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Let's Get It Started

What President-elect Obama can learn from previous administrations in making political appointments

Anne Joseph O'Connell January 2009



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Executive summary

If President-elect Obama follows the example of recent presidents, he will finalize his initial top picks for the cabinet and heads of other major agencies by Inauguration Day but will take much longer to select individuals for lower layers of the bureaucracy. Staffing these lower but still critical positions is remarkably challenging. It takes many months to get the first wave of appointees into the bureaucracy. Once filled, these positions do not stay occupied for long. And near the end of a term or administration, these political positions empty out yet again.

This report analyzes comprehensive new data on delays in the appointments process as well as appointee turnover in Senate-confirmed positions in executive agencies over the past five administrations. In particular, this analysis reveals:

- **Presidents take many months to fill Senate-confirmed positions in executive agencies at the start of their administrations.** President Clinton took the longest of the past four presidents, at an average of 267 days to fill Senate-confirmed agency positions. He is followed by President George W. Bush at 242 days, President Reagan at 194 days, and President George H.W. Bush at 163 days.
- **Presidents fill the highest positions in cabinet departments relatively quickly when they take office, but staff lower-level positions in cabinet departments and other executive agencies much more slowly.** It took President Clinton an average of 457 days to fill deputy agency head positions, for example, while it took President George W. Bush an average of 422 days to fill technical positions.
- **Executive agency positions were vacant an average of 25 percent of the time over the past five administrations.** The percentage of time that Senate-confirmed positions were not filled with appointees from 1979 to 2003 ranged from nearly 12 percent in 1990 and 1994 to approximately 50 percent in 1992 and 2000. The percentage of time a position was vacant was highest in the final year of each administration and was greater when party control of the White House changed. It was also highest in the final year of each four-year term.
- **It typically takes presidents far longer to nominate executive agency leaders than for the Senate to confirm them.** Although presidents often complain about the length

of the confirmation process, the nomination process actually accounts for more delay in filling positions—except in the case of cabinet secretaries where both confirmation and nomination delays are minimal. For example, from 1987 to 2005, it took presidents an average of 173 days to nominate non-cabinet agency heads, and it took the Senate an average of 63 days to confirm these nominations. An even bigger difference exists for deputy non-cabinet agency heads—it took presidents an average of 301 days to nominate and the Senate 82 days to confirm.

- **Presidents have frequently left Senate-confirmed positions in executive agencies empty or filled with an acting official for many months at the end of their administrations.** This problem is pronounced in two-term presidencies. At the end of the Clinton and Reagan administrations, positions had been left vacant for an average of 231 days and 159 days, respectively. Lower-level jobs have far more vacancies at the end of presidential administrations than those at the cabinet secretary and deputy cabinet secretary levels, where long vacancies are rare. Under secretary positions, for example, were vacant an average of 358 days at the end of the Reagan administration; 341 days at the end of the Clinton administration; 82 days at the end of the George H. W. Bush administration; and 55 days at the end of the Carter administration.
- **Vacancies vary widely by agency, but follow nearly identical patterns for two-term Presidents Reagan and Clinton.** This report specifically examines vacancies at the Environmental Protection Agency, Federal Emergency Management Agency, Department of Justice, and Department of the Treasury during the Reagan, George H.W. Bush, and Clinton administrations. The Reagan and Clinton administrations show consistent patterns, but there is a great deal of variation from agency to agency. Recent presidents have initially filled spots at Treasury faster than at the EPA and FEMA, while leaving a considerable number of positions vacant at the EPA near the end of their administrations. While presidents nominated Treasury positions faster, the Senate confirmation process consumed a larger percentage of the vacancy period than positions at the other three agencies examined, except under President George H.W. Bush.

Frequent and lengthy vacancies carry serious consequences for agency performance. Agencies without appointed leaders to set direction and initiate action will be less likely to address critical problems or quickly respond to emergencies. Less than a year before Hurricane Katrina, for example, more than one-third of FEMA's policy positions were vacant. This absence of leadership may help explain FEMA's poor response to the disaster in New Orleans and the Gulf Coast.

Acting officials are not seen as backed by the president. As a result, they generally lack sufficient authority to direct career civil servants. They may also be reluctant to initiate action for fear that it will not be supported by an eventual appointee. In this environment, careerists may become confused as to what they should do, which abets bureaucratic inertia.

Vacancies also undermine agency accountability and public trust. The legitimacy of the vast American administrative state rests, in large part, on its accountability to the president and to Congress through its appointed leadership. Frequent and lengthy vacancies may result in agencies that are less responsive to elected leaders and the public.

President-elect Obama can avoid these problems through an improved presidential appointments process. This report proposes six steps, summarized in the box below, that the Obama administration should take to decrease the number and length of such vacancies. These are simple and feasible reforms that, with one exception, are within the direct control of the White House. History shows that presidents often get stuck in the appointments process. By taking these steps, President-elect Obama can put himself in a stronger position to achieve his agenda.

Recommendations

1. The president should get executive agency officials to commit to serve for a full presidential term. It would be easy to ask applicants to make this commitment as part of President-elect Obama's extensive vetting form.
2. All agency leaders should receive more comprehensive and institutionalized training, similar to training available to new members of Congress. If agency leaders perform better and face less hostile oversight, they will be more likely to serve longer.
3. Congress should increase agency leaders' salary and benefits. Increased pay decreases the opportunity cost of entering public service for several years.
4. The president should pay more attention to lower-level appointments in executive agencies. Although lower-level appointments do not grab headlines, they will be instrumental in carrying out the president's agenda and thus should be treated as presidential priorities.
5. The presidential personnel office should plan for future appointments after initial appointees take their positions. The personnel office should anticipate that each Senate-confirmed executive agency position will be filled, on average, by at least two people during a presidential term. This will allow the president to respond quickly when key appointees leave.
6. The president should ask political appointees in federal agencies to provide four weeks notice of resignation. This notice would allow the presidential personnel office to start actively vetting individuals for appointment before the presiding office holder departs.

Background

In the immediate aftermath of the 2008 election, President-elect Barack Obama started to select key White House staff members, including Rahm Emanuel as chief of staff and Ellen Moran as director of communications. The president-elect has also formally announced his selections for some important agency positions, which require Senate confirmation. He began the week of Thanksgiving with his economic team—from Timothy Geithner for secretary of the treasury to Peter Orszag for director of the Office of Management and Budget, among others—and moved the next week to his national security team, including his former rival Hillary Clinton for secretary of state. By all accounts, he has moved remarkably quickly on these top positions.

Yet many other positions remain to be filled. The federal administrative state now encompasses 15 cabinet departments and dozens of other agencies, from the Environmental Protection Agency to the Securities and Exchange Commission. Over 1,100 full- and part-time Senate-confirmed presidential appointees, along with other executive appointees and career civil servants, run these government agencies, comprising a federal workforce of over 2.5 million employees.¹

Many of these Senate-confirmed executive branch leaders wield considerable authority. The agencies they run arguably do more “lawmaking” and “judging” than Congress and the federal courts combined. During the first session of the 107th Congress, which ran from January 3 to December 20, 2001, Congress enacted 24 major statutes and 112 other public laws. By contrast, cabinet departments, the Executive Office of the President, and independent agencies in that year promulgated 70 significant rules and 3,383 other rules.² That same year, Article III, magistrate, and bankruptcy judges conducted about 85,000 adversarial proceedings, including trials; while federal agencies completed over 700,000 such proceedings, including immigration and social security disputes.³

Staffing agency positions is challenging whether in executive agencies such as the EPA or in independent regulatory commissions such as the SEC. Because presidents are more constrained in their hiring and firing decisions at independent regulatory commissions, this report examines only executive agencies where presidents can often freely select, with Senate confirmation, and remove agency leaders.

It takes many months to get the first wave of executive agency appointees into place. Once filled, these positions do not stay occupied for long. As one staff member from President Eisenhower’s administration commented, agency leaders seem to stay for “a social season and a half and then leave.”⁴ This observation seems especially apt for more recent presidents. A year or two after the start of an administration, presidents are often looking for replacements for critical agency jobs. And near the end of a term or administration, these political positions empty out yet again. “In the last year you have the phenomenon of a lot of assistant secretaries looking for jobs . . . and it’s a difficult time to be recruiting,” explained Ed Rollins, a former White House political director under President Reagan.⁵

The cycle—from the start through the end of a presidential administration—produces a considerable number of vacant offices in federal agencies. Sometimes these offices are completely empty. One of the spots on President George W. Bush’s Council of Economic Advisors, for example, is entirely vacant. But often positions are filled temporarily by acting officials. For instance, as of mid-December, three of the main six issue division heads at the Department of Justice are serving in an acting capacity.

This report examines the extent to which these important positions in executive agencies are not filled by Senate-confirmed presidential appointees (or, for temporary periods, by formal recess appointees). The vacancy period between proper appointees has three components. There is the period between the departure of the former appointee and the president’s nomination of the new appointee—the “nomination lag.”⁶ There is the period between the president’s nomination and the Senate’s confirmation of the appointee—the “confirmation lag.”⁷ And there is the period between the Senate’s confirmation and the appointee’s first day in the office.⁸

Using data from the Office of Personnel Management for the past five presidents, this report focuses on the entire vacancy period, from the date of departure of a previous official to the start date of a new one, although it also looks at the differences between nomination and confirmation lags. The report then considers the consequences of these vacancies and recommends several proposals to improve agency staffing.

Appointment delays and vacancies in recent administrations

Several key insights have emerged from previous work on vacancies in appointed positions at executive agencies, including that it takes new presidents many months to staff these positions,⁹ that presidents fill higher-level positions before lower-level positions,¹⁰ and that the Senate takes longer to confirm appointees in periods of divided government.¹¹ These studies generally rely on surveys of appointees and do not cover the current administration.

This report analyzes new comprehensive data on all Senate-confirmed and recess appointees in executive agencies over the past five administrations. Specifically, the analysis examines (1) how long it takes to fill important agency positions at the start of an administration; (2) how long these positions are left empty at the end of an administration; (3) how much time over an entire administration these jobs are not staffed with proper appointees; and (4) how much of the delay in agency appointments can be attributed to the nomination process and how much to the confirmation process.

On all these issues, special attention is given to four important agencies—the Environmental Protection Agency, the Federal Emergency Management Agency, the Department of Justice, and the Department of the Treasury. The appendix describes the data and methodology in more detail.

Vacancies at the start of an administration

Recent presidents have taken many months to fill Senate-confirmed positions in executive agencies at the start of their administrations. Table 1 displays the average number of days it took for each of the past four presidents to staff one of these positions.¹² President Clinton was the slowest; President George H.W. Bush, the only occupant of the White House that shared the same party with his predecessor, was the fastest.

Table 2 breaks down this initial vacancy period by position type for each of the four administrations. On average, cabinet secretaries were put in place first, followed by deputy cabinet secretaries. It took longest to fill the second highest position in non-cabinet agencies,

TABLE 1
Average number of days to fill a Senate-confirmed agency position for the first time

By president

President	Initial vacancy period (days)
Reagan	193.69 (270 positions)
George H.W. Bush	162.50 (294 positions)
Clinton	267.39 (348 positions)
George W. Bush	242.15 (324 positions)

TABLE 2

Average number of days to fill a Senate-confirmed agency position for the first time

By position type and president

Position	Reagan	Bush 41	Clinton	Bush 43
Cabinet secretary	13.21	35.62	4.86	4.50
Deputy cabinet secretary	75.86	67.36	153.57	132.79
Agency head	165.95	155.07	200.35	237.71
Deputy agency head	270.71	150.94	457.14	347.28
Assistant secretary	188.95	140.69	249.56	234.91
Under secretary	101.82	145.00	209.33	183.64
Inspector general	224.07	336.50	452.72	280.36
General counsel	121.20	180.53	233.48	214.30
Technical position	168.25	159.67	335.06	422.00
Other low level	420.44	282.61	365.11	317.14
Other	201.00	165.50	226.25	177.00

lower-level positions such as directors of individual offices, inspectors general, and, in the past two administrations, technical positions.

Figure 1 shows the average delay in initial appointments for the EPA, FEMA, DOJ, and Treasury by administration. Recent presidents staffed positions in Treasury, on average, more quickly than top positions in the EPA and FEMA, and Presidents Reagan and George H.W. Bush filled Treasury positions much more quickly than Presidents Clinton and George W. Bush.

Vacancies at the end of an administration

Recent presidents have also left Senate-confirmed positions empty or filled with an acting official for at least one month and often many months, on average, at the end of their administrations. Table 3 displays the average number of days these positions were not filled by a permanent appointee before the next transition for Presidents Carter, Reagan, George H.W. Bush, and Clinton.¹³ Two-term presidents Clinton and Reagan had the longest vacancies; one-term presidents Carter and Bush had the shortest.

Table 4 breaks down this final vacancy period by position type for each of the four administrations. As with the initial vacancy periods in Table 2, cabinet secretaries on average had the shortest vacancies at the end of an administration. The longest vacancies across all four administrations were in under secretary and low-level positions.

Average number of days to fill a Senate-confirmed agency position for the first time

By agency and president

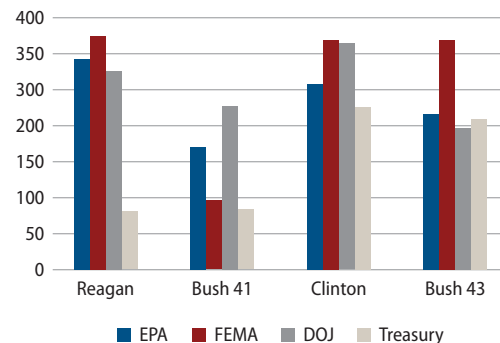


FIGURE 1

TABLE 3

Average number of days a Senate-confirmed agency position was not filled by an appointee at the end of an administration

By president

President	End of term vacancy period (days)
Carter	31.85 (299 positions)
Reagan	159.37 (356 positions)
George H.W. Bush	61.98 (352 positions)
Clinton	230.50 (397 positions)

TABLE 4
Average number of days a Senate-confirmed agency position was not filled by an appointee at the end of an administration

By position type and president

Position	Carter	Reagan	Bush 41	Clinton
Cabinet secretary	0.14	0.14	9.31	12.93
Deputy cabinet secretary	9.85	0.67	93.94	3.29
Agency head	34.62	142.71	23.96	204.90
Deputy agency head	1.13	94.69	114.70	239.59
Assistant secretary	15.01	100.23	69.81	256.13
Under secretary	55.27	357.95	81.74	340.88
Inspector general	19.00	225.94	48.89	83.81
General counsel	12.73	13.29	37.24	113.95
Technical position	32.08	77.44	23.88	347.33
Other low level	74.91	339.63	64.02	260.18
Other	76.39	294.43	157.50	240.60

Figure 2 shows the average length of end-of-term vacancies for the EPA, FEMA, DOJ, and Treasury by administration. There is considerable variation by agency across recent administrations. For Presidents Carter and George H.W. Bush, the longest vacancies at the end of their terms were, on average, at the EPA. By contrast, for President Reagan, the longest gaps were at Treasury; for President Clinton, they were at the DOJ.

Vacancies over the course of an administration

The scope of vacancies in the federal bureaucracy is a combination of how long it takes to fill positions and how long officials stay once those positions are filled. If it takes a year to staff an assistant secretary position, policy observers might be less worried if the official then stays for several years than if he or she serves for only six months. Yet, if long vacancy periods are coupled with short tenures, vacant offices will be more extensive throughout federal agencies.

Figure 3 displays one possible, though imperfect, measure of the overall scope of vacancies in top agency positions—the percentage of time positions are vacant by year, using the average vacancy period (classified by the year when the previous official departed) and the average tenure period (classified by the year when the new official started).¹⁴ In other words, if it takes, on average, 60 days to fill an empty position in a given year and if the average tenure for someone starting in that year is 120 days, the measure in Figure 3 for that year is $60/(60+120)=.33$, or 33 percent.

Average number of days a Senate-confirmed agency position was not filled by an appointee at the end of an administration

By agency and president

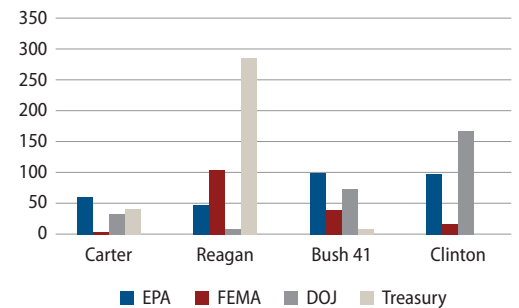


FIGURE 2

Percentage of time, on average, a Senate-confirmed position was not filled with an appointee

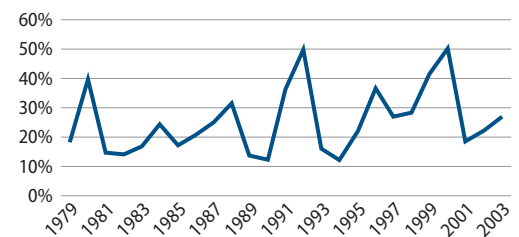


FIGURE 3

The percentage of time positions were vacant across recent administrations ranged from nearly 12 percent to over 50 percent. Offices were vacant 25 percent of the time on average. The percentage of time an office was vacant was highest in the final year of each administration, as expected, and was greater when party control of the White House changed; it was also highest in the final year of each four-year term.

Figure 4 displays the same measure as Figure 3 for three positions with sufficient data for each year—heads of non-cabinet agencies, assistant secretaries, and deputy secretaries.

Table 5 provides an alternative measure to Figures 3 and 4 of agency vacancies. Table 5 lists the total number of days that Senate-confirmed positions in the EPA, FEMA, DOJ, and Treasury were filled by confirmed or recess appointees during three recent administrations, and the total number of days those positions were empty or filled with acting officials.¹⁵ Under Presidents George H.W. Bush and Clinton, the DOJ had the highest percentage of days with acting officials or no officials at all. During President Reagan’s administration, the EPA had the largest percentage of such days. Interestingly, overall vacancy patterns are nearly identical for Presidents Reagan and Clinton. President Bush had significantly lower vacancy gaps in Treasury and FEMA.

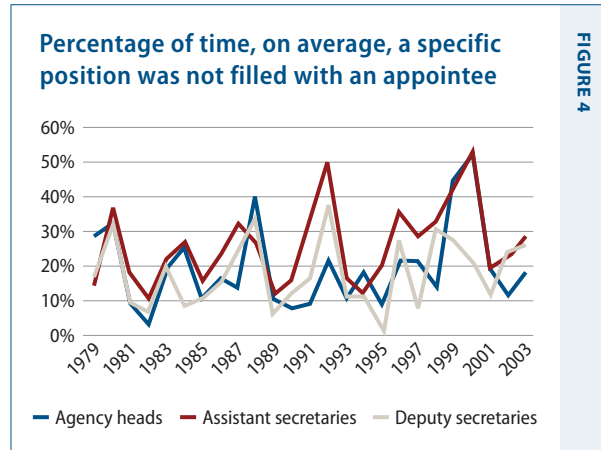


FIGURE 4

Reasons for vacancies

Vacancies encompass several components of delay—nomination, confirmation, and the period between confirmation and starting work.¹⁶ Table 6 displays the average nomination and confirmation lags, by type of position, from 1987 to 2005.¹⁷ Although presidents like to complain about the confirmation process, the nomination lag in that period typically dwarfed the confirmation lag, except for cabinet secretaries where both delays were minimal.

TABLE 5
Total number of days Senate-confirmed positions were filled and not filled by appointees

By agency and president

Agency	Reagan	Bush 41	Clinton
EPA (not filled)	7,040	3,611	8,350
EPA (filled)	26,477	15,467	29,099
FEMA (not filled)	3,407	795	3,821
FEMA (filled)	15,607	10,180	15,618
DOJ (not filled)	12,400	8,991	21,281
DOJ (filled)	50,376	25,555	56,708
Treasury (not filled)	7,383	2,910	10,643
Treasury (filled)	38,700	24,266	49,630

TABLE 6
Average delay in days in nomination and confirmation

By position type, 1987–2005

Position	Nomination Lag	Confirmation Lag
Cabinet secretary	16.61	16.25
Deputy cabinet secretary	94.98	62.10
Agency head	173.03	63.33
Deputy agency head	300.96	82.35
Assistant secretary	206.12	77.17
Under secretary	198.00	86.28
Inspector general	289.81	120.18
General counsel	156.36	71.28
Technical position	283.80	93.64
Other low level	348.03	87.93
Other	249.18	81.75

TABLE 7
Average delay in days in nomination and confirmation

By president

Agency	Reagan (1987+)	Bush 41	Clinton	Bush 43 (before 2005)
EPA: nomination	187.00	209.17	337.05	197.88
EPA: confirmation	44.67	38.54	70.35	114.89
FEMA: nomination	375.00	79.00	378.75	253.00
FEMA: confirmation	95.00	88.57	96.70	71.80
DOJ: nomination	139.23	179.20	353.79	254.59
DOJ: confirmation	99.38	76.32	109.95	89.34
Treasury: nomination	39.38	161.00	134.43	142.85
Treasury: confirmation	55.67	36.63	144.62	99.27

Table 7 shows the average nomination and confirmation lags for the last four administrations in the EPA, FEMA, DOJ, and Treasury. It is hard to compare the presidents as there is data for the entire administration only for Presidents George H.W. Bush and Clinton, and their administrations differed in length. The most striking pattern is that the Senate confirmation process consumed a larger percentage of the vacancy period for Treasury positions than any other agency, except under President George H.W. Bush.

Consequences of appointment delays and vacancies

The gaps between confirmed (or recess) appointments for key agency positions have several deleterious consequences for policymaking, including agency inaction, agency confusion, and decreased agency accountability.

Agency inaction

Most critically, the absence of appointed agency leaders fosters agency inaction. If agencies are missing top managers, they will make fewer policy decisions. Even if there are acting officials in place, such officials often lack sufficient stature to implement significant new programs or regulations.¹⁸

Take two examples, one general and one specific. Agencies typically begin fewer rulemakings in the first year of a presidential administration, as judged by the number of Notices of Proposed Rulemakings published in the Federal Register and announced in the Unified Agenda of Federal Regulatory and Deregulatory Activities, from 1983 to 2003.¹⁹ This delay in initiating new regulatory (or deregulatory) programs parallels the delay in getting important agency positions filled at the start of an administration.²⁰

Agency inaction from leadership vacancies may also contribute to national tragedies. When Hurricane Hugo struck South Carolina and other coastal areas in September 1989, causing 82 deaths and leaving tens of thousands without homes, only one of eight top positions at the Federal Emergency Management Agency was filled by a Senate-confirmed appointee.²¹ Less than a year before Hurricane Katrina slammed the Gulf Coast in August 2005, more than one-third of FEMA's important policy positions were vacant.²² David Lewis, a political scientist who has studied the effects of appointee turnover at FEMA, concludes: "If you told people on Wall Street that every four years or eight years, you were going to lop off the top of a Fortune 500 company and say the company would operate normally, you'd be called crazy. There is no question that it matters. Turnover and vacancies in politically appointed positions hurts performance."²³

Agency confusion

Vacancies in high-level agency offices also create confusion within the agency, particularly for civil servants. Non-political employees make up almost the entire federal workforce, save for the several thousand slots reserved for political appointments. Without political leaders, civil servants may not know what they should do. Acting officials often do not have sufficient authority to direct careerists.

There has been no permanent surgeon general for the past two years, for example. Two men have served in an acting capacity during that time. The current official is a well-respected career official, but the leader of a non-profit organization representing many U.S. Public Health Service officers laments that because the official is “the acting guy, he doesn’t have the heft, the authority, that a permanent appointee would have.”²⁴ Leadership vacuums may also produce more conflict between civil servants and political appointees as non-political employees may become unaccustomed to political direction and react more sharply to such direction when it is provided.

Agency accountability

Gaps in agency leadership ultimately undermine agency accountability and public trust in the bureaucracy. The legitimacy of the vast American administrative state rests, in large part, on its accountability to the president and to Congress through its appointed leadership. As the Supreme Court explained in *Chevron v. Natural Resources Defense Council*, a landmark case on deference to agency actions: “While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this political branch of the Government to make such policy choices—resolving the competing interests which Congress itself either inadvertently did not resolve, or intentionally left to be resolved by the agency charged with the administration of the statute in light of everyday realities.”²⁵ Agency claims of public representation through the presidential nomination and Senate confirmation process are far less convincing if there are large periods of time when there are few officials who have gone through that process.

To be certain, agency vacancies are not always costly. They may actually be desirable for policymaking in at least two circumstances. First, vacancies may allow the president to select more qualified people for critical positions. It may be possible to fill a top agency position in two months with someone who campaigned for the president but who lacks significant relevant expertise. But it may take six months to find someone who has more experience but is unknown to the White House and willing to take the job. Second, the inaction fostered by leadership vacancies may be beneficial if there is no agreement on what the agency should be doing. If there is considerable conflict about agency

priorities—either as a political matter or because of the uncertainty of the issue area—vacancies may prevent premature decisions.

Despite these possible benefits, agency vacancies are generally harmful to a well-functioning federal bureaucracy. Steps can be taken to improve the quality of appointees without encouraging delays in the appointments process. And appointees can choose to postpone decisions or make incremental policy judgments in issue areas with high uncertainty, especially if directed to do so by the White House.

Recommendations and conclusion

When it comes to agency leaders, public attention targets the very top spots, namely the cabinet and cabinet-rank officials. But a full cabinet often masks vacancies in the lower layers of executive agencies. This report has shown that in recent administrations many critical agency positions took months to staff with Senate-confirmed presidential appointees and that many of these positions did not stay filled for long. The incoming president should take steps to decrease the number and length of such vacancies as these frequent openings contribute to agency inaction, confusion among civil servants, and decreased legitimacy of federal agencies.

Decreasing the number of vacancies

To decrease the number of vacant positions within an administration, agency appointees must serve for longer. Several reforms could meet that objective. Specifically:

The president should get executive agency officials to commit to serve for a full presidential term. If a four-year commitment is not feasible, the president should obtain a two-year promise. (The president could still ask any official serving at his pleasure to step down at any time). Such commitments are not legally binding, but they discourage potential appointees from using government service as a quick stepping stone to more financially lucrative jobs in the private sector.

Both Presidents Carter and George H.W. Bush asked their appointees to stay for a full term. Although the performance of these presidents was mixed—indeed, neither was reelected—both devoted energy to trying to improve the quality and tenure of agency appointees. President Carter created a “talent bank” of individuals to draw from for key positions.²⁶ President H.W. Bush, the only recent president with significant prior federal agency experience, had firm ideas about improving the performance of the bureaucracy. He actually fired many Republican appointees who were serving at the end of President Reagan’s administration.²⁷

Many questions are asked of potential appointees. President-elect Obama’s vetting form asks government job seekers about tax payments for domestic workers and even embarrassing blog posts. It would be easy—and at least as important—to ask how long such

applicants plan to stay in the agency and if they would promise to commit to a two- or four-year stint in government service.

All agency leaders should receive more comprehensive and institutionalized training. Training should cover the incoming leaders' agency, the wider administrative state, congressional appropriations and oversight, and the White House regulatory review process, as well as media relations, management, interactions with the civil service, and other executive skills. If agency leaders perform better and face less hostile oversight from within and outside their agency, they will be more likely to serve longer.

New members of Congress have an intensive orientation at the Capitol; they can also attend a supplemental week-long training at Harvard University. Agency leaders generally have received nothing comparable, despite their similarly critical responsibilities.²⁸ Appointee training in recent administrations has varied widely. Indeed, there was no branch-wide orientation for agency leaders during President Clinton's first term. Although Congress appropriated funding for the first time in 2000 (but not again in 2004) for appointee training, there is still no standard orientation for agency leaders.²⁹ Part of the difficulty is timing. Congressional turnover almost always occurs at regular intervals, but agency officials are constantly coming and going. There could, however, be an intensive training for new agency officials in the first few months of each presidential term, which could be recorded for later appointees to access electronically.³⁰

Congress should increase the salary and benefits of agency leaders, if feasible.

Congress can decrease the opportunity cost for entering public service for several years by making government service more financially attractive. This is not to say that government service should pay these officials what they could earn in the private sector. But political appointees should earn sufficient income and benefits such that taking on critical public service is not a financial burden, especially for those with college or other family expenses.

The National Commission on the Public Service recommended in its 1989 report, for instance, that agency leaders should be able to qualify for "up to three months of severance pay with full benefits as a bridge to outside employment."³¹ If severance pay were available, appointees would spend less time looking for their next job while they should be working for the public.

Decreasing the length of vacancies

To decrease the length of vacancies in critical agency positions, the president should announce his nominations more quickly, when he first takes office and after an appointee in a position departs. Several proposals could meet that goal. Specifically:

The president should pay more attention to lower-level appointments in executive agencies. Although public attention tracks only the highest appointments, the president should also tend to positions that will not grab headlines yet will be instrumental in implementing his policies. Such focus does not mean sustained participation by the president in hiring decisions for any of the approximately 1,100 Senate-confirmed agency jobs. But it does require the president to retain considerable control over the appointments process and treat lower-level agency appointments as a presidential priority.

Presidents Carter and Reagan are two opposing examples. President Carter, at the start of his administration, delegated considerable authority to his cabinet secretaries over who would be selected to fill lower-level positions in the agencies.³² This delegation left President Carter relatively powerless against his own cabinet, at least in the first years of his term. By contrast, President Reagan wielded his appointment power carefully to maintain close control over the federal bureaucracy. He and his staff tried to choose individuals loyal first to him, rather than to agency clients or interest groups.³³

The presidential personnel office should plan for future appointments after initial appointees take their positions. Specifically, the office should anticipate that a particular Senate-confirmed executive agency position will be filled, on average, by at least two people during a presidential term. In addition, when a cabinet secretary departs, many lower officials often follow. The personnel office should therefore be prepared for a wave of vacancies in an agency when the top official resigns. The office could construct a personnel team that draws members from across the administration and, much like in disaster response, would spring into action if certain jobs became vacant—for example, critical positions at the Treasury Department, Office of the Director of National Intelligence, Defense Department, and FEMA.

This preparation for filling agency vacancies requires low turnover in the presidential personnel office itself. President H.W. Bush benefitted from such stability in his personnel operations. He had tasked Chase Untermeyer—an unlikely appointee for key White House or cabinet jobs—to plan the transition before his election and then named him to head his personnel office.³⁴

President Clinton's transition was far more chaotic. Richard Riley, whom President Clinton put in charge of sub-cabinet appointments, soon turned to preparing for his own nomination as secretary of education. Warren Christopher, President Clinton's transition director, was selected as secretary of state. As one scholar of presidential transitions noted, "Perhaps the worst danger is the one Clinton faced: a personnel operation and a transition whose principals end up with cabinet positions to the detriment of the personnel office."³⁵

The president should ask political appointees in federal agencies to provide four weeks notice of resignation. Four weeks notice would allow the presidential personnel office to start actively vetting individuals for appointment before the presiding office

holder departs. Indeed, the departing and incoming appointee might be more likely to meet, which would provide more training to the new official, thereby promoting longer tenure. The president would still retain his authority to fire many appointees at will and to remove other appointees for cause at any time.

In the private sector, employees generally have a legal duty (sometimes contractually based) to give reasonable notice of resignation so that their employer can find a replacement in time to prevent damage to its business. Non-political government workers also often face similar requirements. For instance, assistant U.S. attorneys for the District of Columbia must agree to not only stay four years but also provide at least 60 days notice before resigning.

Moving forward

These six proposals to decrease the number and length of vacancies in important agency positions are reasonable and feasible to implement. Five are within the direct control of the White House and do not require any fundamental shifts in the agency appointments process. The remaining one—seeking increased salary and benefits for appointees—requires legislative action that may be impossible in the current economy. Nevertheless, small increases in benefits may be financially obtainable.

Many commissions and commentators have called for more radical changes—most notably, cutting a large number of political appointments in the bureaucracy or significantly decreasing the confirmation lag.³⁶ This report does not take a position on the merits of eliminating many political positions. Either way, such a change would be politically impossible to implement. Paperwork should surely be streamlined among the White House, Senate, and agencies conducting background checks during the appointments process, but the substance of the Senate confirmation process should not be abbreviated, particularly in times of united government. If a primary concern about agency vacancies is the lack of accountability for agency action (or inaction), compressing the Senate’s role compounds that concern.

The federal administrative state has tremendous power to shape a range of public policies, from environment protection to disaster preparation and response. Despite its immense size and scope, there are only about 1,100 Senate-confirmed presidential positions at the top. As this report shows, however, these positions are often empty—particularly when presidents first come into the White House, as well as after a few years due to short tenures and before presidents leave office. The consequences for such vacancies are profound for public policy and democratic legitimacy. Some simple feasible reforms could improve the appointments process by increasing the tenure of agency officials in important positions and decreasing the time needed to select individuals for these positions.

Appendix: Data methodology

The information on agency vacancies in this report comes from a new database of agency appointments constructed by the author. The Office of Personnel Management provided the start and end dates of service of all Senate-confirmed and recess presidential appointees who worked in the federal bureaucracy sometime between January 1977 and January 2005, along with information on the position in which they served. This report excludes data on appointees in independent regulatory commissions, boards, government-chartered corporations, and similar institutions.

The database includes information on Senate-confirmed and recess presidential appointees at the following agencies: Central Intelligence Agency, Council of Economic Advisors, Council on Environmental Quality, Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of Justice (excluding U.S. attorneys), Department of Labor, Department of State (excluding ambassadors), Department of Transportation, Department of Treasury, Department of Veterans Affairs, Environmental Protection Agency, Federal Emergency Management Agency, Federal Mediation and Conciliation Service, General Services Administration, National Aeronautics and Space Administration, Office of Management and Budget, Office of National Drug Control Policy, Office of Personnel Management, Office of Science and Technology Policy, Office of the United States Trade Representative, Peace Corps, Selective Service Administration, United States Arms Control and Disarmament Agency, and the United States Agency for International Development.³⁷

For these agencies, the database includes start dates for 2,862 individuals.³⁸ Because some appointees were still serving when OPM provided the data, the database has end dates for only 2,724 officials. Nomination and confirmation dates were obtained from the Library of Congress's presidential nominations database, which contains such dates for the 100th (1987-1988) and later Congresses. The appointments database used in this report has nomination and confirmation dates for 1,762 appointees who served between 1987 and 2005.

These dates—start of service, end of service, nomination date (as received by the Senate, if available), and confirmation date (if available)—were used to calculate various measures of vacancy length for each unique position in the data (for example, secretary of commerce, assistant administrator for water at the EPA, etc.). First, the number of days between the last

day of service of an appointee in a position and the first day of service of the next appointee in that position was determined.³⁹ Second, for more recent appointees, the nomination lag (from the last day of service of an appointee to the nomination of a new appointee) and confirmation lag (from nomination to confirmation) were also calculated. Third, for appointees with both start and end dates, tenure in a particular position was calculated.

Position types were coded as follows: The cabinet secretary category contains cabinet secretaries for all current cabinet departments except the Department of Homeland Security, including administrators of the Veterans Administration before it became a cabinet department in 1989. The deputy secretary category contains the second most senior person for all departments contained in the cabinet secretary group. This position was often an under secretary in earlier administrations but is now a deputy secretary. The agency head category contains leaders of stand-alone agencies—for example, the administrator of the EPA and the United States trade representative—and agencies within cabinet departments such as the secretary of the Army and the commissioner of food and drugs. The deputy agency head category contains the second most senior person for all agencies contained in the agency head group. The assistant secretary category contains all assistant secretary positions and assistant attorneys general positions, except for those classified as technical below. The under secretary category contains all specific under secretary positions and associate attorneys general positions. The inspector general category contains all inspectors general. The general counsel category contains all general counsels and similar positions such as solicitor of labor, solicitor general, legal advisor). The technical position category contains technical positions, including chief financial officers, controllers, comptrollers, scientists, science advisors, members of the CEA and CEQ, and the chief of protocol. The low-level position category contains low-level positions, including deputy assistant secretaries, administrators or directors of offices, deputy administrators or deputy directors of offices, special assistants, deputy undersecretaries, associate deputy secretaries, counselors, deputy advisors, and special trustees. The other category contains appointees in positions not identified by title in the OPM data.

Endnotes

- 1 David E. Lewis, *The Politics of Presidential Appointments: Political Control and Bureaucratic Performance* (Princeton University Press, 2008), pp. 20, 22. The 2.5 million figure excludes military personnel. In sheer numbers, the layer of political personnel in the federal workforce appears thin. Senate-confirmed presidential appointees, non-civil service individuals placed in senior executive service positions, and politically selected Schedule C employees hold approximately 3,000 jobs, far less than 1 percent of the federal workforce. *Ibid.*, p. 56.
- 2 Anne Joseph O'Connell, "Political Cycles of Rulemaking: An Empirical Portrait of the Modern Administrative State," *Virginia Law Review* (94) (4) (2008): 889, 892.
- 3 Judith Resnik, "Migrating, Morphing, and Vanishing: The Empirical and Narrative Puzzles of Declining Trial Rates in Courts," *Journal of Empirical Legal Studies* (1) (2004): 783.
- 4 Patricia W. Ingraham, "Building Bridges or Burning Them? The President, the Appointees, and the Bureaucracy," *Public Administration Review* (47) (1987): 425, 428. Looking at all Senate-confirmed agency appointees from October 1981 to September 1991, the GAO found that the median appointee tenure was 2.1 years. General Accounting Office, "Political Appointees: Turnover Rates in Executive Schedule Positions Requiring Senate Confirmation" (GAO GDD-94-115, 1994). RAND determined that from 1949 to 1999 most top-level appointees in the Defense Department served only 11 to 20 months. Cheryl Marcum et al., "Department of Defense Political Appointments: Positions and Process" (2001).
- 5 Mary Thornton, "Running the Bureaucracy in the Lame-Duck Days," *The Washington Post*, Nov. 6, 1987.
- 6 Technically, the nomination date is the day the Senate receives the president's nomination, not the date the president announces his intent to nominate someone. In practice, the difference is typically a matter of days, though can be much longer for initial high-level appointments for a new president. In the analysis here, if a president nominated an appointee more than once for a position (typically because an earlier nomination was returned by the Senate), the first nomination date is used.
- 7 The Senate's confirmation is the date of the vote, not the date of any confirmation hearing.
- 8 Confirmed appointees often start several days after being confirmed. But, sometimes, appointees have waited to move to Washington, D.C. until they are confirmed and do not start their jobs for several weeks.
- 9 Paul C. Light, *A Government Ill Executed: The Decline of the Federal Service and How to Reverse It* (Harvard University Press, 2008); G. Calvin Mackenzie, *The Politics of Presidential Appointments* (Free Press, 1981); G. Calvin Mackenzie, "The State of the Presidential Appointments Process." In G. Calvin Mackenzie, ed., *Innocent Until Nominated: The Breakdown of the Presidential Appointments Process* (Brookings Institution Press, 2001); James Pfiffner, "Presidential Appointments: Recruiting Executive Branch Leaders." In G. Calvin Mackenzie, ed., *Innocent Until Nominated: The Breakdown of the Presidential Appointments Process* (Brookings Institution Press, 2001).
- 10 See note 9. Also, on independent regulatory commissions and boards, see David C. Nixon, "Appointment Delay for Vacancies on the Federal Communications Commission," *Public Administration Review* (61) (2001): 483; David C. Nixon & Roisin M. Bentley, "Appointment Delay and the Policy Environment of the National Transportation Safety Board," *Administration & Society* (37) (2006): 679.
- 11 Burdett Loomis, "The Senate: An 'Obstacle Course' for Executive Appointments." In G. Calvin Mackenzie, ed., *Innocent Until Nominated: The Breakdown of the Presidential Appointments Process* (Brookings Institution Press, 2001); Nolan McCarty & Rose Razaghian, "Advice and Consent: Senate Responses to Executive Branch Nominations, 1885-1996," *American Journal of Political Science* (43) (1999): 1122.
- 12 Table 1 measures the average number of days from the president's inauguration to the start date of a non-acting official (either Senate-confirmed or recess appointee) in a Senate-confirmed position in the agencies listed in the appendix. If there was a proper official in the position at the time of inauguration, the initial vacancy period for that position was calculated from the departure of that official to the start date of the first official under the new president. In addition, if a president never appointed anyone to a particular open position during his administration, that "delay" (i.e., four or eight years) is not included in the figures displayed in Table 1. Table 1 thus underestimates the average time it takes a new president to fill a Senate-confirmed position in an executive agency with his own appointee. New positions in a particular administration were not included; in other words, if a position was created in January 1987, there would be no six-year initial vacancy period included in President Reagan's figure. Table 2 breaks this measure down by type of position, as described in the appendix.
- 13 Table 3 measures the average number of days from the departure date of the last person in a Senate-confirmed position for each administration to the inauguration date of the next president. If the last person was still serving in the position at the time of the inauguration, the end vacancy period was coded as zero for that position. If a position was filled at least once in an administration, Table 3 includes the time between the last occupant and the start of the next administration. In other words, if President Reagan appointed someone to a position who then departed in 1982 and then never appointed a replacement, Table 3 would include the difference between that 1982 departure and President George H.W. Bush's inauguration. Table 3 thus may overestimate vacancies at the end of an administration because some positions may have been eliminated during an administration. Table 4 breaks this measure down by type of position, as described in the appendix.
- 14 See the appendix. To be included in the tenure measure, an appointee's start and end dates both must appear in the database. In other words, appointees who were still serving in 2005, the cut-off point for the OPM data, are not included in the tenure calculation, which means that figures for President George W. Bush's administration may underestimate average tenure and thus overstate the vacancy period.
- 15 Table 5 required some additional calculations at the start and end of a presidential administration. Time spent in a new administration by a previous administration's appointee had to be assigned to the new president. Time vacant in a position that spanned two administrations had to be divided among two presidents. The figures vary across administrations because of the varying lengths of the administrations (one term versus two) and because of changing numbers of political positions within these agencies.
- 16 The first two periods are, of course, related. The president makes nominations in the shadow of the confirmation process. For example, the president may take more time to nominate an official if he is worried about the Senate confirmation process; the president typically does not want his nominations to fail.
- 17 Unlike Table 2, which examines vacancies at the start of an administration, Table 6 includes all vacancies for these positions in the given time period. Tables 6 and 7 exclude nominations that were never confirmed.
- 18 McCarty & Razaghian, "Advice and Consent: Senate Responses to Executive Branch Nominations, 1885-1996," p. 1141.
- 19 O'Connell, "Political Cycles of Rulemaking: An Empirical Portrait of the Modern Administrative State," pp. 938-943.
- 20 On the other hand, there is a flurry of "midnight" regulatory activity at the end of presidential administrations despite a corresponding trend of Senate-confirmed political appointees rushing out the door. See O'Connell, "Political Cycles of Rulemaking: An Empirical Portrait of the Modern Administrative State," pp. 947-959.

- 21 Lewis, *The Politics of Presidential Appointments: Political Control and Bureaucratic Performance*, p. 151.
- 22 Ibid., p. 165. The vacant positions included “the Chief of Operations in the Response Division, Chief of Individual Assistance in the Recovery Division, Chief of Public Assistance in the Recovery Division, and Deputy Director of Preparedness.” Ibid. Not all of the vacant positions required Senate confirmation.
- 23 Dan Eggen and Christopher Lee, “Late in the Term, an Exodus of Senior Officials: Scores of High-Level Political Positions Are Vacant or Are Being Filled by Temporary Appointees,” *The Washington Post*, May 28, 2008 (quoting Lewis).
- 24 Ibid. (quoting Jerry Ferrell, Executive Director of the Commissioned Officers Association).
- 25 467 U.S. 837, 865-66 (1984).
- 26 President Carter emphasized that he wanted to appoint “the best person in the country . . . for each position.” In line with this goal, he instituted a Talent Inventory Process. For each top government job, the TIP identified the qualifications and asked a network of several hundred people for recommendations. Joel Havemann, “Carter is Taking Pains in Picking His Plums,” *National Journal*, Nov. 20, 1976, p. 1650.
- 27 Robert Maranto, *Beyond a Government of Strangers: How Career Executive and Political Appointees Can Turn Conflict to Cooperation* (Lexington Books, 2005), p. 58.
- 28 See Delmer D. Dunn, *Politics and Administration at the Top* (University of Pittsburgh Press, 1997), p. 173; James P. Pfiffner, “Strangers in a Strange Land: Orienting New Presidential Appointees.” In G. Calvin Mackenzie, *The In-and-Outers: Presidential Appointees and Transient Government in Washington* (Johns Hopkins University Press, 1987), p. 141.
- 29 The Council for Excellence in Government, *Preparing Presidential Appointees for Leadership: A History* (September 22, 2008).
- 30 In 2002, a website (www.results.gov) was established to provide appointees electronic access to recent trainings as well as other items. See *ibid.*, p. 16.
- 31 National Commission on the Public Service, *Report and Recommendations* (1989) (printed by House Committee on Post Office and Civil Service, 101-4) (Volcker I), pp. 15-16.
- 32 By the middle of his term, however, President Carter had taken back much of that authority. See Thomas J. Weko, *The Politicizing Presidency: The White House Personnel Office, 1948-1994* (University Press of Kansas, 1995), pp. 68-79.
- 33 Marissa Martino Golden, *What Motivates Bureaucrats? Politics and Administration During the Reagan Years* (Columbia University Press, 2000), p. 6; Weko, *The Politicizing Presidency: The White House Personnel Office, 1948-1994*, pp. 90-99.
- 34 John P. Burke, *Presidential Transitions: From Politics to Practice* (Lynne Rienner, 2000), pp. 191-196.
- 35 Ibid., p. 406.
- 36 On cutting the number of political positions, see, for example, National Commission on the Public Service, “Urgent Business for America: Revitalizing the Federal Government for the 21st Century” (2003) (Volcker II); National Commission on the Public Service, *Report and Recommendations* (1989) (printed by House Committee on Post Office and Civil Service, 101-4) (Volcker I); Light, *A Government Ill Executed: The Decline of the Federal Service and How to Reverse It*. On cutting the confirmation process, see, for example, Sarah A. Binder, “The Senate as a Black Hole? Lessons Learned from the Judicial Appointments Experience.” In G. Calvin Mackenzie, ed., *Innocent Until Nominated: The Breakdown of the Presidential Appointments Process* (Brookings Institution Press, 2001); Christopher J. Deering, “Damned if You Do and Damned if You Don’t: The Senate’s Role in the Appointments Process.” In G. Calvin Mackenzie, *The In-and-Outers: Presidential Appointees and Transient Government in Washington* (Johns Hopkins University Press, 1987).
- 37 The database excludes appointees at the Department of Homeland Security. Because the DHS was created in 2003, there was typically only one person listed for each position in the OPM data. Appointees at FEMA, however, were folded into the FEMA data.
- 38 O’Connell spent considerable time cleaning the data, including, for example, merging separate observations when it was clear, from news searches or other items, that they represented one person’s tenure in the same position. Upon request, O’Connell can explain what changes she made to the OPM data.
- 39 This period cannot be determined for the earliest person in each position (as there is no departure date for the previous person), resulting in information on 2,327 officials. Because the dataset starts in 1977, vacancy measures for President Carter’s administration were excluded from much of the analysis because they were not available for the first set of Carter appointees. This period also cannot be determined if an official departed and no new official had started within the time frame of the data. Because individuals who started in a position after January 2005 are not in the dataset, measures of appointment delay (separate from appointee tenure) for President George W. Bush’s administration may be understated. In other words, if an assistant secretary departed in January 2003 but the replacement stated in January 2006, that three year vacancy period would not be included in the average vacancy period for President Bush’s administration. Finally, in a handful of cases, when this period was negative (the official last day of the previous official was after the start date of the next official), it was recoded to be zero.

About the author

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