

**PARTNERSHIP  
FOR PUBLIC SERVICE**

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**“Senate Procedures to Confirm Nominees”**

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## **Introduction**

Chairwoman Klobuchar, Ranking Member Fischer, and members of the Committee on Rules and Administration, thank you for the opportunity to appear before you today to discuss Senate procedures for confirmation of positions subject to the advice and consent of the United States Senate.

I am Jenny Mattingley, Vice President of Government Affairs of the Partnership for Public Service, a nonpartisan, nonprofit organization dedicated to building a better government and stronger democracy. The Partnership is home to the Center for Presidential Transition, the premier nonpartisan source of knowledge and resources on the transitioning of government from one administration to the next – whether it be a transfer of power to a new administration or a transition to the second term of a presidency. The Center also focuses on data, policies and practices that underpin transitions, the confirmation process, and the political appointee vetting process – identifying barriers and opportunities to making these processes more effective for the Senate and the executive branch.

One area of particular focus for the Center is the role of leadership across the federal government. Strong leadership is key to the success of any organization, including political appointee roles at each federal agency. One of the more significant responsibilities of a president is the vetting, selection and appointment of political appointees, totaling around 4,000 – far greater than any other modern democracy. Of these appointees, over 1,300 are subject to the advice and consent of the Senate before they assume their duties.

Filling these positions would be a daunting task under the best of circumstances. In today's dangerous world of escalating crises, it is a race against time. Yet with each successive president, the Senate confirmation process becomes more arduous. This is true for nearly all nominees, including those for senior national security positions. The work required to select, nominate and vote on presidential appointees is longer, more complicated and more uncertain. Many positions remain vacant for months or years; some will never be filled. Presidents may intentionally leave positions vacant or rely on a succession of temporary officials in the absence of a Senate-confirmed leader.

Under the current system, each stakeholder in the process loses: the Senate, the executive branch, the public, and individuals who step up to serve our country as appointees. The broken process is undermining the Senate's constitutional powers, both because it has led to executive branch efforts to sidestep Senate confirmation altogether by relying on non-confirmed officials, and because the extraordinary amount of time being spent on nominations is time lost from the Senate's role of legislating. Agencies suffer from gaps in leadership that hobble long-term planning and the execution of the responsibilities Congress has assigned them, which is a disservice to your constituents. Moreover, the increasingly laborious experience that nominees—and their families—experience in going through the confirmation process discourages qualified individuals from wanting to accept a nomination.

Improving the Senate confirmation process is not just a good government initiative – it is a national security, public health and economic imperative. Our government needs capable leaders to address the country’s most urgent needs and to act in moments of crisis. However, even non-controversial nominees will face long, arduous paths to confirmation, and some positions will never have a nominee at all. Improving this process can bolster the Senate’s constitutional responsibilities, strengthen government and encourage talented individuals to enter public service.

In 2011, the Chairs and Ranking Members of the Rules Committee and the Homeland Security and Governmental Affairs Committee, along with the then-Majority and Minority leaders, joined in a bipartisan push to improve the appointments process. That bipartisan effort led to enactment of S. Res. 116,<sup>1</sup> creating the Privileged Calendar to expedite confirmation procedures for around 300 nominees, and the passage of the Presidential Appointment Efficiency and Streamlining Act of 2011,<sup>2</sup> which reduced by over 160 the number of positions subject to Senate confirmation. More work is needed to build on these past efforts.

Key recommendations I highlight in this testimony are:

- Develop a model for “bundling” nominations, which would allow for at least some nominations to be batched together for a final vote on the Senate floor.
- Improve the Privileged Calendar and pursue other changes to Senate processes for executive branch nominations that could win broad bipartisan support.
- Reduce the number of positions subject to Senate confirmation – modeling on the bipartisan effort led by Rules Committee leaders in 2011.
- Revisit the 2012 and 2013 recommendations of the Working Group on Streamlining Paperwork for Executive Nominations.<sup>3</sup>
- Increase transparency into the leadership of our government and the appointments process, while also strengthening agency accountability to Congress during vacancies by improving the Federal Vacancies Reform Act.

Some of these recommendations fall outside of the jurisdiction of the Rules Committee. Some implicate Senate procedures, some require action by both houses of Congress, and some can be addressed through Executive Branch attention. The range of proposals is offered to help show the bigger picture of potential improvements to the vetting, nomination and confirmation of an appointee.

Your hearing today will help inform how we might increase the efficiency of getting qualified political leaders in place. My testimony today will summarize the Partnership’s latest research showing that the confirmation process, for civilian executive branch nominees, is in dire straits. I will also discuss the consequences of the dysfunction and offer solutions to help get qualified individuals in place expeditiously while also preserving the Senate’s advice and consent role.

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<sup>1</sup> [S. Res. 116](#), 112th Congress.

<sup>2</sup> Presidential Appointment Efficiency and Streamlining Act of 2011, Public Law No. 112-166.

<sup>3</sup> The Working Group was established by Sec. 4 of the Presidential Appointment Efficiency and Streamlining Act of 2011, Public Law No. 112-166.

## **The Scope of the Problem**

Since 2008, the Partnership and our [Center for Presidential Transition](#) have worked to improve presidential transitions. We study each transition and provide, on a nonpartisan basis, information on what has and has not worked to transition teams, incoming and outgoing administrations, career agency transition officials, Congress, the media and the public. We have produced a significant body of research reports, documenting the growing challenges that each president faces in filling Senate-confirmed positions. Also, the Center for Presidential Transition, with the Washington Post, maintains a political appointee tracker to follow the progress of key Senate-confirmed positions.<sup>4</sup> Today, we track roughly 800 Senate-confirmed positions, including Cabinet secretaries, deputy and assistant secretaries, heads of agencies, ambassadors and other critical leadership jobs. This tool, along with our other research, has helped us uncover key confirmation trends which have informed this testimony.

We think a few statistics and charts tell the story.<sup>5</sup>

### **The number of Senate-confirmed positions has grown for decades.**

When Congress reorganizes federal departments and agencies, creates new agencies, adds new responsibilities or establishes positions to implement laws and programs, it has the ability to determine which politically appointed positions will be subject to Senate confirmation. Between 1960 and 2020, the number of Senate-confirmed positions increased by over 70%, from 779 to 1,340.<sup>6</sup>

### **The Senate confirmation process takes longer in each successive presidential administration.**

It takes the Senate nearly four times as long to confirm or reject a nominee today as it did during President Ronald Reagan's administration. During President Biden's first term in office to date, the Senate took an average of 182 days to confirm nominees compared with 49 days during the first term of President Reagan.<sup>7</sup>

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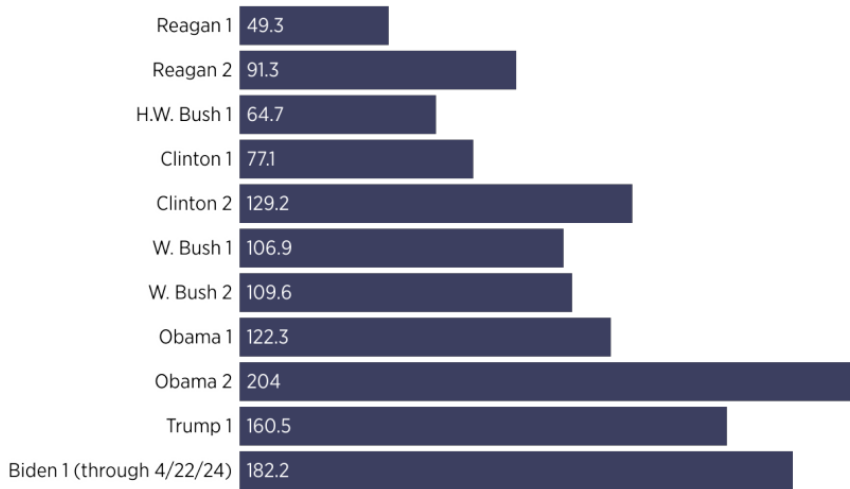
<sup>4</sup> <https://www.washingtonpost.com/politics/interactive/2020/biden-appointee-tracker/>

<sup>5</sup> Additional information and data on confirmations included in the Appendix to this testimony.

<sup>6</sup> David E. Lewis, "Political Appointees to the Federal Bureaucracy," Feb. 20, 2024, University of Chicago Center for Effective Government Democracy Reform Primer Series. Available at <https://effectivegov.uchicago.edu/primers/political-appointees-to-the-federal-bureaucracy>

<sup>7</sup> Chris Piper, "Taking stock of the vacancy crisis across cabinet departments," April 25, 2024. Available at <https://presidentialtransition.org/blog/taking-stock-of-the-vacancy-crisis-across-cabinet-departments/>

**Average Days to Confirmation Across Terms of Last Seven Administrations**



Note: Data excludes judicial, military, U.S. marshal and U.S. attorney nominees.

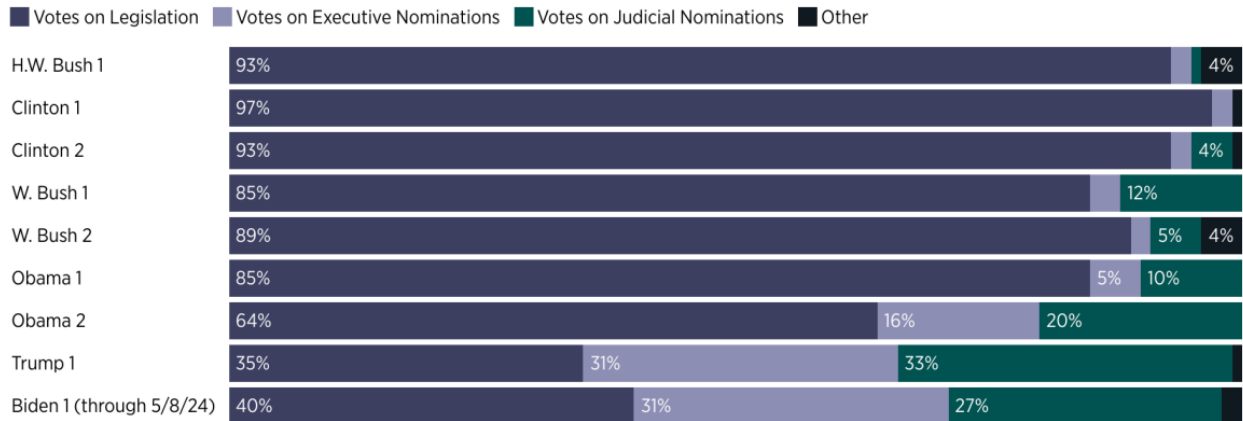
Source: Partnership for Public Service

**In a stark break from the past, the percentage of Senate votes on nominations now far exceeds votes on legislation.**

Procedural votes, cloture votes to end debate and direct votes on presidential nominations made up 64 percent of all recorded Senate votes during President Trump’s administration, and 58 percent so far into President Biden’s administration. This compares with just 15 percent during the first term of George W. Bush’s presidency and 14 percent during Barack Obama’s.

Meanwhile, votes on amendments, to end debates and for final passage of legislation accounted for only 35 percent of all recorded votes during Trump’s first term in office and 40 percent during Biden’s time in office so far, compared with about 85 percent during the first term of both the W. Bush and Obama administrations.

**Distribution of Recorded Votes Across Terms of Last Six Administrations**



Source: Partnership for Public Service analysis of data from govtrack.us.

### **Layers upon layers of nominees create extended delays in confirmation of lower levels.**

The overall length of time to confirmation has increased on average – although the delays are not standard for every position. While Cabinet secretaries and other high-profile positions are likely to move through the process in a timely way, lower-level positions and positions on part-time boards and commissions take much longer because they are generally a lower priority.

In the Biden administration, Cabinet secretaries and deputy secretaries took about 19 days and 59 days, respectively, to be confirmed. However, those further down the leadership hierarchy (e.g., assistant secretaries and directors), took around 200 days on average to be confirmed. This leaves many of the positions closest to agency operations vacant for extended periods of time. For example, it took President Biden’s nominees an average of 505 days, from inauguration day to confirmation, to assume the six deputy undersecretary positions in the Department of Defense.<sup>8</sup>

### **Senate confirmed positions are vacant more frequently and for longer periods.**

The growing challenges faced by executive branch nominees in the Senate confirmation process leave important agency leadership positions vacant for extended periods of time. This creates a leadership vacuum for the agencies tasked with carrying out the fundamental roles of government, from national security to infrastructure to health and safety, and means a new administration has less ability to implement its policy priorities.

Many of the most important positions across Cabinet departments face regular vacancies. Four Cabinet departments had 30% or more of their positions vacant as of March of this year. At the equivalent date during Trump’s fourth year, nine Cabinet departments had 30% or more of their positions vacant.<sup>9</sup>

My organization has identified 83 positions requiring Senate confirmation that were vacant at least 50% of the time between the beginning of President Obama’s administration (January 2009) and the first two years of the President Biden’s administration (January 2023). This means these positions were vacant for at least half of this 14-year period. These positions range from the heads of major Cabinet bureaus to the chief financial officers of Cabinet departments.<sup>10</sup>

Extremely long-term vacancies invite questions about whether a position needs to be subject to Senate confirmation. For example, the position of assistant attorney general for the tax division at the Department of Justice has been vacant 84 percent of the time between 2009 and 2023.

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<sup>8</sup> Partnership for Public Service, Center for Presidential Transition, “Layered Leadership: Examining How Political Appointments Stack Up at Federal Agencies,” Feb. 20, 2024. Available at <https://presidentialtransition.org/reports-publications/layered-leadership-examining-how-political-appointments-stack-up-at-federal-agencies/>

<sup>9</sup> Chris Piper, “Taking stock of the vacancy crisis across cabinet departments,” April 25, 2024. Available at <https://presidentialtransition.org/blog/taking-stock-of-the-vacancy-crisis-across-cabinet-departments/>

<sup>10</sup> Partnership for Public Service, Center for Presidential Transition, “Persistently Vacant: Critical federal leadership positions go unfilled for years,” July 9, 2024. Available at <https://presidentialtransition.org/reports-publications/persistently-vacant-critical-federal-leadership-positions-go-unfilled-for-years/>

Presidents have relied largely on career members of the senior executive service to lead the division.

### **Longer delays and increased conflict over nominees lead to fewer first-year confirmations.**

The Senate has confirmed a lower and lower percentage of nominations in the first year of administrations: The Senate confirmed 75% of President Bush's first-year nominees, 69% of President Barack Obama's first-year nominees, 57% of President Donald Trump's first-year nominees 55% of President Joe Biden's first-year nominees.<sup>11</sup>

### **Part-time board and commission positions see lengthy delays in confirmation.**

Positions on part-time boards and commissions similarly take much longer to be confirmed than other positions.<sup>12</sup> In the last three administrations, these positions have had an average confirmation delay of over 200 days. Seven part-time boards and commissions have a confirmation delay of over 300 days on average since the George W. Bush administration. With lengthy delays in confirmation, many of these boards and commissions cannot operate as designed and others appear to be a low priority. For example, the National Association of Registered Agents and Brokers Board of Directors has not had a nominee confirmed to the board since it was created in 2015.

### **Consequences of Dysfunction**

The Senate's advice and consent role, contained in Article II, section 2 of the Constitution, reflects the founder's vision of a system of checks and balances, where the Senate and the president share appointing power. The framers intended to give presidents the ability to staff their administrations, while limiting their ability to appoint unsuitable officials or candidates presenting conflicts of interest. The broken Senate confirmation of today harms effective governance in a number of ways.

**The dysfunction of the confirmation process undermines the Senate's constitutional role.** As I explained in my introductory comments, the dysfunctional confirmation process weakens the Senate's constitutional powers. First, the slowness of the process means that the president's personnel team must focus on the highest-priority positions, while nominations for other positions may take hundreds of days or never be forthcoming. Vacancies result in roles being performed by non-confirmed officials, often for extended periods. All of this undermines the Senate's advice and consent role, as well as hampering ongoing oversight when positions remain vacant. Second, the sharp rise in the percentage of floor votes on nominations takes time away from the Senate to spend floor time on legislation.

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<sup>11</sup> Partnership for Public Service, Center for Presidential Transition, "Joe Biden's First Year in Office: Nominations and Confirmations," Jan. 9. 2022. Available at <https://presidentialtransition.org/reports-publications/joe-bidens-first-year-in-office/>

<sup>12</sup> Partnership for Public Service, Center for Presidential Transition, "Empty Seats: Slow Confirmation Process Leaves Many Part-Time Boards and Commissions with Vacancies," Dec. 20, 2023. Available at <https://presidentialtransition.org/reports-publications/empty-seats/>

**The leadership gaps resulting from the broken confirmation process strain federal agencies.** While a president can install temporary, “acting” leadership to fill these gaps, these officials cannot fully replace confirmed officials. Former commandant of the Coast Guard, Thad Allen, explained that when vacancies arise, “people who are in an acting capacity feel they do not have the power to make long-term changes and do what they need to do.”<sup>13</sup>

This calls to mind an analogy that Max Stier, the Partnership’s president and CEO, often uses – that of substitute teachers. We all recall a time when we had a substitute teacher and the difference in how the classroom was managed and how much was accomplished. It’s no different for agencies. Acting officials may be skilled professionals—often they are drawn from the most well-respected ranks of career officials, especially at the start of an administration—but they are not perceived by those around them as having the full authority of the confirmed appointee, and they do not view themselves as having the right to make decisions with long-term impact. They also work under the strain of being dual-hatted, assuming the role of the vacant position while continuing to ensure the execution of their permanent position.

Vacancies have numerous ripple effects. In particular, they slow decision making and strategic planning, ultimately diluting the agency’s ability to best serve the public interest. A sense of impermanent leadership can negatively affect employee morale – especially if no nomination is forthcoming, making employees wonder whether their agency is a priority.<sup>14</sup> Another impact of long-term vacancies at an agency is that decisions about filling other senior leadership positions are sometimes put on hold, especially when the vacancy is in the top leadership of the agency. Furthermore, excessive reliance on acting officials, or officials “performing the duties of the office,” can invite legal challenges and raise questions about who is accountable to Congress and the public for performance of duties.

**National security risks intensify when key officials are not in place.** In 2004, a bipartisan commission issued its report the attacks on the United States on September 11, 2001.<sup>15</sup> One of the 9/11 Commission’s most notable findings was that the Bush administration “like others before it—did not have its team on the job until at least six months after it took office.” Key deputy Cabinet and subcabinet positions remained empty until the spring and summer of 2001, less than two months before 9/11. The Commission concluded that because “a catastrophic attack could occur with little or no notice, we should minimize as much as possible the disruption of national security policymaking during the change of administrations by accelerating the process for national security appointments.” Despite the 9/11 Commission’s call to action, the percentage of top national security positions confirmed by the twentieth anniversary of the attack in 2021 was only 27%,

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<sup>13</sup> Partnership for Public Service, “Government Disservice: Overcoming Washington Dysfunction to Improve Congressional Stewardship of the Executive Branch,” September 2015, p. 29. Available at <https://ourpublicservice.org/publications/government-disservice/>

<sup>14</sup> Chris Piper and David E. Lewis, “Do Vacancies Hurt Federal Agency Performance,” June 24, 2022, Journal of Public Administration Research and Theory. Available at <https://academic.oup.com/jpart/article-abstract/33/2/313/6617662?redirectedFrom=fulltext>

<sup>15</sup> The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States (9/11 Report) (July 22, 2004). Available at <https://www.9-11commission.gov/report/911Report.pdf>



compared to 57% on the day of the attack in 2001. Although the percentage rose to 67% by the end of President Biden’s first year, we still fall short in addressing the 9/11 Commission’s concern.<sup>16</sup>

**The grueling confirmation process discourages qualified candidates from accepting a presidential appointment.** Serving the American people as a presidential appointee is a privilege, and it comes with the responsibility of public trust. It is appropriate that individuals nominated for these important positions are subject to the Senate’s review and scrutiny. Many former appointees have told us that serving the public in a presidential appointment was the toughest job they had ever had, but also the most rewarding.

However, the confirmation process as it works today is taking a toll on nominees, and on their families, which can discourage or prevent talented people from serving. Nominees must divulge personal information and subject their lives and families to public scrutiny. Many take leaves of absence from jobs or leave jobs altogether to avoid even the appearance of a conflict of interest, thus reducing their income; hire lawyers and accountants to ensure their paperwork is free from error; sell assets and take other steps to mitigate financial conflicts; and make plans to move their homes and families at personal expense – only to wait weeks, months or even longer, with no clear indication of when or if the Senate will consent to, or even consider, their nomination.

Taken together, the data on, and the consequences of, the current confirmation process point to an area that is ripe for reform.

### **Recommendations for Reform**

Outlined below are options to improve the process for presidential appointments while maintaining, and potentially strengthening, the Senate’s role in ensuring the qualifications of individuals selected to serve in the highest political positions in our government.

We’ll begin with some ideas that fall within the jurisdiction of the Rules Committee.

#### **1) Develop a “bundling” approach for the batching of some nominees for final vote.**

Even with a reduced number of appointees subject to Senate confirmation, those who remain subject to advice and consent will face gridlock. The norms of the Senate have changed dramatically and gone are the days when Senators would vote for a president’s qualified nominees out of respect for the office, even if they were of a different party or had strong policy disagreements with the nominee. The process is long and hard even for nominees who ultimately are confirmed by unanimous consent or with overwhelming support in the Senate. In light of the shift in norms, a

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<sup>16</sup> Partnership for Public Service, Center for Presidential Transition, “Joe Biden’s First Year in Office: Nominations and Confirmations,” Jan. 9. 2022. Available at <https://presidentialtransition.org/reports-publications/joe-bidens-first-year-in-office/>

shift in processes is not only reasonable but is necessary to make the confirmation process more manageable.

Senator Klobuchar has put forth a proposal that would allow the bundling of up to ten nominees from a committee to move to final vote.<sup>17</sup> This would allow a package of nominations to be put forth at once and voted on by majority vote, whereas now a package needs unanimous consent to move forward, meaning that a single Senator could block consideration of the package. The Partnership thinks this is a promising concept for consideration of executive branch nominations and potentially could be used for nominees on the Privileged Calendar and other categories of nominees.

## **2) Improve the Privileged Calendar and pursue other changes to Senate processes for executive branch nominations that could win broad bipartisan support.**

We know that discussion of any changes to Senate rules or processes has been difficult within the institution. A conversation on potential changes is needed to determine whether bipartisan agreement can be reached on improvements to the confirmation process. In addition to bundling, areas of discussion should include:

***The Privileged Calendar:*** One obvious opportunity for improvement is the Privileged Calendar, which was established to expedite the consideration of nominees to noncontroversial positions but instead, has made those positions harder to fill.<sup>18</sup> The Privileged process was an innovation created by the Senate in 2011 to streamline the consideration of nominees to nearly 300 positions. While committees still review paperwork and qualifications of these nominees, the privileged process allows the nominees to be placed on the Senate’s Executive Calendar unless a Senator requests referral to committee within ten session days of the completion of the nominee’s paperwork. Once on the Executive Calendar, they wait with all other nominees for a final vote, and with limited floor time, it is likely that higher-profile positions are prioritized. In fact, the Partnership’s 2022 research into these nominees shows that privileged nominees take longer to confirm now than they did before the privileged procedures were instituted, and privileged nominees continue to take longer to confirm than nominees subject to the regular confirmation process.<sup>19</sup>

The Senate should look for ways to create a more streamlined floor process and final vote for the privileged nominations – the bundling concept is promising here. Also, under the privileged process, any Senator can make a request for referral of a privileged nominee to committee. The Senate should raise the number of Senators it takes to refer a nominee to a committee and could also require that a request for referral come from a member of the committee of jurisdiction. Then,

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<sup>17</sup> [S. Res. 219](#), 118<sup>th</sup> Congress.

<sup>18</sup> [S. Res. 116](#), 112<sup>th</sup> Congress.

<sup>19</sup> Carter Hirschhorn, Partnership for Public Service, Center for Presidential Transition, “(Not so) privileged nomination calendar,” July 26, 2022. Available at <https://presidentialtransition.org/reports-publications/not-so-privileged-nomination-calendar/>

combined with these improvements, the Senate should add more positions to the list of nominees who go through the privileged process. And finally, as noted above, Congress should consider whether there are positions currently on the Privileged Calendar that could be converted to non-confirmed political appointments or career roles.

***The rule on returned nominations:*** The Senate should modernize its rule on returning nominations to the President, which dates back to 1868. Under Senate Rule XXXI, clause 6, nominations pending when the Senate adjourns sine die at the end of a session (1st or 2nd) or recesses for more than 30 days are returned to the President unless the Senate waives the rule by unanimous consent. Often, the return of a nomination has nothing to do with the qualifications of the nominee but results from delay over unrelated issues. Due to increasing confirmation delays, the number of returned nominations has increased significantly. Only seven nominations were returned in the first years of the W. Bush and Obama administration combined, while Trump and Biden had 85 and 118 nominations returned respectively. The return of the nominations places an additional burden on the Presidential Personnel Office, the Office of Government Ethics, agency ethics officers and the nominees, who in many cases must refresh financial disclosures. Re-nomination of those who have already been reported by committee also creates more unnecessary work for the committees. The Senate should revisit the rule and consider limiting its application to the end of the 2nd session and/or raising the number of Senators required to block waiver of the rule.

***Potential expedited procedures for early in a president's first term:*** Another option for the Senate could be to create special expectations or procedures for the first months or year of a presidential term. For example, Congress could revisit provisions of the Intelligence Reform and Terrorism Prevention Act of 2004, which included a sense of the Senate that administrations submit nominations for high-level national security positions, through the level of undersecretary, by Inauguration Day and encouraged the full Senate to vote on these positions within 30 days of nomination.<sup>20</sup> Congress could consider whether this expectation could be established for a broader set of national security positions. Also, given that any incoming president will face unique challenges—e.g., the economic crisis in 2009 or the pandemic in 2020—the Senate similarly should commit to the expedited consideration of all nominees identified by the incoming president as priorities and whose paperwork is submitted by Inauguration Day.

***Justifications for new statutorily-created presidential appointees:*** S. Res. 116, adopted by the Senate in 2011, provides that committees need to identify and justify the creation of new Senate-

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<sup>20</sup> Public Law No. 108-293, Sec. 7601. The IRPTA sense of the Senate is a variation on a recommendation of the 9/11 Commission. The Commission recommended that a president-elect should submit the nominations of the entire new national security team, through the level of under secretary of cabinet departments, not later than January 20, and that the Senate, in return, should adopt special rules requiring hearings and votes to confirm or reject national security nominees within 30 days of their submission. The 9/11 Commission Report, *supra* note 15, p. 422.

confirmed positions.<sup>21</sup> Our review of Senate-confirmed positions created since 2011 found scant evidence of these types of justifications in committee reports. The Rules Committee could play an important role in educating other committees on this obligation and should consider stronger mechanisms to enforce it. Creating a position with Senate-confirmed status may be the default approach; instead, committees should carefully consider whether a position needs to be subject to advice and consent. The Rules Committee also could ensure that there is a public report at the end of each session (or at the end of a Congress) on the total number of new Senate-confirmed positions created, so that Congress understands the new confirmation responsibilities being placed on both the presidency and the Senate.

***Other areas for Committee exploration:*** There are several additional potential reform areas that could be explored by the committee for additional discussion and research. Again, we know that discussions related to Senate processes—even processes not ensconced in the Senate Rules—are always delicate. We remain optimistic, though, that healthy conversations such as today’s hearing will lead to agreement on some changes that would make a real difference. These might include:

- Is it necessary to have both a cloture vote and a final vote on a nomination if the threshold is the same?
- Does there need to be an intervening day between the placement of a nomination on the Executive Calendar and consideration by the full Senate?<sup>22</sup>
- What other process changes could facilitate final Senate consideration, when vetting and consideration by the committee of jurisdiction have been conducted?

### **3) Reduce the number of positions subject to Senate confirmation.**

Procedural changes must be accompanied by a reduction in the number of positions subject to advice and consent. Improved processes will be of negligible benefit if the overall number of positions requiring Senate confirmation remains unmanageable.

I note that while the Presidential Appointment Efficiency and Streamlining Act, the last successful piece of legislation to reduce the number of Senate-confirmed positions, was referred to the Committee on Homeland Security and Governmental Affairs, the primary sponsors of the bill were the then-Chairman and Ranking Member of the Rules Committee, Senator Charles Schumer and Senator Lamar Alexander. The reduction of Senate-confirmed positions was paired with creation of the Privileged Calendar as an overall reform package.

Reducing the number of unnecessary confirmations would enhance, not undermine, the Senate’s advice and consent function by allowing the Senate to focus on the hundreds of high-level positions that warrant scrutiny due to their responsibilities and authorities. Positions converted to

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<sup>21</sup> S. Res. 116, 112th Congress. Sec. 4 of the resolution states that the report accompanying each bill or joint resolution of a public character reported by any committee shall contain an evaluation and justification made by such committee for the establishment in the measure being reported of any new position appointed by the president within an existing or new federal entity.

<sup>22</sup> Rule XXXI, clause 1.

presidential appointments not requiring Senate confirmation would be filled more efficiently, instead of positions remaining “vacant” while other unconfirmed appointees or career officials perform the duties of the position with little visibility to Congress. Congress would still have ample means to hold these presidential appointees accountable through its legislative, appropriations and oversight functions.

Several categories of nominees are ripe for consideration:

***Positions reporting to multiple other layers of Senate-confirmed positions:*** In many cases, a Senate-confirmed official reports up the chain to layers of other Senate-confirmed officials. For example, the Department of State has 26 positions four levels down. The Department of Defense has 17 positions five levels down.<sup>23</sup> In reviewing which positions should be subject to advice and consent, we recommend that the Senate start with the presumption that positions at the Assistant Secretary level or below—who typically report to multiple layers of Senate-confirmed officials—be presidential appointees but not subject to confirmation. This presumption could be overcome on a case-by-case basis by examining a position’s unique responsibilities and authorities, which the Senate may decide should be subject to advice and consent.<sup>24</sup>

***Part-time boards and commissions:*** The Senate should also examine the multitude of boards and commission positions across the federal government, many of which are advisory or ceremonial. Many of these positions could be converted to nonconfirmed roles or to positions appointed by an agency-confirmed leader. In many cases, boards or commissions may have close to a dozen or more Senate-confirmed positions. For example, the Advisory Board for Cuba Broadcasting is administratively inactive and has not had someone confirmed to the board since 2005. Our Center for Presidential Transition report, [Empty Seats](#), provides a full picture of vacancies on part-time boards and commissions.<sup>25</sup>

***Persistently vacant positions:*** The Senate also should examine appointee positions subject to advice and consent that have been chronically vacant to determine whether those positions should be converted to nonconfirmed status, career status, or even eliminated. For example, the deputy director of the National Science Foundation has been vacant since 2014. Our recent report

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<sup>23</sup> Partnership for Public Service, Center for Presidential Transition, “Layered Leadership: Examining How Political Appointments Stack Up at Federal Agencies,” Feb. 20, 2024. Available at <https://presidentialtransition.org/reports-publications/layered-leadership-examining-how-political-appointments-stack-up-at-federal-agencies/>

<sup>24</sup> Consistent with this approach, the 9/11 Commission recommended that positions in national security below Executive Level 3 (level of under secretary) not be subject to Senate confirmation. The 9/11 Commission report, *supra* note 15, p. 422.

<sup>25</sup> Partnership for Public Service, Center for Presidential Transition, “Empty Seats: Slow Confirmation Process Leaves Many Part-Time Boards and Commissions with Vacancies,” Dec. 20, 2023. Available at <https://presidentialtransition.org/reports-publications/empty-seats/>.

[Persistently Vacant](#) provides details on positions that have experienced lengthy and frequent vacancies.<sup>26</sup>

***Technical, management and operational roles that benefit from consistent leadership over time:***

The Partnership recommends that Congress consider whether these types of positions would be better filled by political appointments not subject to confirmation or career officials. Chief financial officers also should be candidates for these changes. Their duties provide consistent, apolitical services that involve long-term financial planning and technical expertise. The CFO positions also take longer than average to appoint and confirm, leaving widespread vacancies across government, another factor in favor of shifting to a different model for CFOs.

The Partnership also recommends that Senate committees consider whether some positions lend themselves to fixed terms with professional qualifications to promote continuity and competence and to reduce the administrative burden caused by frequent turnover. We also recommend that some positions, given their management or professional nature, be treated with the expectation that they should not turn over with a change in administration, just as Inspectors General are expected to stay on the job from one administration to the next.

Another model would be to establish a term that spans administrations, with clear expectations for performance. Senate-confirmed positions that would lend themselves to greater continuity may include positions that require deep technical or specialized expertise, oversee long-term strategic planning and provide consistent delivery of apolitical services. The line between policy development and operational responsibilities is extremely important to consider in determining which positions would be appropriate for these models intended to promote continuity of service. The Under Secretary for Health at the Department of Veterans Affairs is a good example, being responsible for administering a health care system with a budget of over \$100 billion. Despite the importance of this position, it has been vacant for a total of over seven years since mid-2009.

***Positions whose counterparts across the government have already been converted to non-confirmed positions:*** Congress at times has been inconsistent in whether it requires positions to be subject to confirmation based on their roles. For example, some agency Chief Information Officers are subject to confirmation; others are not. Some Assistant Secretaries for Legislative Affairs are subject to confirmation; some are not. Where Congress has seen fit to convert most of a certain category of positions, it likely makes sense to convert the rest of them.

Our report [Unconfirmed](#) provides further discussion of considerations Congress should undertake in deciding which positions should be removed from the requirement of Senate confirmation.<sup>27</sup>

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<sup>26</sup> Partnership for Public Service, Center for Presidential Transition, "Persistently Vacant: Critical federal leadership positions go unfilled for years," July 9, 2024. Available at <https://presidentialtransition.org/reports-publications/persistently-vacant-critical-federal-leadership-positions-go-unfilled-for-years/>

<sup>27</sup> Paul Hitlin and Carlos Galina, "Unconfirmed: Why reducing the number of senate-confirmed positions can make the government more effective," Partnership for Public Service, Center for Presidential Transition, Aug. 9, 2021. Available at <https://ourpublicservice.org/publications/unconfirmed/>

#### **4) Revisit the recommendations of the Working Group on Streamlining Paperwork for Executive Nominations.**

The Presidential Appointment Efficiency and Streamlining Act set up a bipartisan Working Group on Streamlining Paperwork for Executive Nominations. The Working Group produced two papers with recommendations on paperwork and background investigations.<sup>28</sup> Both the executive branch and Congress should examine the extent to which progress has been made on the recommendations of the two reports, which include: working to eliminate overlap and duplication among the various executive branch and Senate forms that a nominee must complete; creating a presumption for a 10-year background investigative scope for appointees subject to confirmation; and varying the paperwork and investigative scope depending on the nature of the position. While progress has been made on some of these fronts, much more could be done to implement the Working Group's recommendations.

The Partnership also strongly supports the Working Group's recommendation on the creation of a smart form, which would automatically populate appointee answers to comparable questions across multiple forms. A smart form would improve vetting by keeping the White House, transition teams, agencies, and appointees apprised of uncompleted tasks and what is necessary for appointees to move forward. As stressed by the Working Group, though, the efficiency of a smart form would depend on reducing duplicative or overlapping questions such as those that ask for similar information but in a slightly different way.

#### **5) Increase transparency into the appointments process while also strengthening accountability of Congress over vacancies by improving the Federal Vacancies Reform Act.**

In 2022, Congress passed the Periodically Listing Updates to Management Act (PLUM Act)<sup>29</sup> to provide basic transparency into who serves in political appointments or senior career positions across the federal government. The law requires a new, on-line version of the directory known as the Plum Book, which has been printed only every four years since it was first produced in 1952 for Dwight Eisenhower, who asked for a list of positions he could fill in his administration. Each Plum Book was filled with errors—missing positions, mislabeled appointments, obsolete titles and offices—that remain uncorrected once the Plum Book was published. To its credit, the Office of Personnel Management produced the first iteration of the new PLUM Act database in 2023, within the time frame required by the new law.

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<sup>28</sup> Working Group on Streamlining Paperwork for Executive Nominations, "Streamlining Paperwork for Executive Nominations," (Nov. 2012), available at [https://www.oge.gov/web/OGE.nsf/0/018B7C7EC03481F5852585B6005A1306/\\$FILE/243ff5ca6d384f6fb89728a57e65552f3.pdf](https://www.oge.gov/web/OGE.nsf/0/018B7C7EC03481F5852585B6005A1306/$FILE/243ff5ca6d384f6fb89728a57e65552f3.pdf); "Streamlining the Background Investigation Process for Executive Nominations," (May 2013), available at [https://www.oge.gov/web/OGE.nsf/0/3D7F6F69527C2F59852587E30066712F/\\$FILE/PAS%20Working%20Group%20Report%20on%20Background%20Investigations.pdf](https://www.oge.gov/web/OGE.nsf/0/3D7F6F69527C2F59852587E30066712F/$FILE/PAS%20Working%20Group%20Report%20on%20Background%20Investigations.pdf)

<sup>29</sup> Public Law No. 117-263, Title LIII, Subtitle B.

The PLUM Act, though, only calls for the information to be updated on an annual basis. Congress should provide resources for OPM to make further enhancements to the database so that it eventually can be a close-to-real time directory providing transparency into leadership roles, the organizational structure of agencies, vacancies, and acting officials. A timelier database would also be a better tool for presidential transition teams as they prepare to staff the administration.

Congress also should revisit the Federal Vacancies Reform Act (FVRA),<sup>30</sup> which governs when an official may temporarily serve in a position subject to Senate confirmation when the position becomes vacant. By limiting the categories of officials who can serve on an acting basis, and by placing time limits on the number of days an acting official can serve, the FVRA aims to encourage a president to nominate individuals to fill positions subject to advice and consent. Over the years, different provisions of the FVRA have proven to be ineffective or ambiguous.

Given widespread and lengthy vacancies in each modern presidency, Congress should revisit the terms of the Vacancies Act and its relationship to agency specific succession schemes. Major issues include (1) revisiting who is eligible to act on a temporary basis when a Senate-confirmed official departs a position; (2) clarifying the relationship between the FVRA and agency-specific statutes addressing authority to appoint an acting official or orders of succession; (3) more clearly delineating what responsibilities of the office can be delegated when the FVRA time limits run.

## **Conclusion**

Thank you again for holding this hearing and for exploring the current state of the confirmation process more deeply. As it stands, dysfunction in the process undermines the Senate's advice and consent role and prevents presidents from effectively filling leadership roles across government. It is an inefficient use of the Senate's precious time, discourages qualified individuals from accepting a presidential appointment and creates inefficiencies in government operations that taxpayers are funding. We appreciate the Rules Committee's role in being careful stewards of the Senate's rules and other processes, and we look forward to working with you to find ways to effectuate a more efficient confirmation process.

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<sup>30</sup> 5 U.S.C. §§ 3354-3349c.



## Appendix

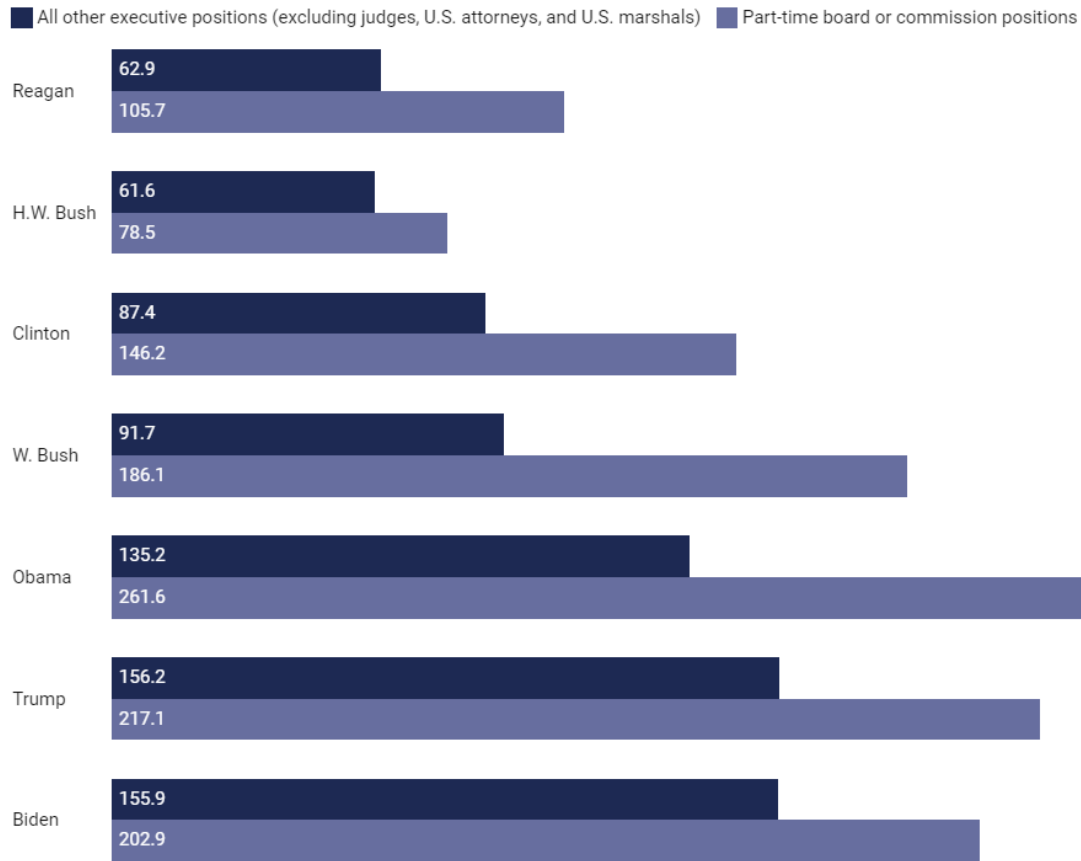
### ***Average Appointment Delays During the Biden Administration for Senate-Confirmed Positions in Five Cabinet Departments with the Most Layering<sup>31</sup>***

Layer	Time from inauguration to nomination (days)	Time from nomination to confirmation (days)	Total time to confirm (days)
Layer 1 (secretary)	0	18.6	18
Layer 2 (deputy secretary)	8	58.5	66.5
Layer 3 (undersecretaries, general counsel, certain directors and assistant secretaries)	190.4	162.7	349.7
Layer 4 (deputy undersecretaries, directors and assistant secretaries)	214.2	216.2	413
Layer 5 (directors and assistant secretaries)	253.1	186	404.5

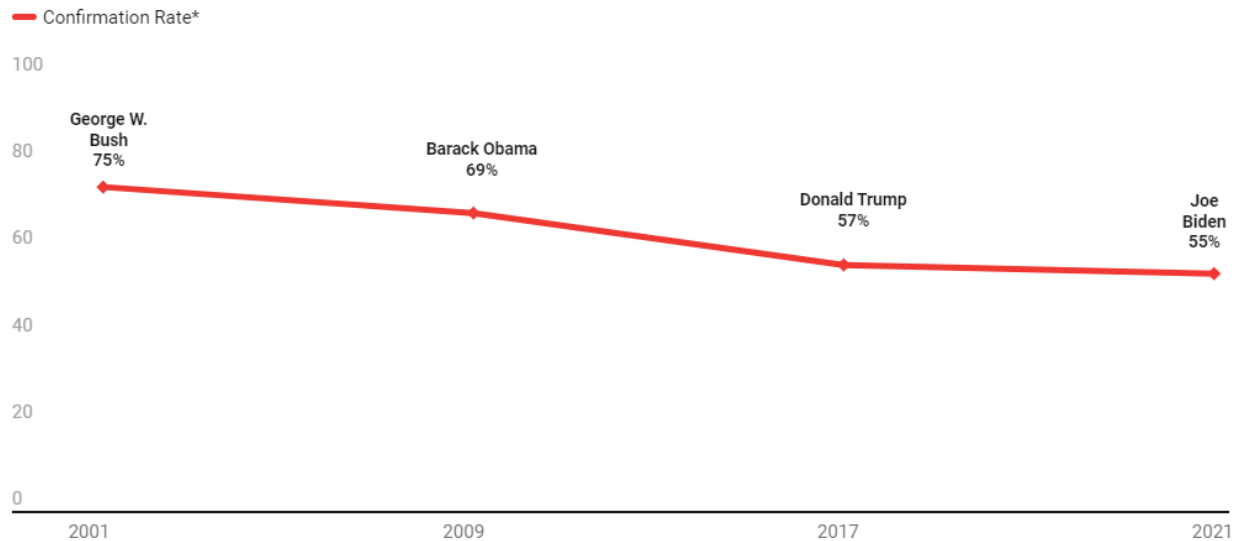
Note: Data updated through Feb. 7, 2024. Data from the Departments of Commerce, Defense, Energy, State and Treasury. Nomination delay is the time it takes the president from Inauguration Day to submit a nomination to the Senate. Confirmation delay is the time it takes the Senate to confirm a nominee from the time the president submitted the nomination. Time to confirmation is the time it takes from Inauguration Day to Senate confirmation.

<sup>31</sup> <https://presidentialtransition.org/reports-publications/layered-leadership-examining-how-political-appointments-stack-up-at-federal-agencies/>

**Average Days for the Senate to Confirm Presidential Nominee by Type of Position<sup>32</sup>**



**Percent of Nominations Confirmed in a President's First Year<sup>33</sup>**

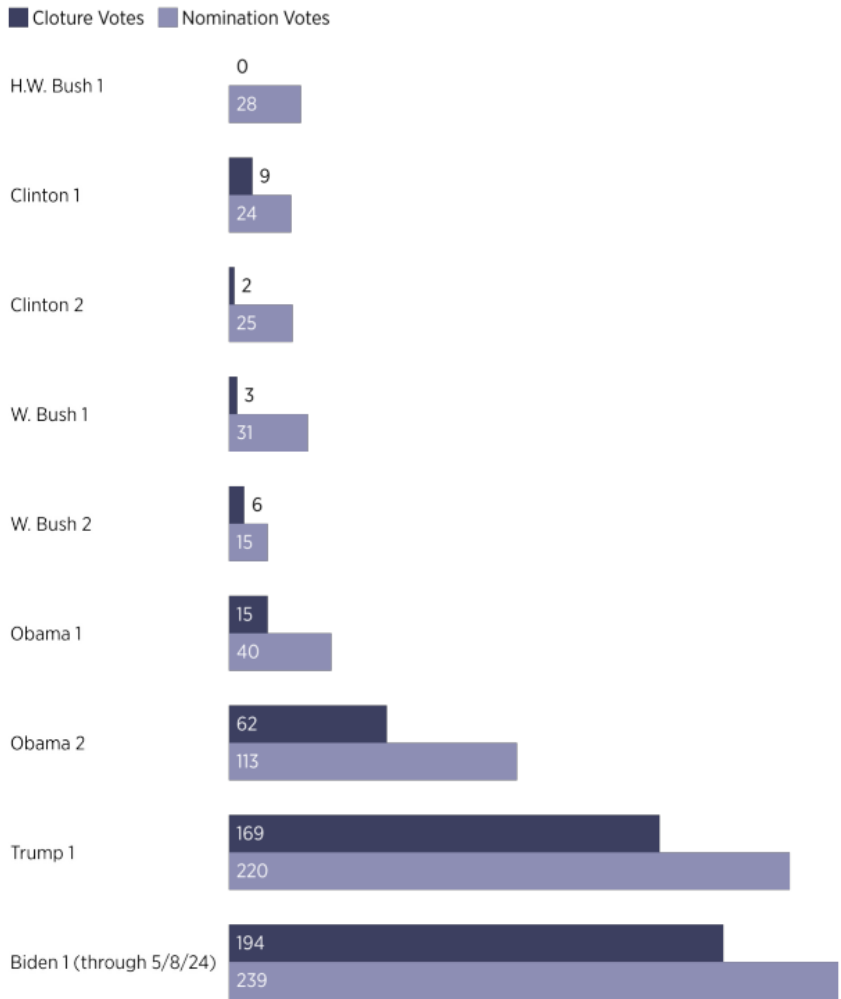


Note: Confirmation rate refers to the percentage of the first-year nominations confirmed in an administration's first year.

<sup>32</sup> <https://presidentialtransition.org/reports-publications/empty-seats/>

<sup>33</sup> <https://presidentialtransition.org/reports-publications/joe-bidens-first-year-in-office/>

**Number of Recorded Cloture and Nomination Votes on Executive Nominees Across Terms of Last Six Administrations**



Note: Data excludes military, U.S. marshal and U.S. attorney nominees.  
 Source: Partnership for Public Service analysis of data from govtrack.us.