



PARTNERSHIP FOR PUBLIC SERVICE

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“Eliminating the Bottlenecks: Streamlining the Nominations
Process”**

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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

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

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

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.

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.

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

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.