if it is not being scaled, it is because the White House is choosing not to scale it.

Senator COLLINS. I am going to take a look at that issue with this White House. I personally read all the FBI reports on all the nominees that come before our Committee, and they seem to be the same kinds of intensive investigation.

Now, that may reflect the fact that in some cases this Administration has gotten burned on some of the investigations done by the FBI. That happened in the case of a Transportation Security Administration (TSA) nominee that came before this Committee, where there were significant issues that were not uncovered by the FBI investigation.

Mr. JOHNSON. One thing I would suggest you do—and your staff could do it—is visit with some of the White House counsels for the last several Administrations in the first year of the Administration. Tim Flanigan, who was the Deputy White House Counsel for George W. Bush, could talk about it, and Fred Fielding, and President Clinton's staff, maybe get them together or talk to them sepa-

rately. But they would tell you what they did or did not do and what they think they can do and cannot do.

Mr. STIER. If I might add?

Senator COLLINS. Yes.

Mr. STIER. I think it would be useful to get data. I hear all kinds of anecdotal stories that are quite frightening with respect to this and share your sense that it is not working as it ought to in many instances. But we do not have data, and it is not that hard to collect it, what is being done for the nominees, how much time it is actually taking. And I think that would help, more transparency would help a great deal.

I think one of the improvements that happened in the Bush Administration was the requirement by Executive Order that there be reciprocity across agencies for security clearances. But now there is a suitability review that individual agencies are doing on top of security clearances, saying, we take the security clearance but we are going to see if it works for us. That is actually just shoehorning back in another layer of time-consuming and oftentimes detrimental review.

But I think this is ripe for more information that would help you understand better what is going on.

Senator COLLINS. I think that is an excellent suggestion.

Mr. Johnson, you are in an unusual situation because you have served as head of the Office of Presidential Personnel, but you have also been a Senate-confirmed nominee as Deputy Director of OMB. In fact, you came before our Committee, and you are welcome to criticize our process, because it is more extensive than others.

Mr. JOHNSON. Do I look that stupid? [Laughter.]

Senator COLLINS. But having seen both sides of the process, which is very unusual for someone to have seen it from both sides, are there particular paperwork or form burdens that you recall as being particularly duplicative or onerous? You have the OGE form; our Committee's form; the White House's form; and the FBI's form. They are all different, from what I have seen. Do you have any thoughts on that, having gone through the process?

Mr. JOHNSON. Well, on the form, I had already filled out a 278 and SF–86 to get my security clearance and be properly qualified to work in the White House. So I did not have to fill those out anew. I had to update them, which you would have to do anyway. So that was not a new thing.

As part of the confirmation process, there was a long list of subject-related questions that I was asked to respond to, and there was a meeting with your staff—maybe it was in this room—to go over a bunch of issues. And nobody is going to answer those questions in writing in a way that is going to cause them not to be confirmed.

Senator COLLINS. Correct.

Mr. JOHNSON. And no one is going to say anything in the interview that is going to cause them not to be confirmed. But yet the relationship between me, the nominee, and the staff is very important to begin to establish as early as possible. I am not sure, though, it helps the Committee decide that I am qualified or not to be the person confirmed for the position.

So the only question I would raise—it is not a criticism—is whether that exchange of information and that interview with the staff and the sharing of ideas needs to take place before the confirmation. It needs to take place early on, I think after the confirmation, to facilitate the exchange of information and communication between Senate and the position at OMB. But I am not sure that you get information from the answers to those questions or from the staff interviews that helps you decide this person is marginally qualified, not qualified, or whatever.

So if time was of the essence and you are trying to move things along, scheduling an extra week or 10 days or so to have me fill out those questions and have the interview with the staff I am not sure improves the quality of your decision that I was qualified or not. It accomplished something else, but that could have waited until after the confirmation.

Senator COLLINS. Thank you.

Chairman LIEBERMAN. Interesting. We are due for a vote soon, but maybe we can do a couple more questions each on the small matter of keeping the government funded and operating after this Friday.

I wanted to ask you about the kind of one-way, one-time standard, and you made a good point. After all that the White House does to vet nominees, in some sense it starts again when it gets here. Is there any reason why the Senate should not begin with the full White House file on a nominee?

Mr. JOHNSON. There might be some legal reason it is not shared. But if not, there could be some sharing of that information. And if there is some reason why the form itself cannot be shared, a so-called smart form could be used where they put it in there and then it populates the data in an SF–86 and then separately gives the Senate the information it seeks.

Chairman LIEBERMAN. Right. Mr. Dove, do you have any thoughts about that from the Senate's legal point of view?

Mr. DOVE. Well, what I am reminded of was the very unpleasant confirmation process involving Senator John Tower to be Secretary of Defense, and as I recall, there were materials placed in a secret room——

Chairman LIEBERMAN. That is correct.

Mr. DOVE [continuing]. Where Senators could go, and then there was some question that possibly some Senators used that information in open debate on the floor of the Senate. To me that is a problem, and was a problem during that confirmation.

Chairman LIEBERMAN. One quick question—and I remember that happened when I first came into the Senate. That was the first month. Do you have any thoughts about how to fulfill this notion of a surge capacity of staff within the Office of Presidential Personnel at the transition time?

Mr. JOHNSON. Well, it starts with a new Administration, directly or indirectly committing to get the 87 or 100 most important positions filled, potentially; send the names up to the Senate in time so the Senate is given a reasonable amount of time to get them confirmed or not within that first 100 days or by April 1, and the bigger number by August.

Once they have committed to do that, then they decide how much money to allocate in the budget to Presidential Personnel staffing, how many people they put in the counsel's office to do clearance work, what kind of directions they give the FBI, and what kind of directions they give the Office of Government Ethics, etc.

Chairman LIEBERMAN. Which is——

Mr. JOHNSON. But it begins with them committing to the notion of doing that much work.

Chairman LIEBERMAN. How about additional personnel? Because you gave a good example about they only could get so many through in——

Mr. JOHNSON. They get a budget. Right now the budget generally allows for hiring seven or eight officers, and it is about six Special Assistants to the President, and that is where most of the work is done.

Chairman LIEBERMAN. And that goes the whole time—I mean, in other words, that is not just for the first 8 months or whatever.

Mr. JOHNSON. Right. In that last 6 months of an administration, it might be five instead of six.

Chairman LIEBERMAN. Yes.

Mr. JOHNSON. But the staffing is the same at the beginning as it is in the end, which is——

Chairman LIEBERMAN. Yes, so what should we do? Is one thing to do here to create a budget for bringing in outside people to do investigations for the office, for that early period of time?

Mr. JOHNSON. Well, the so-called Kaufman bill, that you passed calls for pre-election transition work.

Chairman LIEBERMAN. Yes.

Mr. JOHNSON. And it gives them the right to go out and raise money to fund transition activities before the election. And it is easy money to raise. They could raise a little bit of money, or they could raise a lot of money, and they would want to raise a lot of money if they were committed to try to make 100 and 400 nomination most expelitously. So it starts with their desire to put their team on the field faster.

Chairman LIEBERMAN. Got it.

Mr. JOHNSON. So that is a lot of jawboning. There are things that the Senate could probably do in bill language that refers to this or a dialogue at the beginning of an administration. I do not know how this takes place. This is your world. But it starts with that commitment, and then everything else flows from that. If there is a need for more money, $2 million, which is the most it would ever be, for the first 6 months in a White House budget—that is not a deal killer.

Chairman LIEBERMAN. It comes from having that as a priority.

Senator Collins, do you want to ask a question?

Senator COLLINS. Just one final point. I know we have a vote that has started.

One complaint that I have heard from some nominees is that it has been very expensive for them to go through the process and to serve. I remember Gordon England in particular pointing out that he had lost, I think it was, hundreds of thousands of dollars because he had to divest himself of assets very quickly in order to be confirmed as Secretary of the Navy, I think it was, at the time.

And as I said from the beginning, my goal is to have the best people possible in government and to not have unnecessary barriers to their serving.

On the other hand, clearly we want to make sure we are guarding against real or perceived conflicts of interest, but I would ask you, Mr. Johnson, because of the role that you play, how big a problem are the requirements for divestiture and the sheer cost of hiring accountants to help you go through your records for the vetting process? Is that something that we should be worried about?

Mr. JOHNSON. The reason people choose not to serve is because it is too expensive, directly and indirectly. An expense can be they have stock options that are worth too much or too little, or they have an ailing mother-in-law living with them, and they cannot afford to move, or they have just built the house of their dreams, or their children are juniors and seniors in high school, so there is an expense. There is a cost to the family, to the individual.

If there is a direct cost associated with divestiture or associated with getting accountants to pull together all the information, it is because the person is really rich. [Laughter.]

Senator COLLINS. Good point.

Mr. JOHNSON. So it is usually a cost that they can incur, and they will tell you whether they can afford it or not.

Now, it would take the Office of Government Ethics to determine whether there are other ways of dealing with a potential conflict. Can you put it in a blind trust? I do not know that. But I think the Office of Government Ethics—by the way, pay a lot of attention to what they recommend because their standards for looking for conflicts of interest are as high as anybody else's in the government, they are trying to do really good work, and they have thought very creatively about how to do it with less burden and get to decisions faster and look for ways to keep some of these expensive divestitures from taking place. But they are the experts, and I encourage you to pay a lot of attention to their ideas.

Senator COLLINS. Thank you. I would love to hear more, but we do have a vote on, so I just want to thank all of our witnesses today, and you, Mr. Chairman, for holding this hearing.

Chairman LIEBERMAN. Thank you, Senator Collins. We will really work on this.

Mr. Stier, do you have something else you want to say before I gavel?

Mr. STIER. I just really wanted to say, back to Mr. Dove's point about human nature, just to reinforce, I think part of human nature around an election is that you are going to see a lot more opportunity at the front end. So if you actually set an aggressive timetable—and I would say not just 100 days but really day one, which means you actually have to have money pre-election. It has to be during the transition process that they are actually doing this. Human nature will mean that this stuff will happen a lot faster.

Chairman LIEBERMAN. Yes.

Mr. STIER. So that front-end piece I think is huge.

Chairman LIEBERMAN. Thank you. Thanks to the three of you very much. It has been very helpful.

We hope to have this legislation ready for introduction next week, and then we will move it as rapidly as we possibly can through the Committee. But you have been really helpful today. We are going to leave the record open for 15 days for additional questions and statements.

With that, again I thank you. The hearing is adjourned.

[Whereupon, at 11:13 a.m., the Committee was adjourned.]

APPENDIX

United States Senate
Committee on Homeland Security and Governmental Affairs
Chairman Joseph I. Lieberman, ID-Conn.

Opening Statement of Chairman Joseph Lieberman
"Eliminating the Bottlenecks: Streamlining the Nominations Process"
Homeland Security and Governmental Affairs Committee
March 2, 2011

The hearing will come to order. Good morning and thank you for coming. This is one of those topics and hearings that attracts not much public attention, but is actually greatly in the public interest.

I thought I'd start with a bit of history. On a single day in 1789, the Senate took up and confirmed 101 executive nominations President Washington had sent up just two days earlier – rejecting only one.

And our first president complained – politely, I'm sure –to the Senate about the one he didn't get. My history doesn't go back this far, but I bet they performed as well as the thousands and thousands of nominations since that have taken months and months and months.

Modern Presidents of both parties would sigh, because nowadays the process by which a person is selected, vetted, nominated, and then considered and confirmed by the Senate has become – in the words of one scholar– "nasty and brutish, without being short."

One hundred days into President Obama's Administration, only 14 percent of the Senate-confirmed positions in his Administration had been filled. After 18 months, 25 percent of these positions were still vacant. And this is not an aberration or anomaly: the timetables for putting in place a leadership team across the government has been pretty much the same each of the last three times there has been a change of occupant in the White House.

We've known about this problem a long time, but failed to act.

In 2001, under former Chairman Fred Thompson, this Committee held hearings on "The State of the Presidential Appointment Process" and recommended legislation, which did not pass.

In 2003, a bipartisan commission headed by Paul Volker recommended ways to speed up the nominations process. That got nowhere.

In 2004, the 9-11 Commission said the delays in getting a new government up and running actually pose a threat to our national security and in its report it also recommended ways to speed up the process.

Well after years of talk, it may well be that the time for change has finally arrived and we'll have bipartisan support. This is a case where it ain't over till it's over, so while I'm encouraged, I'm not confident yet.

In January, Majority Leader Reid and Minority Leader McConnell established a working group on executive nominations and appointed Senators Schumer and Alexander – chairman and ranking member, respectively, of the Rules Committee – to lead it. Senators Schumer and Alexander have been working on draft legislation, which we expect will be introduced shortly.

Senator Collins and I have been part of the working group on this bill and we hope to introduce a bill shortly.

The nature of the problem becomes clear when we look at the numbers.

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A study by the Congressional Research Service says the delay occurs not so much at the Cabinet level positions. Presidents Reagan, George W. Bush, Clinton and Obama all were able to get the vast majority of their nominees for Cabinet Secretaries in place on or shortly after Inauguration Day.

Where the delay is most pronounced, according to CRS, is in the sub-cabinet level positions. Under President Reagan, nominees averaged 114 days from the President's election to final confirmation. Under Clinton, George W. Bush and Obama those numbers jumped to 185, 198 and 195 respectively.

Part of the problem is that the number of positions requiring confirmation has grown over time.

When President Reagan took office, he had 295 key policy positions requiring confirmation. By the time President Obama was inaugurated, that number had grown to 422 key positions, plus another nearly 800 lesser positions that also required Senate confirmation.

And these numbers do not include judges, foreign service officers, or public health officials that also require Senate confirmation.

The legislation Senators Schumer and Alexander are working on will recommend eliminating Senate confirmation for several categories of presidential appointments, freeing up the Senate to concentrate on the more important policy-making nominees.

It will raise and answer some other important questions. For instance, can we simplify, standardize and centralize the forms and documentation required by both the White House and Senate so a nominee isn't stretched out with duplicative paperwork and information requests?

And second, since we know there will be a flood of nominations with each new administration, can we create what might be called a "surge" capacity by temporarily adding personnel to the White House Office of Presidential Personnel and perhaps the FBI to handle vetting and background checks more efficiently?

In the past, the reason nominations reform legislation has stalled is evident and not really acceptable. It is because of the perceived fears of some of our colleagues, particularly chairs and ranking members that they would be giving up some of their jurisdiction and authority. The truth is that not only some of these nominations shouldn't be, but frankly it's a waste of the Committee's time when we can and should be working on legislation.

Nothing in the legislation we are working on will weaken in any way the Senate's important Constitutional role of "advice and consent."

If I may end with a little history, As Governeur Morris, one of the architects of the Constitution, said when speaking in favor of the "advice and consent" clause: "As the President was to nominate, there would be responsibility. And as the Senate was to concur, there would be security."

Those essential national goals and principles for our government will be unaffected by the kinds of changes, which are actually relatively modest, that we are talking about. But I believe and hope we can get it done this year.

Nothing we are considering will dilute this important part of our delicate system of checks and balances.

But if we don't fix what is broken in this system, I fear we risk discouraging some of our nation's most talented individuals from accepting nominations and leaving important positions unfilled.

I call on my fellow chairmen, ranking members and colleagues on both sides of the aisle to work with us on addressing this challenge so the next new Administration, regardless of party, can recruit the best candidates and then put them to work quickly addressing the many challenges our nation faces.

Statement of Ranking Member
Senator Susan M. Collins

"Eliminating Bottlenecks: Streamlining the Nominations Process"

Committee on Homeland Security and Governmental Affairs
March 2, 2011

One of the most significant responsibilities of United States Senators is set forth in Article 2, Section 2, of the Constitution. It requires that the Senate provide its "Advice and Consent" on nominations made by the President.

The 82-word Appointments Clause, as it is commonly known, provides the President with the authority to determine who, in his view, is the best qualified to serve in the most senior and critical positions across the executive branch of our government. It also requires that we -- the Senate --exercise our independent judgment and experience to determine if nominees have the necessary qualifications and character to serve our nation in these important positions of public trust.

The confirmation process must be thorough enough for the Senate to fulfill its Constitutional duty, but it should not be so onerous as to deter qualified people from public service.

Countless studies have been written and many experts have opined on how to improve the process -- from the Brownlow Commission in 1937 to the 9/11 Commission in 2004.

There are two areas in particular where I think that improvements should be made. The first is to reduce the sheer number of positions subject to Senate confirmation.

In this regard, the National Commission on the Public Service, commonly known as the Volcker Commission, gathered some very illuminating statistics. When President Kennedy came to office, he had 286 positions to fill with the titles of Secretary, Deputy Secretary, Under Secretary, Assistant Secretary, and Administrator. By the end of the Clinton Administration, there were 914 positions with these titles.

Today, according to the Congressional Research Service (CRS), there are more than 1,200 positions appointed by the President that require the advice and consent of the Senate.

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The large number of positions requiring confirmation leads to long delays in selecting, vetting, and nominating these appointees. Consequently, administrations can go for months without key officials in many agencies. And when political appointees are finally in place, their median tenure is only about two and a half years.

A second area ripe for reform is to develop a consistent, common form for the nominees to complete in order to streamline the process, save time, and increase accuracy. This also would reduce the cost and burden on nominees.

If these two areas can be reformed, substantial time will be saved, and key leadership posts at our federal agencies will not be vacant for nearly as long.

National security reasons also compel attention to this problem. The *National Journal* has noted that "[p]eriods of political transition are, by their very nature, chaotic" and that "terrorists strike when they believe governments will be caught off guard." Both the 1993 bombing of the World Trade Center and the attacks on September 11th, 2001, occurred within eight months of a change in presidential administrations. And in March 2004, just three days before Spain's national elections, al Qaeda-linked terrorists bombed Madrid commuter trains.

Now, during this mid-term period -- two years away from a Presidential election -- we have the opportunity to streamline the executive branch nominations process. This can help ensure that the next presidential transition will be as smooth as possible, thwarting the terrorists' belief that they will be able to "catch us off guard."

While we must deliver on our duty to provide Advice and Consent, reforms are needed to improve the effective operation of government. We all want the most qualified people to serve the President and the nation. We should, therefore, ensure that the process is not unnecessarily burdensome and that key leadership posts do not go unfilled for long stretches of time. Most of all, we need to reform the process so that good people whose talents and energy we need, do not become so discouraged that they give up their goal of serving the public.

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Statement of the Honorable Clay Johnson III
former Assistant to the President for Presidential Personnel
and
former Deputy Director for Management
Office of Management and Budget
and
Co-Chair, Commission to Reform the Federal Appointments Process

before the

U.S. Senate Committee on Homeland Security and Government Affairs

on

Eliminating the Bottlenecks: Streamlining the Nominations Process

March 2, 2011

Mr. Chairman, Ranking Member Collins, and members of the Committee, thank you for asking me to testify before you today. I congratulate you and Senate and Rules Committee leadership for committing to find ways to improve the process by which Presidents are able to put in place, in a timely fashion, a team to help carry out their policies.

My thoughts and recommendations here are informed by my personal experience as the Executive Director of the 2000-2001 Bush-Cheney transition, the head of Presidential Personnel during the first two years of the Bush-Cheney administration, and as a co-chair this past year of the Aspen Institute's/Rockefeller Foundation's Commission to Reform the Federal Appointments Process (Commission). Senators Bill Frist and Chuck Robb, the Honorable Mack McLarty, and I have lead the Commission to explore the obstacles and opportunities involving all the organizations involved in the Federal appointments process. We have had extensive discussions about possible appointments process reforms with relevant staff members in the White House, Senate, FBI, Diplomatic Security, and Office of Government Ethics (OGE).

Based on all that we have heard and experienced first-hand, I recommend you place a priority on identifying and enacting reforms that especially:

- Improve the process during the first six months of a new administration, when there are the greatest number of critical vacancies, and thus the greatest risk to our President's ability to effectively attend to the national

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security, financial, economic, health and/or other challenges facing our nation.

The experience of the 5 most recent administrations is that by August 1 of the first year, only about 60% of an administration's most critical 400 cabinet and subcabinet positions are filled. By April 1 of the first year, only the Obama administration had filled as many as 50% of the 100 or so most critical, time-sensitive operational, national security, economic, and health positions.

- Reduce the unnecessary and unacceptable vetting burden on the candidates, which are at the level now where some highly qualified candidates are not interested in being considered for an appointment. Candidates for positions have to answer just about every question two or more times, and oftentimes different ways, and there are unacceptable and unnecessary delays in getting this information to the different vetting organizations, and thus in assessing the worthiness of the applicants.

You are already working to convert a number of PAS positions to PA status. This would increase the time the Senate has to spend on matters most worthy of Senate attention, reduce the vetting burden on a significant number of nominees, and make it possible for a new administration to put people more quickly into 50 or so of the 400 most time sensitive-positions in the first six months (legislative affairs, public affairs, etc.).

In addition to this, to focus on the two goals suggested above, I highly recommend you also:

- Cause an electronic application, a so-called "smart form," to be developed and used.

  The FBI, Diplomatic Security, Office of Government Ethics and Senate each experience vetting delays of days to weeks because of the time it takes potential/actual nominees to prepare and transmit their background information to them. The time it takes to answer the questions is unnecessarily long, as most of the questions asked by vetting organizations are redundant; the FBI doesn't receive a likely nominee's background information until days and sometimes weeks after the person has been officially "put into clearance" by the White House; OGE is delayed vetting potential nominees for conflicts of interest because they don't receive nominees' financial information until the very end of the nominee selection

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process; and the Senate receives no nominee information with the nomination, and can't begin their consideration of a nominee's merits for the days to weeks it currently takes for the nominee to respond to the Senate's requests for information.

For less than $1 million (possibly from eGov funds currently available) and in 10 to 12 months, a "smart form" could be developed and put into use which allowed nominees to answer one way, one time each of the White House, FBI, Diplomatic Security, OGE, and Senate personal background questions relevant to the intended position, and then transmit the completed background questionnaires as soon as permissible. A likely nominee would download an application from a website, indicate the position for which he or she is being considered, and receive an unduplicated list of all the background questions to be asked by any of the relevant vetting organizations. The likely nominee would answer the questions, and as soon as permissible transmit to each of the vetting organizations the information they each expect, on the forms they are used to receiving: each vetting organization gets the information they desire to receive. The application would be easy to use, private and secure, provide a lot of "pop-up" assistance, and allow the applicant to stop and start answering the questions as desired. A likely nominee for one of the 400 most time-sensitive positions during the first 6 months of a new administration could be directed to answer all questions before being presented to the President for formal consideration; so the FBI and OGE could get their information as soon as the President decides to put an applicant into "clearance," and the Senate could receive its information with the nomination. Exhibit A (attached) contains the proposed specifications for such an application.

Such an application would reduce the unnecessary and unacceptable data gathering burden for all potential nominees, help ensure the same questions are answered consistently, and make it possible to reduce the time required to vet and confirm (or reject) a nominee.

- Help ensure a new administration has the capacity to select, vet and nominate persons to the 400 or so most time-sensitive positions in the first six months of the first year, in case the new administration is so inclined to do so.

  The White House has never allocated enough funding for the Presidential Personnel Office (PPO) to employ enough staff to actually make this many

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nominations this early. A new administration has never had the capacity in the first six months to nominate persons for more than 250 cabinet and subcabinet positions, let alone 400 positions, which government reform individuals and groups suggest a new administration should be able to do. All recent administrations have employed 7 or 8 PPO officers, not because that was the size staff they needed to do the work but because that was what had been done traditionally. To create the desired nominating capacity a new administration would need to employ eight to ten additional Special Assistant-level personnel during the transition and first six months of a new administration, along with commensurate support staff and White House Counsel clearance personnel, which would cost less than $2 million.

New administrations can be "encouraged" to create such nominating capacity by good government groups and the press calling for such a commitment from all eligible presidential candidates, and measuring nomination and confirmation performance relative to the suggested April and August targets. Perhaps the Senate could request new administrations indicate the positions they intend to nominate persons for such that they might be filled by April or August; so the Senate (and FBI, Diplomatic Security, and OGE) can staff and organize accordingly. Our Commission is available to help you explore ways to "motivate" new administrations to prioritize the resources within the White House budget to create the selecting and vetting capacity to make it possible to fill all the time-sensitive PAS positions by the August recess of the first year.

Note: FBI, Diplomatic Security, OGE, and Senate staff leadership have indicated they can move resources around during the first 6 months of a new administration to support the nomination and potential confirmation of persons for the 400 or so most time-sensitive positions by the August recess, and the 100 most time-sensitive of these by April 1 or so. They do not need additional resources to create extra process capacity for a six-month period. However their ability does depend on the FBI, Diplomatic Security, and OGE receiving nominee candidate background information at the beginning of the investigation process, and the Senate receiving their nominee background information with the nomination, which a "smart form" helps make possible.

And finally, I suggest you also:

- Consider ways Senate committees could work together to reduce the wide range of questions, time periods, valuation ranges and the like, used to

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gather similar background information from nominees. The examples included in Exhibit B (attached) suggest some of the questions asked may be redundant and unnecessary, and some questions may ask for more detailed information than is necessary to assess the nominees' qualifications.

- Consider reforms that the OGE will propose shortly regarding how their process can be reformed to more effectively and expeditiously identify potential conflicts of interest.

Most everyone agrees the current Federal appointments process does not serve our country well. Presidents, particularly new presidents, are without their key subcabinet members for too long. The risks to our country resulting from these vacancies are unacceptable and, I believe, unnecessary.

Again, thank you for asking me to testify before you today.

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Exhibit A

Smart Form Specifications

One electronic form application which applicants use to answer one way, one time the White House, Senate, SF86 and SF 278 questions relevant to the intended position, and then transmit completed questionnaires if/when requested.

Benefits

- Faster data availability for all users, especially the Senate
- Minimum errors of omission
- Less burden on the applicant + more targeted content assistance where important

Basic requirements

- Free to the user and easy to use
  - Targeted content assistance
- **All output from the form is identical to the current forms**
- Private and secure
  - Minimum data storage
  - Authentication of true individual
  - Encryption
  - Registration
- Separable file structure
  - Portable: save input and begin again; allow for multiple submissions over time
  - Compliant
    - Export data to other databases
    - Import data from other databases
  - Mutable: update quickly; restructure submissions as needed
- Flexibility
  - Compatible across different computer platforms
  - Open architecture, non-proprietary
  - Easy to add/modify/subtract questions
- Elaborate error checking
- Smart scheduling: keep track of progress providing info; check for incompletes

Timing: 10 to 12 months for development and testing

Basic design/ownership/maintenance concept

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- Mini-application is downloadable from a website
- Development is managed, and website/application is maintained by __?__
- Usage by each applicant is mandatory, to ensure data for all nominees is made available faster

Funding (cost $400 -700 thousand?)

- Development funded by private $ initially (or gifted)?
- Private $ repaid (if not gifted) by USG $ (Transition or eGov)?

Usage agreement

- How make form "official?"

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Exhibit B

Facts Regarding Different Versions of the Same Questions

Financial data and conflict-of-interest information. Despite the fact that the Ethics in Government Act requires OGE to provide the committee of jurisdiction with an ethics packet that includes the SF-278 and an ethics agreement, most Senate committees still request additional and often redundant financial and conflict-of-interest information.

Financial data. Most committees require the disclosure of financial information beyond what is called for by the SF-278, but there is little consistency among committees, and often divergence between the questionnaires and the SF-278. A few examples:

- The SF-278 requires the reporting of assets and liabilities in ranges, rather than precise figures; a number of committee questionnaires (e.g. Ag, Banking, Intel, Finance if the asset or liability exceeds $1,000) require precise figures.
- The SF-278 requires a nominee to report sources of income for the current and previous calendar years only. Committee ranges vary: the Banking Committee, for example, requires all sources of income for the preceding three years, while Intel requires five years.
- The SF-278 does not require a nominee to report the value of a primary residence (or include as a liability any mortgage on that residence); some committee questionnaires (e.g., Banking) do require such information.
- The SF-278 does not require a nominee to report financial transactions from the past year, but some committees (e.g., Finance) require a complete accounting of the previous 12 months' transactions involving securities, commodities, futures, real estate, or other investments that have a value of $10,000 or more.

Conflicts of interest. A nominee's ethics agreement describes all potential conflicts of interest identified by the DAEO and the Office of Government Ethics and sets forth the steps that the nominee will take, if confirmed, to avoid any conflicts. Nevertheless, nearly every Senate committee asks the nominee to list potential conflicts. These questions are ordinarily answered with a boilerplate reference to the ethics agreement, so the answers add little value. In addition, some conflicts-related questions do

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call for slightly different information than the SF-278:

- o Gifts. Although incoming nominees do not need to disclose gifts (schedule B on the SF-278), some questionnaires (e.g., Banking) call for their reporting.

Taxes.

Tax returns. Six committees—Budget, Finance, HSGAC, Indian Affairs, Rules, Small Business—require the submission of tax returns, for varying periods of time. Foreign Relations instructs nominees to personally review returns for the previous five years, and asks for a commitment to provide returns for three years upon request. Other committees do not request tax returns.

Tax questions. Committee practice varies widely on the question of tax information. Finance (and several others) asks whether a nominee has always filed and paid all federal, state, local, and other taxes when due, and also whether all federal, state, local, and other tax returns and tax liabilities are current (filed and paid) as of the date of nomination. HELP just asks whether a nominee's tax returns have ever been the subject of any audit or investigation. Other committees ask no substantive tax questions at all.

Misc.

Litigation questions. Some questionnaires ask for a detailed account of all litigation in which the nominee has been a named party; some, like Armed Services and HSGAC, go still further, asking the nominee whether "any business of which [he or she was] an officer [has] ever been involved as a party in any administrative agency proceeding or civil litigation" (and if so to provide details). This can lead to incredibly lengthy responses, particularly when a nominee has had many employers often embroiled in litigation, or is a long-time government official with many official-capacity suits.

Political contributions. A number of committees ask nominees to list political contributions; Intel asks for a comprehensive report of contributions for the last ten years, while Foreign Relations asks for the current and preceding four calendar years; HSGAC asks for contributions of $50 or more for the past five years, HELP asks for the past five years, and Banking for contributions of $500 or more over the past eight years. Other committees, including Judiciary, ask no such questions.

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Clients. The Intel committee asks nominees who are "attorneys, accountants, or other professionals" to list all clients and customers billed more than $200 for the previous five years (an extremely burdensome request for many nominees).

Student loans. Some committees (e.g., Ag) ask whether the nominee has ever had a student loan. Since the SF-278 captures any current loans, it's not clear what interest committees have in knowing whether a nominee once received a student loan that has been repaid in full.

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Written Testimony of Max Stier
President and CEO
Partnership for Public Service

Prepared for

The U.S. Senate Committee on Homeland Security and Governmental Affairs

Hearing Entitled,
"Eliminating the Bottlenecks: Streamlining the Nominations Process"

March 2, 2011

Chairman Lieberman, Ranking Member Collins and Members of the Committee, thank you very much for the opportunity to appear before you today. I am Max Stier, President and CEO of the Partnership for Public Service, a nonpartisan, nonprofit organization dedicated to revitalizing the federal civil service and transforming the way government works. I appreciate your invitation to testify on nomination reform.

While it once might have been viewed as a "good government" initiative, expediting the nomination and confirmation process has become a national security imperative. The pace and severity of global challenges are such that any interruption in government capacity can have devastating consequences. The current system, which allows key positions to remain vacant for months, is cause for alarm and we applaud the Committee for seeking to improve it. It is not hard to find examples where the absence of critical personnel in the chain of command could have led to disaster. Just hours before President Obama's inauguration, the Bush White House was dealing with a potential terrorist threat with only a skeleton crew of presidential appointees still in place, and President Obama's new Treasury Secretary operated without any senior appointees at the height of the financial crisis. We were lucky that our government was able to weather these storms without all hands on deck – but luck is not enough.

Having high quality senior leaders in government – including the politically appointed leaders in federal departments and agencies – is crucial to government's ability to perform, particularly during times of crisis. So in 2007, the Partnership began to follow the next presidential campaign and transition to assess the preparation for a transfer of power and the ability of a new administration to install leaders and respond to urgent national challenges. The leadership transition is one of the defining characteristics of our government and, as presently conducted, it exposes the dangerous weaknesses in our current nomination and confirmation process. We released our final report, "*Ready to Govern: Improving the Presidential Transition*," one year after the inauguration. A lot has been done in the past year on this issue, and I am pleased to highlight both the progress made and further recommendations we have for you, specifically on the nomination and confirmation process.

I. Celebrating Progress

Pre-Election Transition Planning

As you well know, creating an atmosphere that will result in a seamless transition and good government management must begin well before election day. We were thrilled to see the Pre-election Presidential Transition Act of 2010 – introduced by Senator Kaufman and cosponsored by Senators Lieberman, Collins, Akaka and Voinovich – become law last Congress. This important legislation addressed a critical factor in the success of any transition – the need for candidates and outgoing administrations to plan ahead.

The Pre-election Presidential Transition Act encourages early planning by enabling qualified presidential candidates to access important transition resources. The law directs the General Services Administration (GSA) to offer qualified candidates an array of services, including office space, communication services, briefings, training and initiation of security clearances for prospective personnel. The law also allows candidates to establish a fund, separate from a

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campaign fund, to pay for transition-related expenses or to supplement the services provided through GSA. Furthermore, the law authorizes the establishment and operation of an agency transition directors council, which includes career employees designated to lead transition efforts in executive branch agencies.

We believe this law will do much to pave the way for smooth transitions in the future. It will also allow for transition teams to openly begin focusing on a crucial aspect of any transition – the nomination of all political appointees – without fear of being considered presumptuous or "measuring the drapes."

II. Building on Success

A. From Election Day to the Inaugural and Beyond

A key finding of our *Ready to Govern* report was that the period between election day and inauguration day is a short but extremely crucial period. When well-executed, this time of "formal" transition can enable a new administration to get off to a fast and productive start. Post-election transition operations must grow quickly, be highly organized and be able to communicate with the public, Congress, the outgoing administration and key allies.

In this period between early November and the inauguration, the president-elect must select key White House staff, Cabinet secretaries and numerous others to head independent agencies and other top positions. The personnel team must also begin processing applications for other administration jobs and deploy information technology to help handle the task.

New administrations spend enormous energy to scrutinize, announce and then shepherd a long list of political appointees through the Senate confirmation process, a task that stretches through the first year of an administration and beyond.

The 2008 edition of the Plum Book (United States Government Policy and Supporting Positions) listed 1,141 Senate-confirmed positions, including Cabinet and sub-Cabinet positions, agency heads, U.S. attorneys, ambassadors, judges, and members of various boards and commissions. A *Washington Post* tracking system lists 526 positions that it considers "top tier."

It is somewhat surprising, given the high level of cooperation from the Bush administration and the commitment to preparation by the Obama transition team, that the Obama administration has fared no better than its recent predecessors in filling key posts in a timely manner.

Although President Obama got off to a fast start, six months into the administration, nominees had been confirmed for only 37.5% of those top tier positions. That number increased to 51.5% after nine months, and at the one year mark, 59.2% of positions were filled by appointees confirmed by the Senate. The most recent data from September 10, 2010 shows the Senate had

confirmed 413 nominees, accounting for 78.5% of top tier positions, and the President had announced the nomination of (or intent to nominate) another 34.[1]

The initial hiccups in the early days of the new administration's personnel operation were attributed in part to a lack of continuity in the operation of the Presidential Personnel Office. The office had a change in leadership when the head of the office was appointed White House deputy chief of staff, and another change when his successor was named to an ambassadorship.

As some high-profile presidential appointees ran into difficulty during the Senate confirmation process, the already-stringent standards of the Obama personnel operation tightened further. Nominees were subject to detailed disclosure requirements, including examination of years of tax records. Some qualified individuals were discouraged from pursuing positions; others were disqualified or withdrew after long periods of inaction and uncertainty.

The vetting process is onerous and requires three lengthy questionnaires and detailed financial and tax information in addition to an FBI background check and additional Senate questionnaires and disclosure requirements on a wide range of issues. The nominees are interviewed numerous times, including by Senate committee staff. Nominees at times are held up in committee for a variety of political and policy reasons, or because problems were encountered in their background investigations.

A number of government experts have argued that the disclosure requirements are unwieldy and that the sheer number of political appointees requiring Senate confirmation has grown too large. The Partnership shares this view. The complexity of the process as it exists today results in difficulty persuading talented individuals to serve, delays in the nomination process that leave jobs vacant, and constraints on the ability of a new president to govern.

B. Bipartisan Executive Nominations Working Group

Given what we learned from the last transition, it is important for the Senate to consider further reforms to the nominations process early in this Congress – before the politics of an upcoming presidential election get in the way. We know that this Committee has long sought to streamline the presidential appointments process, and you now have bipartisan support from Senate leadership. We commend the Senate leadership for elevating the issue of nominations reform and establishing the executive nominations working group headed by Chairman Schumer and Ranking Member Alexander of the Rules Committee. We know Chairman Lieberman and Ranking Member Collins are key participants in this working group and we thank the Committee for holding this hearing to help build momentum for change.

We support the work of Senators Schumer and Alexander, in conjunction with this Committee, to reduce by one-third the number of Senate-confirmed political appointees and to explore the possibility of "smart forms" to ease the paperwork burden on nominees. Improving the

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[1] www.washingtonpost.com/wp-srv/politics/fedpage/, Washington Post, Fed Page: *Head Count: Tracking Obama's Appointments* (February 25, 2011)

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nominations process will benefit the American people, federal agencies, Congress and the talented men and women who may be asked to serve in our government.

III. Improving the Confirmations Process: Recommendations for Congress

Mr. Chairman, the deficiencies in the executive nominations process are not only an issue during the post-election period; indeed, they are ever-present challenges that need to be addressed. This Committee should be commended for your bipartisan approach to nominations reform, and for holding today's hearing to surface problems and initiate changes that will contribute to smooth presidential transitions and better agency management in future years. We are pleased to share our recommendations with you for your consideration.

Reducing the number of appointees requiring Senate confirmation

It is no surprise to the members of this Committee that the Senate confirmation process is much maligned – and with good reason. In our view, there are too many political appointees requiring Senate confirmation, too few resources available for vetting candidates, too much red tape for the nominees to wade through, and too little sense of urgency when a sense of urgency is exactly what we need. This is an extraordinary time in our nation's history on virtually every front – and the American people need all hands on deck. Unfortunately, that is not what they are getting, as the Obama administration has encountered the same hurdles that slowed its predecessors. One year into the administration, President Obama had only 59.2% of his top tier nominees named and confirmed; as of September 10, 2010, that number had increased to only 78.5%. No administration can govern at its very best, and respond effectively to crises, when it is missing senior members of its political leadership.

We encourage the Committee, and Congress, to evaluate the number of political appointees requiring Senate confirmation and consider whether Senate confirmation is necessary in all of those cases. We are well aware that this ground is well-trod by the Committee and that this would be an exceedingly difficult task, but we also believe that it is a recommendation worth making and would have a very significant impact on the pace of the presidential transition. We are highly encouraged by the efforts of the Senate's bipartisan working group; the working group's success in reducing the number of Senate-confirmed positions is critical and would serve as a strong foundation on which to build subsequent improvements in the system.

Establish a timeline by which to consider nominees

Improving the Senate confirmation process would be truly "game-changing" – that is, a paradigm shift with highly consequential results. We believe that Congress and an incoming administration should work together to ensure that a new president's team is in place as soon as possible. The Senate and the president-elect should agree on a timetable that would enable the Senate to vote on the top 50 administration officials on or immediately after inauguration day, including all key posts within the Departments of Defense, Homeland Security, Justice, State and Treasury, provided those names were received by a date mutually agreed upon and no problems with the nominees surfaced.

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Establishing a timetable would give transition teams a much needed incentive to get their nominees to the Senate in a timely fashion. Concrete deadlines would help transition teams make naming top appointees a priority and provide them with a level of certainty about when they would have their teams in place at agencies.

The Senate should strive to have 100 appointees confirmed within the first 100 days of the administration and close to all 526 key positions filled by the August recess.

For vacancies that occur after the early months of an administration, we believe a similarly aggressive timetable should be established. Vacancies in key positions will inevitably arise throughout a president's term, but those vacancies must not be allowed to remain unfilled for months at a time.

We believe that the Senate should consider internal procedural changes that would incentivize each committee to move noncontroversial nominees who become mired in the current system. We do not presume to tell the Senate how best to achieve this reform, but suggest that the Senate may wish to consider having noncontroversial nominees discharged from committee after a period of time or held at the desk. This would enable committees to focus their energies on the individuals nominated by the president for more consequential policy-making roles.

Establishing a timetable for nominations would require high levels of cooperation among Senators and between the Senate and the incoming administration – but we believe it is achievable. We are already witnessing a renewed spirit of bipartisan cooperation on nominations reform, as demonstrated by the Senate leadership in establishing the nominations reform working group, and we must not waste this momentum. We believe it can and must be a priority of the Senate to help the administration fill all of its most consequential positions by the August recess. This change would improve our national security, promote better government management and allow agencies to more effectively work toward their missions.

Improving the executive branch process for selecting and advancing nominations

No matter how efficient the Senate may be in moving nominees, the Senate can do little until an individual is nominated. Much of the delay in the current process occurs in the executive branch, well before the Senate ever receives a nominee's formal nomination papers. Current ethics, financial disclosure and overall vetting processes place a significant burden on the system, thwarting even the most dedicated administration efforts to nominate individuals quickly. We encourage the Committee to task the Government Accountability Office with identifying the costs and benefits of the current steps in the process and recommending improvements that would contribute to a better system for clearing and confirming political appointees.

While awaiting the results of a GAO report, there are several changes we urge Congress to make that we already know will improve the process. First, to ease the burden on nominees, we recommend that Congress order an interagency effort to consolidate and streamline the political appointee background questionnaires into a single, secure electronic form, providing each investigating agency the opportunity to add jurisdiction-specific addenda.

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We also suggest that Congress establish a single source of information regarding the status of all presidentially appointed positions subject to Senate confirmation. The public would benefit from a one-stop shop where it is easy to track open positions, whether individuals have been formally nominated and where they are in the process. While this information exists in a piecemeal fashion, we believe it should be consolidated and more easily accessible to the public.

These improvements may also include more vetting resources and personnel for the White House personnel office and the Office of Government Ethics during high-volume periods – in other words, "surge capacity" that would allow key executive branch offices to ramp up when the need arises.

We also suggest that the Office of Government Ethics be directed to revise and update financial disclosure forms for the executive branch to address the changing nature of "conflict of interest" and other increased complexities in financial products and services.

Converting select political appointments to career positions

We fully support the effort by Senators Schumer and Alexander to reduce the number of Senate-confirmed political appointees and would recommend to the Committee that this effort go even further. The proliferation of executive nominations subject to confirmation has placed a significant burden on the committees of jurisdiction; eliminating the requirement for Senate confirmation for select positions will help, but more can be done. We propose converting a number of appointed positions from "at will" to career positions with fixed terms and performance contracts. This makes sense for positions that are truly of a managerial nature, and would enable a longer time horizon to address agency management challenges. Having career experts serving in key management positions would also allow an agency to retain institutional knowledge and ensure continuity between administrations. Congress could reserve its right to call these reclassified positions in to testify and thus ensure accountability measures are kept in place.

Avoiding creating new positions subject to Senate confirmation

Additionally, the Senate should be cognizant of attempts in legislation to create new politically appointed positions and work to find alternatives, particularly when those positions are managerial in nature. The Senate should carefully consider any legislation that would add nominees to make sure it is absolutely necessary to require the advice and consent of the Senate to fill those positions.

Cap the number of political appointees at each agency, not just across government

Currently, the 10% government-wide cap for noncareer Senior Executive Service (SES) personnel varies from agency to agency – sometimes dramatically. For example, 20% of the SES at the Department of Education are noncareer personnel, while the Department of Veterans Affairs and Department of Energy each have 4.27% and 4.95% of their SES as noncareer positions, respectively. Congress should limit the number of noncareer SES at each agency instead of the current, cross-government policy. This would ensure no agency becomes a

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repository for political favors and would promote better selection of individuals whose skills match agency missions.

Political appointee training

Lastly, reform should not end with more effective selection, vetting and confirmation of political appointees. These individuals, many new to government, need training to effectively manage their new responsibilities and understand how to lead and maximize the contributions of the career workforces at their respective agencies. Since the nomination and confirmation of senior political appointees occurs throughout a president's term, Congress should amend the Presidential Transition Act to authorize and encourage the training of incoming appointees throughout an administration's tenure, not only during the transition stage. Congress should also expand that Act's definition of who may receive training, so it is extended to senior leaders across federal agencies, not only department heads and key White House staff.

IV. Conclusion

Mr. Chairman, we thank you and your colleagues for the opportunity to share our recommendations with you today. We are passionate about the importance of improving the presidential appointments process, and commend you for your bipartisan commitment to nominations reform. Your goals are ambitious and your success is imperative; the Partnership looks forward to doing whatever we can to help.

Testimony of Robert Dove

March 2, 2011

Introduction

Every new president assembles a team of advisors. Article II, Section 2 of the Constitution, provides for the President, who "shall nominate, and by and with the Advice and Consent of the Senate..." these government officials._ Today more than 2.000 high-level positions in the Cabinet departments and independent agencies are submitted to the Senate for approval.

When the President names a new Cabinet member, or makes another executive appointment, the following steps occur:

1. The nomination is submitted by the President in writing to the Senate.
2. The nomination is referred to the committee with jurisdiction over the position or the agency in which the position exists. i.e. The Armed Services Committee will review the Secretary of Defense nominee.
3. Committee hearings may occur at this point.
4. Once a nominee is placed on the Senate's calendar, floor consideration of the nomination may occur.
5. The White House is notified of the confirmation or rejection of the nominee. The Record includes all nominations submitted to the Senate, as well as the action taken on them.

The Senate committees hear testimony on proposed nominees in order to determine whether or not to approve the presidential nominee. The reality is that over 98% of the nominations are approved.

Committee Referral and Consideration. The Parliamentarian, acting on behalf of the presiding officer, refers each nomination to the committee with jurisdiction over the position or the agency in which the position exists. More than one committee may have the opportunity to examine a nomination; some nominations are referred sequentially, and a few are jointly referred to two or more committees. Confirmation hearings, generally open to the public, are not held on all nominations. The closest scrutiny in hearings is given to the most senior appointments, and also to controversial nominees, to afford committee members an opportunity to question a nominee to determine his or her fitness for a post. Senators may also use hearings as a forum to advance their own views on public policy, to determine or challenge the administration's position on policy issues, and to extract commitments from a nominee. In addition to investigations already conducted by or at the behest of the White House, each Senate

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committee may have its own questions or forms for the nominee, and may conduct its own investigation. Often a nominee is introduced at a hearing by a Senator or both Senators from his or her home state, and may be accompanied by other Members of Congress. Supporters and opponents of a nominee are occasionally permitted to testify. Most committees have rules governing how soon after hearings the committee may vote on a nomination. The committee has the option to report the nomination favorably, unfavorably, or without recommendation, or to take no action at all. If the committee votes to report the nomination, it is then filed with the legislative clerk, who notifies the executive clerk. Committees usually do not submit written reports to accompany nominations. The executive clerk assigns a calendar number to each reported nomination (or list of nominees in the case of military commissions), and the nomination is placed on the *Executive Calendar*. The calendar identifies the number of the presidential nomination message, the name of the nominee, the office to which he or she is nominated, and the name of the predecessor holding the office. Other details about the nomination, such as committee action, are also provided. Although unusual, a committee may be discharged by resolution from further consideration of a nomination. Such a resolution is listed in the *Executive Calendar*.

Floor Consideration. The Senate meets in executive session to consider nominations, but may not begin floor consideration of a nomination until it has been on the *Executive Calendar* for at least one day, except by unanimous consent. Nominations are subject to unlimited debate, subject to cloture being invoked (which requires 60 votes). In some instances, one or more Senators may place a "hold" on a nomination, thereby delaying or preventing it from reaching the floor for further action. Under Senate Rule XXXI, the final question on a nomination is, "Will the Senate advise and consent to this nomination?" The Senate has three options: confirm, reject, or take no action on the nomination. Confirmation requires a simple majority vote.
Although Senate Rule XXXI requires pending nominations be returned to the President when the Senate recesses for more than 30 days or adjourns between sessions, this requirement is often waived. Nominations pending at the end of a Congress are returned to the President, and they must be resubmitted for the Senate to reconsider them.
White House Notification. Once the Senate has acted on a nomination, the Secretary of the Senate attests to a resolution of confirmation or rejection, which is transmitted to the White House. All nominations submitted to the Senate as well as action on them are printed in the *Congressional Record* and a number of other Senate publications.

Routine Nominations. The Senate also confirms nonpolitical appointments to and promotions in the military and other civilian positions (in the Foreign Service, Public Health Service, and National Oceanic Atmospheric Administration). These routine nominations are usually "placed on the secretary's desk." The Senate typically considers and approves these nominations by unanimous consent, frequently en bloc, without committee action. Routine nominations in any given Congress number between 50,000 and 100,000.

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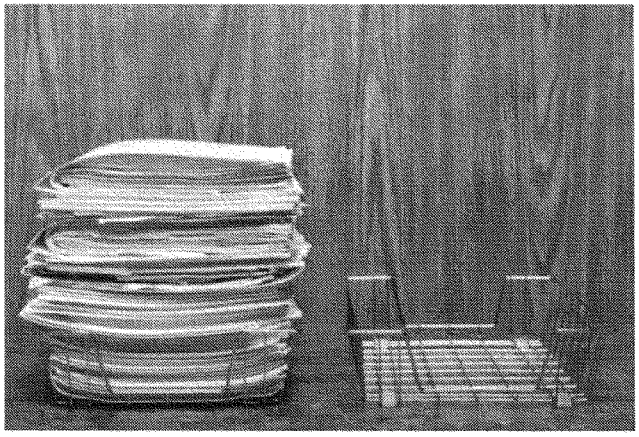
December 14, 2010



A Half-Empty Government Can't Govern: Why Everyone Wants to Fix the Appointments Process, Why It Never Happens, and How We Can Get It Done

William A. Galston and E.J. Dionne, Jr.

INTRODUCTION

On May 6 of this year, British voters failed for the first time in 36 years to give a single party a majority in their country's Parliament. This forced elaborate negotiations in which the Conservative Party, which came in first in the elections, and the second-place Labor Party bid for the affection of the Liberal Democrats, who effectively held the balance of power.

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Viewed from an American perspective, the speed with which British politicians got a government up and running is astonishing. Within five days, the Conservatives and Liberal Democrats reached an agreement that made Conservative leader David Cameron Prime Minister. A day later, a full Cabinet was named. Less than two weeks after the election, the entire sub-Cabinet was filled. By contrast, it took almost 6 months from the election for President Obama's full Cabinet to work its way through the confirmation process.

Britain's parliamentary system allows for quick transitions in a way the United States' more cumbersome arrangements for divided power between the executive and legislative branches do not. Constitutionally, a newly-elected president does not even take office until two-and-a-half months after election day. The American approach to building a new government will, of necessity, always be slower than Britain's.

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But the United States has taken a system that constitutionally mandates a longer transition of power and made it impossibly unwieldy, often through inadvertence and the accumulation of small decisions. This has created an enormous problem for governing that reached a near crisis point during the country's economic chaos in the early months of the Obama Administration. "Home Alone" was a fine movie, but it should alarm us that the phrase came to be applied to Treasury Secretary Timothy Geithner who, in March of 2009, found himself dealing with the worst financial catastrophe in 70 years without most of his principal deputies in place. There is something badly wrong when one Senate committee clears an appointee for one government job with little difficulty in less than three months while another Senate committee holds up the nomination of his wife for over a year because of a question about her taxes -- even though she and her husband *filed exactly the same joint tax return*. Is there any other democracy in which a single legislator can hold a Cabinet or sub-Cabinet nomination hostage to a bridge or office building in his or her state? Does any other government require nominees to fill out an endless stream of duplicative financial and personal disclosure forms -- and then hold a nominee accountable for missing a receipt for $12.59? By the 18 month mark of Obama's presidency, a quarter of the key policymaking positions in government were still vacant. And at the time of the midterm elections, close to 20 percent of such positions were unfilled and some of

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Obama's early appointees have already resigned.[1]

Most alarming is the fact that comparable problems with our system of naming and confirming nominees have been discussed year after year after year. Wise students of American government have been calling for reform for well over a decade. We thus offer this paper not to recommend a series of brand-new proposals, but to ask why so many thoughtful proposals offered by one distinguished commission and study group after another have gone nowhere — and to suggest ways out of this political impasse.

The failure to fix the process can certainly not be blamed on such commissions, which did their best to offer practical and reasonable reforms. It cannot be blamed on partisanship, since Republicans and Democrats agree that the process is broken and both Republican and Democratic presidents have found themselves frustrated by its workings. Both liberal and conservative policies have suffered in their implementation because of the difficulty presidents face nominating candidates and getting them confirmed. On the left, on the right and in the center, there is frustration over the unintended consequences of our ungainly approach to filling executive branch offices.

Recess appointments have long been seen as a way to circumvent the Senate, and like his predecessors, President Obama has put them to use. He has granted recess appointments to over 20 nominees, including some of his most controversial, such as Donald Berwick, the head of the Centers for Medicare and Medicaid Services, and Craig Becker to lead the National Labor Relations Board.[2] But the ungainliness of the process has prompted ever-more creative ways to circumvent the Senate and get officials in place rather than in confirmation-purgatory.

Most recently, Obama named Elizabeth Warren as a special advisor so that she could quickly begin developing the new consumer regulatory commission included in the financial overhaul legislation. Her appointment to a White House position allowed her to sidestep a potentially drawn-out confirmation process. Whether or not one agrees with Obama's decision to circumvent confirmation for Warren, the fact that his choice seemed quite rational as an alternative to months of delay in getting a critical new agency up-and-running is a symptom of the confirmation mess.

Another symptom to consider is the widespread impatience with the number of "policy czars" President Obama has named. As the scholar Paul Light has pointed out, what he labeled "czar-itis" is a direct and rational presidential response to the difficulty of winning confirmation for Cabinet and sub-Cabinet appointees. Freed from the need for confirmation, those named as czars inside the

[1] David E. Lewis, "Presidential Appointments in the Obama Administration: An Early Evaluation." Forthcoming in Andrew Dowdle, Dirk van Raemdonck, Robert Maranto, eds., *The Obama Presidency: Change and Continuity*. New York: Routledge (2011).

[2] Ibid

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White House can get to work with dispatch on a new president's priorities. Fixing the appointment and confirmation process is the prerequisite for curing "czar-itis."

It is not only the Senate that may be the loser in this scenario, however. The scholar David Lewis argues that because "czars" lack formal authority to decide on everything from budgets to personnel to regulations they must rely on other officials to implement the president's desired policies. Ironically, Lewis says, this may make it more difficult for the president to recruit people to serve in key policymaking positions. Because the czars' authority derives from their access to the president, their existence makes Cabinet secretaries and agency heads middle managers, and many qualified individuals may not be willing to go through a brutal confirmation process and take a significant pay cut only to be second in command. What's more, as the number of czars increases, the less access each of them has to the president, thus diminishing their authority and making it more difficult for the president to implement his policy objectives.

Abuses of the confirmation process, far from strengthening the executive's accountability to the legislative branch, instead call forth ever more creative executive actions to get around Congressional scrutiny. And that creativity has, in turn, led to an executive branch potentially weaker and less able to control and influence the departments and agencies it depends on to implement its policies.

Without any formal Constitutional change, the very structure of the American government is being altered. A confirmation process designed to safeguard Congress' prerogatives has, in important ways, undermined them.

And some of the problems should, in principle, be easily fixed. As Light observed in a New York Times op-ed piece in March, 2009: "At least half of the delays in the presidential appointments process appear to involve bureaucratic red tape and duplication of effort, while a quarter appear to reflect the rising and inappropriate use of personal holds by the senators to extract concessions from the president and fellow legislators."

Light also wrote: "Clogged with bureaucratic sediment and filled with distrust, the appointments pipeline involves a succession of twists and turns that leaves nominees exhausted, embarrassed and confused." It's worth noting that this quotation comes not from the 2009 piece, but from an op-ed article Light offered *eight years earlier* in the Wall Street Journal, in April, 2001.

Or consider this sharp, well-informed analysis of our problem:

> Contemporary presidents face two daunting difficulties in filling the top posts in their administrations: the number of appointments is very large, and the appointments process is very slow.
>
> When President Kennedy came to office in 1960, he had 286 positions to fill in the ranks of Secretary, Deputy Secretary, Under Secretary, Assistant Secretary, and Administrator — the principal leadership positions in the executive branch. By the end of the Clinton administration, there were

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914 positions with these titles. Overall in 2001, the new administration of President George W. Bush confronted a total of 3,361 offices to be filled by political appointment.

The time required to fill each of these positions has expanded exponentially in recent decades. . . . In part, this results from the more thorough and professional recruitment procedures employed by recent administrations. But most of the elongation of the appointments process is the consequence of a steady accumulation of inquiries, investigations, and reviews aimed at avoiding political embarrassment. These include extensive vetting, lengthy interviews, background checks, examinations of government computer records, completion of questionnaires and forms composed of hundreds of questions, FBI full-field investigations, public financial disclosure, and conflicts of interest analysis. Much of the process is duplicated when a nomination goes to the Senate and is subjected to the confirmation process.

What has foiled reform is *not* a shortage of good ideas or a lack of clear thinking.

These observations, as relevant now as they were when they were made, come from the January, 2003 report of the bi-partisan National Commission on The Public Service, commonly known as the Volcker Commission after its chair, Paul Volcker. Again, why were they not fully-embraced and acted upon?

The pithiest description of our confirmation-nomination process came from the scholar G. Calvin Mackenzie, who called it "Nasty and Brutish Without Being Short." He offered it in the spring of 2001.

We cite this past good work — a very small portion of all the labor and thinking that has gone into curing a problem everyone recognizes — to underscore that this paper is premised on the assumption that what has foiled reform is *not* a shortage of good ideas or a lack of clear thinking. Both have been well-supplied over the years by scholars, legislators and former government officials, and substantial ongoing work in this area has been undertaken by, among others, the Partnership for Public Service, the Center for American Progress, and the Aspen Institute in partnership with the Rockefeller Foundation.

Rather, this paper is offered in support and in tribute to such efforts and in the hope that they might, at long last, be taken seriously by the president and by Congress. Our purpose is twofold: to bring together some of the most practical reforms that have been put forward over the years to speed nominations and confirmations; and to explore whether there are new opportunities to break through the torpor and resistance that has greeted such proposals in the past.

We divide the proposals into two groups. The first we characterize as the "low hanging fruit" of reform. These are practices that could be put into place with relative ease — many of them by presidential candidates and presidents-elect themselves, without any new legislation or changes in Senate habits. Other ideas in this category raise no issues involving the balance of power between Congress and

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the president and should raise no principled objections. These would include creating a "surge capacity" before the beginning of a new president's term involving a temporary increase in the number of FBI agents, Senate staffers and others involved in vetting so as to avoid backlogs. We also suggest a tiered-system of background checks, with the most stringent reserved only for top-level positions.

The second category involves worthwhile changes that will require a larger appetite for reform and substantial political will. These include, among other ideas, a sharp curtailing of the use of "holds" by individual senators, a reduction in the number of positions requiring Senate confirmation, and mandatory discharge procedures to encourage Senate committees to act with dispatch.

In preparing the ground for this report, we consulted officials from past Republican and Democratic administrations with responsibilities for appointments, scholars and legislators. What struck us most during a day-long roundtable discussion is how little partisan division there is on the core questions, how resolutely practical reformers are trying to be, and how attuned the best thinkers in this area are to seeking ways to overcome the political obstacles to change. We are grateful for their thoughtful contributions and have drawn extensively on their ideas in this report.

If the nomination-confirmation problem has long been recognized, and if so many good ideas have been proposed — we include an Appendix that lists some of the commissions and many studies — what has been missing? We have lacked the political will to break through the inertia. We have mourned the delays in the process in the period after a new president's election — and then let the problem slip from public attention as administrations slowly filled key posts and as other matters, understandably enough, loomed as so much more urgent. We have failed to act on even the simplest and most easily adopted proposals. Presidents themselves have become complicit in the problem. They have deployed their own vetting processes in ways that greatly delay their own appointments out of an at times crippling anxiety over an admittedly difficult political and media environment in which every nominee's smallest flaw might be magnified into a major — or, at least, much televised and blogged about — scandal.

But we also believe that reformers need to pay more attention than they have to the political factors that have blocked reform, most of them rooted in competing but thoroughly legitimate concerns. For example, if the public has a legitimate interest in a government up-and-ready to act early in a president's term, and if a president has a legitimate expectation that he will be able to surround himself with officials of his own choosing, Congress also has a legitimate concern with oversight and accountability. How can reforms protect all these interests at once?

Speed is obviously not the only factor entailed in appointments. Quality, experience, character and competence matter most. How can candidates for president build in enough time before they are elected to properly vet appointees so that they are ready not only to put a government in place with dispatch, but to

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put a good and highly qualified government in place?

Ethics rules passed to avoid conflicts-of-interest and self-dealing in government have, in important ways, made our government cleaner and less subject to abuse. We strongly oppose overturning the core ethics laws. But we also think that they can be enforced without the excess of paperwork, the hugely burdensome and duplicative reporting requirements, and the sometimes petty and irrelevant questions posed to potential nominees during the vetting process.

The confirmation process involves power.

The confirmation process involves power. Individual senators will be reluctant to yield the power they wield through "holds." Presidents may be reluctant to yield power by agreeing to reduce the number of confirmable political positions and rely more on career civil servants. Individual Senate committees may be reluctant to abandon practices particular to themselves in the interests of a more streamlined confirmation process. We would suggest that rather than focusing their efforts entirely on coming up with additional reform proposals that make sense in political isolation, would-be reformers devote more effort to finding ways around or through the political difficulties that have blocked the many, already sensible ideas on the table.

Why might this moment be different from other moments? Why might reforming this process be more possible now than in the past? We offer four reasons for hope.

First, the country barely dodged a bullet in the early months of the Obama presidency. A president confronting the worst economic crisis in decades had to do so while many core positions in his Treasury went unfilled. He also had to deal with two ongoing wars and an ambitious plan to refashion American foreign policy without all of his major foreign policy aides in place. There is no telling if the earlier months of the Obama term might have been more successful if more of the president's team was in place. What is clear is that we would be foolish to take this risk again.

Second, the very rebellion against "czar-itis" points to the dysfunction of the current system, the contradictions it creates and the way in which efforts to create more accountability to Congress are backfiring. It's time to reexamine many assumptions.

Third, the last Congress created a reaction against the abuse of Senate filibuster rules. It is not our purpose here to wade into that debate, but only to suggest that the fact that the Senate is at least considering broad reform proposals might create room for less sweeping fixes, notably a repair of how "holds" are used in the nomination process.

Finally, the 2010 elections have produced a much more closely divided Congress with a Senate and a House under the control of opposing parties. In this climate, Congress might at least consider paying more attention to issues that lack ideological energy and also have the virtue of not dividing neatly across left/right or Republican/Democratic lines — reforms with genuine bi-partisan support.

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Indeed, the passage in September of the "Pre-Election Presidential Transition Act of 2010" (subsequently referred to as the transition act) is an early indicator that the Senate is able to unite to pass such reforms. The bill, which cleared the Senate with unanimous consent, includes provisions to encourage and support presidential candidates as well as sitting presidents to begin early and effective transition planning, allowing for important positions within the executive branch to be filled almost immediately upon the inauguration of a new president. Congress should build on this achievement.

We believe appointment and confirmation reform should remain a priority, and it should be undertaken now, before either party can be certain of the partisan affiliation of the next president, or the one after. Reformers largely have the right ideas. Now, they must find creative ways of getting the politics of reform right.

Presidential Appointments: Reframing the Conversation

Political pundits, political scientists, and practitioners agree that the current presidential appointments process is deeply flawed — some would say broken. Among pundits and many nominated victims, the prevailing view is that the fault lies mainly with the legislative branch, and its source is our hyperpolarized party system. Presidents send nominations to the Senate, where they languish, held hostage to quirky "holds" and to the desire of the president's adversaries to embarrass him and obstruct his agenda. Stuart Eizenstat, who successfully navigated the confirmation process four times during the Clinton administration, speaks forcefully about the "political polarization fostered by a grassroots internet blog and cable-driven highly ideological and partisan politics" that is "simply being mirrored in the appointments process."[3]

There is much validity to this view, and no shortage of cases that support it. This, alas, points toward the despairing conclusion that nothing much can be done, absent a radical decline in political polarization and a renewed devotion to the common good on the part of power-maximizing individual senators.

A second well-known view focuses on what Light calls the "thickening" of the federal government — the proliferation of new layers of officials within Cabinet departments and agencies, most of whom are presidential appointees requiring Senate confirmation. As Light pungently puts it, "We are just forcing too many people through a system in the White House and on Capitol Hill that cannot process that many people. Sort of like the oil spill: you can stand on the beach and try to mop it up, or you can try to shut the thing down. And if you're in mop detail, you're never going to catch up."[4]

The evidence for the thickening thesis is undeniable. When Ronald Reagan took office in 1981, he faced the task of filling 295 core policy positions in the

[3] Stuart Eizenstat in discussion with the authors, Brookings, (May 2010).
[4] Paul Light in discussion with the authors, Brookings, (May 2010).

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Cabinet departments and executive agencies. Twenty-eight years later, the incoming Obama administration confronted 422 such positions.[5] A recent White House Transition Project Report documents a total of 1177 full-time presidential appointments, almost all statutory, that require Senate confirmation.[6] While some of these nearly 1200 positions are part-time advisory positions and appointments to regulatory commissions, the burden of processing them further inundates an already overwhelmed system.

Presidential decisions and administrative inadequacies combine to create long delays in submitting completed nominations to the Senate for confirmation.

Here again, we encounter a counsel of near-despair. Despite reports and recommendations going back more than a quarter of a century, past efforts to prune back this proliferation have yielded few results. As members of our roundtable pointed out, there are several reasons for this failure. Among them: the Senate jealously safeguards its confirmation powers as a check on the executive, and many senior Cabinet and agency officials regard Senate confirmation as a *sine qua non* for membership in the elite circle of men and women with principal responsibility for the president's agenda.

It is heartening, then, that a different understanding is now gaining ground. While acknowledging the influence of polarization, thickening and Senate prerogatives, the proponents of this third view — they include political scientists, policy experts, and practitioners — stress the ways in which presidents bring many problems on themselves: by starting the process too late in their campaigns; by failing to ensure continuity between the campaign, the transition, and their administration; by asking prospective nominees for excessive amounts of information; and by over-reacting to the high-profile glitches that inevitably occur.

Political scientists and practitioners also underscore the impact of problems rooted more in administrative capacity than in political will. Key choke-points in both the executive and legislative branches are unable to handle the surge of vetting responsibilities generated by the bunching of prospective nominees at the beginning of new administrations.

Presidential decisions and administrative inadequacies combine to create long delays in submitting completed nominations to the Senate for confirmation. As a result, in each of the past four administrations (including Obama's), the "nomination lag," the average time for sending nominations to the Senate, was between two and three times as long as was the gap between receipt of nominations and confirmation. If the Senate acted on every nomination within a month, the time needed to fill positions would decline by less than 20 percent.

These figures exclude positions for which the executive branch fails to submit a completed nomination. A full year into the Obama administration, for example,

[5] Anne Joseph O'Connell, "Waiting for Leadership: President Obama's Record in Staffing Key Agency Positions and How to Improve the Appointments Process," Center for American Progress (April 2010).

[6] Bradley H. Patterson, James P. Pfiffner and David E. Lewis, "The White House Office of Presidential Personnel," White House Transition Project (2009), 5.

the Senate had received only 326 nominations to fill 422 Senate-confirmed positions in Cabinet departments and executive agencies—77 percent, versus 86 for George W. Bush and 78 percent for Clinton. As a result, the administration managed to fill only 64 percent of the total in that period, versus 86 percent for Reagan, 80 percent for George H.W. Bush, 70 percent for Clinton, and 74 percent for George W. Bush.[7] (Using a somewhat broader base of 516 positions, The Washington Post found that Obama got only 305, or 59 percent of these positions filled within his first year.)

None of this absolves the Senate – and particularly its opposition party – of its role in delay, and, at times, obstruction. The evidence is clear: the "confirmation lag"—the gap between receiving and acting on nominations—is increasing. It averaged 51.5 days during George H. W. Bush's first year; during Obama's that rose to 60.8 days, a figure that is actually understated because it does not include nominees that had not yet been confirmed by March, 2010. (Therefore the confirmation lag for Obama nominees is likely even longer.) Nonetheless, even the understated figures are telling: at the end of George H. W. Bush's first year, only 8 percent of total nominees were still awaiting confirmation, compared to 20 percent for Obama.[8]

Some members of our convening cautioned against giving too much weight to these statistics. As Calvin Mackenzie put it, "The goal of this process should be to get the best people into government we can get, not speed. There are unnecessary delays, and we ought to focus on them. But it takes time."[9] True, but delay is inherently costly. As Anne Joseph O'Connell has written, "Vacancies at federal agencies can undermine government responsiveness and accountability." She offers a number of telling examples: among them, the fact that it took until Christmas Eve to confirm a permanent head of the National Highway Traffic Safety Administration, which arguably slowed the administration's response to the Toyota safety fiasco. It took President Obama more than a year to select a nominee for undersecretary of agriculture for food safety, one of the key officials charged with monitoring and maintaining the integrity of our food supply. And when there was an attempt to destroy an American passenger plane bound for Detroit, there was no head of the Transportation Security Administration in place. (Indeed, one was not confirmed until six months after the attempted bombing.)[10]

Reforming the Senate confirmation process is thus necessary, but our consultation suggests that even in the absence of such changes, presidents — in their time as candidates, in the interim months as president-elect, and in the period after their inauguration — can do a great deal to improve this situation, without any changes in legislation or political heavy lifting. These measures — the "low-hanging fruit" of reform — are the focus of our first set of recommendations.

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[7] Joseph O'Connell, "Waiting for Leadership," 8-9.
[8] Ibid., 10.
[9] G. Calvin Mackenzie in discussion with the authors, Brookings, May 2010.
[10] Joseph O'Connell, "Waiting for Leadership," 3, 11.

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Improving the Appointments Process: Low-Hanging Fruit

Vital early steps

At the outset, presidential candidates must come to understand both the importance and the complexity of the appointments process. Many candidates, career senators, for example, lack executive experience; others, such as governors from small states, may believe or hope that the process at the federal level is as informal and ad hoc as it is at home. Some may not fully understand how important an effective personnel process will be to implementing their legislative and policy agendas.

By the beginning of the election year at the latest, senior campaign aides and outside experts should walk prospective nominees through the challenging complexity of the federal appointments process and the careful response it requires. These briefings should include case-studies of campaigns widely regarded to have handled this challenge well, along with cautionary notes drawn from those that did not. It should be noted that the recently passed transition act requires the General Services Administration to offer each candidate, upon nomination, briefings, trainings and resources to begin transition planning. While this is a large step forward, campaigns must take further steps to prepare themselves, the most vital of which involve preparations for the task of considering and selecting nominees.

- Start early — by the middle of the election year at the latest. (Some successful campaigns have begun as much as a year before that.)
- Remove the political stigma from early planning. The transition act includes a provision to educate the campaigns, press and public on the importance of early transition activities. Nonetheless, it's easy to imagine that charges of arrogance and "measuring the drapes" would persist if early transition and personnel efforts became public. One solution is for the campaigns to negotiate a truce, acknowledging the urgency of this planning process and pledging not to attack each other for engaging in it. The transition act is certainly the first step toward institutionalizing and depoliticizing this process. We offer more proposals in this area later.
- Candidates should give their designated heads of the personnel process unchallenged authority over the appointments planning process and make that fact clear to all other parts of their campaign. As both Jimmy Carter and Bill Clinton learned, struggles for control can lead to consequential confusion and delay.

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- Candidates should make it clear to their designated personnel heads that they are expected to remain in that position during the transition and for at least the first year of the administration. In turn, the heads of personnel should require the same commitment from their key deputies. Continuity of leadership in the personnel process is a necessary condition for success.
- During the transition, the president-elect and the personnel office should aim to select and vet nominees for all key positions, at senior sub-Cabinet as well as Cabinet levels. It is important to have these nominations teed up early, before the White House Counsels' office and Senate committees get bogged down with their ongoing substantive responsibilities.
- In consultation with the personnel office, the president-elect should establish numerical goals and timetables for key dates during the first year: the first hundred days, six months, and the end of the calendar year. All relevant parts of the Executive Office of the President should be informed of this plan and understand the high priority the president has accorded it.

Steps the outgoing administration should take

In the appointments process as in so much else, it takes two to tango. While there is much that presidents-elect can do during the transition, they need help from their predecessors. Many observers credit George W. Bush with having created the best hand-off in history to an incoming administration of the opposite party, but as Senator Ted Kaufman and his co-sponsors on the transition act recognized, "not every incumbent administration has made or can be expected to make transition planning the priority it was made by the Bush Administration."[11] The transition act authorized appropriations for all of the following activities, which were undertaken by Bush and which we recommend future presidents repeat. Here are the key elements.[12]

- Early in 2008, President Bush instructed his chief of staff, Josh Bolten, to make 2008-2009 "the best transition possible regardless of who was going to win." Both the president and the chief of staff effectively communicated this commitment to the Cabinet and other senior officials. As a result, the Obama and McCain transition teams were

[11] Press Release, "Senate Passes Kaufman Bill to Improve Presidential Transfers of Power," (September 24, 2010).
[12] This overview of Bush's transition activities is based on "Ready to Govern: Improving the Presidential Transition," Partnership for Public Service (January 2010), 6-8.

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treated equally: all materials and briefing given to one were offered to the other as well.

- To institutionalize this commitment, President Bush issued an executive order creating a White House Presidential Transition Coordinating Council, which met regularly to plan for the smoothest possible transfer of power.
- In April, Bolten told Clay Johnson, OMB's deputy director for management, to take charge of preparing the agencies for the transition. The president's Management Council (deputy secretaries of Cabinet departments plus chief operating officers from major agencies) then ensured that by mid-October, senior career officials would be designated and prepared to fill major positions on a temporary basis until the incoming administration was able to fill them.
- Before the election, the White House helped expedite security clearances for key advisors and transition officials of both campaigns.
- According to Bolten, the Bush White House prepared a "complete inventory and description of all the appointed jobs in government" that was given to the transition directors of the two campaigns.
- With the agreement and cooperation of both campaigns, the White House facilitated the design and creation of a new presidential personnel computer system to replace the much older system it had been using. The plan was to create a seamless interface between the systems the campaigns were using and the system one of them would inherit on Inauguration Day.

Two other steps would also help incoming administrations carry out their personnel business more effectively.

- The Office of Personnel Management should take the lead in creating an online database of basic information for all presidentially appointed positions, divided into two categories: those that require Senate confirmation and those that do not.
- Though it is currently common practice, outgoing presidents should continue to request and receive formal letters of resignation from all appointees, to be effective no later than the new president's inauguration.

Speeding the vetting process

It takes too long to complete the vetting process for prospective nominees, slowing

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the formal submission of their names to the Senate. And in far too many instances, the Senate's additional background checks take too long as well. Participants in the Brookings roundtable agreed on a number of policies that would substantially improve this process and would generate at most modest political difficulties.

There are, for example, a number of steps the president can take on his own, most through executive order. They include:

- simplifying the cumbersome personal data statement;
- for previously vetted candidates, starting background checks, not from scratch, but where the previous checks left off;
- making more extensive and effective use of private-sector headhunters to propose candidates for top positions; and
- supplementing the FBI's capacity by using the Office of Personnel Management for nominees' background checks. As Clay Johnson argues, "The largest investigative agency and capacity in the federal government is OPM. They do the background check for . . . almost every security clearance. So the . . . background checks that include access to the most sensitive information in our world [are] done by OPM. They have 8500 background check people; probably 500 to 750 of them are plenty qualified to do an FBI-caliber background check. So why isn't OPM used by the White House? The reason is, that's just not the way it's ever been done."[13]

Norman Ornstein outlined another important proposal—namely, establishing a tiered system of background checks, from the most stringent for top-level positions through the least detailed for most part-time commissions. In principle, this could be done through executive order. In practice, previous administrations, including George W. Bush's, have declined to go down this road, perhaps, Ornstein suggests, because it would require the administration to make a series of judgments as to the importance and potential sensitivity of hundreds of positions. If so, he concludes, the legislative route might offer better prospects, even though legally it is not necessary.

This brings us to measures for improving the vetting process that certainly would require Senate cooperation or formal legislation but that might well enjoy bipartisan support. They include:

- simplifying the SF-86 form (clearance information) and the SF-278 form (financial disclosure information);
- providing "surge capacity" — additional temporary personnel needed to process the flood of early nominations and background inquiries —

[13] Clay Johnson III in discussion with the authors, Brookings, (May 2010).

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in the Presidential Personnel Office, FBI, and relevant Senate staff. In the case of the FBI, not enough retired agents are hired during the transition period to undertake background checks, and the White House has never been demanding enough about the pace at which these checks should be completed.

- Authorizing an expansion of the White House personnel operation to create a permanent staff of professionals, overseen and supplemented by presidential appointees. The permanent staff would administer the personnel software and online information about positions requiring presidential appointments, work on an equal basis with all qualifying presidential campaigns, and serve as the ongoing institutional memory for incoming administrations, much as career officials at OMB now do so effectively for presidential appointees.

Improving the Appointments Process: Heavy Lifting

Up to this point, we have focused on steps presidents can take on their own, or for which they can reasonably expect congressional support. For the most part, these steps are addressed to the kinds of delays in the appointments process that reflect either inattention or lack of capacity. But as we've seen, there are two other significant kinds of obstacles — political polarization and the thickening of government. Addressing these will be far more difficult.

One suggestion might seem straightforward and uncontroversial — namely, instituting uniform forms for all Senate committees of jurisdiction over nominees. But committees guard their prerogatives jealously and regard their distinctive forms as necessary to elicit the specific information each of them requires. Past pushes for uniformity have come to naught, and it's not clear why this should change now. Yet this single change would substantially simplify what has become a Byzantine system. Senate committee chairs should commit themselves to achieving this reform. Better still would be a single form agreed upon between the White House and the Senate.

Or consider efforts to speed confirmation votes by eliminating or restricting the "holds" that individual senators can place, anonymously and without public justification, on nominees. It is hard to defend such a practice, but some senators do, citing the tradition of an institution in which each individual is an empowered agent. And it offers individual senators a chance to use nominees as hostages and bargaining chips to attain policy objectives otherwise out of reach. While some reform seems possible—at least, enforcing rules requiring senators to disclose their holds—eliminating this practice altogether is not now in the cards. Again, however, the current system is indefensible and some modification is essential.

Other far-reaching proposals include mandatory discharge procedures

providing that if a committee does not act within (say) 30 or 45 days of receiving a nominee with a full package of required information, that nomination would become eligible for consideration by the full Senate. Bolder still would be what some have called "confirmation by rule": nominees below a certain threshold of rank or significance would be deemed confirmed by default if the Senate did not act within a specific period. While this would entail a major surrender of Senate prerogatives, which would be possible only if a majority of senators agreed, there is a strong case that maintaining authority over third-tier appointments just isn't worth the time and trouble.

Thinning government by reducing the number of Senate-confirmable positions raises even more complex issues — even if, again, there are few persuasive reasons for forcing so many appointees through an increasingly cumbersome and, at times, dysfunctional process. There was a consensus among members of the Brookings session that this effort could not succeed unless the president takes the lead. And because the Senate sees this as reducing its power vis-à-vis the executive branch, the president would have to offer serious concessions to achieve this reform. The president might, for example, offer to convert a number of positions from "at will" appointments to fixed terms, which would restrict the president's ability to control the executive branch. Another would be to move specialized categories of appointees, such as inspectors-general, to career status. And in return for switching positions from presidential appointment/Senate confirmation to presidential appointment only, the president could offer to allow these reclassified appointees to be called to testify before congressional committees, just as confirmed appointees must do now. But such a negotiation can succeed only if a president makes a serious commitment to undertake it.

It's not hard to identify other steps that would be essential for the success of any broad effort to change the appointment process through legislation. The political parties would have to be on board with a free-standing of reforms negotiated with both caucuses. The bill would have to move at the beginning of a congress before rising partisan rancor and the press of other business obtruded. And the surrounding environment would have to be supportive. At a minimum, liberal and conservative opinion-leaders would have to converge on a common position. The ex-presidents of both parties could be mobilized as evidence of broad-based support. It might even be necessary to appoint a new "Hoover Commission"— with prestige comparable to the 9/11 Commission — to send a credible signal that certain changes are above party and in the national interest.

We don't know how far such a push would get. But one thing is clear: we won't ever know unless leaders from both parties emerge who are prepared to give it both high priority and unwavering support.

A New Politics for Confirmation Reform

Washington is all too familiar with problems that do not get solved or at least

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ameliorated because deep partisan and ideological divisions make consensus impossible. It's true that partisan divisions have slowed the confirmation process. It's also true that the desire to score political points combined with the current media environment have made presidents more skittish about appointees, prospective appointees themselves more reluctant to commit to public service and all players in the process more reluctant to give potential opponents the benefit of the doubt.

Solutions to the problem do not have an ideological coloration.

Nonetheless, the problems with the confirmation process are widely recognized. Solutions to the problem do not have an ideological coloration. As we learned in our own consultations, there is broad agreement across the lines of party and ideology that the system is broken — and remarkably broad agreement about potential solutions.

We would urge that those who take on the seemingly thankless task of fixing this process (including future commissions) concentrate their energies less on coming up with new ideas than in thinking through how to overcome these political obstacles. Participants in our own consultations offered examples of creative political approaches. For example, Clay Johnson suggested that the problem be redefined by establishing a series of clear goals. He suggested that a new president might define what he considers to be the 100 most time-sensitive positions in his administration and that the administration and the Senate commit to make every effort to fill these positions by a fixed time, perhaps by April of the first year of a president's term. The agreement would also involve a set of rolling commitments — that the next 200 be filled within, say, two further months and so on. Johnson's point is well-taken: Establishing clear and specific goals is more likely to lead to action than a broad but general commitment to reforming the whole process. In light of the Obama Treasury experience during the economic crisis, there should be a central emphasis on filling both Treasury and State Department positions essential to the nation's security, including its economic security.

As we have already suggested, the Senate and Congress as a whole does have a legitimate interest in accountability. But too much of the burden for achieving accountability is now placed upon the confirmation process. Presidents can reassure Congress of its right to testimony from occupants of presidentially appointed positions removed from the rolls of those requiring confirmation. When it passes laws creating new positions, Congress does not always have to insist that the nominees in all cases should require Senate confirmation. Or it can make a practice of removing old positions from the category requiring confirmation when it adds new ones. Presidents can consider using more civil servants in what are now categorized as "political" positions but that often require specific forms of expertise that are already available in the government.

In a climate where reform of the Senate, including the filibuster, is now on the agenda, it ought to be politically possible to make at least modest fixes in the use of holds, particularly secret holds.

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And a clearance process created for the period of the Cold War can be revisited so as to create a tiered system for vetting. Just as there are different levels of clearance for government documents, so can there be different levels of vetting.

We reiterate this particular list of ideas simply to illustrate our hope that thinking in this area can become as shrewd about solving political problems as it has already become wise and creative in offering fixes. We suggest that rather than rail against obstacles or denounce the fact that various players in the process have their own narrow power and political interests, reformers accept that such political factors are inevitably part of a democracy. Reformers need to work with them, or around them.

Among the democracies, the United States has created — without intending to — what is almost certainly the most ungainly process of filling a government with qualified people. We would not design the system this way if we started from scratch, yet we cannot start from scratch. But neither can we leave the system as it is. With a dose of political shrewdness and creativity, we can make the system far better.

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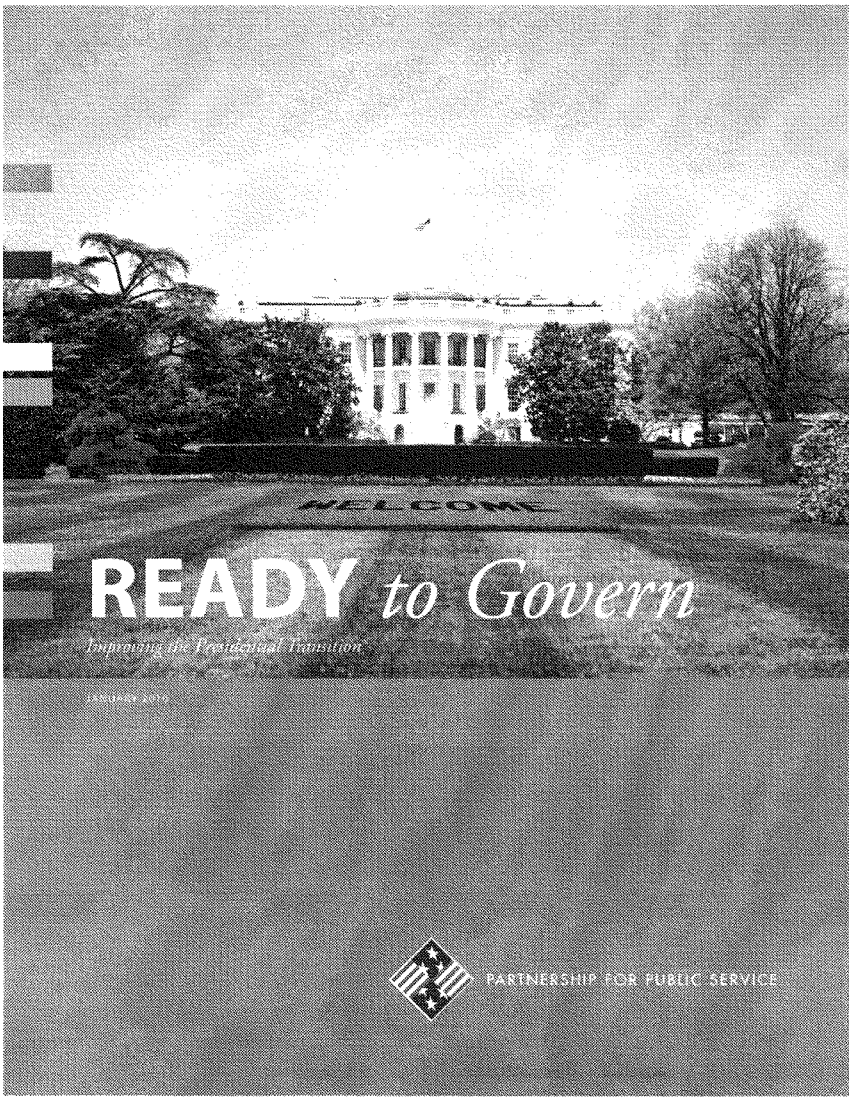
WELCOME
READY to Govern
Improving the Presidential Transition
PARTNERSHIP FOR PUBLIC SERVICE

EXECUTIVE SUMMARY

As more than one million people poured onto the National Mall for Barack Obama's historic January 20, 2009 presidential inauguration, outgoing and incoming national security officials huddled in the White House Situation Room monitoring reports about a possible attack on Washington, D.C. by a militant Somali terrorist group with links to al Qaeda.

This was the nightmare transition scenario for Joshua Bolten, President George W. Bush's chief of staff. The political leadership of the country was gathering at the Capitol and the president's staff had cleaned out their White House offices, but the new president and his team were not yet in charge.

"So there I am with the president until he got into the limousine with the president-elect. I had no assistants because everyone had turned in their badges, even me, and yet there was this threat," recalled Bolten. "By inauguration time they concluded it was not credible, but it could have been a serious problem."

The transfer of power from President Bush to President Obama turned out to be smooth and peaceful on that cold, sunny January day, an American democratic ritual that occurred in the midst of the ongoing threat of terrorism, the Iraq and Afghanistan wars and the most severe economic crisis since the Great Depression.

Although a false alarm, the inauguration terror alert magnified how important it is for a new administration to immediately take charge in case of a national emergency.

In today's world, the American people expect their federal government to be equipped for any contingency. The national security issues facing an incoming president are too important to be left to chance, and in 2009, the economic crisis required immediate engagement. This means presidential transitions must be highly organized, professional, and involved in extensive advance preparation. Hope and luck are not a strategy.

There have been times in our history when newly elected presidents have been well-prepared and other times when they have not been ready to govern on the day they assume office. Some politicians have been so superstitious or fearful of seeming presumptuous that they intentionally avoided detailed planning until after they were elected, leaving only two-and-a-half months to assume leadership of the most important government in the world. In some cases, outgoing administrations have not been fully cooperative or the incoming team has not always been receptive to even hearing advice from departing officials.

During the 2008-2009 transition, the Bush White House worked very hard to ensure that there would be a smooth transfer of power to whoever won the election.

Republican presidential candidate John McCain laid down a basic foundation and established a game plan for a formal transition, but devoted few financial resources to the task and relied mainly on a small circle of trusted associates. He personally took a hands-off approach, in large part because he did not want to be distracted from campaigning and was wary of moving ahead too quickly.

Obama's pre-election transition was highly organized, well financed, and had a policy and personnel operation that carried over into the formal transition after his November 2008 electoral victory. While Obama's operation in many ways offers a model for how presidential transitions should be run, the process began to break down on the personnel front after he entered the White House. This was partly due to a shift in personnel directors from the transition to the White House, Senate delays, a decision to stiffen vetting requirements following nominee tax issues and other problems.

In truth, as smooth as the latest transition was and even with the considerable effort put into it by all involved, in many ways our nation was simply lucky. No effort to date has been adequate to truly enable any newly elected president to hit the ground running, an inexcusable fact in today's volatile, fast-paced world where the stakes have never been higher.

It is time to better enable new presidents to get their full team in place as quickly as possible. It will not be easy, but we must strive to change the status quo. This will require institutionalizing a number of steps now left to the discretion of the participants, and creating a new set of goals and expectations that set a higher standard for all involved—the presidential candidates, the outgoing administration, a president-elect and then his new administration, and the Senate.

To provide a framework for the future, the Partnership for Public Service examined the 2008-2009 presidential transition, including the pre-election period, the phase between the election and the inauguration, and Obama's first year in office. We interviewed a number of key players from the Bush White House and the transition teams of Obama and McCain. We studied the public record, talked to outside experts and interviewed officials at the Department of Homeland Security (DHS) and the General Services Administration (GSA), which handles office space and logistics for the president-elect.

This report recounts many of the 2008-2009 presidential transition activities, includes observations from the participants, and identifies notable successes and shortcomings. Based on our study, we propose a series of legislative changes to the Presidential Transition Act, and we highlight some best practices that could be employed in future transitions by the White House and presidential campaigns.

From our study, several key issues stand out.

- **To institutionalize effective presidential transitions, we need to change the cultural norm. Rather than viewing early, pre-election transition planning as premature and presumptuous, our nation must recognize it as prudent and necessary, and acknowledge that failing to plan for the transition can leave the country vulnerable to issues ranging from national security to the stability of financial markets.**
- **The preparation to govern must not wait until the two-and-a-half-month period between the election and the inauguration; it should begin during the height of the presidential campaign season though the outcome of the political contest will still be unresolved. This requires a strong commitment and leadership from presidential candidates, a commitment of federal resources to help the candidates do the planning and the selection of respected transition leaders with past experience in government.**
- **A new president must fill, at the very minimum, top Senate-confirmed national security and economic positions immediately after the election, ensuring candidates have already been vetted, hold security clearances, are familiar with issues and procedures, and have been prepared to work as part of a team.**
- **The White House should provide cooperation and guidance to the major party presidential candidates in the pre-election period, and later to the president-elect. If the president is running for re-election, there still should be a transition plan in place that includes designating and training senior career executives who can temporarily take over from political appointees at the departments and agencies during a change of administration.**
- **The vetting process and disclosure requirements for nominees have become too onerous and complicated. Too many political appointee positions require Senate confirmations, and it takes far too long—sometimes a year or more—for a new president to get all of his nominees in their jobs and engaged in governing. The Senate needs to address the above issues to remove barriers to public service.**
- **Too little attention is paid—and insufficient resources are devoted—to preparing and training political appointees. Many political appointees are policy experts, but the success of those polices may depend on how well they are able to manage and lead the career civil servants who must carry out the mission. The new leadership needs to prioritize selecting and preparing its team to govern.**

The 2008-2009 presidential transition was historic in many respects. Without an incumbent president or vice president in contention, a major transfer of power was a certainty. This created an environment in which it was easier for President Bush to openly facilitate a smooth transition, a process that also was driven by his own concerns about the terrorist threat.

Bush decided a year before the 2008 election that he wanted "the best transition possible regardless of who was going to win," and after the election, publicly declared that a smooth transition of power would be a "priority."

In this report, we detail the ways in which the Bush administration cooperated with both political campaigns and then the president-elect. The White House undertook extensive transition planning long before the election, and provided assistance in many areas, including homeland and national security, the economy and agency reviews.

McCain's transition relied on a volunteer staff and a budget of only $25,000 to $30,000. His planning committee began talks in the spring of 2008, and by summer began engaging in preparatory work about jobs that would need to be filled. His transition developed preliminary lists of potential Cabinet, sub-Cabinet and White House appointees, had a plan for handling a range of logistical issues, and laid out timelines for what would have to be accomplished in a formal transition if he won the election.

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But McCain did not plan to send sizable fact-finding teams into the agencies after the election because he believed it would be a "friendly takeover" and unnecessary. He also arranged for only five campaign aides to obtain advanced security clearances so they would have had immediate access to classified briefings after the election. McCain was described by staff members as being "superstitious" about engaging in too much advanced planning before the election. On occasion during the campaign, McCain accused Obama of "measuring the White House drapes" before the election had taken place.

Obama began preparing for his transition in the spring of 2008, had a budget of roughly $400,000 from privately raised funds, engaged in detailed planning on the issues, began preparing for expert teams to descend on the agencies after the election, identified the top jobs that needed to be filled quickly, and arranged for more than 100 individuals to get security clearances so they would be prepared to receive classified briefings right after the election.

President-elect Obama raised in excess of $4 million in private donations for his post-election transition to supplement the roughly $5.3 million in taxpayer funds that were made available once he was elected. He grew his transition staff to several hundred people, and he quickly named his top White House aides and other top political appointees. He set strict ethical guidelines, had national security and economic appointees in place early, and sent review teams into every agency to gather information. Obama also prepared his policy agenda including the economic stimulus package and plans to deal with failing banks and an auto industry that was on life support. One month into his presidency, Obama still had only 13 of his 15 Cabinet secretaries confirmed.

The Obama transition, however, was not all smooth sailing. Throughout the government, key posts remained unfilled in the early months of the administration, and those in place struggled to meet the demands of Obama's ambitious agenda. Additionally, several of Obama's high-level appointees ultimately did not make it into office, sometimes for reasons that proved embarrassing, leading Obama to tighten the already strict vetting requirements.

According to a Washington Post count, of the top 516 Senate-confirmed positions, Obama managed to get 76 political appointees confirmed and 108 nominated in his first 100 days. This amounted to about 15 percent of those positions that were filled.

By August 7, 2009, when Congress took its summer recess, only 240 or 46 percent of his nominees had been confirmed by the Senate. By December 31, 2009, just 305 or about 59 percent of the nominees were in their jobs and 67 others were nominated and awaiting confirmation. Even with so many jobs unfilled, some political appointees already were preparing to depart, including the deputy attorney general at the Justice Department.

Bush also experienced problems getting his full team in place after the 2000 election. His transition was delayed five weeks because of the electoral dispute with Democrat Al Gore, but Bush began planning in the spring of 1999, privately funded his initial post-election transition, and quickly named his White House staff and Cabinet nominees after the outcome of the election was settled. Due in part to the election dispute and delays in the Senate, the incoming Bush administration did not have its deputy Cabinet officials in place until the spring of 2001 and its sub-Cabinet officials on the job until that summer.

President Bill Clinton had a particularly hard time, with controversies over a number of his nominees and a personnel operation that was slow off the mark. Three months after his election, only 50 of his top political appointees had been confirmed by the Senate. At the end of June 1993, only 10 of 24 positions in the Defense Department requiring Senate confirmation were filled.

There is no way to guarantee the success of a presidential transition, control the political dynamic or account for the personalities and idiosyncrasies of individual candidates. But there is no doubt that there can be significant improvements.

Improving presidential transitions will require institutionalizing some important activities now often left to chance, setting higher standards and raising expectations. Extensive cooperation from all sides is needed along with thorough and early transition planning to ensure a new administration is fully staffed and ready to govern. That is not a luxury; it's a necessity.

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Based on our study, we recommend, among other actions, the following:

THE PRESIDENTIAL CANDIDATES

- Publicly name a transition director within two weeks after their respective nominating conventions. This will signal the campaign's intention to position itself well for assuming office, take the transition out of the shadows, and remove the stigma of presumptuousness.
- Appoint a personnel director for the transition who also will serve as the White House personnel director (if elected) as a way of ensuring continuity and enhancing the effectiveness of the personnel process.
- Fully utilize the 2004 Intelligence Reform and Terrorism Prevention Act provision (P.L. 108-458, Title VII, Subtitle F) that allows select individuals to be screened for security clearances before the election.

CONGRESS

- Assess the true costs incurred for the presidential transition and allocate an appropriately increased sum for transition activities in future years, in part to minimize the need for private funding of transition activities that are now a necessity. To facilitate early transition planning, require campaigns to publicly name their transition director within two weeks of the nominating convention and assign a small percentage of appropriated transition funding to pre-election activities accessible only when the transition director is named.
- Create in statute an Agency Transition Directors Council, led by the GSA transition coordinator and a representative named by the White House, to ensure early and meaningful planning across federal agencies for the presidential transition.
- Mandate that the head of each Cabinet-level department, independent agency and critical agency subcomponent name a top-level careerist to lead that agency's transition efforts, with appropriate decision-making authority, six months before Election Day.
- Require the incumbent White House, as part of prudent contingency planning, to select and prepare career executives to temporarily fill the positions of top political appointees who will leave in the wake of an election. This should be done even if the president is running for re-election. If Congress does not mandate this action, the incumbent White House should take such steps on its own.
- Reduce the number of politically appointed positions that require Senate confirmation to help reduce delays that have traditionally prevented a new administration from getting a full team in place.
- To prevent a leadership vacuum and give transition planning a sense of urgency, Senate leaders should commit to work with the president-elect to have 50 top officials confirmed on or shortly after the inauguration, including all key posts within the departments of Defense, Homeland Security, Justice, State and Treasury.

THE PRESIDENT-ELECT'S TRANSITION

- Provide the names of the top 50 officials, including key posts within the departments of Defense, Homeland Security, Justice, State and Treasury, to the Senate by January 1 (or a date certain) to enable the Senate to act on their nominations on or shortly after the inauguration.
- Put in place early orientation and training for incoming political appointees who will be managing the departments and agencies, and plan for ongoing training.

THE WHITE HOUSE

- Create a White House Transition Coordinating Council comprised of administration, campaign and outside organization representatives to plan transition activities prior to the presidential election and through the inauguration. Each campaign's transition director will represent their respective campaign on the council. This may present an especially difficult challenge for an incumbent seeking re-election.
- Install a high level official who has the strong backing of the president to be in charge of handling the transition and ensuring the transfer of power is smooth and seamless.
- Stage table top exercises that bring together incoming and outgoing officials to participate in a crisis management scenario such as a national security threat or natural disaster.
- Ensure that the president-elect and appropriate agencies have sufficient resources and vetting personnel to carry out ethics and background investigations between the election and the first six months of the new administration. This would help eliminate delays that have impeded the nomination process.

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INTRODUCTION

The constitutional transfer of presidential power has been one of the hallmarks of American democracy—a peaceful ritual that provides continuity for our government as well as an opportunity for change and renewal.

Yet with all the hope, pomp and circumstance that comes with the swearing-in of a president, the ability of a new administration to effectively begin governing often rests on the preparation undertaken long before Inauguration Day.

For much of American history, presidential transitions were carried out without very much advance planning or even cooperation from the sitting chief executive. A president-elect was not expected to come to the nation's capital until the inauguration and had few if any substantial policy or procedural discussions with the outgoing administration.

President Harry Truman charted a positive course by extending his hand to President-elect Dwight D. Eisenhower after the 1952 election, inviting him to the White House and ordering federal agencies to assist the new administration with the transition. John F. Kennedy funded his own transition just like his predecessors, and engaged in extensive transition planning on domestic and foreign policy issues, but did not meet with Eisenhower until January 6, 1961, two months after the election.

It was not until March of 1964 that a formal transition framework was established with the congressional passage of the Presidential Transition Act, a measure designed to "promote the orderly transfer of executive power" and to "ensure continuity" while "minimizing disruption."

This law for the first time provided federal funding after an election for a presidential transition and was intended in part to reduce reliance on the use of private donations. The law authorized the GSA to provide the president-elect and vice president-elect as well as the outgoing president and vice president, with office space, paid staff and consultants, travel expenses, communications services and the temporary use of agency personnel.

The transition law was amended in 1976, 1988 and again in 2000, each time raising the amount of money available to the incoming and outgoing administrations. Amendments in 1988 also capped private donations at $5,000 from a single individual or organization, and required disclosure of how this money was spent. Congress also extended public transition funding for 30 days following the president's swearing-in instead of terminating it on Inauguration Day.

Twelve years later, in 2000, Congress for the first time authorized the GSA to coordinate and help develop an orientation program for the president-elect's Cabinet and high-level political appointees, providing up to $1 million in funding. In 2004, Congress again revisited the transition, this time as part of the Intelligence Reform and Terrorism Prevention Act that reorganized the intelligence community in the aftermath of the September 11, 2001 terrorist attacks.

This law required that the incumbent administration provide the president-elect with detailed classified summaries of all ongoing military and security issues. It encouraged the president-elect to nominate "candidates for high level national security positions through the level of undersecretary" as soon as possible after the election and to expedite their background checks. In addition, the 2004 law allowed candidates from the major political parties to request security clearances for prospective transition team members prior to the general election.

We have come a long way since the early days of presidential transitions, and the various legislative changes of the past four decades have been helpful, but there still is vast room for improvement. Even with the assistance provided by the transition act, preparation for the transfer of power has varied widely in every presidential election cycle.

The world today is volatile, the pace of events is rapid and the stakes are so high that it's time to bring the transition process to a new level of stability and predictability. There must be a change in the cultural norm so that it is perceived as absolutely essential for presidential candidates to make detailed plans for governing, and to do so well before the election. There must be expectations placed on the candidates that engaging in the planning process is a duty, not an option. There also must be a strong commitment from the Senate to expedite consideration of key officials and to vote on the nominations of at least the top 50 defense, foreign policy, economic,

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homeland security and law enforcement officials on or as quickly as possible after Inauguration Day.

Based on our examination of presidential transitions, and in particular the 2008-2009 experience, it is time once again to revisit and amend the presidential transition law to place requirements on the White House to better facilitate transition activities, and to enable campaigns and the president-elect to be better prepared to govern.

Beyond enacting changes into law, there are a number of operational practices that could improve future presidential transitions, and they should be adopted as standard procedure by presidential campaigns, the president-elect and outgoing administrations.

In most regards, the 2008-2009 transition was successful. Although there were a variety of glitches and shortcomings, President Bush's White House created a climate of cooperation and professionalism. The circumstances helped create the dynamic—a two-term president, a vice president who was not on the ballot, and an overriding concern about terrorism that fueled the sitting president's desire to fully prepare his successor.

At the same time, Barack Obama devoted substantial resources, thought and planning to governing, and came to office highly prepared amid difficult economic and national security circumstances.

The central problem we face, as one former White House aide told us, is "how to make a transition not depend on personalities and good will. It worked this time because you had two grown-ups."

This report seeks to answer that question, and to move the process from the vagaries of fate and good will to a higher standard. We examine the three phases of the 2008-2009 transition—the pre-election timeframe, the period from the election to the inauguration and President Obama's first year in office. In each section, we provide a short narrative based on the experiences and reflections of some key participants in the transition, and offer a series of recommendations for each phase on a broad range of transition issues.

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PHASE ONE
PRE-ELECTION DAY TRANSITION PLANNING

A critical phase of every presidential transition occurs before Election Day. In the most effective and successful presidential transitions, planning begins well before the outcome of the election is clear—in many cases, a year before the election. Yet in recent times, campaigns have portrayed such advance planning as "presumptuous," when in fact it is both prudent and necessary.

Even if conducted quietly behind-the-scenes, a campaign can powerfully argue that preparing to govern is essential to the safety and security of the nation. It is necessary to reset expectations and create a climate that encourages the need to properly prepare for a transfer of power.

During the period before the election, presidential campaigns must take steps to identify key White House staff positions and the individuals who might fill them if their candidate is elected. They need to prepare lists of potential Cabinet nominees and other senior politically appointed leadership posts, and prioritize important issues that will need to be addressed early in a new administration.

The campaigns also must work with the General Services Administration (GSA) to plan for office space and other logistical and personnel requirements in the post-election period—a time when the formation of a new government must be put into full gear.

The White House should play a role even if the sitting president is seeking re-election. In such a case, the White House still must facilitate security clearances for key aides of a challenger, help agencies with coordination for a possible transition, and include funding in the budget for transition activities. If the incumbent is not running, there are a variety of steps that should be taken before the election to help provide information and facilitate a smooth post-election transition and transfer of power.

THE OBAMA PRE-ELECTION TRANSITION PLANNING

Democrat Barack Obama created a highly structured, well-funded and well-managed transition, with Obama's aides saying that he felt strongly about the need to lay a firm foundation so that he would be prepared to govern if elected.

Christopher Lu, the executive director of the Democratic candidate's transition, said Obama had referred to the scene in the 1972 classic political film *The Candidate* when actor Robert Redford, playing the role of a young liberal lawyer and the winner of a hard fought Senate race, turned to his campaign advisor on election night and asked, "What do we do now?"

"Obama did not want to be in that position of saying, 'What now?'" recalled Lu.

Obama conferred with trusted advisers about the need for transition planning in May 2008. By Election Day, Lu said they had identified about 300 top jobs, and had a sense of "what order we wanted to fill them" including placing a priority on quickly naming a White House chief of staff and other key White House personnel.

John Podesta, a former chief of staff to President Bill Clinton, became head of the Obama transition effort in June of 2008 and presided over a high-level board of advisers who each had different policy expertise. The group met regularly during the pre-election period.

Podesta came to the transition after having founded the Center for American Progress in 2003. This Washington, D.C.-based think tank put together a voluminous book on how to run a Democratic administration, and had compiled detailed background on past presidential transitions and important policy considerations.

Podesta said a key to his role as a kind of chief executive officer was not having any ambitions to go into the government again, making him an honest broker and allowing him to devote his full energies to the task from the summer right through the election and the inauguration.

A similar pattern had been followed in 1960 when John F. Kennedy named Clark Clifford, an experienced Washington hand with no ambition to serve in the new ad-

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ministration, as his transition director. In contrast, Bill Clinton's transition lost continuity when Warren Christopher, the director of his transition, was nominated to be secretary of state after the 1992 election.

In addition to Podesta, Lu and the top-level advisory board, the Obama transition had a paid staff of about 10 people during the summer of 2008, dozens of volunteers, and a budget funded from private donations that reached about $400,000 during the pre-election period. The money was used to pay for office space, salaries, computers and software, travel, and telephones.

The transition produced policy options on a wide range of issues, including national security and had "parachute teams" ready to go into the agencies after the election to collect information. In addition, the Obama team worked out the logistics and processes for handling an expanded and formal transition operation in the post-election period, conferring frequently with officials from the GSA. They also began compiling names of potential political appointees for top jobs, and engaged in some preliminary vetting by scouring public sources of information.

The transition also obtained security clearances in advance of the election for well in excess of 100 people who would be dealing with national security, economic and other important issues.

Lu said one problem that arose during this pre-election phase involved ensuring the integrity of the sensitive policy documents developed by Obama's national security team. He said the transition rented computers at great expense that had anti-virus software and other security features, but noted there were no guarantees that the data would be fully protected. Lu said it would have been safer and less costly if the intelligence community or the Defense Department could have provided the transition with secure computers.

A good deal of the transition's organization had been laid out in the early part of 2008 by Peter Rouse, Obama's former Senate chief of staff and top campaign aide. Lu reviewed the detailed plans from the 2004 transition of losing Democratic presidential candidate John Kerry, which he said "turned out to be a road map for how to do transitions."

While Podesta and Lu ran the transition, Rouse served as the primary liaison to the campaign, and all three were in regular contact.

"We would provide Obama with a memo every week on what had been happening in the transition and then John (Podesta) and Pete (Rouse) would talk to him, and brief him in greater detail," said Lu.

Looking back, Podesta said solid work had been done in the pre-election period because of the early start, good resourcing and organization.

Lu said the transition "laid out pretty good plans up to November 4." But even so, Lu said, a lot of those plans changed after November 4, "because once the reality of what we were doing set in, you just have to make a lot of adjustments."

THE MCCAIN PRE-ELECTION TRANSITION PLANNING

John McCain engaged a small circle of six friends and advisers to begin the transition planning in the spring and summer of 2008, and they worked through the fall to lay down a basic foundation while keeping their efforts closely guarded.

Aides said the Arizona Republican felt it was premature to move too aggressively before a presidential victory was in hand. Rick Davis, McCain's campaign manager and a member of the transition's inner circle, said there was "a level of superstition involved" on the part of the senator who wanted to take a cautious approach and have a transition that "operated in a discreet environment." He said McCain believed there would be ample time to deal with a number of issues after the election if he were victorious.

"He didn't want to take his eye off of the election," said Davis. "He knew what he wanted to do when governing. He had very specific ideas."

Members of McCain's Transition Planning Committee, as the group called themselves, said they felt they had a solid framework in place and would have been prepared if McCain had won the election.

"We had a good plan, we had a good book ready," said Will Ball, a former Navy secretary who handled many of the day-to-day operations of the transition. "Based on what we understood to be the level of planning undertaken by previous transition planning teams, we were pretty far along, but we never got to take the final exam."

"In April and May of 2008, we were gathering information and then in May, I started writing down some of the basic outlines of what we needed to do going forward with some specific recommendations and a timeline,"

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said Ball. "We had a blueprint with fairly general steps and then as each week went by we would flesh out more specific goals to reach in the three phases, the pre-nomination phase, the nomination to election phase, and then the post-election phase."

Russ Gerson, a New York executive recruiter and the transition's personnel director, said he began work in June of 2008, and put together a volunteer team of 29 mostly private-sector subject matter experts in different fields from across the country. Gerson said he built a database that included job descriptions, and with the input from his volunteers, developed lists of potential candidates along with their biographical material that went five deep for the top 125 Cabinet and sub-Cabinet positions. He also said he developed job descriptions and a list of candidates for 50 or so White House staff jobs.

Gerson said the individuals on the lists were not contacted directly, although in most cases preliminary public record vetting was undertaken. He said the lists of potential candidates were ready for McCain to see right after the election, along with a week-by-week timetable for assessing and naming appointees. Gerson said he was proud of the work product, but noted that the task was enormous and said it would have been helpful to have started the planning much earlier.

Throughout the process, Gerson said, McCain kept his distance but knew the work was taking place. "We did this with very little direct input from Sen. McCain. Sen. McCain's philosophy was, 'I want to be prepared to govern, but I don't want to think about any of these decisions until after November 4,'" said Gerson. He said McCain "knew he could trust us to do an effective job."

Ball made the same point about McCain's view of the transition. "While McCain understood why this is important and what the major objectives of the transition should be, he was still not going to devote any significant amount of time to this planning, leaving that to us up until it became the real thing," said Ball.

Besides Ball, Davis and Gerson, William Timmons Sr., a prominent Washington lobbyist and veteran of Republican transitions, was part of the core group. He provided a thick book filled with administrative details for a formal transition, including office space requirements, the way to conduct travel arrangements, the placement of telephone lines, and the ins and outs of building security and many other logistical issues. John F. Lehman Jr., a former Navy secretary, friend and member of the commission that investigated the September 11, 2001, terrorist attacks, concentrated on national security issues. Trevor Potter, the campaign's counsel, was also part of the transition's inner circle that met at least every week as the election drew closer.

McCain's transition operated out of the campaign's headquarters in Arlington, Va., and ran on a shoestring budget of $25,000 to $30,000. The operation consisted of the six key players, a relatively small group of volunteers, and the part-time advisors spread around the country. Davis said that he did not think that more money for the transition was necessary and felt the small budget "did not have a material impact." He added that it was important to devote scarce resources to the campaign, particularly in the final month-and-a-half.

Unlike the Obama transition, McCain did not have review teams prepared to go into federal agencies to obtain information and make assessments on policy and operations. Ball said it was "a conscious decision" not to pull these groups together prior to the election because McCain "would have relied to a greater extent on selected carry-over personnel" from the Bush administration. He said the process would have been like a "friendly takeover," and large groups would not have been necessary.

The McCain transition also did not take advantage of the opportunity to obtain a sizable number of security clearances for aides to gain quick access to classified briefings after the election. Davis said there were just five campaign aides who went through the clearance process—individuals who would have been directly involved with intelligence briefings for the president-elect.

Ball said the transition did not follow through with more names. "We met with Justice Department officials and went over the procedures with the Justice Department and the FBI," said Ball. "We didn't have names we were ready to put into clearance at the time, but we knew the process was there, and had the election gone the other way, we would have been ready to take advantage of it."

Throughout the summer and fall, the McCain and Obama campaigns were reluctant to talk about their transition activities for fear of being viewed as presumptuous even though representatives from each group were engaged in planning, conferring with the White House, and meeting with the GSA about post-election office space and other issues.

The McCain campaign, however, sought to exploit Obama's extensive transition preparation.

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In July of 2008, a senior Obama campaign adviser was quoted as saying, "Barack is well aware of the complexity and the organizational challenge involved in the transition process and he has tasked a small group to begin thinking through the process." A McCain press spokesman immediately accused Obama of "dancing in the end zone" before crossing the 50-yard line.

Ball called this remark "unfortunate" and said McCain and his planning committee took the transition seriously. Yet McCain at various times during the campaign accused Obama of overconfidence and suggested during the fall campaign that he was already "measuring the drapes."

Lu said Obama transition team members felt "burned" by some of these comments, reinforcing the need to keep their activities as quiet as possible. Davis said the McCain camp was constantly under attack on personnel issues by Obama, with the Democrat accusing the Republican of having a staff top-heavy with lobbyists. "This kind of culture doesn't allow you to open up," said Davis.

Some of participants in the 2008 transition agreed that finding a way to bring the pre-election transition out of the shadows and make it an accepted part of the process would be a positive development and would avoid the possibility of it being used as a campaign issue. One way to do this would be to make it a statutory requirement for each campaign to publicly name a transition director following their nominating conventions, and to be eligible to receive federal funds for transition activities during this period. This would legitimize the pre-election transition and provide the resources to begin the proper planning without having to worry about private fundraising or criticism from an opponent.

Others interviewed saw a downside to placing the pre-election transition in greater public view, feeling it might inhibit planning, create problems for the presidential campaigns, and in the end cause some transition teams to shut down activities that should actually occur. According to this view, it is better to operate under the radar and provide campaigns with greater flexibility. The low key approach, they said, serves to avoid raising issues that should not be publicly addressed, such as personnel matters. There was also concern that accepting federal funding would bring unwanted scrutiny.

THE WHITE HOUSE PRE-ELECTION TRANSITION PREPARATION

While the Obama and McCain transitions were seeking to operate quietly and their political campaigns were attacking each other on a daily basis, the two sides were privately consulting with the Bush White House in the summer of 2008 to prepare for a smooth transition of power.

These consultations had been preceded by a good deal of White House planning that was set in motion earlier in the year after President Bush instructed his chief of staff, Joshua Bolten, to make this "the best transition possible regardless of who was going to win." According to aides, Bush wanted an effective, cooperative and seamless transition in large part because of his concerns over national security, particularly the ongoing terrorist threat and the wars in Iraq and Afghanistan.

Bush's commitment to a thorough and professional transition process, which he communicated to his Cabinet, set the tone and direction for the White House effort. This stance was made easier given the fact that neither he nor his vice president was on the ballot.

A cornerstone of the administration's contact with the campaigns was what it called "uniformity of access." Seeking to avoid any charges of favoritism, all materials, meetings, and guidance given to one transition team were simultaneously offered to the other.

Bush created a White House Presidential Transition Coordinating Council by executive order that included senior economic, national security and homeland security officials, representatives from the two presidential campaigns, and outside experts. The council, similar to one created by President Clinton in 2000 after the November election, met in the 2008 pre-election period and afterward to discuss pertinent issues and plan for a smooth transfer of power.

During the period before the election, the White House also helped expedite security clearances for key advisers and top transition aides of the campaigns so that the winner's staff would have access to classified briefings and important information quickly after the election. This process, permitted by the Intelligence Reform and Terrorism Prevention Act of 2004, was used extensively by the Obama campaign as noted earlier, but not by McCain.

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The Office of the Director of National Intelligence provided briefings to the two major candidates after their political party nominations. There also were briefings on the deepening financial crisis as the campaign progressed into the fall. The Office of Government Ethics held meetings with both campaign transition teams to discuss financial disclosure rules.

Aware of the importance of personnel matters in the transition, Bolten said the Bush White House prepared "a complete inventory and description of all the appointed jobs in government" that was turned over to the transition directors of the two campaigns. The White House also prepared briefing papers on "hot" domestic, economic and national security issues that the new administration would face in the first 90 days

The White House, with the input of both campaigns and assistance from the GSA, helped facilitate the design of a new presidential personnel computer system to replace the antiquated software program it had been using. The outdated White House personnel database, called TeleMagic, had been used by Bush when he was governor of Texas.

The template for this new personnel database had been developed initially by Gerson, McCain's personnel director. He said he offered to let the Obama transition use his software so that both campaigns could jointly request that the Bush administration adopt it as the model for the new system that would be in place at the White House on Inauguration Day. Gerson said he believed that having both sides using the same data management system that would be available at the White House would help ensure a smoother personnel process for the new president. He said both campaigns agreed, and the White House fast-tracked the approval with the GSA by late September 2008.

On policy issues, Bolten months earlier issued a memo to the heads of all executive departments and agencies urging them to resist last minute regulatory activity except in "extraordinary circumstances." His March 2008 memo directed that all regulations be proposed no later than June 1, 2008, and that final regulations be issued no later than November 1, 2008.

Bolten said he felt he was pursuing a prudent course that would give sufficient airing of new regulations and avoid the appearance that the administration was seeking to walk out the door while imposing "midnight" rules. The chief of staff said he drew criticism from inside the administration for constraining the agencies and the Bush agenda. He was attacked by Democrats and outside groups who said the edict prompted agencies to rush to meet the new deadlines with a higher than normal volume of new regulatory proposals.

The president and his staff won praise from both camps and outside experts.

Ball, the McCain transition aide, said he found the White House to be very cooperative, "offering plenty of information" after the Arizona senator had secured the Republican presidential nomination.

Similarly, Lu of the Obama transition said, "Anything we ever wanted, they always got to us, before Election Day, after Election Day."

THE WHITE HOUSE PRIMES THE AGENCIES

In April of 2008, Bolten instructed Clay Johnson, the deputy director of the Office of Management and Budget (OMB), to "prepare the agencies" for the presidential transition. Johnson said that meant "helping them figure out what to do, getting them to focus on this and devote resources."

Johnson said he had his first meeting with the President's Management Council in May that resulted in a July 18 transition guidance memo. This memo directed the management council, comprised of the deputy secretaries and chief operating officers of major agencies, to begin identifying by August 1, 2008, the career officials responsible for assuming the positions of departing political appointees at each major bureau and office of their department or agency, and by October 15 to sign off on the individuals who would temporarily fill those jobs.

The Johnson memo told the agencies to identify a career official to serve as their transition coordinator and as the liaison to the president-elect's team. In addition, the agencies were asked by November 1 to prepare a brief summary of their department's basic organization, current missions and performance goals, and to identify and summarize their important policy, internal management, and legal and infrastructure issues.

Although the agencies were given these instructions, Johnson said he did not think it was necessary to require them to report back to him on their progress. "If they were not doing what was asked, then they were going to pay the price when their new bosses got there," he said. He added that all of the agencies completed their work by October 31.

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The administration for the first time ever also brought together a number of career agency transition coordinators in the fall, prior to the election, to discuss common issues they would need to confront during the post-election transition. After the election, additional meetings were held. These sessions were arranged by Gail Lovelace, the director of the presidential transition at the GSA.

Lovelace got involved in the transition because of the GSA's role in providing office space and support services to the president-elect after the election, but she worked with Johnson to initiate pre-election agency activities including the meetings to discuss how to prepare for the new administration. Lovelace said most of the agency people had never been through a transition before and did not know what to expect.

"Nobody said, 'Gail, do this job,' before I became the official person here at the GSA," said Lovelace. "There's nobody in government, so to speak, in charge of transition."

Lovelace said agency coordinators should have been engaged much earlier and an effort should have been made to ensure they were making the necessary preparations. "I think some agencies scurried at the last minute," she said. "I think a lot of the agencies weren't focused. They didn't understand the level of effort needed to transition to a new administration." Attendance at the meetings convened by Lovelace for the agency transition leaders varied from session to session.

PHASE ONE RECOMMENDATIONS

The experiences of the 2008 transition offer some important insights into best practices and effective policies that should be part of a pre-election transition period for presidential campaigns, the White House, and the federal departments and agencies. Based on our study, we recommend:

THE PRESIDENTIAL CANDIDATES

- Establish a transition team to conduct early planning long before the general election, with a trusted liaison between the transition and the campaign.
- Publicly name a transition director within two weeks after the official nominating convention. This will signal the campaign's intention to take the transition out of the shadows, and remove the stigma of presumptuousness. This would not be applicable for an incumbent's campaign.
- Select a transition director with significant federal or White House experience, and who does not plan to join the administration, so the focus can be on the transition alone. This would not apply to an incumbent president who would not have the same needs.
- Assign transition directors to learn about past transitions, in many cases, leveraging the plans from previous transition teams. They should consider how to archive the new transition plans for future teams, viewing the transition in the broader perspective of effective federal operations.
- Send transition advisors to key agencies (such as the Department of Homeland Security and the Defense Department) to receive briefings during the pre-election phase so that they will be well-informed on key issues early in the process.
- Name a personnel director for the transition early in the planning process who will also serve as the White House personnel director (if elected) and who intends to stay in that role for at least the first year of the administration. This will build continuity and enhance the efficiency and effectiveness of the personnel process.
- Begin compiling lists of possible appointees during the pre-election phase, and start public record vetting.
- Utilize the early security clearance process permitted by the 2004 Intelligence Reform and Terrorism Prevention Act of 2004 to expedite getting key national security aides and other important staff access to classified material immediately after the election.

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CONGRESS

- Assess the true costs for the presidential transition and allocate an appropriately increased sum for transition activities in future years, in part to minimize the need for private funding of transition activities. With modern security concerns and enhanced technology needs, building on past budgets—rather than actual expenses—may underestimate resource requirements. In 2008-2009, $8.5 million was federally allocated for the presidential transition, divided as follows: $5.3 million for the incoming administration (62 percent), $2.2 million for the outgoing administration (26 percent), and $1 million for the GSA to provide initial training for appointees (12 percent.) But even with this funding, President-elect Obama had to raise millions of dollars more in private donations to finance his transition.
- Assign a small percentage of appropriated funding to pre-election transition activities, accessible only once the transition director is public named, to facilitate early transition planning. For example, 2.5 percent of the incoming administration's appropriation could be provided to each major campaign immediately following the party's nominating convention, contingent upon a campaign identifying its transition director. This could obviate the need for private transition fundraising, and provide money for important activities. Eligibility for this pre-election federal transition funding should be determined by the same standards established by the Commission on Presidential Debates. A candidate who participates in commission-sponsored debates during the general election would be eligible. The GSA representative would track the expenditures to ensure this funding is used for transition planning activities.
- Create in statute an Agency Transition Directors Council, led by the GSA transition coordinator and a representative named by the White House, such as the deputy director for management at the Office of Management and Budget, to ensure early, consistent and meaningful planning within federal agencies for the presidential transition. This would enhance GSA's significant transition role, which includes managing logistical elements such as securing office space and coordinating preparatory activities across federal agencies.
- Mandate legislatively that the head of each Cabinet-level department, independent agency and critical agency subcomponent name a top-level career civil servant to lead that agency's transition planning, with appropriate decision-making authority, six months before Election Day. These individuals will comprise the Agency Transition Directors Council.
- Require by law that by September 15 of a presidential election year, agencies identify and prepare career executives to fill critical positions on an interim basis until a new administration's political appointees are in place. This would apply even if an incumbent is seeking re-election.

THE WHITE HOUSE

- Create by presidential executive order, during a president's second term, a White House Transition Coordinating Council, led by White House officials and comprised of administration, campaign and outside organization representatives to plan transition activities prior to the presidential election and through the inauguration. Each campaign's transition director will represent the campaign on the council. Conduct regular meetings leading up to a presidential election and during the period between the election and the inauguration and follow up with agencies throughout the transition until the formal transfer of power.
- If Congress does not legislatively require it, voluntarily select and prepare career executives to temporarily fill appointed positions of departing officials even if the incumbent president is seeking re-election. When choosing career executives to temporarily assume these roles, train them to be contingency-ready and able to support incoming appointees from the transition phase into the new administration.
- Direct agencies to develop briefing materials for the incoming administration dealing with the top issues and problems on their agendas with guidance from the Agency Transition Directors Council regarding the content and format (and input from the candidates' representatives) by November 1.
- Provide to campaigns, through presidential personnel, a list of all Senate-confirmed positions and their related responsibilities in the early fall of an election year. Position descriptions for high-level jobs would be especially helpful.
- Set guidelines and negotiate protocols for access to materials and personnel at the agencies and departments with the two campaign transition teams if the president is leaving office, and with the transition team of the opponent if the incumbent is running for re-election.

THE GSA

- Arrange for the transition teams of the major party nominees to have access to secure computers and state-of-the art software that will protect sensitive national security information.

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The 2008 presidential election marked the first transition for the Department of Homeland Security (DHS), a six-year-old organization created in the aftermath of the September 11, 2001, terrorist attacks.

Ensuring continuity of operations and the readiness to handle a national security crisis or a natural disaster were the top transition priorities for DHS, an often troubled and complex conglomeration of 22 separate agencies with different missions, cultures and 216,000 employees.

Recent events have shown that elections are times of increased vulnerability, with terror attacks taking place in Madrid in 2004, in London in 2005, and in Glasgow in 2007 during political transitions. The 1993 World Trade Center attack as well as the 9/11 attacks occurred within the first year of new administrations.

DHS began its preparations in 2007, long before the presidential election. President Bush issued an executive order in August 2007 delineating a line of succession for DHS, and Secretary Michael Chertoff in September 2007 established task forces to develop recommendations and best practices for the presidential transition.

These actions were followed by a number of positive and concrete steps taken by DHS in 2008 that included:

- Establishing a succession plan that designated career executives to backfill roughly 80 senior political appointees at DHS headquarters and subcomponents to preserve continuity of operations before, during and after the administration changeover. The succession plan went three levels deep in each organization. Paul Schneider, the former DHS deputy secretary, said, "On January 20, we assumed that every political appointee would be gone, which for the most part is exactly what happened."
- Organizing seminars, training programs and hands-on group exercises in crisis management and operations for the senior career employees (and later for the new political appointees) to ensure that each component and office within DHS had capable leadership ready to take the reins and respond to an incident.
- Providing briefing materials for the new administration, as well as making sure that policies issued over the years were validated and memorialized into management directives. The materials contained descriptions of the missions and capabilities of each component, outlined issues that affect more than one component such as cybersecurity, and included a detailed roster of decision points that would be faced in the first 30, 60 and 90 days of the new administration.

According to several knowledgeable individuals, progress on the transition was slow at the start because the day-to-day implementation of many issues was left to DHS employees who did not have the stature and authority needed to do the job.

This changed in June 2008 when Schneider, the DHS deputy secretary, appointed U.S. Coast Guard Rear Admiral John Acton to head the transition. Acton was a career officer free of politics, highly organized and respected. When he came on board, Acton said, "DHS had no transition playbook, no binder to pull off the shelf as a starting point because it was the department's first real transition." He immediately set clear goals, determined the functions that needed to be performed and the organization that was required to accomplish those tasks. Initially, he started with six full-time staffers and later called on some 80 others to help on a part-time basis across the department.

Acton said his efforts were enhanced by several factors, including the clear signal sent to the entire department from Chertoff and Schneider in the summer of 2008, well before the national party political conventions, that everything possible must be done to ensure the new administration succeeds. He said a successful transition requires strong support from leadership and "someone senior" heading the effort. "If the secretary and the component heads are not on board, it could be a very long road," he said.

The Coast Guard admiral said another positive factor was that President-elect Obama's DHS review team was "very informed on homeland security issues, knew what questions to ask and were ready to hit the ground running." He said his DHS staff moved as quickly as they could to remove roadblocks and give the Obama team access to requested information. He said they gave them private workspace, laptops, phones, printers, shredders, building passes, and provided training and crisis management exercises for incoming political appointees.

Acton said there were a number of lessons learned from the 2008-2009 transition. He said his full-time effort

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should have started a year before the election, not in June of 2008. "That was too late and really compressed our timelines," he said. He also said the effort would have benefited greatly from a line item in the DHS budget for the transition, to avoid having to scratch out resources from others to get the job done.

There were other issues as well. Acton said DHS would have preferred direct contact with the campaigns of both Obama and Republican John McCain immediately after the national conventions, but neither the White House nor the campaigns supported early contact. He also noted that, initially, only a handful of Obama's DHS review team held top secret security clearances and therefore had access to classified briefings. Though this later changed as the review team grew, he said that was inadequate and slowed down the review team's work.

In addition, Acton said it was a challenge getting all of the new political appointees to engage in the initial training and crisis management sessions, since they were new to their jobs, had a lot on their plates, and in some cases did not grasp the urgency. "We sat down with them to say this is important and you really need to do it now," said Acton.

Throughout 2008, there were a number of emergency response exercises for career officials who had been designated to backfill departing political appointees. Some observers felt that the earlier training efforts were not as effective as they could have been, but Acton said DHS sought to make them meaningful and he believes they were successful.

Aside from the internal DHS training, Acton said there was "no formal mechanism to get the entire federal government to train together" and engage in joint operations. "We presented our DHS transition training proposal to other federal agencies and Cabinet-level departments. Some took part and others did not," he said. "No one was telling them you must do this."

Outside observers found that the DHS transition, while experiencing a bumpy start and its share of shortcomings and frustrations, involved a high degree of advance preparation and offers a guide for other agencies to follow in the future. Acton said that he would "give us a B, because while we did well for the first time out of the blocks, we could improve substantially."

PHASE TWO THE FORMAL TRANSITION
BETWEEN ELECTION DAY AND THE INAUGURATION

The finish line of the presidential campaign represents the start of the formal transition for the victor, assuming that the individual is not the incumbent. It marks a short, but extremely crucial, two-and-a-half months for the president-elect to shift away from the campaign mode, build an administration and get ready to govern.

A failure to handle this phase properly can have serious consequences for a new administration, leaving it unprepared and squandering the chance to get off to a fast and productive start. The post-election transition operation must grow quickly, be highly organized, and be able to communicate with the public, the Congress, the outgoing administration and party, and campaign allies.

In this period between early November and the inauguration, the president-elect must select the key players for his White House staff, 15 Cabinet secretaries and numerous others to head independent agencies and other top echelon positions. His personnel team also must begin processing applications for other administration jobs, and set up computer systems and Web sites to help handle the task.

The personnel process for the high-level jobs is a delicate one, requiring political and policy considerations, and demanding extensive background vetting. It requires consultation with congressional leaders and, in particular, Senate committee chairmen and their staffs.

Cooperation from the White House is needed on a range of matters, including high-level briefings on national security, the economy or other issues that may be important at the time. Lame duck administrations are not always helpful, however, and sometimes seek to cement their legacy with last-minute rulemaking, executive orders, national security directions, spending decisions and appointments not requiring Senate confirmations.

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THE BUSH WHITE HOUSE

The 2008 transition, marked by a shift of power between the two major political parties, unfolded in the midst of the financial meltdown, two foreign wars, and the ongoing terrorist threat. Although the president-elect had run a campaign that was highly critical of the outgoing Bush administration and its policies, President Bush put politics aside and emphasized cooperation.

Two days after Obama's 2008 election, Bush spoke to his White House staff and pledged that a smooth transition of power would be "a priority," declaring "over the next 75 days, all of us must ensure that the next president and his team can hit the ground running."

"We face economic challenges that will not pause to let a new president settle in," Bush said. "This will also be America's first wartime presidential transition in four decades. We're in a struggle against violent extremists determined to attack us—and they would like nothing more than to exploit this period of change to harm the American people."

Such an approach was not taken by President Clinton in 2000, a transition that was complicated by the ballot dispute in Florida between George W. Bush and Vice President Al Gore. The dispute ended up delaying the outcome of the election for more than a month. After Bush was declared the victor, there were complaints about a lack of cooperation from the president-elect's side, and angry responses from the Clinton camp.

The muddled 2000 experience contrasted with 1988 when Vice President George H.W. Bush succeeded President Reagan. In that case, the elder Bush benefited from being Reagan's vice president and getting the close cooperation of Reagan aides before and after the election. But Towson University political science professor Martha Kumar has pointed out that Reagan did not force any of his political appointees to resign. As a result, Bush and his Cabinet officers had to clear out people who remained in order to put their own appointees in place, creating resentments.

Following the November 2008 election, George W. Bush and his staff followed through on his commitment to help President-elect Obama. The White House provided high-level intelligence, national security, defense and economic briefings, access to the federal agencies and created a climate of collaboration. The White House, for example, organized a national security crisis training drill on January 13, 2009, that included key outgoing and incoming Cabinet and national security officials. Bolten described it as "one giant table top exercise" that required the participants to work together on handling a scenario involving the coordinated detonation of improvised explosive devices in several major cities.

"The most important thing for us to accomplish was to prepare our successors as best we could for a national security event that might happen early in their tenure," said Bolten. "We brought them all into one big room. I think (incoming national security adviser) Jim Jones was sitting next to (outgoing national security adviser) Steve Hadley and (incoming homeland security secretary) Janet Napolitano was sitting next to (outgoing homeland security secretary) Michael Chertoff and so on."

Bolten suggested that future transitions should include additional training exercises for incoming White House personnel and key Cabinet members and their staff to develop a working familiarity with each other and the processes that need to be followed.

The Bush team established written protocols and guidance for the new White House and key responders to handle a national security event, and provided the president-elect's staff with briefings on these issues. They catalogued President Bush's conversations and commitments with foreign leaders in a way that could be easily retrieved by the new president; helped ensure Obama's team members received security clearances; and they intervened with Cabinet officers and political appointees to remove roadblocks and resolve conflicts to ensure the president-elect's agency review teams had access to the information they needed.

PRESIDENT-ELECT OBAMA

Obama, for his part, set an early and swift pace during his post-election transition, having laid a solid foundation during the pre-election phase. His early preparation was fortuitous given the daunting task he faced putting together a government and seeking to implement major policy shifts under extremely difficult circumstances.

One day after his historic election, Obama formally named the leaders of his transition team that included John Podesta; Valerie Jarrett, a senior campaign adviser and close confidante; and Peter Rouse, his campaign chief of staff. He also named Christopher Lu as the executive director and appointed other close allies to handle communications, congressional relations, personnel, legal affairs and the vetting of job candidates. That same week, Obama named a White House chief of staff, Rep. Rahm

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Emanuel (D-Ill.), who brought congressional and previous White House experience to the table. Obama also ramped up his transition staff, which grew to hundreds of people. Many of them were former campaign staffers.

Aides said Obama did not want to repeat the mistakes of former President Clinton, whose 1992 transition was considered chaotic. Clinton did not name any Cabinet nominees or White House staff until six weeks after the election, and most of the key White House positions were not announced until a few days before the inauguration, providing them little time to prepare for the huge tasks at hand.

The Obama transition staff, divided between Chicago and Washington, was funded with about $5.3 million in taxpayer funds. Obama also collected more than $4 million in private donations to cover the additional costs of the transition.

The transition process for Obama went smoothly at the beginning, but hit some bumps along the road.

Obama had picked most of his Cabinet nominees before Christmas, and filled all of his top West Wing jobs before the inauguration. His staff appointments included a number of policy "czars," special assistants to the president with important portfolios who did not have to face Senate confirmation. Some of these appointees would come under fire from Republicans and some Democrats in the Senate who felt Obama deliberately created the positions to sidestep Senate oversight.

"We got the White House staff, senior staff, put in place first," said Podesta. "We had a very rigorous and managed process of handing off decision-making from the transition to the incoming White House staff through the transition."

While the Cabinet nominations flowed out at a regular pace following the election, Obama was dealt a setback in early January 2009 when Commerce Secretary-designate and New Mexico Gov. Bill Richardson withdrew from consideration amid a federal investigation into how a political donor from Beverly Hills won a lucrative state contract. Questions also were raised regarding Treasury nominee Timothy Geithner, who had been delinquent in paying $42,000 in back taxes, and Health and Human Services nominee Tom Daschle, who withdrew two weeks after the inauguration due to his failure to pay in excess of $140,000 in taxes. Nancy Killefer, Obama's choice to become deputy director for management at OMB, also withdrew at the same time after disclosing a failure to pay $946 in unemployment compensation taxes on household help.

These problems prompted Obama to tighten what was already an extensive vetting process requiring unprecedented scrutiny of the personal financial and professional backgrounds of prospective nominees. This policy required so much detailed information that it delayed the appointment and confirmation of many qualified nominees for important administration positions. In some cases, the vetting disqualified some of the president's choices.

While the personnel side had some issues, the president-elect did not miss a beat on policy preparation.

Obama began receiving top level briefings two days after the election from Michael McConnell, the Director of National Intelligence, and on November 10, 2008, went to the White House to confer with President Bush. Obama's national security team received regular briefings, and had the opportunity to work together on major issues as the transition progressed. Podesta said it was positive to have the national security staff not just reading memos and getting briefed, but meeting together, getting to know each other and really working on the problems in the transition phase.

Podesta said a similar process unfolded "out of necessity" with members of his economic team who conferred with Bush administration officials and deliberated on the banking and auto industry bailouts and an economic recovery plan. He said the same process took place on energy issues as well. Podesta said Obama pulled together many experienced people, but it was just as important to engage in "team building" and to "focus on how they are going to work together."

AT THE AGENCIES

Two weeks after Obama's presidential election victory, his review teams began their assessments of more than 100 federal departments and agencies to identify program and policy priorities, pour over budgets, identify potential minefields, and prepare detailed briefing materials.

The teams, said transition leader Podesta, were designed to "ensure that senior appointees have the information necessary to complete their confirmation process, lead their departments and begin implementing signature policy initiatives immediately after they're sworn in."

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The review team leaders and members had been picked long before Election Day, trained, and given strict ethical guidelines. Many had experience at the agencies they were reviewing or substantial knowledge about the policy issues, and they were given strict timelines to produce information for the transition leaders.

"I thought one of the most important things that we did in the agency review process was the tremendous clarity in the work product of these groups," said Podesta. "I think that was a reflection that we made based on past transitions."

The Bush administration helped facilitate the process by bringing the agency career transition leads together early in November just after the election to meet directly with some of the top people from the Obama campaign.

"This was right before they were going to go in and start these agency reviews with their agency review teams," said Johnson, the Bush administration's OMB deputy director. "And so they heard it straight from the horse's mouth, what their general approach would be, what they were looking for, and what these reviews were going to be."

Some Obama team leaders met directly with Cabinet secretaries and agency directors, while others interviewed senior managers and employees at lower levels. The Washington Post reported on December 3, 2008, that Obama's State Department leads, Tom Donilon and Wendy Sherman, met with Secretary of State Condoleezza Rice.

At the Pentagon, Defense Secretary Robert Gates, who would stay on as secretary in the Obama administration, designated four senior officials to directly handle the transition reviews.

Government Executive.com reported on Nov. 6 that a Pentagon task force "outlined a list of events and milestones taking place within the next 90 days that the president-elect's team should be aware of, including the first budget submission, upcoming conferences and deployment orders for troops heading to Iraq and Afghanistan." The Pentagon developed a succession plan for some 200 political appointees, and cleared office space for the transition team, although one Obama aide said the review team encountered some difficulties with access at the Pentagon during the transition that had to be resolved by the Bush White House.

Lu said having a transition point of contact at every agency and someone in charge of pulling information together was "incredibly important."

"It was necessary to help guide those agencies' transition planning such that they were ready on November 5 to start downloading information to us," he said.

Although the White House issued explicit instructions to the agencies, some were better prepared than others with background materials and procedures for access. And while many were helpful to the Obama transition teams, there was conflict at some agencies.

Lu said that there had been a rules of engagement memo signed by the Bush White House and the president-elect's transition detailing how review team members would obtain access to the agencies and their materials. He said these protocols had to be renegotiated regarding the level of access, space requirements and who could be interviewed at some of the departments and agencies when disputes developed.

"Our original idea was that we would have people in the agency doors the following Monday after the election or, perhaps, even a week after that," said Lu. "Many people did not get into the agencies until weeks later." Lu said it was up to the agency review team leaders to fight on "a case-by-case basis," and when an impasse arose, to take it to the next level. He said this sometimes meant convening conference calls with White House Deputy Chief of Staff Blake Gottesman and principals from the noncompliant agencies.

There were also many positive stories, with reports of transition team members being warmly greeted and given full cooperation. Lu said there were no problems at the vast majority of the approximately 110 agencies involved in the transition reviews

A former aide in the Bush White House noted that even with explicit direction, various personal, political and territorial tensions arose that no directive or order could completely erase.

"There was a fair amount of sensitivity, and it took a lot of work to iron out and manage," said the former White House aide.

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PHASE TWO RECOMMENDATIONS

Based on our interviews with principals engaged in the 2008 transition and the views of a number of outside experts, we believe there are steps that should be taken by the president-elect and an outgoing administration during the period between the election and the inauguration. We recommend that:

THE PRESIDENT-ELECT'S TRANSITION

- Name a White House chief of staff as the first order of business followed by key positions at the White House and then members of the Cabinet, and other top level appointees. With a significant number of positions to fill, selecting critical White House staff members will help incoming Cabinet and subcabinet level officials' transition into their roles.
- Utilize the outgoing administration's position descriptions as an outline of the issues that specific jobs cover. This will help facilitate a smooth transfer of knowledge by providing better specifications regarding job requirements.
- Create a personnel operation with sufficient resources and staff to properly screen, interview and fully vet the backgrounds of potential administration nominees. Launch the security clearance process as early as possible for key personnel who will assume high-level or mission-critical positions to reduce lag time early in the administration.
- Hire enough professional vetters to screen nominees for appointments. Bringing executives into an administration requires the type of talent found by an executive search firm and greatly varies from the type of hiring done on a campaign in level, magnitude and number.
- Dispatch expert teams to the departments and agencies with clear instructions on the type of information they should gather regarding operations and policy. Aim to collect only data that will be most useful to the incoming team, particularly in a brief, readable format. Set a timetable for the information to be submitted and reviewed by transition team leaders. To the extent possible, select agency review team members who are likely to serve in the agency to which they are assigned. The formal transition phase is most beneficial to those who will leverage what they learn as an employee of the same organization.
- Identify top-caliber political appointees in the departments and agencies who want to stay on an interim basis and keep them on the job to help fill the vacuum created by the slow Senate confirmation process for new political nominees. Promote highly capable career executives with institutional knowledge and management skills to political management positions to help ensure continuity.
- Make preparations and begin training sessions to help familiarize White House advisers, Cabinet nominees and other high level appointees with their department and management responsibilities. Hold pre-inauguration sessions, particularly in key areas like national security, the economy and energy, so individuals who will work together can get going early on the new agenda, become familiar with each other and develop processes for decision-making.

THE WHITE HOUSE

- Install a high-level official with the strong backing of the president to handle the transition and ensure the transfer of power is smooth and seamless.
- Ensure that the president-elect and appropriate agencies have sufficient resources and vetting personnel to carry out ethics and background investigations between the election and the first six months of the new administration. This would help eliminate delays that have impeded the nomination process.
- Provide access to the agencies and departments by the incoming administration's transition team, and be prepared to intervene to settle disputes when they arise.
- Stage table top exercises bringing together incoming and outgoing officials to participate in a crisis management event such as a national security threat or an emergency such as a natural disaster.
- Provide high-level briefings to the president-elect, his national security team and key advisers.
- Provide written protocols and guidance for the incoming White House staff and national and homeland security teams on how to handle a national security event.

THE SENATE

- Set goals for committees and the Senate as a whole for confirmation of political appointees in an effort to create high expectations and speed the process. Agree to vote on the confirmation of the 50 top officials on or immediately after the inauguration, including all key posts within the Departments of Defense, Homeland Security, Justice, State and Treasury, provided they were received by a date mutually agreed upon with the incoming administration and no problems with the candidate are surfaced. The Senate should strive to have 100 appointees confirmed within the first 100 days of the administration and close to all 516 key positions filled by the August recess.

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The high level of scrutiny given to presidential nominees requiring Senate confirmation involves numerous written questionnaires, interviews, background investigations and extensive financial disclosure. The vetting starts with the White House and includes the Office of Government Ethics, the FBI and Senate committees. Many nominees with considerable wealth or complicated business holdings choose to hire an attorney or an accountant to help fill out the reports and comply with information requests. The confirmation process has grown slower and more cumbersome over the years in part because of the rigorous disclosure requirements and the number of nominees that now require Senate approval. In 2009, President Obama tightened his already stringent vetting process following embarrassing revelations of past tax problems by several nominees. Along with Senate delays, this heightened scrutiny impeded Obama's efforts to quickly get his full team of political appointees in place.

The current vetting requirements include:

- **The White House Personal Data Statement.** This questionnaire varies from administration to administration, but generally focuses on a nominee's personal, professional, legal and financial information. It asks questions about a nominee's professional experience, political affiliations, physical and mental health, published material, club memberships, alcohol and drug use, litigation and potential conflicts. There are questions about employment of domestic help (surfacing "nanny tax" and immigration concerns), and other information that could be used to attack a nominee's qualification or character. There also are questions that screen for policy opinions that would show any inconsistencies between the nominee and the White House that might create an embarrassing situation.
- **The Public Financial Disclosure Report (SF-278).** Mandated by the Ethics in Government Act, this questionnaire requires detailed reporting on assets, income, liabilities, transactions, gifts, travel expenses, loans, arrangements for future employment and recent organizational positions held outside government. Nominees must provide the names of every client or customer with whom they performed more than $5,000 worth of personal services and offer a brief description of those services. This financial disclosure form is reviewed by the White House Counsel's Office, by the department to which the nominee is headed and by the Office of Government Ethics prior to a Senate confirmation hearing. Any financial conflicts must be remedied by divestiture, recusal, waivers, regulatory exemptions or the creation of special trusts.
- **The Questionnaire for National Security Positions (SF-86).** This questionnaire is used for the FBI background investigation and the security clearance process. The SF-86 requires very detailed information on where a nominee has lived, worked and gone to school over the last 10 years. Additionally, information must be provided on affiliations, foreign contacts, mental health, drug use, foreign travel, friends and relatives.
- **The FBI Background Investigation.** Current practice requires a full field investigation for positions that any agency or department head designates as "sensitive" due to the ability of the occupant to "bring about, by virtue of the nature of the position, a material adverse effect on national security." There are three levels of sensitive positions, with each having its own investigative requirements. Generally, an FBI background inquiry includes interviews with the nominee, family, friends, neighbors and co-workers. Issues related to the nominee's employment, professional, personal, foreign travel, medical, financial, legal, military and educational history also are explored.
- **Senate Committee Questionnaires.** Each relevant committee that confirms nominees has one or more unique disclosure forms, often duplicating information already provided to the executive branch. Committees frequently follow up with requests for interviews and additional information, and in some instances, have required lengthy tax audits of nominees.

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PHASE THREE
AFTER THE INAUGURATION

The inauguration marks the formal launch of a new administration and the starting point for measuring the effectiveness of the presidential transition. While many view the period between the election and the inauguration as the formal transition, the first few months, and in some instances the first year of a new administration, often reflect the depth of the planning and advance preparation.

The post-inauguration period, in fact, actually represents yet another phase of the presidential transition. New administrations spend enormous energy to scrutinize, announce and then shepherd a long list of political appointees through the Senate confirmation process, a task that can stretch through the first year of an administration and sometimes longer.

The 2008 edition of the Plum Book (United States Government Policy and Supporting Positions) listed 1,141 Senate-confirmed positions, including the Cabinet, important sub-Cabinet management positions, the heads of agencies, U.S attorneys, ambassadors, judges and members of various boards and commissions.

A Washington Post tracking system lists 516 of these positions that it considered top tier. These include the Cabinet and high-level department management positions, the heads of independent regulatory agencies and members of the Executive Office of the President, such as the Council of Economic Advisers and key people in the Office of Management and Budget.

The confirmation process is often regarded as too slow, frequently encumbering the progress of a new administration. Many experts and officials who have served in both Republican and Democratic administrations believe that far too many jobs require Senate approval, and that there are too many delays stemming from political gamesmanship and extensive and, in some cases, excessive vetting requirements.

OBAMA: NOMINATION PROGRESS

President Obama got off to a fast start after his January 2009 inauguration in terms of naming and filling Cabinet and other high-level administration positions, and was ahead of his predecessors even with withdrawals of two Commerce secretary nominees, Gov. Richardson of New Mexico and Sen. Judd Gregg (R-N.H.), as well as former South Dakota Sen. Daschle, his first choice to head the HHS.

As he was seeking to staff his new administration, Obama also moved forward at a rapid pace on his policy agenda that included drafting and passing a $787 billion economic stimulus package, dealing with the collapse of the U.S. auto industry, the crisis in the banking and financial sectors, the housing foreclosure stampede and the economy as whole. He also quickly turned to health care, and sought to address foreign policy matters regarding the wars in Iraq and Afghanistan as well as relations in the Middle East and Iran.

Although Obama was prepared on appointments, there was a lack of continuity in the operation of the presidential personnel office. Jim Messina, the chief of staff during the presidential campaign, was named as the transition personnel director after the election, but soon was appointed White House deputy chief of staff and became more focused on responsibilities related to those duties. Two weeks before the inauguration, Don Gips, who had handled agency review teams during the transition, took over the presidential personnel position until he was nominated as ambassador to South Africa in the summer of 2009.

Podesta said that changing personnel directors between the transition and the entry into the White House caused some disruptions and should have been handled differently. Podesta also said in hindsight it would have been better to keep the transition operation running at the office down the street from the White House for at least a month after the inauguration with the "personnel functions staying at the transition" to create better continuity. He said the communications problems and other issues that came up in the early days at the White House resulted in some slowdown on the personnel front.

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A similar void occurred in 1992 when Richard Riley, President-elect Bill Clinton's transition personnel director, was named education secretary. In contrast, Pendleton James served as Ronald Reagan's personnel director during the pre-election summer and fall of 1980, during the post-election period, and through the first year-and-a-half of the administration. James came to the job with personnel experience in the Nixon administration.

Despite the extensive planning and appointee vetting that took place in the pre-election and post-election transitions and a record of early confirmations that surpassed some of his predecessors, Obama still ran into staffing problems as he worked to confront serious problems facing the nation. News stories began appearing in late February and early March of 2009 that Treasury Secretary Geithner was "home alone" without top deputies confirmed to handle major economic policy issues.

There were reports during the same timeframe of the billions of dollars in stimulus money that needed to be allocated and key appointees at major departments expected to handle this aid not yet confirmed. Energy Secretary Steven Chu, for example, was the only Senate-confirmed appointee in his department in March. Despite the importance of the upcoming health care debate and the need for serious planning to deal with the unusual H1N1 flu epidemic, Kathleen Sebelius was not confirmed to head HHS, with its 64,000 employees and a $700 billion budget, until late April.

Secretary of State Hillary Clinton commented in July 2009 that she was frustrated by the long-standing USAID vacancy. "The clearance and vetting process is a nightmare," she said. "And it takes far longer than any of us would want to see. It is frustrating beyond words." Obama did not make a USAID nomination until November 2009, with a Washington Post story on November 11, 2009, attributing the delay in part to an internal debate between the White House and State Department over how much autonomy and authority should be given to the agency director.

A Washington Post tracking system lists 516 of these positions that it considered top tier. These include the Cabinet and high-level department management positions, the heads of independent regulatory agencies and members of the Executive Office of the President, such as the Council of Economic Advisers and key people in the Office of Management and Budget.

Some vacant posts in late October 2009 included the head of the Centers for Medicare and Medicaid Services, the Agriculture Department's undersecretary for food safety, the inspector general of the CIA, the administrator of Maritime Administration, the Defense Department's principal deputy undersecretary for personnel and readiness, and the head of the U.S. Agency for International Development (USAID).

On the December 25, 2009, more than 11 months into Obama term and the day a terrorist unsuccessfully sought to blow up a jetliner headed from Amsterdam to Detroit, the two agencies charged with keeping terrorists off of airplanes and out of the country were without leaders. The president had nominated individuals to head the Transportation Security Administration and the Customs and Border Protection agency, but they were among some 200 political appointees still not confirmed by the Senate.

A number of reasons have been cited for the hold-up of nominees. In some instances, the Senate Finance Committee demanded extensive tax records going back many years and audits that ended up sidetracking some nominees and delaying others for Treasury posts. Some senators blocked nominees for a variety of political and policy reasons—a common occurrence for every new administration—while some nominees ran into problems with their personal background checks.

But part of the problem also can be attributed to Obama and his team, whose stringent standards and detailed disclosure requirements, including examination of years of tax records, discouraged some qualified individuals from pursuing positions, disqualified others and resulted in long periods of inaction.

This vetting process is onerous and requires three lengthy questionnaires and detailed financial and tax information in addition to an FBI background check and additional Senate questionnaires and disclosure requirements. The nominees are interviewed numerous times, including by Senate committee investigators.

Nominees are asked about small financial transactions, travel and personal and business contacts going back decades. They also are routinely fingerprinted and required to provide detailed medical records, reveal if they have employed domestic help, provide information on their families and job history, and disclose any information going back years that might prove embarrassing.

A number of government experts, including Norman Ornstein of the American Enterprise Institute, argue that the disclosure requirements have become unreasonable

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and unwieldy and need to be streamlined. They also argue that the number of Senate-approved political executive positions has grown exponentially in recent decades, and that far too many administration positions require Senate confirmation. The result has been difficulty getting talented individuals to serve, delays in the nomination process that keep political leadership jobs vacant, and constraints on the ability of a new president to govern.

There have been a number of commissions, studies and legislative initiatives calling for changes, but to no avail. In 2003, The National Commission on Public Service led by Paul A. Volcker called for turning at least one-third of Senate-confirmed political executive positions into career positions or even terminating some of the job titles altogether to streamline the government leadership structure of federal agencies and departments.

Early in President Bush's first term, discussions were held with the Senate about reducing the number of Senate-confirmed appointees. This proposal met with resistance from senators reluctant to surrender power and prerogatives.

Besides these issues, there have been routine delays related to completion of security clearance reviews, with some appointees having to be fully investigated even if they already hold a clearance from another job that meets the standards of their new position. This needless duplication of effort could be eliminated by a government-wide policy that requires agencies to accept use of security clearances already held by individuals that meet their same standards. Another problem in this arena centers on the government having too few people available to undertake the ethics and security reviews of appointees, creating another serious choke point in the nomination process.

Clearly something needs to be done both on the length and extensive nature of the vetting, and on the ever-growing number of administration jobs that require Senate confirmation. These have been intractable problems for a long time, and altering the status quo will mean a new mindset and strong leadership in the Senate, and cooperation from the president.

PREPARING APPOINTEES

The congressional revisions to the Presidential Transition Act of 2000 included $1 million for an incoming administration to provide leadership training and orientation sessions for "individuals the president-elect intends to nominate as department heads or appoint to key positions in the Executive Office of the President or federal agencies."

The Obama White House worked with GSA to select a contractor to handle the orientation program, with a bid awarded in the summer of 2009. One session was held for about 50 Cabinet secretaries and top White House staff in July 2009 and another for deputy secretaries took place in November. The White House also scheduled training sessions in early 2010 for assistant secretaries and chiefs of staff.

Since many appointees are unfamiliar with the inner workings of their departments and agencies, and many are schooled more in policy than management, earlier orientation and ongoing training could have been beneficial to the administration's efforts to implement its agenda.

Some of the appointee preparation, in fact, should as a matter of course take place before the inauguration—as was intended by the 2000 Presidential Transition Act amendment. This would enable nominees to have some of the background and tools needed to make a quick start.

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PHASE THREE RECOMMENDATIONS

The problems encountered by President Obama in the post-inauguration period, even with all of the advanced planning and preparation, reflect many of the same experiences of previous administrations in getting their appointees confirmed and their government up and running. To deal with some of these problems, we recommend:

CONGRESS

- Provide the Office of Government Ethics statutory authority to revise and update financial disclosure forms for the executive branch to address the changing nature of "conflict of interest" and other increased complexities in finance.
- Reduce the number of Senate-confirmed politically appointed positions. Congress should take the lead, and work cooperatively with the administration.
- Expand the 2000 Presidential Transition Act amendment's appointee training target audience to include a broader cross-section of political appointees.
- Provide funding for ongoing training of incoming appointees throughout an administration's tenure, not only at the beginning of a presidential term of office.
- Order an interagency effort to consolidate and streamline the political appointee background questionnaires into a single, secure electronic form, providing each investigating agency the opportunity to add jurisdiction-specific addenda.
- Address impediments that slow down political appointees from assuming their new government roles including adoption of a government-wide policy requiring agencies to accept the security clearances already held by individuals that meet their same standards instead of having to repeat the background investigation.
- Investigate, analyze and understand the consequences of the ethics requirements, financial disclosures and overarching political appointment process on getting the nation's top talent to consider government service. Task the Government Accountability Office with developing the measurements that would allow a better understanding of the costs and benefits of the process.

THE NEW ADMINISTRATION

- Recognize the challenges associated with vetting nominees and hire appropriate staff to serve during the first year of an administration, when the greatest influx of new hires will join the government ranks.
- Ensure White House personnel has adequate resources to help usher nominees through the political appointment process.
- Conduct training for political appointees early in the administration. Elements of this orientation could be standardized, with added components that focus on a specific president's agenda.

THE GSA

- Permit the incoming administration to use a portion of the GSA-provided office space for a period of up to six months following the inauguration to better facilitate, without interruption, the personnel selection process. This extension would also offer nominees for appointed positions necessary office space as they prepare for confirmation.

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PHASES ONE THROUGH THREE

IDEAL PRESIDENTIAL TRANSITION MILESTONES

PHASE ONE

PRE-ELECTION DAY TRANSITION PLANNING

Spring and summer of election year:

- Campaigns establish a transition team to conduct early planning, with a trusted liaison between the transition and the campaign, and pick a personnel director.
- Agencies designate a top level career executive to lead their transition activities.
- Incumbent administration activates Agency Transition Directors Council and names White House official to assist agency transition effort and work with agency transition leaders.
- Agencies pick and help prepare top level career civil servants to fill in on an interim basis for departing top-level political appointees.
- White House begins regular meetings of a high-level Transition Coordinating Council to plan important government-wide transition activities.
- Agencies identify and prepare career executives to fill critical positions of outgoing political appointees, on an interim basis.

Nominating convention:

- Campaigns publicly name their transition director within two weeks after the official nominating convention to take planning out of the shadows.
- Campaigns request security clearances for top advisers.
- Transition teams prepare briefing books on top policy priorities, and ready plans for review teams to visit agencies.
- Transition teams begin preliminary vetting of potential nominees for top positions.
- The Senate creates a mutually agreeable confirmation schedule with the new administration.

PHASE TWO

BETWEEN ELECTION DAY AND THE INAUGURATION

- President-elect names a White House chief of staff as the first order of business followed by key positions at the White House and then members of the Cabinet
- President-elect dispatches expert teams to the departments and agencies with clear instructions on the type of information they should gather regarding operations and policy.
- White House stages table top exercises for incoming and outgoing officials to participate in a crisis management event such as a national security threat.
- President-elect agrees to timeline with key committees on when nominees need to be received in order to have them in place on or shortly after Inauguration Day.
- President-elect expands personnel operation with resources and staff to properly screen, interview and fully vet the backgrounds of potential administration nominees.

PHASE THREE

AFTER THE INAUGURATION

- President has national security and economic aides in place who have working familiarity with the procedures and protocols needed to marshal action by the government
- Administration has 50 top officials confirmed on or immediately after the inauguration, including all key posts within the departments of Defense, Homeland Security, Justice, State and Treasury.
- Administration conducts management training and orientation for new political appointees.
- Administration has top 500-plus Senate-confirmed political appointees in place by summer congressional recess.

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- ☐ Provide realistic financing for the transition. Allocate a portion of the money to the major party pre-election transition teams contingent upon campaigns publicly naming their transition directors following their nominating conventions.
- ☐ Reduce the number of politically appointed positions that require Senate confirmation.
- ☐ Create an Agency Transition Directors Council led by the GSA and the White House to coordinate early planning across federal agencies for the presidential transition.
- ☐ Mandate that each department and agency name a top-level career civil servant six months before Election Day to lead that agency's transition efforts, and be part of the Agency Transition Directors Council.
- ☐ Require by September 15 of a presidential election year that departments and agencies identify and prepare career executives to fill critical positions on an interim basis until new political appointees are in place.
- ☐ Consolidate the multiple political appointee background questionnaires into a single, secure electronic form, providing each investigating agency the opportunity to add jurisdiction-specific addenda.

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APPENDIX A

BUSH ADMINISTRATION MEMO LAYING OUT TIMELINE FOR TRANSITION ACTIVITIES TO PRESIDENT'S MANAGEMENT COUNCIL

July 18, 2008

To: PMC Members

From: Clay Johnson

CC: Josh Bolten, White House Chief of Staff

Transition Direction

I provide you the attached, minimum transition preparation guidance, which you helped develop. I ask each of you to formally assure me (by brief, return email) that your agency will perform these tasks by the dates indicated. I know that most of you have already done this and more to ensure the continuity of public services during the transition to the new Administration, and to assist the current non-career employees to exit successfully.

Transition Direction for Agencies

Goal 1: Help ensure continuity of public services during the transition to the new Administration

- By 8/1: Identify a knowledgeable, capable career official to lead/coordinate the transition, and communicate internally and externally.
- By 10/15: Indentify the career official who will be responsible for acting in place of the departing/departed political official, for each major bureau and office of the department/agency, and communicate internally and externally. Ensure compliance with your agency's delegation of authorities and the Vacancies Act.
- By 11/1: Ensure all COOP and NRF procedures are tested and understood by the senior career officials referenced above.
- By 11/1: Prepare a brief summary of the department's basic organization, current mission/function/performance goals, and key personnel.
- By 11/1: Identify and summarize the "hot" policy, internal management, legal and infrastructure issues to require immediate attention by the new Administration officials. Ensure the information is approved for release to the intended audience.
- By 11/1: Prepare to provide the work tools and new employee briefings: badges, computers, blackberries, parking, work spaces, access to secure information and areas, ethics briefings and the like.
- In mid-October and, if desired, again after the election: OMB DDM to create the opportunity for career transition leads to meet to confer with each other and others from whom they seek counsel.
- In general:
  - Work to ensure every program/initiative is as you are proud to have it, as of 1/20/09.
  - Ensure all program improvement, high risk improvement and management improvement goals and plans are as all stakeholders are proud to have them, and available to the public, as planned.
  - Do transition planning with (not to) career officials.

Goal 2: Help current non-career employees exit successfully

- By 8/04, develop for delivery as needed a briefing on what a departing political can and cannot take with them.
- By 8/04, develop for delivery as needed a briefing on "exit ethics" and post-service health benefit coverage, retirement estimates, etc. Include information about who to contact with related questions after they have left government service.

Source: http://transition2008.files.wordpress.com/2008/08/omb-transition-memo-07-18-08.pdf

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APPENDIX B

PRESIDENT BUSH'S EXECUTIVE ORDER ON THE PRESIDENTIAL TRANSITION

Executive Order 13476 of October 9, 2008
Facilitation of a Presidential Transition

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7301 of title 5, United States Code, and the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458) (IRTPA), and in order to further the purposes of the Presidential Transition Act of 1963, as amended, and to assist the presidential transition, it is hereby ordered as follows:

Section 1. *Presidential Transition Coordination.* (a) To assist and support the transition efforts of the transition teams for the "major party" "candidates," as those terms are used in the IRTPA and defined in section 9002(2) and (6) of the Internal Revenue Code of 1986 (26 U.S.C. 9002(2), (6)), and the President-elect, there is established a Presidential Transition Coordinating Council (Council).

(b) The Council shall be composed of the following officials or their designees:

(i) Chief of Staff to the President, who shall serve as Chair;

(ii) Assistant to the President and Deputy Chief of Staff for Operations, who shall serve as Vice Chair;

(iii) Assistant to the President and Deputy Chief of Staff for Policy;

(iv) Counsel to the President;

(v) Assistant to the President for Presidential Personnel;

(vi) Assistant to the President for National Security Affairs;

(vii) Assistant to the President for Homeland Security and Counterterrorism;

(viii) Assistant to the President for Economic Policy and Director, National Economic Council;

(ix) Attorney General;

(x) Director of National Intelligence;

(xi) Director of the Office of Management and Budget;

(xii) Director of the Office of Personnel Management;

(xiii) Administrator of General Services;

(xiv) Archivist of the United States;

(xv) Director of the Office of Government Ethics; and

(xvi) Such others as the President or the Chair of the Council may select.

(c) The Council shall assist the major party candidates and the President-elect by making every reasonable effort to facilitate the transition between administrations. This assistance may include, among other things, providing information relevant to facilitating the personnel aspects of a presidential transition and such other information that, in the Council's judgment, is useful and appropriate, as long as providing such information is not otherwise prohibited by law.

(d) In order to obtain a wide range of facts and information on prior transitions and best practices, the Council, its members, or their designees may, from time to time, seek information from private individuals, including individuals within outside organizations, who have significant experience or expertise in presidential transitions. The Council, its members, or their designees shall endeavor to obtain such facts and information from individuals representing a range of bipartisan or nonpartisan viewpoints. If the Council, its members, or their designees find it necessary to seek advice from private individuals or outside organizations, such counsel should be sought in a manner that seeks individual advice and does not involve collective judgment or deliberation.

(e) It shall be the policy of the Council to provide appropriate information and assistance to the major party candidates on an equal basis and without regard for party affiliation.

Sec. 2. *Transition Activities and Materials.* (a) At the direction of the Council or its designee(s), the Administrator of General Services shall coordinate orientation activities with the appropriate agencies, including the Office of Government Ethics and the Office of Personnel Management, for key prospective presidential appointees.

(b) At the direction of the Council or its designee(s), the White House Office of Presidential Personnel shall supplement as appropriate and necessary the electronic record of all title 5 presidentially appointed positions provided by the Office of Personnel Management to the major party candidates pursuant to section 8403(b) of IRTPA.

(c) The Suitability and Security Clearance Performance Accountability Council shall coordinate with the Council when performing those functions authorized by Executive Order 13467 of June 30, 2008, that are necessary to assist in transition-related activities.

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(d) At the direction of the Council or its designee(s), executive departments and agencies shall prepare a set of briefing materials for new political appointees before the inauguration of the President-elect. The current Administration shall work with the incoming transition team to provide copies of all such materials.

(e) At the direction of the Council or its designee(s) and consistent with the Presidential Transition Act of 1963, as amended, the Administrator of General Services, in consultation with the Archivist of the United States and other appropriate agencies, shall develop a Transition Directory. This directory shall include Federal publications and other materials that provide information on each executive department and agency.

Sec. 3. *Transition Agreements.* To assist and support the transition, transition agreements between the White House or appropriate executive branch departments and agencies and the transition teams for the major party candidates and the President-elect will be entered into, as necessary, regarding transition procedures and identification of transition contacts.

Sec. 4. *General Provisions.* (a) In order to take appropriate account of the transition reforms made by IRTPA and to further update and clarify the presidential transition process, this order supersedes Executive Order 13176 of November 27, 2000.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order is intended only to facilitate the transition and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

(d) Unless extended by the President, this order shall expire on February 20, 2009.

George W. Bush

The White House,
October 9, 2008

Source: http://edocket.access.gpo.gov/2008/pdf/E8-24465.pdf

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APPENDIX C

TIMELINE OF 2008-2009 TRANSITION AND POST-INAUGURATION ACTIVITIES

PHASE ONE

PRE-ELECTION DAY TRANSITION PLANNING

Early 2007
Transition preparations begin at the Department of Homeland Security.

Mid-April 2008
David Bibb, deputy administrator of the General Services Administration (GSA), indicates the agency had identified temporary office space for the transition.

Late April 2008
Top officials in the McCain campaign began meeting weekly to discuss transition preparations.

May 5-6, 2008
Representatives of federal agencies, good government groups, and major political campaigns meet to discuss transition planning at a conference organized by the Partnership for Public Service at the Pocantico Conference Center of the Rockefeller Brothers Fund in Tarrytown, N.Y.

May 2008
Top officials in the Obama campaign begin regular meetings to discuss transition-related activities.

June 10, 2008
The Senior Executives Association holds a conference to prepare its members for the transition.

June 2008
Russ Gerson begins limited personnel planning for the McCain campaign.

June 2008
John Podesta assumes role as transition coordinator of the Obama campaign.

July 18, 2008
President Bush issued an executive order mandating certain transition preparations by agencies.

August 1, 2008
Deadline for each agency to identify a "knowledgeable, capable career official" to lead the transition preparations in that agency.

September 2, 2008
Barack Obama receives first intelligence briefing as a presidential candidate.

September 18, 2008
Reports emerged that Bill Timmons will serve on John McCain's transition team along with former Navy secretary and 9/11 commission member John Lehman.

September 24, 2008
GSA and the White House convene senior career transition coordinators from each agency to discuss their preparations for the transition.

October 9, 2008
President Bush, through executive order, creates the Presidential Transition Coordinating Council.

October 15, 2008
Presidential Transition Coordinating Council meets for first time, with both major campaigns' transition representatives and White House officials.

October 15, 2008
Deadline for agencies to identify career officials to fill the positions of departing political appointees.

October 28, 2008
Presidential Transition Coordinating Council meets for the second time.

November 1, 2008
Deadline for each agency to prepare a brief summary of its basic organization, current mission/function/performance goals and key personnel.

November 1, 2008
Deadline for each agency to summarize the most pressing policy, internal management, legal and infrastructure issues facing the incoming administration's officials.

November 1, 2008
Agencies are required to finish preparing work tools and briefings for incoming political appointees

November 4, 2008
Election Day. Democrat Barack Obama defeats Republican John McCain.

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PHASE TWO
BETWEEN ELECTION DAY AND THE INAUGURATION

November 5, 2008
President-elect Obama names John Podesta, Valerie Jarrett and Pete Rouse as co-directors of his presidential transition.

November 6, 2008
President Bush promises that a smooth transition will be a "priority" so that Obama and his team can "hit the ground running."

November 6, 2008
Obama receives his first intelligence briefing as the president-elect.

November 10, 2008
President-elect Obama visits the White House and confers with President Bush.

November 11, 2008
The President-elect's staff announces new ethics guidelines for the presidential transition.

November 12, 2008
White House Chief of Staff Josh Bolten sends a memo to agencies and departments detailing transition coordination between the outgoing and incoming administrations.

November 12, 2008
The Senate Committee on Homeland Security and Government Affairs publishes the 2008 version of the Plum Book.

November 14, 2008
President-elect Obama's transition review teams begin operating in agencies.

November 17, 2008
Under President Bush's order, agencies submit lists of crucial issues to Obama transition teams.

December 1, 2008
President-elect Obama's agency review teams began reporting back findings to the main transition office.

January 8, 2009
President-elect Obama introduces the primary goals of the American Recovery and Reinvestment Plan to provide a stimulus to the ailing economy.

PHASE THREE
AFTER THE INAUGURATION

January 20, 2009
Inauguration Day. In five hours, White House staff and GSA prepare the White House and the Eisenhower Executive Office Building for the new administration. By noon, the National Archives Administration collects papers from the Bush White House with the support of 400 employees.

February 5, 2009
President Obama holds his first address to government employees at a visit to the Department of Energy.

February 17, 2009
President Obama signs massive $787 billion economic stimulus bill.

February 26, 2009
President Obama presents his fiscal 2010 budget proposal to Congress.

April 1, 2009
Forty-nine political appointees, or 9.5 percent of the 516 top tier positions, have been confirmed by the Senate.

April 29, 2009
At the 100-day mark, 76 political appointees, or 14.7 percent, have been confirmed.

June 9, 2009
GSA selected the Hay Group to provide an orientation program for the new administration's political appointees.

June 24-25, 2009
The Office of Personnel Management holds orientation for new career and non-career Senior Executive Service.

July 20, 2009
Six months into the new administration, 191 political appointees, or 37 percent, have been confirmed.

August 20, 2009
Administration has 240 nominees confirmed, or 46.5 percent.

November 13, 2009
Administration has 285 nominees confirmed, or 55.2 percent.

December 31, 2009
Administration has 305 nominees confirmed, or 59 percent.

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APPENDIX D
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Statement for the Record

Norman J. Ornstein
Resident Scholar
American Enterprise Institute

"Eliminating the Bottlenecks: Streamlining the Nominations Process"
Senate Homeland Security and Governmental Affairs Committee
March 2, 2011

Mr. Chairman, Senator Collins, Members of the Committee, thank you for the opportunity to give my views on the longstanding and deep problems in the process of selecting, vetting and confirming presidential appointees to executive branch posts. In the Kennedy era, it took two months on average for the president to fill a position in his administration. In the Clinton era, it took over eight months. Now it takes even longer. Time is only one of the many problems that potential appointees face. There are endless forms and extensive, time-consuming and invasive background checks; increasingly adversarial confirmation hearings—and for many, no hearings at all, but hostage-taking Senate holds leaving nominees in limbo. Partisanship plays a role, of course. But there are much broader reasons; the problems and delays have grown through Democratic and Republican presidencies, with Democratic and Republican-controlled Senates.

There are many reasons to be concerned about the process, starting with the human cost for nominees and their families, and the deterrent to many qualified and able people to consider service. And it provides perverse incentives for an administration to seek not the best and brightest, but the safest, for many important posts. But the bigger problem is that of governance itself. Going months, even years, with key positions unfilled leaves a major gap in agencies and with critical programs. Career managers are often left in limbo, waiting for explicit direction from political appointees, sometimes leaving no clear authority in charge. The gaps are most serious in the first year of a presidential term, but the problems can be compounded in the second half of the term. The average tenure of a presidential appointee is around 14 months. When those people leave, their positions are often filled by those in positions one or two levels down—an undersecretary replaced by an assistant secretary, for example—to enable a transition without a major hitch. But if the second, third and fourth tiers in presidential appointees are not filled in a timely fashion, there may be no one in place to move up—and given the time from nomination to confirmation midway through a term, that can mean another wave of uncertainty and turmoil.

The problem with time to confirmation is not with Cabinet secretaries. It begins at the deputy secretary level, and is exacerbated as one moves down the chain, with the largest delays coming at the assistant secretary level. In the Bush administration at its onset, once the cabinet nominees were announced, it took the administration five days to send the nominations to the Senate and another 18 days for the Senate to confirm.

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For assistant secretaries, it took 36 days from the time of the announcement of the nominee until the nomination was sent to the Senate and 74 days on average for the Senate to confirm them. I do not have up-to-date, comparable figures for the Obama administration, but we know from research done by Berkeley law professor Anne Joseph O'Connell that overall, the Senate took an average of 60.8 days to confirm Obama's nominees in the administration's first year, compared to 48.9 for President Clinton and 57.9 for President George W. Bush.

Fixing these problems and looking more generally at the state of management and personnel in public service at the top levels has been a high priority for good government groups and scholars of public management, as well as for many former cabinet officers and top White House and executive branch officials. But nothing has happened for decades. There have been two basic problems. The first is partisan: when a new president comes in, the members of the opposite party have no incentive to do anything to expedite the confirmation process, especially if it involves potentially difficult actions like easing up for some nominees on disclosure and background checks.

The second is institutional. As the chairman and ranking member of this committee know well, getting the Senate, including party leaders and committee leaders, to focus on the confirmation process and to seriously consider changes, including in how the Senate does its business, is an uphill battle. No chair wants to give up any prerogatives, including that of confirming as many nominees as possible, or altering in any way their own approach to the confirmation process; no individual member wants to give up any prerogatives, including the right to hold as many executive branch nominees hostage for any purpose, however extraneous to the nominees or however costly to their personal lives.

The third is human nature: new presidents have many priorities and demands, and are especially focused on their 100 days agenda and on their cabinet and top White House staff appointments, not on the rest of government. This is not an area they have given any attention before the election. Using any time or energy, much less political capital, to deal with something as seemingly arcane as appointment/confirmation reform for the second tier nominations, seems counterproductive. Despite the best efforts of many scholars and experienced practitioners to change this mindset, presidential candidates, presidents-elect, and presidents, just don't listen until it is too late.

What to Do?

The presidential appointment process needs reform in each of its three stages: the presidential selection of nominees; the presidential appointment background checks; and Senate confirmation. In the broader sense, it is a truly encouraging step the Senate took with its agreement at the start of the new Congress to cut significantly the number of Senate-confirmable nominees, something reformers have been seeking for two decades. Following through on this pledge is essential. We could also use a we need a searching look at the overall number of presidential appointments.

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Stage One:

1. Increase staffing of the White House personnel office temporarily at the beginning of a new administration. This could cut the burdens of an overloaded office and streamline its efforts when expedited action is most important.

2. Review—and reduce-- the overall number of presidential appointments. The numbers have skyrocketed in recent decades, and have not contributed to presidential control over the bureaucracy. Instead, we have seen, in Paul Light's terms, the "thickening" of government, a slowness in reaction, and a real problem at the career level with the shortage of serious management posts for top managers. In the next decade, a huge number of these top SES people will be retiring; what management structure is appropriate for this shift and for their replacements? Having more opportunities for career managers to be able to move up into significant posts that have been taken over by political appointment would enhance the chances that the federal government will get some of the best and brightest managers coming into and staying in government.

3. Use the committee bully pulpit to encourage presidential candidates to begin their personnel selection process before the election. I want to commend especially former Senator Ted Kaufman who worked tirelessly to reform the Presidential Transitions Act to provide greater resources for this purpose. We need to make sure the resources are there after the budget-cutting exercises, and the committee especially can serve to urge candidates to use them without apology.

4. Ask former directors of the White House Office of Presidential Personnel, and top private sector search firm executives to testify about best and worst practices in this area.

5. Look for ways to encourage businesses to allow their employees and executives to serve in administrations. Hearings could explore things like leaves of absences, credit on career ladders for time served in government, the barriers of post-employment restrictions and what might be done about them, and even to ask for commitments from companies like Citigroup or Dow to encourage their employees to go into public service.

6. Design a pay and compensation package to attract top-flight people to presidential appointments. Money is never going to be the incentive for people to serve, but too little in the way of pay and benefits, including relocation support, can be a major obstacle to convincing people to uproot their families and to serve in government.

Stage Two:

1. Reexamine and reform the ethics and disclosure process. This subject has been addressed by the committee in the past, with useful testimony by people like Amy Comstock of the Office of Government Ethics. It is time to move to the next stage and address the disclosure requirements of the Ethics and Government Act of 1978 and the Ethics Reform Act of 1989. The forms and disclosure requirements are burdensome. Changing them to simplify the forms, create a uniform financial disclosure form and let it be filed electronically, raise the reporting threshold to omit small financial interests, allow easy and painless divestiture and reinvestment of assets, clarify the standard for a conflict of interest, and make post-employment restrictions more uniform, could be done without weakening ethical standards. Several years ago, as part of our AEI/Brookings Transition to Governing Project, Tom Mann and I worked with political scientists Martha Kumar and Terry Sullivan to create an ingenious piece of software, a cross between TurboTax and the college application software, enabling all presidential nominees to enter basic information once, and have it automatically travel to all the forms for all the agencies and committees that are relevant. The software exists; adapting it to the next transition and making it standard would be a great step forward.

2. Reform the FBI background check process. An executive order from the Eisenhower era requires full FBI field checks for all Senate-confirmable presidential nominees. The dramatic cut in numbers pending in the Senate is a huge step forward to streamline this process. But even with the reduction, the process, which involves a large number of face-to-face interviews, is time-consuming and a major strain on FBI resources. Some of the checks are now outsourced to OPM and others, but we are still using many FBI agents who otherwise could focus on, say, homeland security. At the beginning of an administration, when large numbers of appointments are made, they go into a queue waiting for the background checks; a major appointee to a national security post can wait behind an assistant secretary for public affairs for a domestic agency. The delays can be weeks or months. There is simply no need for these full background checks for many non-security and non-major posts; a sliding scale from full investigations for key posts down to simple computer background checks for more minor posts would suffice. And streamlining the national security background check for national security nominees who already serve in other sensitive posts and have been thoroughly scrubbed—but who now require another full check going all the way back, not just an update—would save considerable resources.

Stage Three:

1. Reduce burdensome paperwork that must be submitted to Senate committees. Many nominees have to appear before several Senate committees; each have separate and often very different requirements, which

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can mean filling out multiple forms with different versions of the same information. An effort to get uniformity in the reporting requirements for all committees would be a truly worthwhile step.

2. Fast track the confirmation process. To whatever degree possible, the Senate should commit to considering floor votes on nominees within 45 days of their formal nomination, especially for specified key positions. While it is impossible to make this a requirement, given the tradition of the hold (which itself should be reformed, not just through making holds public, to minimize hostage-taking of nominees,) it can be at least be put into a Sense of the Senate resolution.

Not all of these steps require legislation; some could actually be done by executive order. But some legislation is in order here, and the role of this committee as an educational force should not be dismissed or underestimated. I hope the leadership that Senators Lieberman and Collins have shown in this area can now be both continued and amplified, and that both parties will see how important reform is for the basic fabric of governance.

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Post-Hearing Questions for the Record
Submitted to the Honorable Clay Johnson
From Senator Mark L. Pryor

"Eliminating the Bottlenecks: Streamlining the Nominations Process"
March 2, 2011

Question. As a member of the Senate Rules Committee, I voted in favor of the working group's recommendation to limit the number of presidentially appointed, Senate-confirmed nominees. What recommendations can you give for the best way to identify nominations for elimination? Who should ultimately be responsible for those decisions? What is an appropriate time frame for implementing these changes?

Answer. I recommend the Senate consider converting the following types of full-time presidentially appointed, Senate confirmed (PAS) positions to presidentially appointed (PA) status: namely, positions that help departments/agencies....

- Communicate and interact with their relevant constituencies, such as legislative affairs, public affairs, intergovernment affairs, and protocol positions.
- Operate responsibly and effectively, such as management/administration, financial, comptroller and information technology positions.
- Deal with all legal matters and questions, i.e., general counsel positions.
- Ensure the information and statistics they use are valid and reliable, such as the information and statistic positions at Commerce, Energy, EPA, Justice and Labor.

Related to the above I recommend keeping as Senate approved....

- All Under Secretaries that deal with these matters
- All Solicitors, which are not the same as general counsels
- All management/support positions which are also responsible for policy matters.

I believe the Senate must propose (in legislation) the PAS positions whose nominee selection they believe is important enough to warrant their advice and consent; and the President must agree (sign the legislation). It is important to note that Congress can call any presidentially appointed person to testify, whether that person has been confirmed by the Senate or not; so reducing the number of PAS positions should not reduce the amount of influence and oversight Congress can impose on any appointee once in position.

I recommend that an appropriate timeframe for implementing these changes is now. Historically there is significant appointee turnover every two to three years; so any changes of this sort made now would expedite filling a number of positions likely to be vacated in the months ahead, and quickly begin to make time available for the Senate to attend to matters most worthy of their attention.

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