



# **A Survivor's Guide for Presidential Nominees**

A complete source of information for navigating the nomination, clearance, and Senate confirmation process - as well as tips on compliance with ethics laws and financial disclosure rules.

**2013 Edition**

## Presidential Foreword and Acknowledgements



I am pleased to present, on behalf of the [National Academy of Public Administration](#), this fourth edition of the *Survivor's Guide for Presidential Nominees*. For many Presidential appointees, navigating the waters of a Senate confirmation can be daunting. It is our hope to have this serve as a resource for aspiring and confirmed Presidential appointees as they prepare for their roles in the administration.

As President Obama enters his second term, the Academy recognizes that even with a continuing Administration, hundreds of new appointees will be vetted, confirmed, and serve over the next four years. This revised version reflects changes in law and new Senate rules affecting Presidential nominees.

I want to thank the Academy staff for their hard work in updating this important resource, particularly Allison Fahrenkopf Brigati and Jonathan Wigginton, as well as Terri Hauser who contributed to updating the *Survivor's Guide*. Also, the Academy gratefully acknowledges the generous support of Academy Fellow, [Linda Springer](#), and the firm of [Ernst & Young, LLP](#) in making this updated version possible. In addition, the Academy recognizes and thanks all those who contributed to the past editions, upon which the current *Survivor's Guide* draws heavily.

A handwritten signature in black ink that reads "Dan G. Blair". The signature is written in a cursive, slightly stylized font.

Dan G. Blair  
President and CEO  
National Academy of Public Administration

## Executive Summary

It is an honor and a privilege to be asked to serve your country as a member of the President's administration. Before saying yes, however, ask yourself whether you want to face the demands and conflicts that come with a presidential appointment.

Many who have served in senior positions attest that these were the most exciting and rewarding days of their life, and whatever sacrifices they had to make, and waits they had to endure, were worth it.

That is what almost all say ... *after* their public service is over.

For now, you have more questions than answers. You want to find out what joining the administration would mean for you and your family, and your career after government. You want a guide to navigate the maze of financial and personal disclosure forms and other steps on the appointment and confirmation process.

That is where the *Survivor's Guide* comes in. This *Survivor's Guide* is intended to serve as a one-stop source of information every prospective nominee would need to know about taking one of the over 1,000 full-time presidential-appointed positions across the Executive Branch that requires Senate confirmation (PAS positions).

Some of the *Survivor Guide's* information may also prove useful to presidential appointees whose jobs do not require Senate confirmation. But the special focus of this book is on those nominees who must first pass the White House's muster, and then convince the U.S. Senate that they are worthy of high government office.

Washington can be a tough city; it can wreak havoc on family life with long, unforgiving hours. But it can also provide the experiences and memories of a lifetime, which explains why many who move to Washington never leave.

We hope the *Survivor's Guide* will help you with that decision – and make the path smoother if you answer the call to service.

## The Five P's

As you navigate your journey, let the five P's serve as your compass – Persistence, Patience, Preparation, Prudence, and Passion.

**Persistence** – If you have your eye on an administration job, you need to work aggressively through the transition team, the White House Office of Presidential Personnel, and the Cabinet Secretary to secure it. Tap any connection you have, no matter how indirect; it helps to have a powerful promoter. There are far more people seeking presidential appointments than there are plum positions available – you must be your own strongest advocate. Chapter 1 ([First Things First](#)) provides information on finding a job that is the right fit, how to get noticed, and what to expect if the White House calls.

**Patience** – Those who want to join a new or continuing presidential administration must be prepared to spend months in limbo, waiting for the White House to make up its mind, then waiting again to be confirmed. Chapter 2 ([People and Places Along the Way](#)) introduces you to the key officials you will be dealing with on your nomination and confirmation journey.

**Preparation** – If you are not nervous going into your confirmation hearing, you should be. Chapter 3 ([Navigating the Senate](#)) provides insider advice on preparing for and surviving your confirmation hearing, including meeting with committee members beforehand, answering committee questions, and making sure you are fully knowledgeable about your agency or department . . . and your own record.

**Prudence** – Washington is a fishbowl where everything you do or say is on display, all the more so in the era of electronic information and social media. As a prospective high-level appointee, your actions and words will be under the microscope. Chapter 4 ([Tread Carefully Before You Are Confirmed](#)) discusses the restrictions you will encounter in interacting with your agency between nomination and confirmation, and looks at the pros and cons of joining an administration before the Senate confirms you. Chapter 5 ([Dealing with the Media](#)) offers guidance for handling the press and explains why nominees are well advised to refrain from talking with the news media, either on background or on the record, before they are confirmed.

**Passion** – Anyone signing up to work for the President of the United States faces the nagging question of whether he or she really wants to put up with the hassles of government work. The *Survivor's Guide* will help prepare you to face the mountains of paperwork ([Chapter 8: Forms and Financial Disclosures](#)); ethics restrictions during and after your service ([Chapter 7: The Ethics Rules and Life After Government](#)); and even

uprooting your family ([Chapter 6: Moving to Washington](#)). But you alone can supply the passion every successful appointee must have – passion for the job you take on, passion for serving the president, and passion for making a difference for our country.

“Very few people ... get to serve at the highest levels of government. Public service is one of the highest callings in the land. You have an opportunity to make a positive impact on families, communities, states, and sometimes the world. And if you’re not at the end of your career, you can greatly enhance your marketability after you leave the Federal Government.”

- Bob Nash, former Director of the White House Office of Presidential Personnel in the Clinton Administration.

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## CHAPTER 1

### First Things First



The phone rings. It is the White House calling, or the Office of Presidential Personnel “We’re looking to fill a senior position in the administration, and we understand that you are one of most knowledgeable people in this field. Are you interested?”

You are honored and flattered. You may have been on pins and needles waiting for this call, or it may have come out of the blue. Either way, the President wants you to take a job important enough to require Senate confirmation.

But should you?

If the White House comes calling, or you are eager to secure a presidential nomination, it pays to first ask yourself some hard questions.

- Do I want this particular job?
- Am I right for it?
- What will it mean financially and personally?
- Where can I find help getting through the long and sometimes precarious nomination and confirmation process?

#### **Do I want this job?**

It is not easy to say “No” to the President of the United States. But no matter who is asking, take a hard look at the pros and cons of public service: If you cannot convince yourself, you may have difficulty convincing the White House or the Senate that you deserve it. These are all-consuming jobs.

The drawbacks include uprooting yourself and your family and subjecting yourself to intense public scrutiny. Any misstep in office can be unfairly magnified in the Washington fishbowl, potentially scarring your reputation. If there are hidden skeletons in your life – from unpaid taxes or debts to a padded résumé – they will be discovered. You must disclose them to the White House and be aware of the possibility that they may become



public. Even for sub-Cabinet positions that normally do not attract an intense spotlight, a nominee must be ready for the rough-and- tumble political life.

### ***“A Tough Skin”***

The stakes are highest for Cabinet officers, but every post that requires Senate confirmation comes with challenges. As Charles Jeffress, a former Occupational Safety and Health Administrator, put it, “Make sure you’ve got a tough skin.”

And be prepared to be knocked down a peg or two. Clay Johnson, former Assistant to the President for Presidential Personnel, warned, “You must remember the work you do while in service to our country is very important, but you are not.”

### ***Getting Noticed***

A few nominees come to their posts from the pinnacles of careers in business, academia, or government, like Harold Varmus, the Nobel Prize winner in medicine who revitalized the [National Institutes of Health](#), or Hilary Rodham Clinton, United States Senator, former First-Lady of the United States, and respected Secretary of State during President Obama’s first term. Most nominees already have distinguished résumés, but some may be looking toward government service as a career builder. If the job you really have your eye on is the one awaiting you *after* your government stint, you could be in for trouble.

Clay Johnson commented, “Some appointees want to ‘do,’ while others want to ‘be.’ Don’t go to Washington to ‘be’ this or that. Go to ‘do’ what you understand the President wants you to accomplish while you’re there. We need more ‘do’ and less ‘be.’”

Still, there are far more people seeking presidential appointments than there are positions available. You must be your own strongest advocate to land one of these plum positions.

If you have waited until after the election to contact the President-elect and his team, you may have waited too long. The odds favor those who have already made themselves indispensable, or at least known, to the winning candidate.

Bob Nash warned that if you wait until after the election to cold call the transition team, “you’re going to be behind the eight ball as it relates to someone else equally capable and competent who has been connected with the new administration. Usually the only exception is a highly-technical position with no competent inside-the-team applicants. An example is the Chairman of the [Nuclear Regulatory Commission](#).”





But do not give up. Instead, look to tap any connection you may have, no matter how indirect. Perhaps your Congressman is close to an incoming Cabinet Secretary, or the Washington lobbyist of your professional organization raised money for the President's campaign. "It's very embarrassing to ask everybody you know to make phone calls on your behalf," said Gregory Baer, a former Assistant Secretary of the Treasury, but job seekers must "be absolutely shameless about it."

Obviously, it helps to have a powerful advocate such as a Cabinet Secretary – but even that is no guarantee. Cabinet Secretaries usually don't get to choose who gets the other top posts in their departments.

### **Am I the right person for this position?**

It is hard to look in the mirror and frankly gauge your weaknesses as well as strengths. But before the White House passes judgment on you, take a close look at whether your managerial experiences match up well with the challenge at hand.

Examine what this government job entails as closely as the White House and others will be examining you. The Academy's [Political Appointee Project](#) is a good place to start: this website offers a wealth of information regarding the appointment process and the rigors and rewards of public service.

Among the resources available through this portal is the [Memos to National Leaders](#) series, a project launched by the Academy and the American Society of Public Administration ([ASPA](#)) to inform incoming leaders about the policy and management challenges facing our nation. The focused memoranda outline these challenges and recommend solutions, representing a consensus of the best-thinking by public management practitioners and researchers throughout the nation.

After every presidential election, Congress publishes the so-called [Plum Book](#) listing all the jobs that the President can fill. You may also browse the entire [U.S. Government Manual](#) online, which contains the names, titles, and phone numbers of senior officials and department heads across the government.

You might be interested in knowing where a particular position falls in the Executive Branch hierarchy and salary structure. To find out whether a position is classified as Executive Level I (Secretary rank), II (Deputy Secretary rank) III (Under Secretary rank), IV (Assistant Secretary rank) or V (Administrators, Directors, and Commissioners), you can



check out the [Plum Book](#), which shows what these jobs pay. The complete salary scale for Executive Schedule jobs appears on the [Office of Personnel Management](#) (OPM) website.

Some jobs and talents are transferable. Someone who knows how to work Capitol Hill could be the Assistant Secretary for Legislation for the [Department of Labor](#) just as well as for the Department of [Health and Human Services](#) (HHS). The same may hold true for public affairs and general counsel positions. But most senior presidential appointments demand specific skills and expertise. Be sure the proffered position is right for you. Especially at the outset of an administration, a candidate may be considered for a number of openings. When one vacancy is filled, other candidates may be shopped around to various Cabinet departments. Do not let yourself be shuffled around to the point where the job in question makes no sense for you. And do not be swayed by grandiose titles. Find out if there is real work to be done, and room to do it.

### ***Playing to Strengths***

You may know an agency's programs inside out and upside down. Does that mean you can run them? Some appointees are taken aback by the management demands of what they thought would be strictly policy jobs.

Hans Mark, a physicist and former Chancellor of the 15-campus University of Texas System who held top jobs at the Pentagon and [NASA](#), said presidential appointees should be accomplished in something more "than working the Washington political system." He suggested candidates ask themselves, "Have you managed a project? Have you run an organization, been a university President, run a company? Can you fire somebody? Can you do the things that a manager has to do?"

### ***Too Deeply Involved?***

Another issue to consider is whether you are so deeply involved in a particular field or an issue that it could tie your hands from making key decisions once confirmed.

If your law practice consists entirely of representing corporate clients in tax disputes with the [Internal Revenue Service](#) (IRS), you might be hamstrung by recusals if offered the job of IRS Commissioner. Likewise, if you came to the [Food and Drug Administration](#) (FDA) from the pharmaceutical industry, you might have to sit on the sidelines on major drug policy decisions. But many nominees work out sensible solutions on recusals with the U.S. [Office of Government Ethics](#) (OGE). The fact that your company or law firm was involved in



a certain matter does not necessarily disqualify you from handling the issue once you enter government.

### ***Learning About Agencies***

Weeks may pass between when the White House publicly announces the President's "intention" to nominate you to a senior post requiring Senate confirmation, and the actual submission of your nomination to the [Senate](#). When your name does go up to Capitol Hill as a nominee, you will face a new battery of forms and detailed policy questions from the Senate committee taking up the appointment. Here you can count on help from your department's legislative affairs staff in answering Senators' written questions. You may get a thick briefing book from your department, but you should also do your own homework and be prepared for a tough grilling, even if that does not happen.

There's a wealth of information at your fingertips, including:

- Government Accountability Office (GAO) reports about federal programs that you can download from the web – [www.gao.gov](http://www.gao.gov);
- Departmental websites, which include Inspector General reports about troubled programs;
- Department and agency performance reports, which must be filed annually with Congress by March 31;
- The Library of Congress' indispensable website – [thomas.loc.gov](http://thomas.loc.gov) – with links to Executive and Judicial as well as Legislative resources. Thomas, as the Library familiarly calls its portal, [has a webpage devoted to presidential nominations](#) where the public can find out details on every presidential nomination, broken down by state, date, and disposition;
- The [OpenCongress](#) and [GovTrack](#) websites, and, nonpartisan websites that seek to make government and legislation information more readily available to citizens;
- The [Federal Register](#), which is searchable and contains all rules and notices issued by each agency;
- The [Government Printing Office](#) (GPO) website, which links to each Senate committee;
- The White House website, [www.whitehouse.gov](http://www.whitehouse.gov);



- The [Congressional Research Service](#) (CRS), which conducts public policy research for members of Congress, their committees, and staffs. Not all are made public, much to the frustration of open government organizations. You can request CRS reports through your member of Congress, or search for them through federal depository libraries and other sources online; and
- The National Academy of Public Administration, “[Reports and Publications](#).”

For more information, see [Chapter 9, Resources](#).

### ***What Restrictions Will You Face on Post-Government Employment?***

As prestigious as a presidential appointment may be, it can have detrimental effects on your income. There are two issues to consider: salary and post-employment restrictions.

As a government employee, your salary is set by law. The Executive Schedule pay levels in 2013 were scheduled to include a 0.5 percent increase, but Congress froze salaries for the third consecutive year. The Executive Schedule is as follows:<sup>1</sup>

Level I	\$199,700
Level II	\$179,700
Level III	\$165,300
Level IV	\$155,500
Level V	\$145,700

Level I, is the Cabinet and positions with Cabinet rank. Level IV jobs include assistant secretaries and general counsels, and Level V jobs are the rung below that.

There are no stock options or bonuses for political appointees. Further, the [Stop Trading on Congressional Knowledge Act](#) (STOCK Act), signed into law on April 4, 2012, makes it clear that “insider trader” prohibitions apply to you as a public official.<sup>2</sup> By Executive

<sup>1</sup> Pursuant to Executive Order 13635, federal employees were scheduled to receive a 0.5% pay increase beginning in April 2013. At this writing, the House of Representatives has passed legislation (H.R. 273) that would continue, effective since 2010, to freeze federal pay, blocking the increase from taking effect.

<sup>2</sup> On April 15, 2013, President Obama signed into law [legislation](#) ensuring the provision requiring online posting of certain federal officials’ financial information not go into effect.



Order, Cabinet Secretaries, Deputy Secretaries, and certain other high-level officials cannot “receive any earned income for any outside employment or activity performed during that Presidential appointment,” nor may they accept gifts from lobbyists. The prohibition includes speaking fees. Other rules and restrictions apply to those below this level. Political appointees do qualify for health insurance and other job benefits.<sup>3</sup>

Ethics officials may also decide that you have to divest stocks to avoid a conflict-of-interest. But do not divest prematurely. You may qualify for a certificate of divestiture from OGE allowing you to postpone payments of capital gains taxes when you sell the stocks and put the proceeds into an open-end, diversified mutual fund or U.S. Treasury notes or bonds. Taxes will eventually be due when you sell those assets, but this can spare you a hefty tax bill when you may be between jobs and incurring the expenses of moving to Washington. OGE only grants these certificates, however, after it reviews your financial disclosure statement and decides that certain assets pose a genuine conflict-of-interest. It will not issue one retroactively if you have already sold the stock or property.

### ***Employment Restrictions***

As for the post-government employment restrictions, here is what federal law requires. Further details are on the [OGE website](#).<sup>4</sup>

The post-employment restrictions were extensively revised in July 2008 in the first major changes to those regulations since 1989.

- **Lifetime Ban:** An employee is prohibited from representing anyone else before the government on any matter in which he or she participated personally and substantially.

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<sup>3</sup> Although the Ethics in Government Act of 1978 has long required the filing of publically-available annual financial disclosures by senior officials in all three branches of the federal government, a recent amendment added to the [STOCK Act](#) would require online posting of Executive and Legislative branch officials’ financial forms, effective April 15, 2013, as well as the creation of a searchable, sortable, public database for these financial forms expected in October 2013. Concerns about the potential impact of the Act’s online posting prompted Congress to delay certain of these online posting requirements and to direct the Academy to “*examine the nature, scope, and degree of risk, including risk of harm to national security, law enforcement, or other Federal missions and risk of endangerment, including to personal safety and security, financial security (such as through identity theft), and privacy, of officers and employees and their family members, that may be posed by website and other publication of financial disclosure forms and associated personal information.*” This report is publicly available on the Academy website.

<sup>4</sup> A 2012 study conducted by the National Academy of Public Administration examines the impacts of these restrictions, specifically those affecting the [Department of Defense](#) ([www.napawash.org/publications-reports](http://www.napawash.org/publications-reports)).



- **Two-Year Ban:** An employee is prohibited for two years from representing another person or entity on a matter he or she supervised or was responsible for during the last year of government service.
- **One-Year Prohibition:** Those who participated in trade or treaty negotiations cannot represent, aid, or advise parties on such matters for one year.
- **“Cooling Off” Period:** Certain senior officials cannot represent anyone before their departments or agencies for a full year after leaving office. For certain very senior officials, the cooling off period is two years.
- **Additional Ban:** Cabinet Secretaries and other very senior officials cannot represent anyone before any federal department or agency – not just their own department – for one year post-employment.

In addition, under the STOCK Act, you will be required to report all negotiations or agreements for future private-sector employment within three days to your ethics officer. You may be required to recuse yourself from matters in which you have, or could appear to have, a financial conflict-of-interest as a result.

There are also restrictions on working as agents for foreign governments or parties. U.S. trade negotiators, for example, cannot work for foreign businesses. With the exception of the restrictions on working for foreign governments, the law does not bar you from working for anyone you wish after you leave Uncle Sam’s payroll, including companies that you may have regulated or otherwise dealt with. But it imposes certain restrictions. There are special additional restrictions for procurement officers.

The day after his Inauguration in 2009, President Barrack Obama signed [Executive Order 13490](#), which every appointee in the Obama Administration must sign. That pledge bans members of the Obama Administration from working on matters on which they lobbied for two years, or in the agencies they lobbied during the previous two years. Anyone who leaves the Obama Administration is prohibited from lobbying the administration. The Order also institutes a ban on gifts by lobbyists to members of the administration. Under certain circumstances, parts of the pledge can be waived. As of January 2013, 28 officials in the Obama Administration have received waivers.

Still, don’t assume that the restrictions will be an albatross for you personally. There are blanket exceptions to the restrictions if you work for a state or local government, a college or other not-for-profit organization. Most officials returning to academia, the corporate



world, medicine, the news media, and other walks of life will experience little, if any, impact on their work.

### **What Sort of Help Will I Need to Get Through the Nomination & Confirmation Process?**

You will need to tackle a pile of paperwork at the outset of the appointments process. Every nominee for posts requiring Senate confirmation must complete:

- The [Public Financial Disclosure Report \(SF-278\)](#) on income, assets, and liabilities;
- The [Questionnaire for National Security Positions \(SF-86\)](#) used for the background investigation and security clearance;
- The White House Personal Data Statement; and
- A separate background questionnaire required by the appropriate Senate committee.

In an attempt to simplify this morass, President Obama signed the [Presidential Appointment Efficiency and Streamlining Act of 2011](#) (P.L. 112-166). As a part of this legislation, a working group chaired by Lisa Brown of the [Office of Management and Budget](#) (OMB), was established to create “smart forms” that would eliminate the need for nominees to fill out identical forms for multiple inquiries. These smart forms, which are currently under development, would contain basic information like name and birthdate and would only have to be filled out once. They would then be shared by investigative parties.

As intimidating as the paperwork is, it is just one aspect of the vetting process. You will also be investigated by the [Federal Bureau of Investigation](#) (FBI) (and, in some cases, questioned by Senate committee investigators as well). Embarrassing details of your life could become public. Have you ever used alcohol excessively? Has anyone ever filed a sexual harassment case against you? Do you belong to a club that excludes women or minorities?

### ***The Paper Maze***

The majority of nominees successfully tackle the financial disclosure and other paperwork on their own. But if you have complex or extensive financial holdings, you will need help—and it may cost you thousands of dollars out of your own pocket.





The most difficult form is the [SF-278](#), the financial disclosure form for the Executive Branch, which you must update each year you stay in government. It is a complex form, demanding a level of detail of income, assets, and liabilities that few nominees have at their fingertips.

Nominees with considerable wealth, complicated business holdings or severance arrangements should hire a private attorney or accountant to assist with the process.

Regardless of the size of your portfolio, the important thing is to get these forms filled out expeditiously. If you let them gather dust on your desk or dresser, you are creating your own confirmation delay.

### ***Sticky Situations***

The financial disclosure form ([SF-278](#)) is reviewed by the White House Counsel's Office, by the department to which the nominee is headed, and by OGE prior to the confirmation hearing. OGE must certify the report before it is sent to the Senate. OGE lawyers will analyze the nominee's holdings, discuss potential conflicts, and propose remedies such as divestitures, recusals, setting up blind trusts and, in some instances, waivers. The nominee agrees in writing to carry out the recommended actions, usually within 90 days of being sworn in.

It is important that all the "i's" are dotted and "t's" crossed on these forms. Not to sound alarmist, but it is a felony to knowingly falsify or conceal a material fact on the SF-86 questionnaire—which is used by the FBI as the basis for your background investigation and for granting your national security clearance. The penalty is a fine up to \$10,000, five years in prison, or both. If the offense involves international or domestic terrorism, imprisonment can be as long as eight years.

### ***The Senate***

Once you are through with the White House vetting process, you still face the hurdle of Senate confirmation. James Baker, former head of the [National Oceanic and Atmospheric Administration](#), said, "It isn't merit alone that gets you a job. You have to do a campaign. You have to get all the interest groups that are involved in that subject to support you, or as many as you can, and as many important people whose names would be recognized. That is also critical. Other people will be pushing their names and you have to do that, too."





[Hannah Sistare](#), Academy Fellow and former Legislative Director for Senator Fred Thompson said, “Nominees should be as timely as possible in submitting information requested by the committee and staff. Be as accurate as possible because inaccuracies and mistakes can slow the process.”

Sistare added, “There will likely be a member of both the majority and minority committee staff assigned to handle your nomination. Establish a good relationship with these staff.”

Don’t assume the White House will expend much energy pushing through a nomination. Bob Nash said, “Nominees need to take a lot of initiative. They can’t just sit back and say, ‘OK tell me which way to turn? How high do I jump?’”

### ***When to Move***

Those who want to join the new administration must be prepared to spend months in limbo, waiting for the White House to make up its mind, then waiting to pass clearance and waiting again to be confirmed. This poses special difficulties for those not already gainfully employed inside the Beltway. You may be able to join your future department as a full-time consultant, (see [Chapter 4](#) for details) but you will have to decide when to move your family to Washington and where to live. These are problems that inside-the-Beltway rivals for the same job will not have to wrestle with. If you come on board as a full-time consultant before moving to Washington, your department may pay for your eventual move. Otherwise, the move is on you.

### ***A Fallback Strategy***

Once you go after a presidential appointment, prepare your fallback strategy.

There is no job security in a presidential appointment. “These jobs are all at the pleasure of the President and you can get into a political situation where you might have to leave,” said James Baker. “There is no guarantee of a four-year term. You must know what you would do if it were clear that you are in an untenable situation.



## Chapter 2

### People and Places Along the Way



These are the key offices and officials you will be dealing with on your nomination and confirmation journey:

- The President-elect's transition team;
- White House Office of Presidential Personnel and the Director of Presidential Personnel;
- Office of the Counsel to the President;
- White House Chief of Staff;
- U.S. Office of Government Ethics;
- Federal Bureau of Investigation;
- Internal Revenue Service;
- U.S. Office of Personnel Management;
- White House Office of Legislative Affairs;
- Departmental Office of Legislative Affairs;
- White House Executive Clerk;
- Executive Clerk of the Senate;
- Senators on the committee handling the nomination; and
- Other Senators and Members of the House

#### Stages of the Confirmation Process

To understand how each of these offices and officials will affect your future, consider the four principal stages of the confirmation process: selection, clearance, nomination, and confirmation.



### ***Stage One: Selection***

The White House Office of Presidential Personnel plays the lead role in preparing a list of candidates for each position that requires Senate confirmation. At the beginning of an administration, the office is customarily flooded with literally tens of thousands and even hundreds of thousands of résumés. But even then, there are positions of such importance to the success of the new administration, and to the country, that the White House will seek out candidates best-suited to those challenges.

Customarily, the Director of Presidential Personnel and the Cabinet Secretary or the departmental Chief of Staff will select and interview a list of finalists for the position. The Director of Presidential Personnel will recommend a top choice to the President. The candidate customarily makes a verbal agreement to accept the job before the President actually makes the offer.

Bob Nash said, “We got recommendations from everywhere – Senators, Congressmen, White House staff, interest groups, and associations.” Even before the formal background checks and vetting begins, the White House Personnel Office might make discreet calls to a prospective appointee’s associates, seeking a candid assessment without even revealing what job that person is being considered for. This will be done for a number of candidates until finally there is a short list. Next, the Director of Presidential Personnel forwards to the President through the White House Chief of Staff’s office a recommendation, with no more than a two-page description of the job, that candidate’s qualifications and why the Director is recommending him or her. Often times, the Director of Presidential Personnel will briefly describe the other candidates that were considered for this position. Ninety-nine times out of 100, Nash said, the President would concur.

Depending on the urgency of filling this President appointment, “Stage One” can take days, weeks or, as is common later in administrations, months.

### ***Stage Two: Clearance***

The clearance process – during which the [White House](#) carefully vets each prospective nominee before the President announces his intention to appoint him or her – can be long and frustrating. The prospective nominee, once he or she has completed all the disclosure forms, allowed the White House to check his or her tax records, and been subject to an [FBI](#) background check, may not know for weeks on end where things stand in the clearance process. The weeks can stretch into months if the person’s financial holdings are large and complicated, and if there are potential conflicts-of-interest that White House and lawyers



need to work out. Customarily, the White House says nothing to the other finalists for the job until the clearance process for the chosen one is complete.

All this while, said former Secretary of the Army Louis Caldera, “You’re in limbo. You can’t go ask people for business. You can’t develop new business in good conscience when in fact you’re thinking about leaving. So your whole life is in limbo.”

White House lawyers will comb through the battery of forms and questionnaires you are required to complete (see [Chapter 8: Forms and Financial Disclosures](#)). The Office of the Counsel to the President will forward your [SF-278](#), the financial disclosure form, to the ethics office at your future department, with a copy sent as well to [OGE](#). Ethics lawyers from all three offices will confer about whether any of your holdings pose potential conflicts-of-interest and, if so, what arrangements need to be made to avoid those conflicts. They will negotiate with you, if necessary, what steps you will have to take, such as divesting certain stocks, putting assets into a blind trust, or signing a recusal that restricts you from taking part in deciding certain matters. You will be required to sign an ethics agreement that the White House will forward to the Senate committee along with a letter from OGE certifying that you are in compliance with the conflict-of-interest laws and regulations.

### ***Stage Three: Nomination***

With the paperwork complete, the FBI background investigation finished, the financial forms scrubbed and any potential conflicts addressed, the Office of the Counsel to the President sends an email to the Director of Presidential Personnel stating that this person has been cleared. In most cases, that is all the email says. It does not elaborate on anything discovered in your background investigation or describe the arrangement agreed to by OGE. The Director sends a memorandum to the President through the Office of the Executive Clerk, which prepares a small nomination parchment with your name, home state, prospective position, and whom you will be replacing or succeeding. This document is placed in an envelope, sealed with wax and hand-delivered to the Senate while it is in session. You are now nominated.

For many jobs requiring Senate confirmation, the White House already may have issued a short press release some time previously announcing the President’s intention to nominate so-and-so to the position. These bare-bones announcements look like this:



The President intends to nominate David Kappos, of California, to be Under Secretary of Commerce for Intellectual Property and Director of the [United States Patent and Trademark Office](#). Mr. Kappos currently serves as Vice President and Assistant General Counsel for Intellectual Property Law at IBM. In addition, he served on the Board of Directors of the American Intellectual Property Law Association, the Intellectual Property Owners Association, and the International Intellectual Property Society. Mr. Kappos received his bachelor's degree from University of California, Davis, and his law degree from the University of California, Berkeley.

Kappos made his trip through the confirmation process almost at warp speed: he was nominated on June 18, 2009, and confirmed on August 7, 2009. About his quick trip through the process, Kappos said in an interview for [Paths to Making a Difference: Leading in Government](#), "I was confirmed at 11:00 a.m. on a Friday and I was supposed to start work on the following Monday. There was no time to plan on where to stay."

#### ***Stage Four: Confirmation***

The Executive Clerk of the Senate enrolls your nomination by entering your name in a log in the Senate computer system and assigning a number to the nomination. When President Bill Clinton nominated Alan Greenspan to a fourth term on Jan. 4, 2000, Executive Clerk Michelle Haynes wrote "BK PN729" by hand on the upper right corner of the nomination parchment. That meant Greenspan was the 729th presidential nominee (PN) in the 106th Congress, and the Senate Banking, Housing and Urban Affairs Committee (BK in Haynes' shorthand) had jurisdiction.

Haynes – like all the clerks in Congress – is a nonpolitical appointee. She still serves as Executive Clerk of the Senate, where her duties include preparing the Executive Calendar as well as preparing the record of actions taken by the Senate during executive sessions on nominations and treaties. The Executive Clerk's count of civilian nominees submitted in the 112th Congress (2011-12) was 744, including part-time positions.

If there is any doubt about which of the 17 Senate Committees that handle nominations has jurisdiction, the Executive Clerk confers with the Senate Parliamentarian and other staff before farming out the nomination. Usually there is no doubt.

Sometimes, although rarely, more than one committee claims jurisdiction. Nominations may be referred to more than one committee either jointly (at the same time, in the case of relatively equal jurisdiction) or sequentially (passing to a second committee after the committee of primary jurisdiction has acted).



In recent years (since the beginning of the 109<sup>th</sup> Congress in 2006), at least eight nominations have been jointly referred to two committees. They were: Under Secretary of Commerce for International Trade; Assistant Secretary of Commerce for Trade Promotion; Assistant Secretary of Energy for Environmental Management; Assistant Secretary of the Interior for Fish, Wildlife, and Parks; Assistant Secretary of Labor for Veterans' Employment and Training Service; Director of the Pension Benefit Guaranty Corporation, and the Director and Deputy Director of OMB.

In addition, the Senate has agreed, by unanimous consent, to sequential referral of the Assistant Secretary of the Army for Civil Works, the Assistant Attorney General for the National Security Division, the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement, and the Assistant Secretary of Homeland Security for the Transportation Security Administration, as well as most Inspector General positions.<sup>5</sup>

The committee of competent jurisdiction (or committees) gets copies of the nominee's SF-278 financial disclosure form, the SF-86 questionnaire and any signed ethics agreement. The committee then sends nominees its own battery of questions, asking them to bare their life and career all over again.

Apart from standard questions, the committee may pose a raft of detailed policy questions, crafted with advice from the [Government Accountability Office](#) (GAO), about key issues confronting that department. Normally you can count on help from the department in articulating responses to these puzzlers. [Hannah Sistare](#) said "Hearing questions will likely relate to your qualifications for the job for which you are being nominated. Hearing questions may also relate to issues the questioner may have with the President and his Administration." When asked about the nominee receiving guidance, Sistare said, "The Administration briefers should alert you to any controversies between the Administration and committee members."

In the weeks or months before the confirmation hearing, it is customary for nominees to make courtesy calls to each member of the committee, regardless of party affiliation, as well as touching base with your home-state Senators. The Congressional liaison at your department may help arrange these meetings. If not, schedule them yourself. Generally a representative from Legislative Affairs will accompany you. They may not delve beyond pleasantries, but some Senators may probe you about your views and qualifications, or

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<sup>5</sup> Davis, Christopher M. and Marsfield, Jerry W. Congressional Research Service. [Presidential Appointee Positions Requiring Senate Confirmation and Committees Handling Nominations](#). November 15, 2012.



bend your ear about a pet peeve with the department. These private meetings can be cordial or test your mettle. Many Senators with whom you meet probably won't show up for your hearing, but they will vote on your confirmation.

For an overwhelming majority of nominees, the hearing is blissfully uneventful. Often it is a joyous occasion for nominees and their families, listening to friendly Senators salute your accomplishments and willingness to serve the nation. Sometimes a home state Senator introduces the nominee to the committee.

Each committee follows its own rules for handling nominations. Normally, there is a specified interval of days between the confirmation hearing and the committee vote to send the nomination forward. The full Senate considers nominations in executive sessions, which are public and can occur at any time the Senate is in session. Nominations customarily are approved by voice vote, not by roll call.

When that vote finally is cast, the Senate Clerk notifies her counterpart at the White House that the Senate has advised and consented to the nomination. The White House Executive Clerk already will have secured an 18-by-24-inch appointment document with your name and title penned in calligraphic script. The Executive Clerk sends this formal document to the President for his signature – the step that makes the appointment official.

It is then returned to the Clerk's office, which pencils in the date and sends it to the [Department of State](#), where the Secretary of State counter signs it. Calligraphers finish their work and the [Great Seal of the United States](#) is affixed. A family heirloom has just been created. Five departments – Treasury, Defense, Justice, Commerce, and Interior—use their own seals and create their own commissioning documents. Everyone else's comes from State, stamped with its Great Seal.

Congratulations. You now are ready to be sworn in, placed on the payroll, and begin your official service.

Let us go back and revisit the gatekeepers along this route: the President-elect's transition team, the Office of Presidential Personnel, the Office of the Counsel to the President, OGE, and the Senate Committees.





### Gatekeepers: Transition Team

According to Clay Johnson, presidential candidates set up transition operations well before conventions and the election because they understand and are committed to govern effectively. This team will have their hands full on the day after, and for months after.

Once the election is over, in the case of a new President, the [General Services Administration](#) (GSA) will have office space and computers waiting for the incoming President-elect and his or her team. Squads of senior campaign officials, insiders, and trusted confidantes will be given the task of heading teams to prepare for the takeover of various departments. Congress and the Bush Administration made a special effort to ensure that there was a smooth transition in 2008 at the [Department of Homeland Security](#) and other departments responsible for protecting the country from terror threats. In anticipation of this first post 9/11 transition, Congress enacted a [law in 2004](#) allowing the candidates to submit before the election requests for security clearances for “prospective transition team members” who will need access to classified information to do their work.

Thousands of résumés will pour into the transition office, mostly by email, a shift in delivery methodology from the days of faxes and letter mail.

Generally, the Cabinet will be announced and very likely confirmed and sworn in, if not on Inauguration Day, then a day or two later. Other senior positions also are likely to be filled quickly, especially in the national security and economic arena. But beyond that, things usually move at a slower pace.

### Gatekeepers: White House Office of Presidential Personnel

Unless you have an extraordinarily close tie with the President or someone in the inner circle, the first and most important starting point to land a nomination is the White House Office of Presidential Personnel.

A President has over 1,000 full-time Executive Branch appointments to make that require Senate confirmation, and more than 2,000 other political appointments that do not require Senate approval.<sup>6</sup> The Director of Presidential Personnel helps identify candidates, narrows the field and makes the final recommendation to the President. The Office of the Counsel to the President and the [Department of Justice](#) do the same for judgeships.

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<sup>6</sup> Patterson, Bradley H. *To Serve the President*, (Brookings, 2008).





Your credentials, experience, political and party affiliation, ethnicity and where you live all affect your chance of getting a job. An incoming administration will likely be choosing from a stack of 125,000 or more résumés. According to [James Pfiffner](#), University Professor of Public Policy at George Mason University and Academy Fellow, Harry Truman had one person dealing with Presidential personnel, John Kennedy three, Richard Nixon 35 to 40, Ronald Reagan 100, and Bill Clinton more than 200 (during the presidential transition).

The official roster for the Office of Presidential Personnel is never that large. The White House borrows or “details” staff from departments and agencies to deal with the crush of work. The Office of the Counsel to the President does the same, pulling in lawyers from across the Executive Branch to vet the financial disclosure forms and other paperwork nominees must fill out. These lawyers may stay a month, three months, six months, or a year on the White House detail. The load is heaviest at the outset of an administration. Bob Nash had just 27 people working for him at the close of the Clinton Administration: a deputy, three associate directors, an information systems director, and 22 support staff. Each Associate Director had specialties and a portfolio of Cabinet and agency jobs to manage. Currently, Director of Presidential Personnel, Nancy D. Hogan, oversees a staff of 20-30.

Chase Untermeyer, who headed Presidential Personnel for President George H.W. Bush, said, “The greatest onslaught of names is right after the election. It’s only after that wave washes out that the Presidential Personnel office is able to do something more akin to corporate recruiting and actually go looking for people rather than having to pick and choose among the many whose names are flying in through the transom.”

Political appointees spend an average of two and a half years in their job, with 25 percent staying fewer than 18 months.<sup>7</sup> Thus, the presidential personnel process will continue throughout a President’s service. President Bush sent almost 1,800 civilian nominations to the Senate for confirmation during his second term.

### ***‘Where do I stand?’***

When you are in the clearance process as a candidate, you may have a tough time finding out from anyone inside the White House where things stand. Indeed, the White House itself may not know how far along the FBI is in the background check. “People call all the time and say, ‘Where am I? Where am I?’” recalled Nash. “Well, when you send something

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<sup>7</sup> Pfifner, James P. “[Presidential Appointments and Managing the Executive Branch](#).”



to the Internal Revenue Service and to the FBI, they don't call you and say, 'Oh, we're a third of the way through' or 'we're halfway through.' When they finish, they tell you."

Administrations sometimes put nominees on departmental payrolls as consultants after they have been formally nominated. But until you are confirmed by the Senate, you are prohibited from taking on decision-making authority and cannot begin acting in the position you have been nominated to fill.

There is an exception. The Constitution gives the President the power to temporarily fill vacancies when the Senate is in recess. Such "recess appointments" can last until the end of that two-year session of Congress. Until the recess appointment expires, they have the same authority to act and receive the same salary as a confirmed appointee.

President Bill Clinton made 139 recess appointments during his two terms, 95 to full-time positions. President George W. Bush made 171 recess appointments over eight years, 99 of which were to full-time positions. During his first three years, President Barack Obama made 32 recess appointments, all full-time positions.<sup>8</sup>

Henry Hogue of the CRS notes, "Presidents have also sometimes used the recess appointment power for political reasons. For example, recess appointments enable the President to temporarily install an appointee who probably would not be confirmed by the Senate."

At best, recess appointments are a fallback measure. A 2013 D.C. Circuit Court decision, [\*Noel Canning v. National Labor Relations Board\*](#), could all but end this practice, and significantly reduce future recess appointments. The Court held that the President's authority to make recess appointments was limited to intersession recesses (between sessions of Congress) and could only be used to fill vacancies that occurred after the recess began.

Some nominees are surprised to find that the Office of Presidential Personnel – which has been all important to their candidacy up to the point of nomination – recedes from the picture once the nomination is sent to the Senate. The White House Office of Legislative Affairs as well as the Legislative Affairs Office within each department are better positioned to help the nominees through confirmation, but the nominees should look to

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<sup>8</sup> Hogue, Henry B. Congressional Research Service. [Recess Appointments: Frequently Asked Questions](#). January 9, 2012.



their own devices as well. Even though not yet confirmed and commissioned, nominees at this point are entitled to the full support of their departments.

### **Gatekeepers: Office of the Counsel to the President**

When the Office of Presidential Personnel forwards your file to the Office of the Counsel to the President, lawyers, and paralegals there begin assembling a dossier on your life. They vet every form and scrap of information to make sure that nothing could prove an embarrassment to the President and that there are no ethical or legal barriers to your serving in the administration. It is the Office of the Counsel that sends the nominee the White House Personal Data Statement Questionnaire, with instructions to fill it out in 24 hours.

Those who have gone through this process all say the same thing: hold nothing back. Joel Klein, who headed the Justice Department's Antitrust Division before becoming the New York City schools chancellor, said, "As hard as it may be, it's absolutely critical ... to be thoroughly truthful. Whatever your indiscretion, whatever your mistakes in life, they are less of a problem for you if they are fully dealt with at the outset than if they are incompletely dealt with – even if that means ultimately you're not going to get the job. But the problems of being exposed and then having to be taken down on issues on which you weren't thoroughly forthcoming and for which the administration therefore owes you no defense – that is a real tragedy."

Presidential nominees for appointments to part-time Boards and Commissions must fill out the same forms and go through the same scrutiny as those who are being asked to run billion-dollar programs. Whether full-time or part-time, nominees need to move quickly to complete the disclosure forms and other paperwork, or else they are contributing to their own confirmation delay. "Get your part done," said Jacob Lew, current Secretary of Treasury, and former Director of OMB. "There should never be a question about whether the nominee is eager for the job or ready to do what it takes to get confirmed quickly."

### ***'Raw' Information from the FBI***

The White House Counsel's office – not the personnel office – gets the results of the FBI full-field background investigation. This includes raw information gathered by FBI agents who canvassed neighbors, relatives, business acquaintances, friends, and foes of the nominee. A former Senate Committee aide said the FBI "spits out whatever anybody says," including rumors and opinions. The FBI tries to sort fact from fiction – but everything goes into the background report.



### Gatekeepers: U.S. Office of Government Ethics

[OGE](#) originally was part of OPM, but the [1989 Ethics Reform Act](#) made it an independent agency. OGE reviews and certifies the financial disclosure statements of the 1,000-plus Presidential nominees who are subject to Senate confirmation.

Stephen Potts, a former Director of OGE said the agency looks not only for economic conflicts-of-interest, but also for family conflicts that may raise questions about an official's impartiality. Senior Executive Branch personnel may not personally handle any proposal, award or other matter in which they or an immediate family member or a business or organization they belong to has a financial interest. New conflicts can arise during a person's service in office and they must be disclosed and dealt with as they come up.

OGE has a staff of 70, one-quarter of whom work for its Office of General Counsel and Legal Policy. OGE has no prosecutorial powers itself, but works closely with the Office of Legal Counsel and the Public Integrity Section of the Department of Justice, both of which deal with criminal conflicts-of-interest cases. Routine ethics matters are handled in administrative proceedings by the departments and agencies themselves. Some of the criminal conflict-of-interest statutes date back to the Civil War, when Congress enacted tough measures to punish crooked Army suppliers.

### *Ethics Agreements*

Before certifying that a nominee is in compliance with the conflict-of-interest laws, OGE, departmental, and White House lawyers may require the nominee to sign an ethics agreement committing him or her to take "remedial" measures within 90 days of being sworn in to resolve a conflict. These steps may include recusal agreements, waivers, qualified trusts, and divestitures. Here is a brief description of each:

- **Recusal.** Nominees agree to disqualify themselves from participating in any discussion or decision on a matter that could affect their financial interests.
- **Waiver.** OGE may grant an individual a waiver from the conflict-of-interest laws when the holding in question is not substantial.
- **Trust.** A blind trust may be set up to remedy the potential conflict-of-interest. It must have an independent trustee approved by OGE. Blind trusts are seldom resorted to, except for nominees with considerable wealth or complicated holdings.



- **Certificate of Divestiture.** OGE is empowered to issue these certificates that permit appointees to defer paying capital gains taxes on assets sold to comply with the ethics laws. The certificate of divestiture must be obtained from OGE before the sale occurs.

OGE grants scores of certificates of divestiture each year, but approves only a handful of blind trusts: In 2012, it issued 85 certificates of divestiture. In some years, a third or more of nominees entered into ethics agreements. Each department or independent agency has its own ethics officers, who work closely with OGE. The ethics rules apply to all federal employees, not just presidential appointees.

### ***Exemptions***

OGE has issued across-the-board exemptions from the conflict-of-interest laws for “particular interests [which] are too remote or too inconsequential to affect the integrity of the services of employees to whom those exemptions apply.” These include exemptions, which can be found under [U.S.C. §208\(b\)\(2\)](#) for investments in diversified mutual funds, and stock holdings in individual companies that do not exceed \$5,000.

The next stop on the confirmation journey is the Senate.



## Chapter 3

### Navigating the Senate



The U.S. Senate has been called “the world’s greatest deliberative body.” It operates by its own rules and procedures, some of which have become enshrined more by practice and custom than by code. The Senate’s authority, however, to pass judgment on a President’s nominees comes directly from Article II, Section 2 of the [U.S. Constitution](#), which states:

“He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.”

As a CRS analyst has noted, “The Constitution gives the Senate a role in the Presidential appointments process, but the parameters of that role have never been clearly defined. The current process is regulated by a mixture of formal rules and informal customs, as well as by political interactions between the President and Senators.”<sup>9</sup>

The Senate usually confirms a President’s Cabinet nominees without fuss or delay. Cabinet appointments engender far less controversy and scrutiny than lifetime appointments to the Supreme Court. In the history of the Republic, only about 21 of the hundreds of men and women nominated to Cabinet jobs have failed to win Senate confirmation according to the Senate Historical Office.<sup>10</sup>

In nine cases, the President’s nominee was voted down, with the last such rebuff occurring in March 1989 when John Tower was rejected as Secretary of Defense in the first Bush Administration. Only 47 of his former colleagues voted for the Tower nomination. Eight days later, the Senate voted 92-0 to confirm Dick Cheney as Secretary of Defense.

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<sup>9</sup> Palmer, Betsy. Congressional Research Service. [“9/11 Commission Recommendations: The Senate Confirmation Process for Presidential Nominees.”](#) Updated March 23, 2005. RL32551

<sup>10</sup> Senate Historical Office. [“Nominations.”](#) Downloaded February 27, 2013.



In other cases, a controversial nominee is withdrawn without coming to a vote. Most recently, Caitlin Halligan, President Obama's nominee to the [U.S. Court of Appeals for the District of Columbia](#), withdrew her name from consideration after a Republican filibuster: the GOP claimed she would be an unfair advocate on certain issues. Tom Daschle, infamous for the anthrax scare in 2001, was President Obama's original nominee to be Secretary of HHS in 2009, but withdrew his nomination due to issues dealing with tax payment. This led to Kathleen Sebelius eventually being confirmed to the post later that year.

The Senate often approves a raft of Cabinet nominees on the day a new President takes the oath of office. Eleven members of President George W. Bush's Cabinet were confirmed on Jan. 20, 2001, before the Inaugural Parade had finished marching down Pennsylvania Avenue. In 2009, six of President Obama's cabinet nominees were approved by unanimous consent on Inauguration Day, with Hillary Rodham Clinton gaining confirmation as Secretary of State the following afternoon.

Action usually is not that swift for sub-Cabinet presidential nominees, but there, too, the odds that the Senate will approve the nomination are greatly in the nominees' favor.

***But the Senate does so only when it is good and ready.*** As the Senate Historical Office put it in an essay on nominations, "From its earliest years, the Senate has jealously guarded its power to review and approve or reject presidential appointees to executive and judicial branch posts."

The Senate in August 1789 rejected Benjamin Fishbourn, whom President George Washington had nominated to be the naval officer for the seaport of Savannah, Georgia. Fishbourn apparently had done something earlier in his career that earned him the enmity of Georgia Senator James Gunn. A chagrined Washington nominated someone else. The rejection, by secret ballot, was the first instance of "Senatorial courtesy," in which home state senators can promote or effectively thwart appointees to certain positions in their back yards.

"Though an unwritten tradition, Senatorial courtesy has been honored, to some degree or another, by most Presidents," according to the CRS.<sup>11</sup> This "courtesy" customarily extends now only to judicial nominations, but not Executive Branch appointments.<sup>12</sup> However,

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<sup>11</sup> Palmer, Betsy. Congressional Research Office. "[Evolution of the Senate's Role in the Nomination and Confirmation Process: A Brief History](#)." Updated March 29, 2005.

<sup>12</sup> Senate Historical Office. "[Nominations](#)." Downloaded February 27, 2013.





individual Senators can and do hold up votes on any Executive Branch nomination, sometimes without explanation.

Still, as another CRS report noted, “Approximately 99 percent of presidential appointees are confirmed routinely by the Senate. With tens of thousands of nominations each Congress, the Senate cannot possibly consider them all in detail.”<sup>13</sup>

For example, according to CRS, of the 964 nominations to Executive Branch positions that President Barack Obama submitted in the 111<sup>th</sup> Congress, 843 were eventually confirmed – an 87% success rate.<sup>14</sup>

But even with the odds in your favor, nominees must realize that once your name is sent to the Hill, your fate rests in the hands of the 100 U.S. Senators. As Chase Untermeyer observed, “Once you’re in the precincts of Capitol Hill, they are by far the supreme beings, not anybody from the Executive Branch.”

For those who chafed at long waits for the White House to make up its mind and then to get clearance, be prepared for a long and sometimes arbitrary wait for Senate confirmation. Weeks or months may pass before a hearing is scheduled. There is no Senate rule requiring that a nomination be acted upon in a fixed amount of time. Many, however, are confirmed in less time than it took for the White House to decide on a nominee, win clearance, and formally submit the name to the Senate.

The [9/11 Commission](#), in response to the 2001 terrorist attacks, recommended that the Senate “adopt special rules requiring hearings and votes to confirm or reject national security nominees within 30 days of their submission.” The legislation subsequently signed by President Bush, the [Intelligence Reform and Terrorism Prevention Act of 2004](#),<sup>15</sup> stopped short of mandating that deadline for action, but expressed “the sense of the Senate” that these nominees should get “expedited consideration” including “to the fullest extent possible” committee hearings and a full Senate vote within 30 days. That law also allowed the presidential candidates to submit names of transition team members and

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<sup>13</sup> Rybicki, Elizabeth. Congressional Research Service. “[Senate Consideration of Presidential Nominations: Committee and Floor Procedure](#).” RL31980. Updated January 21, 2013.

<sup>14</sup> Carey, Maeve P. Congressional Research Service. “[Presidential Appointments, the Senate’s Confirmation Process, and Changes Made in the 112<sup>th</sup> Congress](#).” R41872. October 9, 2012.

<sup>15</sup> General Services Administration. Intelligence Reform and Terrorism Prevention Act.





candidates for national security positions through the Under Secretary so that security clearances may be issued the day after the general election.

Still, for the 843 appointees confirmed for Executive department positions during the 111<sup>th</sup> Congress (2009-2010), an average of 92.1 days elapsed between nomination and confirmation (approximately three months). It took Senate committees about two months to consider and report the average nomination.<sup>16</sup>

During the 112<sup>th</sup> Congress, two measures were adopted with the intent of making the appointment process quicker and easier. The [Presidential Appointment Efficiency Act](#) (P.L. 112-166), removed the requirement for Senate confirmation for 163 appointee positions. In addition, the Senate adopted a standing order creating a new class of “privileged nominations.” These nominations are eligible for expedited consideration, bypassing formal committee action – although objection by a single Senator can send the nomination to committee.<sup>17</sup>

Often delays have little or nothing to do with the candidate’s credentials. They may have more to do with other business that the Senate deems more important or, as if often the case, policy quarrels that individual Senators may have with that particular department or even the entire administration.

When NASA scientist and former Director of the Johnson Space Flight Center Carolyn Huntoon was nominated to be Assistant Secretary of Energy, she was surprised during her courtesy calls how many questions Senators posed on Energy Department issues outside her area. “I was not fully prepared for the amount of departmental politics that my nomination would get caught in. I thought more people would care about environmental management,” said Huntoon.

Senate committees ask their own battery of questions to nominees about their personal and professional backgrounds. Often, they pose a separate list of detailed policy questions about issues on that department’s front burner. Here is a sample list of questions that may be posed by the Senate:<sup>18</sup>

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<sup>16</sup> Carey, Maeve P. and Hogue, Henry B. Congressional Research Service. “[Presidential Appointments and Nominations Data from the 111<sup>th</sup> and 112<sup>th</sup> Congresses](#).” May 20, 2011.

<sup>17</sup> Carey, Maeve P. Congressional Research Service. “[Presidential Appointments, the Senate’s Confirmation Process, and Changes Made in the 112<sup>th</sup> Congress](#).” October 9, 2012. R41872.

<sup>18</sup> Eliciting Nominees’ Views on Leadership and Management Issues, [GAO/GGD-00-174](#).



1. During your tenure in this appointed position, what key performance goals do you want to accomplish, and how would this Committee know whether you have accomplished them?
2. Describe two or three tangible examples of instances where your personal leadership skills were essential in getting your employees to accomplish a challenging goal. How could those leadership abilities help you in the position for which you have been nominated?
3. What characteristics do you believe a results-oriented leader and effective manager in the federal government must possess? Can you provide a self-assessment on each characteristic you cite?

Now that you are an official administration nominee, you can count on help from the department's legislative office with preparing responses to the policy questions. But whatever you do, make these responses your own. Don't just cut and paste what the department tells you into the Senate questionnaire.

Two Clinton nominees to the [Commerce Department](#) learned that lesson the hard way when they submitted identical, typed responses to the Senate Commerce Committee's policy questions in advance of their confirmation hearing. A committee aide erroneously had told them that would not be a problem. But they incurred the wrath of Senator John McCain (R-Arizona), then-Chairman of the Committee, who dressed the nominees down and abruptly cancelled the confirmation hearing. The contrite nominees later submitted separate, personalized responses.

Many nominees are surprised to learn how much their success in winning confirmation depends upon their own initiative. The Legislative Affairs office of your future department may furnish a briefing book on key issues facing the department and proffer advice on how to deal with individual Senators. But unless you are ticketed for a high-profile position, you will have to function as your own chief advocate.

[Linda Springer](#), former Director of OPM, said, "It can be mutually advantageous for the nominee to meet with members of Congress, as well as committee and professional staff. These initial visits are an expression of respect and can be the foundation for future working relationships."

The biggest challenge is to win the support of individual Senators, especially the 18 or so on the committee hearing your nomination. Reach out first to your home state Senators and ask them to introduce you at your confirmation hearing. It doesn't matter if they don't know you from Adam, said Bob Nash. "Go see them and say, 'I'm from your state. Here's



who I am. I'm capable. I'm qualified. I want to do public service. You don't know me, but I've followed your career, and I need your help.' They will help you. Senators always like to make friends," said Nash. Later on, when you are serving as Deputy Secretary or Assistant Secretary, don't be surprised when a call comes from that Senator asking for your help.

Above all, be circumspect. Raymond Kammer, former Director of the [National Institute of Standards and Technology](#) in the Commerce Department, offered this advice: "Say less, make no promises that you're not sure you can live with and remember: It's not against the law to say, 'I don't know.'"

Most confirmation hearings are more affable than acrimonious. Still, nominees should be deferential at all times, always address your interlocutors as "Senator" and remember that many Senators like to hear themselves talk even more than they are eager to hear a nominee's answers. Tom Korologos, a Republican lobbyist and former Ambassador to Belgium who has personally guided hundreds of nominees to confirmation, including over 100 Ambassadors, advises nominees to follow the 80-20 rule and let the Senators do 80 percent of the talking. If the balance tips the other way, he warns, the nomination is headed into trouble (Korologos authored a set of "commandments" for getting through the confirmation process, highlighted on the next page).

#### Korologos' Commandments

1. Model yourself after a bridegroom at a wedding. Be on time, stay out of the way, and keep your mouth shut.
2. Between the day of nomination and the day of confirmation, give no speeches, write no letters, make no public appearances. Senators do not like to read about grand plans of an unconfirmed nominee.
3. You may have been a brilliant success in the corporate world or some other field of endeavor, but the Senate expects you to be suitably humble and deferential, not cocky.
4. There is no subject on this Earth that the Senate is not free to probe. Be ready with polite and persuasive answers.
5. The purpose of the hearing is to get in and get out. Follow the 80-20 rule. If the Senators are talking 80 percent of the time and you are talking 20, you are winning. If it's 60 for them and 40 for you, you've got a problem. If it's 50-50, you're losing.
6. The Constitution stops at the hearing room door. There are no rules of evidence like in a trial. It's not going to be fair or fun. There will be hearsay questions, irrelevant questions and even some stupid questions. Be ready for all of them.

Senate committees often consider nominations in batches, which leaves even less time for any one nominee to fill, and that is usually a good thing.



### ***“You’ve Really Got a Hold on Me”***

Committees generally require at least two days to pass after a confirmation hearing before voting on a nomination. There is no limit under Senate rules on how long consideration of a nomination may last, and even a single Senator can delay a final vote for an extended period by using a “hold.”

A hold is a request by a Senator to his or her party leader to prevent or delay action on a nomination or a bill. CRS, in a 2011 report, said, “Today, holds are often used to stall action on legislation or nominations in order to extract concessions from other Senators or the Administration. They are also employed to ‘take hostages.’ Senators may delay bills or nominations, which they do not oppose, so they might gain political or procedural leverage to achieve other extraneous objectives.”<sup>19</sup>

Various attempts have been made to reform or eliminate the practice, especially ending the custom of allowing Senators to secretly place a “hold” on nominations. In the 112<sup>th</sup> Congress, the Senate adopted a standing rule directing that a Senator who places a hold on any matter, including a nomination, make public his or her objection to the matter.<sup>20</sup>

The Senate can, and does on occasion, move a matter that has a hold on it by invoking cloture, which requires a three-fifths majority (60 votes) and generally limits further consideration to 30 hours. A new Senate temporary standing order adopted at the start of the 113<sup>th</sup> Congress, states that post-cloture debate on nominations for all but the highest level Executive Branch positions is limited to eight hours.

Cloture votes were first allowed on nominations in 1949. Through 2010, cloture was sought on 89 nominations. Ultimately, 71 of these nominees were confirmed (including 41 nominations on which cloture was invoked) while 18 were rejected, withdrawn or never came to a final vote. Most of these cases involved judgeships (including President Lyndon Johnson’s failed effort to elevate Abe Fortas to Chief Justice of the Supreme Court in 1968), but there also have been cloture battles over nominees for surgeon general and

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<sup>19</sup> Oleszek, Walter J. Congressional Research Service. [“Proposals to Reform ‘Holds’ in the Senate.”](#) RL31685. Updated August 21, 2011.

<sup>20</sup> Rybicki, Elizabeth. Congressional Research Service. “Senate Consideration of Presidential Nominations: Committee and Floor Procedure.” January 31, 2013. RL31980.



the administrator of the Environmental Protection Agency.<sup>21</sup> Most recently, cloture was invoked successfully (71-27) on the nomination of Chuck Hagel to be Secretary of Defense at the start of President Barack Obama's second term; hours later, he was confirmed by a vote of 58-41.

But most nominees move through the Senate without a fight or major opposition. Unless there is something especially controversial about a nominee, most Senators subscribe to the view that a President is entitled to staff the Cabinet and sub-Cabinet with capable people who espouse the administration's political philosophy.

John Berry, Director of OPM, had a relatively smooth confirmation. In an interview for [\*Paths for Making a Difference: Leading in Government\*](#), Berry stated that, "I wanted all my team in place on the same day that I started. I worked with the White House in getting my team cleared. We were all sworn in on the same day. We wanted to get the team in place and get started."

Sooner or later, when the stars align in the right constellation, the Senate likely will approve your nomination, probably by voice vote.

Nominees should keep a low profile and avoid giving interviews or making speeches before they're confirmed. Senators want to hear from you in private and at your confirmation hearing before they start reading your views in the newspaper.

Don't forget to cultivate contacts with members of the House as well, especially those lawmakers who hold key positions on the authorizing and appropriations committees for your department. While they do not have a vote on nominations, House members still play a large role in determining what gets done in Washington. Most Representatives have keen political instincts kept sharp by having to seek re-election every two years instead of the six year terms afforded Senators. House Committee staff work closely with their Senate counterparts and may know ways to nudge your nomination along.

However, Martha N. Johnson, President Obama's nominee to the post of Administrator of [GSA](#) in April 2009, did not have such a smooth process. The Senate decided to hold Johnson's nomination for a total of 10 months as they debated with President Obama over a controversial GSA property in Kansas City, Missouri. While the hold on Johnson had

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<sup>21</sup> Beth, Richard S. and Palmer, Betsy. Congressional Research Service. "[Cloture Attempts on Nominations](#)." RL32878. Updated March 9, 2012.



nothing to do with her credentials, this example shows the extent to which the Senate can control a nomination.

Presidential nominees and other political appointments account for just a few thousand of the 50,000-plus appointments and promotions that the White House submits to Congress each year. The Senate usually considers most of these nonpolitical appointments in large bunches and approves them by unanimous consent without committee action. They include military promotions and new assignments and promotions in the Foreign Service, the Public Health Service and the National Oceanic Atmospheric Administration.

The Senate website, [www.senate.gov](http://www.senate.gov), offers excellent resources about nominations, including a link to a search tool on the [Library of Congress' THOMAS website](#), which includes information on every nomination submitted to the Senate since 1987.



## **Chapter 4**

### **Tread Carefully Before You Are Confirmed**



Some presidential appointees come straight off the campaign trail. Some first work as staff or volunteers in the transition. But most will be giving up their regular jobs – in elected offices, law firms, universities, businesses, non-profits, associations, and from many other walks of life – to answer the call to public service.

You may be placed on the payroll of your future department as an adviser or consultant pending confirmation. You cannot assume the duties of your future post on an acting basis, but you can perform other work while drawing a salary and other benefits, including health insurance.

There are pros and cons to getting an early start this way. You may already be working as a paid adviser or consultant when the President nominates you to a full-time job requiring Senate confirmation. Especially if you are coming to Washington from outside government, this may help you learn the ropes and prepare for your new responsibilities. But if you get thrust into the thick of policy discussions and debates inside a department, you could get yourself into hot water with the Senate committee considering your nomination. That is a situation that prudent nominees would do well to avoid.

But financial considerations – including health insurance – may enter into this.

If you have left your old job and moved to Washington, you may need to get a spot on the federal payroll as a consultant while you wait for clearance, nomination, and confirmation. You became a lame duck on your old job the minute you announced your intention to leave. If you are self-employed or providing professional services, you cannot very well take on new clients or responsibilities knowing full well that you are on your way out the door.

The President will tap some nominees for important sub-Cabinet jobs from among those already serving a rung or two lower in the same department or agency. Normally, when a PAS position becomes vacant, the job can be filled temporarily on an acting basis either by the top deputy or “first assistant,” or by another presidential appointee designated by the President, or by certain senior agency personnel designated by the President. There is a general 210-day limit on serving in an acting PAS capacity.





Nominees can qualify for health benefits, life insurance, and retirement coverage if the administration gives them a non-career or limited appointment to the Senior Executive Service (SES) while they await Senate confirmation. The limited emergency of limited term appointment must be designated as a “provisional appointment” on the SF-50, Notification of Personnel Action.<sup>22</sup>

Sometimes the acting official winds up being the one nominated by the White House. That happened to Joel Klein, who held the No. two position in the Antitrust Division at the Justice Department in 1997 when his boss, Anne Bingaman, resigned. Klein, who had also been a Deputy Counsel in the Clinton White House, said later, “Generally speaking, it was a mistake that had to be made under the circumstances. I would not recommend to anybody to take a position as acting, because inevitably you have to make some tough decisions that are going to make people unhappy with you.”

“There’s a lot of Senators and any one or two of them can make problems for you if you take specific actions that can be controversial, but which you have no ability to avoid if you’re acting,” said Klein, who led the antitrust case against Microsoft Corporation. Klein made the best of a ticklish situation and, in the end it worked out fine. After the White House sent up his nomination, Senators were “uniformly cordial, professional,” he said, and four months later they confirmed him, by an 88-12 vote.

William Apgar, a former Federal Housing Commissioner, said he was glad he signed on as a consultant at [HUD](#) well before he was nominated to the housing job. Colleagues on the faculty at Harvard University had counseled him not to leave Cambridge or quit his academic job prematurely. “Fortunately, I rejected” that advice, he said. “They said you shouldn’t pick up your family and move until you’ve been confirmed. But that would have been a mistake.” Apgar further stated:

“My sense is: just jump in the pond. It was six months into the second year of a second Presidential term when I got the call. It was going to take six or eight months before I got confirmed. Whether I was going to be successful depended on whether I could work well with (HUD Secretary) Andrew Cuomo. I literally didn’t know him, and he didn’t know me at all. The only way to figure out if I could work with him was to be here, so I came down, was an adviser, and all the things I’d heard about him turned out to be true: a really amazing fellow. And I’d have missed all that sitting up at Harvard waiting for the nomination process to take its course.”

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<sup>22</sup> Office of Personnel Management. “[Transition to a New Presidential Administration](#).” Appendix E.





Todd Dickinson, Under Secretary of Commerce for Patents until 2001, also came to that Department as a consultant and Senior Adviser to Secretary William Daley. He had been practicing law in Philadelphia. Dickinson recounted:

“My job was basically a political Senior Executive Service job. It gave me the opportunity to learn the system from the inside and begin to work on some of the issues that were important to me and important to the patent commissioner at the time who wanted to delegate them to me. But I didn’t have any formal responsibility ... It allowed me, coming from the private sector, to get my feet wet. There’s a lot to learn about the federal government that you don’t really know – how it’s organized, and how it’s managed.”

But Dickinson stressed: “Resist the temptation to act like you were in that job at all costs. There are eyes on you all the time ... You have to be extremely prudent how you operate in that kind of situation.”

[Linda Springer](#) warned that, “The nominee needs to avoid even the appearance of assuming duties of the office for which he or she is being considered.”

The experience of Jacques Gansler, former Under Secretary of Defense for Acquisition and Technology, offers more reason for caution. “Don’t give up your [old] job if you have one during this time,” he advised. Senators upset about White House plans to close some Army depots held up Gansler’s nomination for months. He said he felt like a hostage.

Mary Jo Bane, who was New York’s Social Services Commissioner before becoming an Assistant Secretary of HHS in the Clinton administration, pushed the envelope by taking part as a consultant in an HHS welfare reform task force before she was confirmed. “That was a little tricky, and I probably pushed the rules a little more than I should have,” she said. Bane’s advice: “Don’t go down there until you’re formally nominated. It’s a very difficult period.”

[OPM](#) – the main human resources arm for the federal government – addressed many of these issues in its Presidential Transition Guide to Federal Human Resources Management, published in June 2008. That guide states that: “Agencies may appoint experts and consultants to positions that primarily require performance of advisory services, rather than performance of operating functions, without regard to competitive civil service requirements [[5 U.S.C. §3109](#)].”<sup>23</sup> Agencies may use expert and consultant appointments for

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<sup>23</sup> 5 U.S.C. §3109: Employment of experts and consultants; temporary or intermittent.



individuals who have been nominated by the President, but not yet confirmed.” OPM’s guide further notes:

“Agencies may pay travel and transportation expenses for travel to and from pre-employment interviews to any individual they consider for employment. Travel expenses to attend confirmation hearings are considered part of the pre-employment interview process. Agencies may also pay the travel expenses of a new appointee from his or her place of residence at the time of selection or assignment to the duty station.” ([§301-75.100-103](#)).

While a President can fill about 800 full-time Executive Branch positions that require Senate confirmation, there are also several thousand so-called Schedule C political appointments that do not require Senate confirmation. Schedule C jobs can range from mid-level aides and assistants – even stenographers – to senior policy and management positions paid at the highest level of the civil service pay scale, a GS-15. In 2012, the GS-15 jobs in the Washington D.C. area started at \$123,758; Step 10 paid \$155,500. A 0.5% pay raise was scheduled to go into effect for 2013, beginning with the April 7 pay period, but this was disapproved by Congress and all salaries were once again frozen.

The President gets to fill up to 10 percent of the 8,328 Senior Executive Service (SES) positions, the elite rank for top executives in the civil service. The SES pay scale for 2012 ranged from \$119,554 to \$179,700.

During the first year of a new presidential administration, or following the appointment of a new agency head, OPM allows departments and agencies to fill “temporary transitional Schedule C positions” for up to 120 days with the possibility of an extension for 120 more days beyond that. The agency must certify that the position was not created solely or primarily for the purpose of detailing the incumbent to the White House and must identify the position and incumbent. Agencies also are allowed to make some SES appointments to limited, 36-month terms. They can terminate these appointments with one day’s notice.

All political appointees, from Cabinet secretaries to Schedule C’s, serve at the *pleasure of the President* and may be asked to resign or be dismissed at any time. “They are not covered by standard civil service removal procedures and generally have no right to appeal terminations, unless they are alleging that such action was taken for prohibited discriminatory reasons,” OPM said.

PAS appointments are effective on the date the President signs the commission document. However, the individual’s pay does not begin until the appointee is sworn in and signs the oath of office.



## Chapter 5

### Dealing with the Media



If you crave media attention, Washington is a great place to work – but watch what you wish for. Washington is awash in reporters, with close to 4,000 members of the media accredited by the Congressional galleries for the 112<sup>th</sup> Congress.

From newspapers and television networks, to newsletters and trade publications that are the bibles of their industries, the federal government and its activities are tracked by an army of correspondents, producers and, yes, even bloggers. What happens in Washington doesn't stay here. It is quickly reported and tweeted to the nation and the rest of the world. Washington is a fishbowl. If you want to make a name for yourself, this is the place to do it, although it may not be quite the name you had in mind.

Many nominees may have dealt with reporters in their previous jobs, in state capitals, the business world, the military, or Congress itself. But no matter how much experience they have, the intensity of the scrutiny in Washington often comes as a surprise. Much of the news that fills nightly telecasts and the front pages of major newspapers emanates from Washington. While their viewership and circulation numbers are declining, outlets are proliferating in the internet age. Make a gaffe at a news conference or at a Senate hearing, and you can be almost certain that it will fly through the Twitter-verse and the video will be on YouTube in a New York minute.

Covering the launch of a new administration, reporters often produce flattering profiles of the new folks in charge and their ambitious plans to bring change to their federal bailiwick. A few weeks or months later, the same reporters will be quick to chronicle the new team's every mistake. In the media spotlight, both beauty spots and blemishes get exaggerated.

During the 77-day transition between the election and Inauguration Day, the media will vie for scoops on who is getting what jobs. They will report who is in the running for the plum positions, from short lists leaked by insiders. Some of these names are trial balloons; others may be little more than flattery or educated guesswork.

A newspaper may carry a long account if it can break news of a senior appointment. But if the transition team or the White House announces it first to all, the same paper may not



write more than a sentence or two. Journalists prize their scoops, however small or short-lived.

Nominees are well advised to refrain from talking with the news media, either on background or on the record, before they are confirmed. They should not give interviews. If a reporter is preparing a profile, ask someone else to run interference for you on the press calls and, if appropriate, to provide biographical information or other details in the public domain.

Wayne Pines, public relations executive and former Spokesman for the Food and Drug Administration, said, “I see no benefit, in advance of being nominated, in speaking with the media. The only people who do that are those who feel their nomination is on the ropes and they have nothing to lose, or who are not going to take the job and want the visibility that goes with having been considered. If I asked someone I was considering for a job not to speak with the media, and he or she did, I would cross that person off my list.”

[Linda Springer](#) said using discretion during the process of being confirmed is always wise: “Sharing your confirmation status with others on a ‘need to know basis’ will reduce unhelpful communications and demonstrate that you are right for the job.”

Gene Gibbons, former Executive Editor of Stateline.org and a former White House correspondent for Reuters, cautioned against putting too much credence in short lists. “Names of people who don’t have a snowball’s chance of getting nominated are often leaked by the administration to make those folks feel good,” Gibbons said. “It’s political puffery without a price tag. Unless you’ve heard from the horse’s mouth that you’re a serious candidate for a job, you probably aren’t.”

And if you do speak with reporters “on background” or “off the record,” make sure both of you agree what those ground rules mean. Said Gibbons:

“‘Background,’ ‘Deep background’ and ‘Off-the-record’ mean different things to different folks. Strictly speaking, ‘on background’ means the information can be used but not attributed to a specific individual. ‘Deep background’ means the information can be used, but without attribution of any kind. Most serious news organizations won’t agree to this, because it effectively makes them vouch for the truthfulness of the information and puts their credibility at risk. ‘Off the record’ means the information can’t be used — period. But, practically speaking, there is no such thing as off the record — a journalist with a nugget of news will find some way to get it out.”



Don't make the mistake of thinking you can enhance your chances of being appointed and confirmed by courting press coverage. Brit Hume, the Fox News anchor and former ABC White House correspondent, said, "the chances of your saying just the right thing and having it come out sounding just the right way are sufficiently remote that it's not worth risking."

Beware of candid conversations even among friends; in Washington, walls have ears.

### ***Freedom of the Press***

As the press will gladly remind you, they have a job to do, and it is a job - like public service - of importance to democracy. Public officials at times may sympathize with the character in a Tom Stoppard play who says, "I'm with you on the free press. It's the newspapers I can't stand."

The First Amendment gives the media certain rights to do their job. And when news erupts, those obstreperous reporters and camera crews camped outside your office and sometimes on your lawn won't let you forget it.



## Chapter 6

### Moving to Washington



Those who live in Washington have a leg up in the nomination and confirmation process. They do not have to worry about relocating their family during what can be a long waiting period. As denizens, many are well acquainted with the White House, their prospective department or agency, and Congress. They may be able to keep their old job right up until confirmation and still devote a significant amount of time to preparing for their new responsibilities.

Those coming from elsewhere may hear conflicting advice about how to arrange their life and affairs in the interim. Some former nominees caution against selling the house back home, severing ties at work, and putting yourself and your family out on a financial limb until you are certain that this federal post is really going to come through. Others counsel those who really want to work in a new administration to sign on at the earliest opportunity, whether that means volunteering at first or accepting a temporary position as a consultant.

This chapter offers practical advice about life in Washington and the surrounding Maryland and Virginia suburbs. President John Kennedy once described Washington as “a city of Southern efficiency and Northern charm.”

Washington has no skyscrapers. Congress imposed a height limitation in 1910 and it has never seriously been challenged or rethought, although some tall buildings peek over the horizon from across the Potomac River in Arlington, Virginia.

Washington’s population actually peaked above 800,000 in 1950, but shrank as people moved out to the suburbs in the decades that followed. With an estimated 632,323 residents in the 2012 census, the District has seen significant population growth since 2010, a figure close to 5%, and boasts cultural and other amenities that few cities can match. As a region, the capital sits in the heart of the nation’s 7<sup>th</sup> largest metropolitan area, with almost 5.8 million residents and some of the highest family incomes and housing prices in the country.

The District, which hovered near bankruptcy in the mid-1990s, has undergone an economic and cultural renaissance. There are more than 80 theatre companies in the



region and dozens of museums, including 15 Smithsonian museums. In addition, residents and visitors enjoy over 234,000 acres of parkland.

Washington has six major league sports teams, welcoming professional baseball back to the nation's capital in 2005 after a 34-year hiatus, with a new park located on the Metro line and a short walk down South Capitol Street from the U.S. Capitol. While District residents get to vote for the President (the District has three electoral votes), the lack of a voting representative in Congress for the city of over 600,000 people remains a thorn of contention.

### **Getting Around**

With growth also has come some of the worst traffic congestion in the country. Washington's population doubles each weekday with the influx of commuters.

Washington is famously a city where traffic can be paralyzed by an inch or two of snow. The entire Metro system is known to shut down – sometimes for days on end – after a heavy snowstorm (portions run above ground). Some Washingtonians believe the city's reputation as a difficult place for strangers to drive around is exaggerated, although the traffic circles do take some getting used to.

The 106-mile Metro rail system extends into the suburbs and is the nation's second largest rail transit system, with the new Silver Line scheduled to extend to Tyson's Corner in Northern Virginia this year and eventually out to Loudoun County (just beyond Dulles Airport) when the full 26-mile extension is completed. Metro also runs the sixth largest bus network in the country. In addition the region has over 800 miles of bikeways.

But with long hours and parking available at work for a reasonable price, a great many of those nominated to high-level jobs will wind up driving to work, even if they come in early and leave late, taking their chances on rush hour traffic. The Beltway (I-495) is not the only artery known for congestion; so are I-66, I-95, and I-395 headed into the District from Virginia and I-95 and the Baltimore-Washington Parkway in Maryland, both of which connect Washington with Baltimore, and the I-270/70 corridor in Maryland leading out to Rockville, Gaithersburg, and Frederick. Although home buyers will pay a premium to live in Washington or such nearby suburbs as Chevy Chase, Bethesda, and Silver Spring, Maryland, and McLean, Arlington, and Alexandria, Virginia, that may make their commute more tolerable. Still, there are commuter rail lines running out to more distant suburbs. MARC trains run up to Baltimore and out to Frederick, Maryland, and even farther out to Harpers Ferry and Martinsburg, West Virginia. Additionally, the [Virginia Railway Express](#)





brings commuters in from Fredericksburg and Manassas, Virginia. The intrepid who are ready to dare the traffic can consider driving in from Virginia's horse country or the foothills of the Blue Ridge Mountains, or from Annapolis, Maryland, or communities along the Chesapeake Bay. Maryland's Prince George's County has experienced a boom in construction of both new homes and shopping centers. Washington itself has old, established neighborhoods such as Chevy Chase and Glover Park, and hip enclaves such as Adams Morgan and DuPont Circle. In much of the District, crime rates are low.

Washington is served by three major airports: Dulles Airport in Chantilly, Virginia, located 26 miles from downtown; Reagan National Airport, just 10 minutes from downtown and on the Metro, also in Virginia; and Baltimore/Washington International Thurgood Marshall Airport, 35 miles north of town and a hub for low-fare Southwest Airlines.

### **Not Just a Government Town**

Washington is a great place for spouses to find jobs. Unemployment for the region usually runs well below the national average. There is no rule against both spouses working in the same administration (although they generally do not work for or with one another). But there are also many jobs outside of government.

Washington is also home to thousands of trade, professional and non-profit associations and organizations, 192 diplomatic missions, the [World Bank](#), the [International Monetary Fund](#), and the [Organization of American States](#). The Greater Washington region is also a significant hub for aerospace, defense and intelligence, biotechnology, healthcare, information technology and communications, and hospitality businesses – and headquarters to 18 Fortune 500 companies.

### **Where to Live**

[The Tax Foundation](#) calculated that Maryland residents bear the heaviest tax burden in the region, paying 10.2 percent of income in state and local taxes, the tenth highest rate in the country. Virginians and residents of the District pay 9.3 percent, below the 9.7 percent national average, ranking 30<sup>th</sup> and 31<sup>st</sup>, respectively.

The local housing market did not escape the national downturn, although home prices remain relatively high and are rebounding in most parts of the region. In 2012, the median sales price for a single family home or townhouse was \$430,000 in the District of Columbia, \$418,000 in Montgomery County, Maryland, and \$458,000 in Fairfax County, Virginia. The Northern Virginia Association of Realtors reported that median sales prices





in Northern Virginia rose to \$425,000 in January 2013, up almost 12 percent from \$380,000 a year earlier.

For those who don't want to buy a house in Washington, there is a healthy market in rentals. State Department and military families who purchase homes during tours here often rent them while assigned overseas. Washington and the close-in suburbs also offer numerous choices of apartments. Stately apartment buildings line Connecticut Avenue up to the [National Zoo](#) and beyond, and there are well-kept apartment complexes in Arlington and the Maryland suburbs. Whether buying or renting, stay as close to a Metro stop as possible, even if you plan to drive to work. That will pay off not only in foul weather, but when you want to make a quick trip downtown for dinner or a show without the hassle of locating a parking space.

More than 100,000 people move in and out of the Washington area each year, so there are numerous real estate companies, movers, and others eager to get your business. There is a wealth of information available online, including a special section of the Washington Post's website, [www.washingtonpost.com](http://www.washingtonpost.com), devoted to newcomers. For a generation or more, the Post's Saturday real estate section has been the Bible for anyone looking to buy or sell a home in the area; now much of that information is available online from various different websites.

### **Schools and Colleges**

If you have children, schools will be a consideration. Despite recent attempts to shape up Washington's low-performing public schools, the District still remains one of the lowest-ranked school districts in the country. One-quarter of the District's pupils attend charter schools.

More affluent sections of the city tend to have stronger public schools. Washington's suburbs boast some of the nation's finest public schools, especially such magnets as Fairfax County's Thomas Jefferson High School for Science and Technology in Annandale, Virginia, and Montgomery Blair High School in Silver Spring, Maryland. Both the Fairfax County, Virginia, and Montgomery County, Maryland schools also are known for the strength of their special education programs.

There are excellent private schools in and around Washington, from Sidwell Friends – attended by the daughters of Presidents Jimmy Carter, Bill Clinton, and now Barack Obama – to Gonzaga, the Jesuit high school that produced William Bennett and Pat



Buchanan, to the Madeira School, alma mater of the late Katharine Graham and economist Alice Rivlin.

The District is home to several fine private universities – Georgetown, George Washington, American, Howard, and Catholic universities – and the University of the District of Columbia, a public university, as well as Gallaudet University for the Deaf. The University of Maryland, College Park, is the largest research university in the area, while George Mason University in Fairfax County has grown rapidly in size and stature. Many colleges and universities, including the University of Virginia and Virginia Tech, operate small satellites in the Virginia suburbs. Johns Hopkins University also offers advanced degrees at its Paul H. Nitze School of Advanced International Studies in downtown Washington. Virginia and Maryland are home to two of the nation’s top community colleges, Northern Virginia Community College and Montgomery College, in Rockville, Maryland; the District has no community college. A half dozen seminaries and theology schools are located in the area, including Washington Theological Union and the Virginia Theological Seminary.

**Life in Washington** Once you find an apartment, condo, or house, and settle into a routine, you will probably come to see Washington as not just the city of marble monuments, but eminently livable as well. Politics can be a contact sport, and political appointees are considered fair targets by some. But even those who deride life “inside the Beltway” have to admit: Washington is one of the world’s most culturally rich and fascinating cities. No matter how hard or long the work gets in the seat of government, most consider it a privilege to live here.



## Chapter 7

### The Ethics Rules and Life After Government



Donald C. Alexander was a tax lawyer in Cincinnati when President Richard Nixon summoned him to Washington to serve as Commissioner of the Internal Revenue Service in 1973. When he stepped down after four challenging years, he knew he did not want to return to Ohio but didn't feel comfortable hanging out his shingle in Washington – at least not right away. He did not want to be viewed as trying to cash in on his public service. “So I went to New York and served out my purgatory period for two years. I had a personal rule,” he recalled. “I just plain went to New York and did wills and things like that.”

Alexander's solution—self-imposed exile before returning to Washington to practice law—was above and beyond the restrictions that federal ethics rules impose on ex-senior officials. Ex-officials generally are free to work for anyone they choose after government, but there may be some strings attached if that work brings them into contact with their former agency.

Some will barely notice these strings. If you are returning to a college faculty or working for a company that is not a government contractor, the restrictions may be imperceptible and have no impact on your ability to earn a living. But if you are returning to or taking a job that deals regularly with the agency you helped run, the restrictions may be an encumbrance, at least for the first year or two.

Post-government employment restrictions prohibit former senior federal employees from engaging in such activities as lobbying for a specified period. There is a two-year “cooling-off” period for certain high-level officials during which they may not communicate with or appear before their former agencies on behalf of a client or anyone else. This cooling-off period used to be one year, but Congress lengthened it to two years in 2007. It does not apply if the former Cabinet Secretary or Deputy Secretary is acting on behalf of a candidate or political party, or as an elected state or local official, or acting on behalf of the United States.

While there have been conflict-of-interest rules on the books since 1872, only in modern times did Congress make violations of the post-employment restrictions a criminal matter. OGE published a final rule on the post-employment conflict-of-interest regulations in the [June 25, 2008, Federal Register](#).



Two days after his Inauguration in 1993, President Bill Clinton issued an Executive Order imposing on his senior appointees a five-year cooling-off period from dealing with their former agencies. The five-year restriction was criticized as overly onerous by some groups promoting public service, and Clinton revoked it by another Executive Order issued in December 2000 in the final weeks of his second term. The Obama Administration has an Ethics Pledge that all presidential appointees must sign, committing to the two-year cooling off period. Further, any appointee who leaves the Obama Administration is prohibited from lobbying the administration.

In addition to not being allowed to go before their former agency, those who held “very senior” posts may not communicate with or appear before other high-level executive branch officials during that first year. The “very senior” officials are Cabinet officers and Deputy Secretaries on the Executive I and II pay levels. Senior officials include those on Executive Pay levels III, IV, and V.

[OGE](#), in its June 2008 final rule on post-employment restrictions, offered dozens of examples of how the regulations affect not just Presidential appointees but others who worked for the federal government. “The former Attorney General may not contact the Assistant Attorney General of the Antitrust Division on behalf of a professional sports league in support of a proposed exemption from certain laws, nor may he contact the Secretary of Labor. He may, however, speak directly to the President or Vice President concerning the issue,” it said. Likewise, a former Secretary of Labor may not represent another person in a meeting with the current Secretary of Transportation to discuss a proposed regulation on highway safety standards.”

The conflict-of-interest laws, which date back to 1962, permanently prohibit former federal employees from “switching sides” and representing a private company or organization before any federal agency on matters that they personally and “substantially” handled while working for the government. This ban does not prevent a former senior official from giving advice behind the scenes to a party in a dispute with his or her former agency.

For two years after leaving government service, former officials may not represent their new employer before their former agency on matters that were pending under their official responsibility in their final year of service.

Ex-officials may not lobby for nor represent a foreign government before any U.S. official or agency for one year after their service ends. Those who participated in an ongoing trade



or treaty negotiation face additional restrictions; so do those who were involved in procurements or contract administration.

OGE has additional details on these [post-government restrictions](#), including links to the primary conflict of interest statute: [18 U.S.C. §207](#), and especially [5 C.F.R. 2641](#).

The Ethics Reform Act of 1989 made major changes to the original law. Congress has made minor changes a dozen other times in efforts to avoid embarrassment over what some regard as a “revolving door” between lobbyists and those in the upper echelons of government.

“None of its provisions bars any individual, regardless of rank or position, from accepting employment with any private or public employer after Government service. Section 207 only prohibits former employees from engaging in certain activities on behalf of persons or entities other than the United States, whether or not done for compensation,” OGE emphasized in a 2006 report to Congress.

The OGE concedes that Section 207 is very complex. It now includes seven different prohibitions applicable to executive branch employees, and they vary by what authority the official exercised and how much he or she was paid.

“Nevertheless, the statute’s complexity creates few real practical problems for the majority of employees since the average executive branch employee is affected by only one restriction in Section 207: the lifetime ban ... with regard to certain matters in which the individual participated personally and substantially,” OGE said.

There are also do’s and don’ts about searching for a job while still on the federal payroll. Most are common sense. Do not ask an assistant to type or photocopy your résumé, for example, and do not conduct your search when you are supposed to be doing your government job. You must avoid dealing with certain issues if you are talking with a company or industry that has a stake in your agency’s decisions and policies. If your work involves procurement, you may have to file a written report about any job overtures, even if they were unsolicited and you have no intention of pursuing them.

In addition, ex-officials can be fined up to \$50,000 per violation and sent to prison for five years for willful violations of the post-employment restrictions. They can also be forced to cough up any earnings from an illegal representation of some other party in a dispute with the government. Lesser violations are handled administratively by the agencies involved; penalties may include doubling the length of these restrictions on post-government



employment. Some agencies expect restricted ex-employees to report on their post-employment activities. And most recently, the STOCK Act requires senior officials to report all negotiations or agreements for future private-sector employment within three days to the agency ethics officer – and be recused from matters in which there is, or could appear to be, a financial conflict of interest as a result.

Some thoughtful people inside and outside government worry that these rules make it harder for Presidents to convince talented people to accept the call of public service. Hans Mark, who served as the Pentagon's Director of Defense Research and Engineering in the Clinton administration, said, "If I weren't 70 years old, I wouldn't have taken this job because it would have restricted me from doing things in the future that I wanted to do. Twenty years ago, when I was Under Secretary and then Secretary of the Air Force, those restrictions weren't there, so I could go back out and do things, and I didn't lose anything. But today, the only people who can get through without a problem are members of the Congressional staffs. That's why you have a preponderance of them in these executive positions. And I don't think that's a good thing. Many have never managed a project or run a large organization. There are now lifetime prohibitions against taking certain jobs. That's nuts."

For those entirely new to federal service, the ethics rules may seem particularly complex and challenging, and the post-employment restrictions may give nominees pause about accepting a presidential appointment. But they are just part of the larger demands they will face in accepting public service and the rigorous ethical standards that are required.

Don't feel you have to become the expert. As a presidential appointee, you will receive regular training in ethics rules. And every Cabinet department has an Ethics Officer, so, when in doubt, ask.

OGE Director Robert I. Cusick, speaking in September 2008 at his agency's annual conference for Ethics Officers from across the Executive Branch, acknowledged that it is a tall challenge to bring a new administration's appointees up to speed on the ethics rules and regulations. This was part of [his message](#) to the ethics officers:

"All of the ethics training you have provided to senior leaders will leave with them. You must start over with new leaders who may have little or no previous government experience. All of the financial disclosure work you did with senior leaders will end soon and must be restarted from scratch. You must emphasize the necessity and importance of establishing a strong ethical culture -- not just in words but in deeds -- to your new leadership. You must help them understand the importance of accurate and complete financial



disclosure, and the transparency it produces, because new people may be resistant to it ... New leaders may have no experience in running a large department or agency. They may come from the private sector or from academia and have held very different leadership positions. Many new leaders will not be accustomed to the intense oversight focused on them by the media, by Congress and by non-governmental organizations ... Many new leaders will not be familiar with federal laws and regulations which both authorize their actions and constrain their discretion. Simply accomplishing something may not be as easy as they expect.”

Cusick warned that “brigades” of lobbyists:

“Will want to advise, curry favor, establish social relationships, create the appearance of having influence, and position themselves as appearing to be close to the new leaders ... Outside the government, fancy meals, expensive sports tickets, the use of one’s positional influence, the blurry line between business and social engagements, the opportunities to make money with whispered information are common. A very intelligent new leader uninformed about government ethics principles can be very susceptible to influences that were thought previously to be a legitimate benefit of his or her position ... Your advice to new leaders must come early and be delivered with great emphasis.”

### **A Strength of the American System**

If you feel anxious about these rules and restrictions, remember this: the movement of top executives, lawyers, professors, soldiers, and others from business, academia, the military, and other walks of life into senior appointments, and their return afterwards to the private sector or other public duties is one of the strengths of the American system, not a liability. It brings fresh blood and fresh ideas into government. It mirrors what the Founding Fathers envisioned for the nation’s elected representatives, with private citizens taking time away from duties back home to help lead the nation. Eugene Ludwig, former Comptroller of the Currency, said, “George Washington’s great gift to America is that after two terms he decided, ‘Well, it’s time. I’ve had enough. It’s time to go home.’ He set a standard for everybody ... But keeping that revolving door going is very, very important.”





## Chapter 8

### Forms and Financial Disclosures



Many big events in life, from applying to college to buying a house, are layered with mountains of paperwork. When you sign up to work for the President of the United States, you're headed into the Alps.

Those hoping to join the Barack Obama Administration will find forms flying at them from every direction - with the longest coming from the [White House](#), [OGE](#), [OPM](#), and the [U.S. Senate](#). Nominees must consent to an FBI background check, give their fingerprints, and let the White House check their tax and medical records.

They have to fill out a complicated financial disclosure form that makes what they own and owe a public record. They must reveal things about health and fitness (moral and otherwise) that would violate privacy laws if asked in other job interviews. FBI agents will knock on neighbors' doors, gathering facts and gossip. It is a gauntlet that everyone must run if they wish to land a position of significance in a presidential administration. Fortunately, much of this can be done online these days. This chapter offers a hand to those intimidated by just the thought of all these forms.

#### White House Personal Data Statement

Each White House asks prospective nominees a battery of questions designed to spare the President any scandal or embarrassment about whom they place into important jobs. White House lawyers, not Torquemada, put together these questions, but nominees may feel a bit like they have fallen into the hands of the Inquisition. The White House Personal Data Statement (PDS) probes nominees about their background, health, professional life, financial and personal activities, and proclivities - including things people might like to forget or have overlooked. You will be asked about foreign travel and business, dealings with the government, your credit and criminal record, and to provide copies of tax returns, past financial disclosure forms, résumés, brokerage statements, etc.





The actual questionnaire is not online nor is it a public document; however, the version used by the Obama-Biden Transition team is posted online and a sampling of the 63 can be found below: <sup>24</sup>

- Have you had a complete physical within the past year? Please describe your overall health and any medical treatment you are currently receiving.
- Please list and, if readily available, provide a copy of each book, article, column, or publication (including but not limited to any posts or comments on blogs or other websites) you have authored, individually or with others.
- Please list all aliases or “handles” you have used to communicate on the Internet.
- Please provide the URL address of any websites that feature you in either a personal or professional capacity (e.g., Facebook, My Space, etc.).
- List all assets with a fair market value in excess of \$1,000 for you and your spouse ... List all liabilities in excess of \$10,000.
- Have you or your spouse ever registered as a lobbyist or other legislative agent to influence federal or state legislation or administrative acts?
- Do you presently have or have you in the past had occasional (to be sure, a monthly housekeeper is covered) or regular domestic help? (e.g., a housekeeper, babysitter, nanny, or gardener) If yes, please indicate the name and years of service for each individual and provide a brief description of the services rendered.
- Have you or your spouse at any time belonged to any membership organization ... that as a matter of policy or practice, denied or restricted membership or affiliation based on race, sex, disability, ethnic background, religion, or sexual orientation or has been subject to a claim that it has done so? If so, please provide details.
- If you have ever been investigated by any law enforcement agency (whether federal, state, military, local, Indian, or foreign), arrested for, charged with, or convicted of violating any law, regulation, or ordinance (whether federal, state, military, local, Indian or foreign), please identify each such instance and supply details ... You may exclude traffic offenses for which the fine was less than \$50.

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<sup>24</sup> The full document can be found here:

[http://www.transitionjobs.us/sites/default/files/Obama\\_Administration\\_Questionnaire.pdf](http://www.transitionjobs.us/sites/default/files/Obama_Administration_Questionnaire.pdf)



- Do you or any member of your immediate family own a gun? If so, provide complete ownership and registration information. Has the registration ever lapsed? Please also describe how and by whom it is used and whether it has been the cause of any personal injuries or property damage.

The final three questions from the category described simply as “Miscellaneous” are:

- Have you ever had any association with any person, group, or business venture that could be used, even unfairly, to impugn or attack your character and qualifications for a government position?
- Do you know anyone or any organization ... that might take any steps, overtly or covertly, fairly or unfairly, to criticize your appointment, including any news organizations? If so, please identify and explain the potential basis for potential criticism.
- Please provide any other information, including information about other members of your family, which could suggest a conflict-of-interest or be a possible source of embarrassment to you, your family or the President-Elect.

That brings the White House Personal Data Statement to a close. The Office of Presidential Personnel is known to ask for responses in 24 hours. Impossible? Well, a deadline like that is intended to make prospective nominees hop quickly.

Many of the White House lawyers’ questions can be traced back to particular appointment scandals, such as “Nannygate,” which cost Zoë Baird an opportunity to become President Bill Clinton’s attorney general in 1993. Baird had hired an illegal immigrant as a nanny and failed to pay Social Security taxes to boot. Linda Chavez’s nomination to become President George W. Bush’s Labor Secretary sank instantly in 2001 after the revelation that an illegal immigrant once lived with and did household chores for her.

Hold nothing back. Candor is the best and really the only course here. Anything you fail to reveal likely will come out anyway during the FBI background investigation, not to mention probing by the news media and Senate confirmation committees.



## **Standard Form 86**

### **Questionnaire for National Security Positions**

Anyone seeking a security clearance, including all presidential nominees and even appointees to part-time boards and commission, must fill out [Standard Form 86: Questionnaire for National Security Positions](#). All the questions can be previewed on the OPM website. A person's answers are protected by privacy laws and not released to the public. Even lower level civilian and military jobs require the SF-86, not just top management appointments.

This requirement is not new. President Dwight D. Eisenhower signed Executive Order 10450 in April 1953 declaring the need to establish that "all persons privileged to be employed in the departments and agencies of the Government, shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States."

The SF-86 form poses blunt questions about whether the nominee has undergone mental health counseling in the past seven years, used illegal drugs or abused alcohol ("Has your use of alcohol had a negative impact on your work performance, your professional or personal relationships, your finances, or resulted in intervention by law enforcement/public safety personnel?").

Nominees also are asked whether they have ever advocated terrorism or the overthrow of the U.S. government, or supported those working towards those ends.

Nominees must list every trip made outside the United States in the past seven years (apart from one-day hops for those living along the borders with Mexico and Canada), and reveal any close contact with foreign nationals "with whom you, your spouse, or your cohabitant are bound by affection, influence, and/or obligation."

The form was revised in March 2010 to include expanded or "branching" questions that allow applicants to provide more complete and accurate information about their backgrounds in such areas as employment and criminal records, credit history, and foreign travel.

The SF-86 starts with a disclaimer: "Providing this information is voluntary. If you do not provide each item of requested information, however, we will not be able to complete your investigation, which will adversely affect your eligibility for a national security position, eligibility for access to classified information, or logical or physical access. Any information



that you provide is evaluated on the basis of its currency, seriousness, relevance to the position and duties, and consistency with all other information about you.” Submitting false information is a felony punishable by up to five years in prison, it adds.

But rest easy. OPM also notes your investigation may include an interview, which “provides you the opportunity to update, clarify, and explain information on your form.”

Those who struggle with the SF-86 also can take consolation from the fact that it now can be completed online. Not long ago, nominees had to scramble to find a working typewriter to complete the paper version.

### **Standard Form 278**

#### **Executive Branch Personnel Public Financial Disclosure Report**

All senior Executive Branch officials must wrestle with the [Standard Form 278](#), not just before they are confirmed but each year they serve in office. The White House will not send any nomination forward without inspecting every line and detail of a nominee’s financial statement. OGE must sign off and assure the Senate either that the nominee has no conflicts-of-interest or has made a satisfactory arrangement to deal with potential conflicts. Everything reported on an SF-278 is open to public inspection.

Pursuant to the STOCK Act, the completed financial disclosure forms for political appointees nominated by the President and requiring Senate confirmation are directly on the Internet through the [OGE website](#), along with certificates of divestiture, when appropriate.

It is against the law for anyone to use the information from a SF-278 for a credit rating or to make solicitations for charities or political causes. But otherwise the figures are fair game for reporters and the curious (or just plain nosy) to pick through.

You may recall news reports that a Cabinet secretary was worth “at least” \$1 million or \$2 million. The media fudges the bottom line because the SF-278 only reveals income, assets, and debts in broad categories.

The SF-278 form is online these days, and it is not out of the question that someone who already keeps meticulous records on income, assets, and net worth could do this all on their own. But nominees may rest easier if they pay an accountant to do the numbers, or at least double-check the math.



## Chapter 9

### Resources



The web has a wealth of resources about presidential appointments, and there is no better place to start than the National Academy for Public Administration's two projects located at: [www.politicalappointeeproject.org](http://www.politicalappointeeproject.org) and [www.memostoleaders.org](http://www.memostoleaders.org). These two websites offer insight and advice into the appointments process, the problems that lie within, and potential solutions to other wide-ranging governmental issues facing our nation.

Foundations, think tanks, news organizations, groups promoting public service, and numerous federal agencies and Congress have produced and posted dozens of reports, articles, and compendiums of useful information for the President-elect, his transition team, and those who answer the call to public service. This chapter will review where you can find some of the best sources of information.

The federal government's main web portal is [www.usa.gov](http://www.usa.gov). It includes reams of information, including an [A-to-Z list](#) of all federal departments and agencies and their websites. There are separate master listings for the Executive, Legislative, and Judicial branches.

We have mentioned earlier in this handbook how useful the [U.S. Senate website](#) is, especially for its rich history on presidential nominations and the search tool on the Library of Congress THOMAS website that lets you find out how long the Senate took to confirm individual nominations going back to 1987.

Additionally, [GSA](#) offers a useful [portal](#) through which nominees can access helpful information regarding the appointments process. GSA, with the [National Archives and Records Administration](#), has developed an Appointee Directory that lists key officials in each department and agency, their statutory and administrative duties, the organizational structure, and their functions, duties, responsibilities, and missions. Congress ordered the GSA to produce such a directory as part of the Presidential Transition Act of 2000.

### The Plum Book

The formal title of a quadrennial listing of all the jobs that a President can fill is [United States Government Policy and Supporting Positions](#), but it is universally called the *Plum*



*Book* for its distinctive shade. Published by the [Senate Committee on Governmental Affairs](#) and the [House Committee on Government Reform](#) alternately after each Presidential election, the *Plum Book* lists over 7,000 federal civil service leadership and support positions in the Executive Branch that the President can fill noncompetitively, as well as approximately 50 Legislative Branch jobs (including the Librarian of Congress, Comptroller General, Architect of the Capitol, and Public Printer) and the 20 members of the U.S. Tax Court, their Secretaries and Clerks. The *Plum Book* lists the title of each job, name of the incumbent, and the pay level.

The major categories of positions listed in United States Government Policy and Supporting Positions include:

- Executive Schedule positions for levels I through V;
- Senior Executive Service “General” positions and Senior Foreign Service positions; and
- Schedule C positions, excepted from the competitive service by the President, or by the Director, OPM, and other positions at the GS-14 and above level excepted from the competitive civil service by law, because of the confidential or policy-determining nature of the duties.

The list originated in 1952, when Dwight D. Eisenhower was elected president, ending 20 years of Democratic control of the White House. The Republican Party requested a list of government positions that President Eisenhower could fill.

The next edition of The *Plum Book* appeared in 1960 and has since been published after every presidential election.

The most recent edition was published on December 1, 2012.

### **The Political Appointee Project**

The [Political Appointee Project](#) houses an electronic version of the *Survivor’s Guide* in combination with several related initiatives.

The new website has several key objectives:

- To inform current discussions about improving the presidential appointments process. We hope to serve as an important forum for this discussion. The website



contains information on previous Academy-related studies, as well as ongoing commentaries on various issues by Academy Fellows and other experts in the field.

- To serve as a repository of profiles of the key management positions in government.
- To provide insights to new political executives on the challenge of managing in government.

This website combines the efforts of several related initiatives. In 2011, the Academy began discussions with the Ernst & Young Initiative on Leadership to share the position profiles they featured in their book [\*Paths to Making a Difference: Leading in Government\*](#). The Academy also assumed responsibility for the Council for Excellence in Government Prune Book Series in 2009: updated material from this initiative series is presented on this website.

### **The U.S. Government Manual**

The [U.S. Government Manual](#) is the official handbook of the Federal Government and a trove of information on all three branches of government. It is updated and published annually each summer by the Office of the Federal Register, which is part of the National Archives and Records Administration (the same folks who store and display the original Declaration of Independence and other historic documents at the National Archives building).

In addition to extensive information about the Legislative, Executive and Judicial branches, the Manual details the duties of government boards, commissions and committees, as well as quasi-official agencies and international organizations in which the United States participates. A typical agency description lists the principal officials, gives a summary statement of the agency's purpose and role, and provides a brief history of the agency, including its legislative or executive authority, a description of its programs and activities, phone numbers, addresses and other consumer-friendly information. The Manual can be searched online. In addition to an Agency/Subject index, it also features a Name Index that can be used to find where a presidential appointee is working. The Manual is a great place to start learning about a corner of the government where you may soon be laboring.

The Manual may be downloaded by chapter or in its entirety. Hard copies of the 709-page Manual may be purchased for \$34 through the Government Printing Office (GPO) through its [online bookstore](#) or in person at the GPO bookstore at its headquarters, 732 N. Capitol Street, a block from Union Station in Washington or at the GPO's retail outlet in Laurel, Maryland. Call (202) 512-1800 for further information.





The Federal Register also publishes the Weekly Compilation of Presidential Documents which may be searched to find the latest White House announcements on presidential nominations.

### **Information from Congress**

Even before they get to Washington or receive a briefing book from the Cabinet department or agency where they will work, nominees can find lots of information about that department and its programs on the web. Some of the best sources of information come from Congress' own research and accountability agencies.

Be sure, also, to read or at least browse the self-critical reports prepared by the Inspector General within each department.

### ***Government Accountability Office***

GAO, headed by the Comptroller General, is the investigative arm of Congress. A 1921 law gave the watchdog agency a mandate to investigate how public funds were being spent and prepare reports and recommendations for Congress "looking to greater economy or efficiency." The Comptroller General is appointed by the President with advice and consent from the Senate for a 15-year term from a list of nominees submitted by a bipartisan group of congressional leaders. It is a nonpartisan post and the Comptroller General can only be fired by Congress, not the President.

Staff at GAO produce upwards of 1,000 reports, letters, and Congressional testimonies each year, often called "blue books" for the color of their covers. Most are produced in direct response to requests from members of Congress, especially the chairs and ranking minority members of committees. All unclassified reports are available to the public on the [GAO website](#), although the lawmakers who requested them can restrict their release for up to 30 days. These reports provide excellent background information and analysis of program performance and policy options. They succinctly frame controversial issues facing a department or agency and often summarize a program's history, starting with congressional action and proceeding through implementation by the Executive Branch (White House and departmental budget documents also often a concise summary of program costs and reach).

GAO always gives executive departments an opportunity to comment on reports and recommendations before they are made public, and those documents often are printed in full at the back of GAO reports. The Congress relies heavily on GAO for its expert





assessments of how the executive branch is implementing programs and spending ordered by Congress.

Functioning like a high-powered consulting firm, GAO has a staff of 2,957 – two-thirds of them analysts – and a budget that topped \$533.6 million in fiscal 2012. The Comptroller General relies on 20 managing directors whose responsibilities range across the entire government. Thirteen head research, audit and evaluation teams with such specialties as: Acquisition and Sourcing Management; Defense Capabilities and Management; Education, Workforce and Income Security; Financial Management and Assurance; Forensic Audits and Special Investigations; Financial Markets and community Investments; Health Care; International Affairs and Trade; Information Technology; Natural Resources and Environment; Physical Infrastructure, and Homeland Security and Justice.

GAO customarily issues a series of reports on major management challenges leading up to a new presidential administration. It opened a transition website shortly after the Nov. 4, 2008 election. Between 1999 and 2001, it published 21 reports in what it called a Performance and Accountability Series: Major Management Challenges and Program Risks that covered each Cabinet department, most major independent agencies and the U.S. Postal Service. It also published suggested questions for Senate committees to ask presidential appointees. Here are three political appointee-specific reports from GAO:

- “Conversions of Employees from Political to Career Positions.” [GAO-10-688](#), June 2010.
- “Potential Questions to Elicit Nominees’ Views on Agencies’ Management Challenges.” [GAO-01-332R](#), January 2001.
- “Confirmation of Political Appointees: Eliciting Nominees’ Views on Leadership and Management Issues.” [GGD-00-174](#), August 2000.

The GAO’s telephone number is (202) 512-3000 – [www.gao.gov](http://www.gao.gov).

### ***Congressional Research Service***

Congress and the Obama Administration provided \$106.8 million in Fiscal 2012 to support the operation of the lawmakers’ very own think tank, CRS, whose staff of 700 produces objective research reports to help Congress make policy decisions. CRS is a branch of the Library of Congress. Through a quirky system that has defied calls for reform, CRS makes its reports available only to members of Congress and does not itself post them on its own bare-bones [public web page](#) or on the Library of Congress’ [parent site](#). CRS maintains a more robust website, but limits access to House and Senate offices and other legislative branch agencies.



Nonetheless, many of its reports wind up in the public domain. Lawmakers make some reports public, either directly or by sharing them with organizations and public depository libraries that post on the web all the reports they get their hands on.

A commercial enterprise called Penny Hill Press sells CRS reports, which it bills as “the most elusive and coveted information products in Washington.” Nowadays, a Google search may turn up the CRS report you are seeking. Some are invaluable in explaining complicated issues and policy options available to Congress. You can read more about CRS and its modus operandi in this 2006 report to Congress.

### ***Congressional Budget Office (CBO)***

[The CBO](#), founded in 1974 to help Congress grapple with the budget and economic forecasts, commands respect for its nonpartisan expertise on financial matters.

Its staff of 235 is comprised primarily of economists and public policy analysts, most of whom hold advanced degrees, and it has been led by such distinguished economists as Alice Rivlin, Rudolph Penner, and Robert Reischauer. It publishes reports, briefs, testimony, and background papers addressing virtually every major area of government involvement: agriculture, health, and education, to taxes, trade, and national security. Visit [www.cbo.gov](http://www.cbo.gov) or go right to its [publications page](#).

The CBO switchboard is (202) 226-2600.

### ***Senate Committees***

The [Senate website](#) has links to valuable information about nominations and to all 17 committees that handle nominations. Each committee has its own website. They vary widely both in how much information is posted there and, perhaps even more to the point, how easy they are to navigate. Most Committee websites have a section on hearings, and some have archived (usually in PDF) the opening statement of the nominee as well as the opening remarks by the Committee Chair and other Senators. Some may have video archives that show the entire hearing for earlier nominees. You will want to scour the website of the committee that you will be called before.

*Here are the 17 committees that handle nominations:*



<a href="#">Agriculture, Nutrition and Forestry</a>	328A Russell	(202) 224-2035
<a href="#">Armed Services</a>	228 Russell	(202) 224-3871
<a href="#">Banking, Housing, and Urban Affairs</a>	534 Dirksen	(202) 224-7391
<a href="#">Budget</a>	624 Dirksen	(202) 224-0642
<a href="#">Commerce, Science and Transportation</a>	508 Dirksen	(202) 224-5115
<a href="#">Energy and Natural Resources</a>	304 Dirksen	(202) 224-4971
<a href="#">Environment and Public Works</a>	410 Dirksen	(202) 224-8832
<a href="#">Foreign Relations</a>	450 Dirksen	(202) 224-4651
<a href="#">Health, Education, Labor and Pensions</a>	428 Dirksen	(202) 224-5375
<a href="#">Homeland Security and Governmental Affairs</a>	340 Dirksen	(202) 224-4751
<a href="#">Indian Affairs</a>	838 Hart	(202) 224-2251
<a href="#">Intelligence</a>	211 Hart	(202) 224-1700
<a href="#">Judiciary</a>	224 Dirksen	(202) 224-5225

The Judiciary website lists all the positions under its purview as well as their disposition in the 113th Congress.

<a href="#">Rules &amp; Administration</a>	305 Russell	(202) 224-6352
<a href="#">Small Business &amp; Entrepreneurship</a>	428A Russell	(202) 224-5175
<a href="#">Veterans' Affairs</a>	412 Russell	(202) 224-9126

The [Senate Appropriations Committee](#) and the [Special Committee on Aging](#) do not handle nominations.

Each of these committees has majority and minority offices, and many have majority and minority websites. The websites and phone numbers listed above were for the majority offices, which were in Democrats' hands in the 113th Congress.



### Key Executive Branch Offices

The White House switchboard operators are legendary for their ability to find people in remote places when the President places a call. You can reach the White House by calling (202) 456-1414 and ask for the Office of Presidential Personnel, the Office of the Counsel, or others.

*But here are several important direct numbers:*

Office of Presidential Personnel	(202) 456-9713
Office of the Counsel	(202) 456-7900
Office of Legislative Affairs	(202) 456-2230
Office of the Press Secretary	(202) 456-2580
Office of the Chief of Staff	(202) 456-1747
Cabinet Secretary	(202) 456-2572

The [White House website](#) has a convenient list of the 15 Executive Cabinet departments, including their web addresses. The Obama White House is also keeping an alphabetical list of all its presidential nominees, with details on when they were nominated and confirmed.

### Office of Personnel Management

OPM is the federal government's human resource agency. It manages the civil service. It ensures compliance with merit system principles and protection from prohibited hiring practices. It administers benefits, including the highly regarded Federal Employee Health Benefits Program. Its main number is (202) 606-1800. The Director's Office is (202) 606-1000.

OPM published a [“Presidential Transition Guide to Federal Human Resources Management”](#) in June 2008 that provides guidance on ethics, presidential appointments, benefits and separations for political appointees.



## General Services Administration

GSA is the government's landlord, furnishing workspace, equipment, supplies, technology, and other services to departments and agencies. It plays a significant role during the transition, including providing temporary office space for the President-elect and his transition team.

The [Presidential Transition Act of 2000](#) requires GSA to provide training and orientation to those the new President intends to appoint to certain key positions. This training and orientation is designed to help prospective presidential political appointees learn more about the problems and challenges they may face when they move from campaign activities to assuming a new role in government. This may include briefings by former executives from past administrations and departments, or agency experts from OMB, GAO, and from Inspector General offices.

## Cabinet Departments

The contact information for the 15 Cabinet departments is on the next page:

Agriculture	1400 Independence Avenue SW Washington, DC 20250	(202) 720-2791	<a href="http://www.usda.gov">www.usda.gov</a>
Commerce	14th St and Constitution Avenue NW Washington, DC 20230	(202) 482-2000	<a href="http://www.doc.gov">www.doc.gov</a>
Defense	The Pentagon Washington, DC 20301	(703) 571-3343	<a href="http://www.defenselink.mil">www.defenselink.mil</a>
Education	400 Maryland Avenue SW Washington, DC 20202	(202) 401-2000 or (800) 872-5327	<a href="http://www.ed.gov">www.ed.gov</a>
Energy	1000 Independence Avenue SW Washington, DC 20585	(202) 586-5000	<a href="http://www.energy.gov">www.energy.gov</a>
Health and Human Services	200 Independence Avenue SW Washington, DC 20201	(877) 696-6775	<a href="http://www.hhs.gov">www.hhs.gov</a>
Homeland Security	3801 Nebraska Avenue NW Washington, DC 20528	(202) 282-8000	<a href="http://www.dhs.gov">www.dhs.gov</a>
Housing and Urban Development	451 7th Street SW Washington, DC 20410	(202) 708-1112	<a href="http://www.hud.gov">www.hud.gov</a>



Interior	1849 C Street NW Washington, DC 20240	(202) 208-3100	<a href="http://www.doi.gov">www.doi.gov</a>
Justice	950 Pennsylvania Avenue NW Washington, DC 20530	(202) 514-2000	<a href="http://www.usdoj.gov">www.usdoj.gov</a>
Labor	200 Constitution Avenue NW Washington, DC 20210	(202) 693-6000	<a href="http://www.dol.gov">www.dol.gov</a>
State	2201 C Street NW Washington, DC 20520	(202) 647-4000	<a href="http://www.state.gov">www.state.gov</a>
Transportation	1200 New Jersey Avenue SE Washington, DC 20590	(202) 366-4000	<a href="http://www.dot.gov">www.dot.gov</a>
Treasury	1500 Pennsylvania Avenue NW Washington, DC 20220	(202) 622-2000	<a href="http://www.treas.gov">www.treas.gov</a>
Veterans Affairs	810 Vermont Avenue NW Washington, DC 20420	(202) 273-5400	<a href="http://www.va.gov">www.va.gov</a>

## News Media

These days you don't have to get ink on your fingers reading the morning newspapers. Every major daily and most mid-size and small newspapers deliver much of their content online and on your mobile devices.

There are several specialty publications covering the nation's capital that are well-known inside the Beltway and that cover Congress and certain issues in great depth. These include the weekly [National Journal](#) magazine, various [Congressional Quarterly](#) publications, and newspapers, [The Hill](#), [Politico](#), and [Roll Call](#). These Washington insider magazines and specialty publications, unlike daily newspapers, do not generally offer most content free online, and their subscription rates often are pricey. But they may have addressed at length a topic or topics that you will have to know well, both for your confirmation hearing and on the job. You may be able to find some of these publications in your local library. They are ubiquitous in government offices and on Capitol Hill.

Congressional Quarterly and the National Journal also publish rival political almanacs – [Politics in America](#) and the [Almanac of American Politics](#) respectively – that provide extensive information about every Senator, member of the House and their districts.



Finally, there are several books and scholarly papers that address problems in the presidential appointment process. Among them:

- “The Federal Appointments Process: The Problem and Our Proposed Solutions,” a commentary by Bill Frist, Clay Johnson, Mack McLarty, and Chuck Robb. (2011)
- “Waiting for Leadership,” Partnership for Public Service. (2010)
- *The Obama Political Appointee Primer*. Lewis D. Eigen. (2009)
- *The Politics of Presidential Appointments: Political Control and Bureaucratic Performance*. David E. Lewis. (2008)
- “Our Tottering Confirmation Process,” an article by Paul C. Light in the journal *Public Interest*. (2002)
- *Innocent Until Nominated: The Breakdown of the Presidential Appointments Process*. G. Calvin Mackenzie. (2001)



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