



Presidential Appointments to Full-Time Positions in Independent and Other Agencies During the 110th Congress

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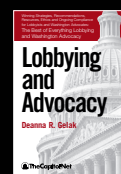


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Summary

The appointment process for advice and consent positions consists of three main stages. The first stage is selection, clearance, and nomination by the President. This step includes preliminary vetting, background checks, and ethics checks of potential nominees. At this stage, the President may also consult with Senators who are from the same party if the position is located in a state. The second stage of the process is consideration of the nomination in the Senate, most of which takes place in committee. Finally, if a nomination is approved by the full Senate, the nominee is given a commission signed by the President and sworn into office.

During the 110th Congress, President George W. Bush submitted to the Senate 52 nominations to independent and other agencies for full-time positions. Of these 52 nominations, 27 were confirmed, 9 were withdrawn, and 16 were returned to him in accordance with Senate rules. For those nominations that were confirmed, an average of 110 days elapsed between nomination and confirmation. The President made two recess appointments to full-time positions in independent agencies during the 110th Congress. Each recess appointment was followed by a nomination which is included in the total of 52 nominations.

The methodology used in this report to count the length of time between nomination and confirmation differs from that which was used in previous similar CRS reports. The statistics presented here include the days during which the Senate was adjourned for its summer recesses and between sessions of Congress. The methodological change, which may reduce the comparability of statistics in this report with those of the earlier research, is discussed in the text of this report, as well as in **Appendix E**. Reasons for the change include the Senate's conversion of traditionally long recesses into a series of short recesses punctuated by pro forma sessions during the 110th Congress; the fact that although committees may not be taking direct action on nominations in the form of hearings or votes, they are likely still considering and processing nominations during recesses; and a desire to be consistent with the methodology used by many political scientists as well as CRS research on judicial nominations. In addition, an argument could be made that the decision to extend Senate consideration of nominees over the course of a recess is intentional, and the choice to extend this length of time is better represented by including all days, including long recesses.

Information for this report was compiled from data from the Senate nominations database of the Legislative Information System at <http://www.congress.gov/nomis/>, the *Congressional Record* (daily edition), the *Weekly Compilation of Presidential Documents*, telephone discussions with agency officials, agency websites, the *United States Code*, and the 2008 "Plum Book" (*United States Government Policy and Supporting Positions*).

This report will not be updated.

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Introduction

This report explains the process for filling positions to which the President makes appointments with the advice and consent of the Senate (PAS positions).¹ It also identifies, for the 110th Congress, all nominations to full-time positions requiring Senate confirmation in 39 organizations in the executive branch (26 independent agencies, 6 agencies in the Executive Office of the President (EOP), and 7 multilateral banking organizations) and 4 agencies in the legislative branch. It excludes appointments to executive departments and to regulatory and other boards and commissions, which are covered in other reports.

A profile of each agency tracks the agency's nominations, providing information on Senate activity (confirmations, rejections, returns to the President, and elapsed time between nomination and confirmation) as well as further related presidential activity (including withdrawals and recess appointments). The profiles also identify, for each agency, positions requiring Senate confirmation, the incumbents in those positions as of the end of the 110th Congress, and the pay levels of those officials.

The Appointments Process

The Constitution (Article II, Section 2) empowers the President to nominate and, by and with the advice and consent of the Senate, to appoint the principal officers of the United States, as well as some subordinate officers.² Officers of the United States are those individuals serving in high-ranking positions that have been established by Congress and “exercising *significant authority* pursuant to the laws of the United States” (emphasis added).³

Three distinct stages mark the appointment process: selection and nomination, confirmation, and appointment.

Selection, Clearance, and Nomination

In the first stage, the White House selects and clears a prospective appointee before sending a formal nomination to the Senate. There are a number of steps in this stage of the process for most Senate-confirmed positions. First, with the assistance of, and preliminary vetting by, the White House Office of Presidential Personnel, the President selects a candidate for the position. Members of Congress and interest groups sometimes recommend candidates for specific PAS positions. They may offer their suggestions by letter, for example, or by contact with a White

¹ The acronym is defined as “Presidential Appointment with Senate Confirmation” in the 2004 “Plum Book” (U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *United States Government Policy and Supporting Positions*, 110th Cong., 2nd sess., committee print, Nov. 12, 2008 (Washington: GPO, 2008)).

² A historical and contemporary overview of the appointment power is found in Louis Fisher, “Appointment Powers,” in his *Constitutional Conflicts between Congress and the President*, 4th ed. (Lawrence, KS: University Press of Kansas, 1997), pp. 22-48.

³ *Buckley v. Valeo*, 424 U.S. 1, 126 (1976). For further information on the distinction between officers and employees of the United States, as well as the distinction between principal and inferior officers, see CRS Report R40856, *The Debate Over Selected Presidential Assistants and Advisors: Appointment, Accountability, and Congressional Oversight*, by Barbara L. Schwemle et al., pp. 43-48.

House liaison.⁴ In general, the White House is under no obligation to follow such recommendations. In the case of the Senate, however, it has been argued that Senators are constitutionally entitled, by virtue of the advice and consent clause noted above, to provide advice to the President regarding his selection; the extent of this entitlement is a matter of some debate.⁵ As a practical matter, in instances where Senators perceive insufficient pre-nomination consultation has occurred, they have sometimes exercised their procedural prerogatives to delay or even effectively block consideration of a nomination.⁶

During the clearance process, the candidate prepares and submits several forms, including the “Public Financial Disclosure Report” (Standard Form (SF) 278), the “Questionnaire for National Security Positions” (SF 86), and the White House “Personal Data Statement Questionnaire.” The Office of the Counsel to the President oversees the clearance process, which often includes background investigations conducted by the Federal Bureau of Investigation (FBI), Internal Revenue Service (IRS), Office of Government Ethics (OGE), and an ethics official for the agency to which the candidate is to be appointed. If conflicts of interest are found during the background investigation, OGE and the agency ethics officer may work with the candidate to mitigate the conflicts. Once the Office of the Counsel to the President has cleared the candidate, the nomination is ready to be submitted to the Senate.

The selection and clearance stage has often been the longest part of the appointment process. There have been, at times, lengthy delays, particularly when many candidates have been processed simultaneously, such as at the beginning of an Administration, or where conflicts needed to be resolved. Candidates for higher-level positions have often been accorded priority in this process. At the end of 2004, in an effort to reduce the elapsed time between a new President’s inauguration and the appointment of his or her national security team, Congress enacted amendments to the Presidential Transition Act of 1963.⁷ These amendments encourage a President-elect to submit, for security clearance, potential nominees to high-level national security positions as soon as possible after the election.⁸ A separate provision of law, enacted as part of the Federal Vacancies Reform Act of 1998, lengthens, during presidential transitions, the potential duration of a temporary appointment by 90 days.⁹ Although this provision might give some additional flexibility to an incoming President, it might also lengthen the appointment process for some positions by, in effect, extending the deadline by which a permanent appointment must be completed.

For positions located within a state (U.S. attorney, U.S. marshal, and U.S. district judge), the President, by custom, normally nominates an individual recommended by one or both Senators (if they are from the same party as the President) from that state. If neither Senator is from the President’s party, he usually defers to the recommendations of party leaders from the state. Occasionally, the President solicits recommendations from Senators of the opposition party because of their positions in the Senate. Before making a nomination to a federal position at the

⁴ The Council for Excellence in Government’s Presidential Appointee Initiative, *A Survivor’s Guide for Presidential Nominees*, The Brookings Institution, Washington, D.C., November 2000, pp. 31-32.

⁵ See, for example, Michael J. Gerhardt, *The Federal Appointments Process: A Constitutional and Historical Analysis* (Durham: Duke University Press, 2003), pp. 29-34.

⁶ See, for example, *ibid.*, pp. 152-153.

⁷ 3 U.S.C. § 102 note.

⁸ P.L. 108-458, § 7601; 118 Stat. 3856.

⁹ 5 U.S.C. § 3349a.

state or national level, the President would likely consider how it will fare in the confirmation process.¹⁰

If circumstances permit and conditions are met, the President could give the nominee a recess appointment to the position (see section entitled “Recess Appointments” below). Recess appointments have sometimes had political consequences, however, particularly where Senators perceived that such an appointment was an effort to circumvent their constitutional role. Some Senate-confirmed positions may also be temporarily filled under the Vacancies Act.¹¹

A nominee has no legal authority to assume the duties and responsibilities of the position; a nominee who is hired by the agency as a consultant while awaiting confirmation may serve only in an advisory capacity. Authority to act comes once there is Senate confirmation and presidential appointment, or if another method of appointment, such as a recess appointment or a temporary appointment, is utilized. (For further information on these methods, see section entitled “Recess Appointments” and “Temporary Appointments” below.)

Senate Consideration

In the second stage, the Senate alone determines whether or not to confirm a nomination.¹² The Senate’s scrutiny of a nomination has depended largely on the importance of the position involved, existing political circumstances, and policy implications. Generally, the Senate has shown particular interest in the nominee’s views and how they are likely to affect public policy.¹³ Two other factors have sometimes affected the examination of a nominee’s personal and professional qualities: whether the President’s party controlled the Senate, and the degree to which the President became involved in supporting the nomination.

Much of the Senate confirmation process occurs at the committee level. Administratively, nominations are received by the Senate executive clerk, who arranges for the referral of the nominations to committee, according to the Senate rules and precedents.¹⁴ Committee nomination activity has generally included investigation, hearing, and reporting stages. As part of investigatory work, committees have drawn on information provided by the White House, as well as information they themselves have collected. Some committees have held hearings on nearly all nominations; others have held hearings for only some. Hearings provide a public forum to discuss a nomination and any issues related to the program or agency for which the nominee would be responsible. Even where confirmation has been thought by most to be a virtual certainty, hearings have provided Senators and the nominee with opportunities to go on the record with particular

¹⁰ For more information on the role of home state senators in the nomination of individuals to fill U.S. district and circuit court judgeships, see CRS Report RL34405, *Role of Home State Senators in the Selection of Lower Federal Court Judges*, by Denis Steven Rutkus.

¹¹ P.L. 105-277, Div. C, Title I, § 151; 5 U.S.C. §§ 3345-3349d. For more on the Vacancies Act, see CRS Report 98-892, *The New Vacancies Act: Congress Acts to Protect the Senate’s Confirmation Prerogative*, by Morton Rosenberg.

¹² For further information on this stage of the appointment process, see CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki; and CRS Report RL31948, *Evolution of the Senate’s Role in the Nomination and Confirmation Process: A Brief History*, by Betsy Palmer.

¹³ G. Calvin Mackenzie, *The Politics of Presidential Appointments* (New York: The Free Press, 1981), pp. 97-189.

¹⁴ Formally, the presiding officer of the Senate makes the referrals. For more information, see Floyd M. Riddick and Alan S. Frumin, *Riddick’s Senate Procedure: Precedents and Practices*, 101st Cong., 2nd sess., S.Doc. 101-28 (Washington: GPO, 1992), pp. 1154-8; and CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki, pp. 2-3.

views or commitments. Senators have used hearings to explore nominees' qualifications, articulate policy perspectives, or raise related oversight issues.

A committee may decline to act on a nomination at any point—upon referral, after investigation, or after a hearing. If the committee votes to report a nomination to the full Senate, it has three options: it may report the nomination favorably, unfavorably, or without recommendation. A failure to obtain a majority on the motion to report means the nomination will not be reported to the Senate. If the committee declines to report a nomination, the Senate may, under certain circumstances, discharge the committee from further consideration of the nomination in order to bring it to the floor.¹⁵

The Senate historically has confirmed most, but not all, executive nominations. Rarely, however, has a vote to confirm a nomination failed on the Senate floor. Usually, unsuccessful nominations fail to be reported or discharged from committee. Failure of a nomination to make it out of committee has occurred for a variety of reasons, including opposition to the nomination, inadequate amount of time for consideration of the nomination, or factors that may not be directly related to the merits of the nomination.

Senate rules provide that “[n]ominations neither confirmed nor rejected during the session at which they are made shall not be acted upon at any succeeding session without being again made to the Senate by the President.”¹⁶ In practice, such pending nominations have been returned to the President at the end of the session or Congress. Pending nominations also may be returned automatically to the President at the beginning of a recess of more than 30 days, but the Senate rule providing for this return is often waived.¹⁷

Appointment

In the final stage, the confirmed nominee is given a commission, which bears the Great Seal of the United States and is signed by the President, and is sworn into office. The President may sign the commission at any time after confirmation, at which point the appointment becomes official. Once the appointee is given the commission and sworn in, he or she has full authority to carry out the responsibilities of the office.

Recess Appointments

The Constitution also empowers the President to make a limited-term appointment without Senate confirmation when the Senate is in recess, either during a session (intrasession recess appointment) or between sessions (intersession recess appointment). Recess appointments expire at the end of the following session of Congress.¹⁸ **Appendix D** provides a table showing the dates

¹⁵ For more information, see CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki, p. 7.

¹⁶ The rule may be found in U.S. Congress, Senate Committee on Rules and Administration, *Senate Manual*, 110th Cong., 2nd sess., S. Doc. 110-1 (Washington: GPO, 2008), p. 58, Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

¹⁷ For an example of a waiver of the rule, see Sen. Harry Reid, “Nominations Status Quo,” *Congressional Record*, daily edition, vol. 153, December 19, 2007, p. S16061.

¹⁸ U.S. Constitution, Art. II, § 2, cl. 3.

of the Senate recesses for the 110th Congress and the number of recess appointments during each recess.

Presidents have occasionally used the recess appointment power to circumvent the confirmation process. In response, Congress has enacted provisions that restrict the pay of recess appointees under certain circumstances. Because most potential appointees to full-time positions cannot serve without a salary, the President has an incentive to use his recess appointment authority in ways that allow them to be paid. Under the provisions, if the position falls vacant while the Senate is in session and the President fills it by recess appointment, the appointee may not be paid from the Treasury until he or she is confirmed by the Senate. However, the salary prohibition does not apply

(1) if the vacancy arose within 30 days before the end of the session of the Senate;

(2) if, at the end of the session, a nomination for the office, other than the nomination of an individual appointed during the preceding recess of the Senate, was pending before the Senate for its advice and consent; or

(3) if a nomination for the office was rejected by the Senate within 30 days before the end of the session and an individual other than the one whose nomination was rejected thereafter receives a recess appointment.¹⁹

A recess appointment falling under any one of these three exceptions must be followed by a nomination to the position not later than 40 days after the beginning of the next session of the Senate.²⁰ For this reason, when a recess appointment is made, the President generally submits a new nomination for the nominee even when an old nomination is pending.²¹ These provisions have been interpreted by the Department of Justice to preclude payment of an appointee who is given successive recess appointments to the same position.²²

Although recess appointees whose nominations to a full term are subsequently rejected by the Senate may continue to serve until the end of their recess appointment, a provision of the FY2008 Financial Services and General Government Appropriations Act that is still in effect today may prevent them from being paid after their rejection. The provision reads, “Hereafter, no part of any appropriation contained in this or any other Act shall be paid to any person for the filling of any position for which he or she has been nominated after the Senate has voted not to approve the nomination of said person.”²³ Prior to this provision, similar wording was included in annual funding measures for most or all of the previous 50 years.

Another recent congressional response to the President’s use of recess appointments was the decision, during the latter part of the first session of the 110th Congress, to restructure the Senate’s longer recesses into a series of shorter recesses divided by pro forma sessions.²⁴ Premised on the

¹⁹ 5 U.S.C. § 5503(a).

²⁰ 5 U.S.C. § 5503(b).

²¹ For further information, see CRS Report RS21308, *Recess Appointments: Frequently Asked Questions*, by Henry B. Hogue; and CRS Report RL33009, *Recess Appointments: A Legal Overview*, by T. J. Halstead.

²² 15 Op. O.L.C. 93 (1991). See also 6 Op. O.L.C. 585 (1982); 41 Op. A.G. 463 (1960).

²³ P.L. 110-161, Div. D, § 709.

²⁴ A pro forma session is a short meeting of the House or Senate during which it is understood that no business will be conducted.

notion that the President can be restricted from making recess appointments during a recess that is no more than three days, the Senate sought to prevent recess appointments by holding pro forma sessions approximately every three days.²⁵ Beginning in November 2007, the Senate agreed to regularly scheduled pro forma sessions during periods that would have otherwise been recesses of duration of a week or longer. The Senate recessed on November 16, and pro forma meetings were convened on November 20, 23, 27, and 29, with no business conducted. The Senate reconvened and conducted business beginning on December 3, 2007. Similar procedures were followed for the remainder of the 110th Congress during other periods that would otherwise have been Senate recesses of at least a week in duration. During the remainder of his presidency, President Bush made no additional recess appointments.²⁶

Temporary Appointments

Congress has provided limited statutory authority for the temporary filling of vacant positions requiring Senate confirmation. Under the Federal Vacancies Reform Act of 1998,²⁷ when an executive agency position requiring confirmation becomes vacant, it may be filled temporarily in one of three ways: (1) the first assistant to such a position may automatically assume the functions and duties of the office; (2) the President may direct an officer in any agency who is occupying a position requiring Senate confirmation to perform those tasks; or (3) the President may select any officer or employee of the subject agency who is occupying a position for which the rate of pay is equal to or greater than the minimum rate of pay at the GS-15 level and who has been with the agency for at least 90 of the preceding 365 days. The temporary appointment is for 210 days, but the time restriction is suspended if a first or second nomination for the position is pending. In addition, during a presidential transition, the 210-day restriction period does not begin until either 90 days after the President assumes office, or 90 days after the vacancy occurs, if it is within the 90-day inauguration period. The act does not apply to positions on multi-headed regulatory boards and commissions or to certain other specific positions which may be filled temporarily under other statutory provisions.²⁸

Appointments During the 110th Congress

During the 110th Congress, President George W. Bush submitted to the Senate 52 nominations to full-time positions in independent and other agencies. Of these nominations, 27 were confirmed,

²⁵ The Constitution does not specify how long the Senate must be in recess for the President to have the ability to make a recess appointment. The three-day norm derives from a Justice Department brief written in 1993. In this brief, the authors posited that because the Constitution allows the Senate to adjourn its session for up to three days without obtaining the consent of the House, a recess of three days or fewer is not considered “constitutionally significant.” Over the past two decades, the shortest recess during which a president made an appointment was 10 days. For more information, see CRS Report RS21308, *Recess Appointments: Frequently Asked Questions*, by Henry B. Hogue. For the Justice Department brief, see *Mackie v. Clinton*, Memorandum of Points and Authorities in Support of Defendants’ Opposition to Plaintiffs’ Motion for Partial Summary Judgment, at 24-26, Civ. Action No. 93-0032-LFO, (D.D.C. 1993).

²⁶ For further information, see CRS Report RS21308, *Recess Appointments: Frequently Asked Questions*, by Henry B. Hogue; and CRS Report RL33310, *Recess Appointments Made by President George W. Bush*, by Henry B. Hogue and Maureen Bearden.

²⁷ P.L. 105-277, Div. C, Title I, § 151; 112 Stat. 2681-611; 5 U.S.C. §§ 3345-3349d.

²⁸ For more on the Vacancies Act, see CRS Report 98-892, *The New Vacancies Act: Congress Acts to Protect the Senate’s Confirmation Prerogative*, by Morton Rosenberg.

16 were returned to the President, and 9 were withdrawn. The President made two recess appointments during this period to positions in organizations covered in this report. Each recess appointment was followed by a nomination which is included in the total of 52 nominations. These recess appointments expired at the end of the second session of the 110th Congress. **Table 1** summarizes the appointment activity.

**Table 1. Appointment Action for Independent and Other Agencies
During the 110th Congress**

Number of positions at the independent and other agencies (total)	117
Positions to which nominations were made	44 ^a
Individual nominees	49 ^a
Number of nominations submitted to the Senate (total)	52 ^a
Disposition of nominations:	
Confirmed by the Senate	27
Returned at the end of the 2 nd session of the 110 th Congress	16
Withdrawn	9
Recess Appointments (total)	2
Intrasession	2
Intersession	0

Source: Table developed by the Congressional Research Service using data presented in the appendices of this report.

- a. The figures shown here reveal that there is a distinction between the number of positions to which nominations were made (44), the number of individual nominees (49), and the total number of nominations submitted (52). This difference is the result of multiple nominations of the same individual to the same or to different positions, or of nominations of more than one individual to a single position. For example, the President nominated Susan E. Dudley to be the Administrator of the Office of Information and Regulatory Affairs once, then recess-appointed her, then submitted another nomination following the recess appointment. This was counted as one position to which a nomination was made, one individual nominee, and two nominations submitted. In another case, the President submitted a nomination for more than one individual to an open position: he nominated David R. Hill to be the Inspector General of the EPA, withdrew that nomination, then nominated Andrew R. Cochran to the same position. This circumstance was counted as a single position to which a nomination was made, two individuals nominated, and two nominations. Cases such as these led these three numbers to differ slightly.

Average Time to Confirm a Nomination

The length of time a given nomination may be pending in the Senate varies widely. Some nominations are confirmed within a few days, others may not be confirmed for several months, and some are never confirmed. This report provides, for each independent agency nomination confirmed in the 110th Congress, the number of days between nomination and confirmation (“days to confirm”). The mean (average) number of days taken by the Senate to confirm a

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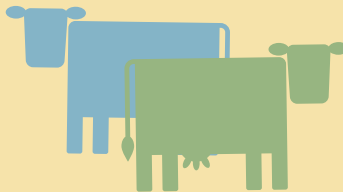
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nomination to a position covered by this report was 110.²⁹ The median number of days taken by the Senate was 113.³⁰

The methodology used in this report to count the length of time between nomination and confirmation differs from that which was used in previous similar CRS reports. The statistics presented here include the days during which the Senate was adjourned for its summer recesses and between sessions of Congress. The methodological change reduces the direct comparability of statistics in this report with those of the earlier research. Reasons for the change include the conversion of traditionally long recesses into a series of short recesses punctuated by pro forma sessions during the 110th Congress; the fact that although committees may not be taking direct action on nominations in the form of hearings or votes, they are likely still considering and processing nominations during recesses; and a desire to be consistent with the methodology used by many political scientists, as well as CRS research on judicial nominations. In addition, an argument could be made that the decision to extend Senate consideration of nominees over the course of a recess is intentional, and the choice to extend this length of time is better represented by including all days, including long recesses. A more detailed explanation of this methodological change is located in **Appendix E**.

Organization of This Report

Agency Profiles

The agency profiles provide data on presidential nominations and appointments to full-time positions requiring Senate confirmation, and Senate action on the nominations. Data on appointment actions during the 110th Congress appear in two tables for each agency, “Full-time PAS Positions, as of the End of the 110th Congress” and “Nomination Action During 110th Congress.”³¹ As noted, some agencies had no nomination activity during this period of time.

The first of these two tables identifies, as of the end of the 110th Congress, each full-time PAS position in the department, its incumbent, and its pay level.³² For most presidentially appointed positions requiring Senate confirmation, the pay levels fall under the Executive Schedule, which, as of January 2009, ranged from level I (\$196,700) for Cabinet-level offices to level V (\$143,500) for the lowest-ranked positions. An incumbent’s name followed by “(A)” indicates an official who was, at that time, serving in an acting capacity. Vacancies are also noted in the first table.

²⁹ See **Appendix B** for a further breakdown.

³⁰ The median is the midpoint of the range of all the numbers when arranged numerically. The median is less sensitive to outliers than the mean.

³¹ This report was compiled from data from the nominations file of the Senate Executive Files database of the Legislative Information System (LIS), available at <http://www.congress.gov/nomis/>; the “Plum Book” (U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *United States Government Policy and Supporting Positions*, 110th Cong., 2nd sess., committee print, November 12, 2008 (Washington: GPO, 2008)) and telephone discussions with agency officials. Information concerning position incumbents was also drawn from nomination and confirmation data supplemented by information from the following two federal agency directories: The Leadership Library on the Internet, Federal Yellow Book, at <http://www.leadershipdirectories.com/fyb.htm> (New York: Leadership Directories, Inc); and CQ Press, 2008/Fall Federal Staff Directory, 46th ed. (Washington: CQ Press, 2008).

³² The data collected on incumbents at the end of the 110th Congress were collected as of the Senate’s last day of business on December 11, 2008. Beginning on December 12, agency officials were contacted and the lists of incumbents were finalized.

The nomination action table provides, in chronological order, information concerning each nomination. It shows the name of the nominee, position involved, date of nomination, date of confirmation, and number of days between receipt of a nomination and confirmation. As discussed earlier (see “Average Time to Confirm a Nomination,” above), the numbers of days shown in the tables in this report include days during the longer recesses around August and between sessions of Congress. Some nominees identified in this report were nominated more than once for the same position. This may have been because a nomination was returned to the President and he submitted a new nomination, or because he submitted a nomination following a recess appointment. The nomination action tables also provide information about recess appointments. When a nominee is awaiting Senate action and he or she is given a recess appointment, a follow-up nomination is usually submitted to comply with the requirements of 5 U.S.C. § 5503(b) (see section entitled “Recess Appointments,” above).

The nomination tables that have more than one nominee to a position also give statistics on the length of time between nomination and confirmation. Each nomination action table provides the average “days to confirm” in two ways: mean and median. Both are presented because the mean can be influenced by outliers in the data, while the median does not tend to be influenced by outliers. In other words, a nomination that took an extraordinarily long time might cause a significant change in the mean, but the median would be unaffected. Presenting both numbers is a better way to look at the central tendency of the data.

Additional Appointment Information

Appendix A presents a table of all nominations and recess appointments to positions in independent and other agencies, organized alphabetically by last name and following a similar format to that of the nomination action tables. It identifies the agency involved and the dates of nomination. The table indicates if and when a nomination was confirmed, withdrawn, or returned. The mean and median numbers of days taken to confirm a nomination are also provided.

Appendix B provides a table with summary information on appointments and nominations by four agency categories: independent executive agencies, agencies in the Executive Office of the President (EOP), multilateral banking organizations, and agencies in the legislative branch. For each of these categories, the table provides the number of positions, nominations, individual nominees, confirmations, nominations returned, and nominations withdrawn. The table also provides, for each of the four categories, the mean and median number of days to confirm a nomination.

Appendix C provides a list of department abbreviations.

Information on the Senate’s recesses and when recess appointments occurred can be found in **Appendix D**.

As noted above, this report employs certain methods that differ from reports tracking appointments during previous Congresses. These methodological changes are explained in detail in **Appendix E**.

Nominations and Incumbents: Full-Time Positions in Independent Agencies

Appalachian Regional Commission (ARC)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay level
Federal Co-Chair	Anne B. Pope	III
Alternate Federal Co-Chair	Richard J. Peltz	V

No ARC Nomination Action During the 110th Congress

Broadcasting Board of Governors (BBG)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay level
Director– International Broadcasting Bureau	Vacant	IV

Note: Nominations to part-time positions at the BBG did occur during the 110th Congress. This report covers only full-time positions; the nominations to part-time positions are not included.

No BBG Nomination Action for Full-time Positions During the 110th Congress

Central Intelligence Agency (CIA)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay level
Director	Michael V. Hayden	II
Inspector General ^a	John Helgerson	III + 3% ^b
General Counsel	John A. Rizzo (A)	IV

Note: The Intelligence Reform and Terrorism Prevention Act of 2004, P.L. 108-458, introduced the Office of the Director of National Intelligence and changed some of the CIA's leadership structure. These changes

included the elimination of three CIA Assistant Director positions and the transfer of two CIA Deputy Director positions to the Office of the Director of National Intelligence (ODNI),

- a. The President may remove an inspector general (IG) from office, as he may remove most other appointed officials in the departments. In the case of the CIA's IG, however, the law provides that "The President shall communicate in writing to the intelligence committees the reasons for any such removal not later than 30 days prior to the effective date of such removal" (50 USCS § 403(q)(b)(6)).
- b. Under the provisions of 5 U.S.C. Appx. § 3 (e), "The annual rate of basic pay for an inspector general (as defined under section 12(3)) shall be the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code, plus 3 percent."

CIA Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
John A. Rizzo	General Counsel	01/09/07	Withdrawn	09/25/07

Corporation for National and Community Service (CNCS)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
President and Chief Executive Officer	Vacant	III
Inspector General ^a	Gerald Walpin	III + 3% ^b
Chief Financial Officer	Jerry G. Bridges	IV
Managing Director ^c	Vacant	IV
Managing Director	Vacant	IV

Note: Nominations to part-time positions at CNCS did occur during the 110th Congress. This report covers only full-time positions; the nominations to part-time positions are not included.

- a. The President may remove an inspector general (IG) from office, as he may remove most other appointed officials in the departments. In the case of an IG, however, the law provides that "[i]f an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer" (5 U.S.C. Appx. § 3 (b)).
- b. Under the provisions of 5 U.S.C. Appx. § 3 (e), "The annual rate of basic pay for an inspector general (as defined under section 12(3)) shall be the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code, plus 3 percent."
- c. According to agency officials, only one of the two managing director positions has ever been filled. The last managing director was Louis Caldera, who resigned in 1998.

No CNCS Nomination Action During the 110th Congress

Court Services and Offender Supervision Agency to the District of Columbia (CSOSA)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Director ^a	Vacant	IV

- a. The position shown has a six-year term; an incumbent may be removed from office prior to the expiration of the term only for neglect of duty, malfeasance in office, or other good cause shown. (*District of Columbia Code 24-133(b)(1)*). There is no provision regarding removal or continuing in office after a term expires.

CSOSA Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Paul A. Quander Jr.	Director	09/26/08	Returned 01/02/09 ^a	

- a. Paul A. Quander Jr. was the previous incumbent of this position, serving from August 5, 2002, until his six-year term expired on August 4, 2008. The President re-nominated him for the seat as is listed here, but the nomination was returned to the President at the end of the 110th Congress under the provisions of Senate Rule XXXI, paragraph 6, of the Standing Rules of the Senate.

Delta Regional Authority (DRA)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Federal Co-Chair	P. H. Johnson	III

No DRA Nomination Action During the 110th Congress

Environmental Protection Agency (EPA)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Administrator	Stephen L. Johnson	II
Deputy Administrator	Marcus C. Peacock	III
Inspector General ^a	Bill A. Roderick (A)	III + 3% ^b
Assistant Administrator – Administration and Resources Management	Luis A. Luna	IV

Position	Incumbent	Pay Level
Assistant Administrator – Air and Radiation	Vacant	IV
Assistant Administrator – Enforcement and Compliance Assurance	Granta Y. Nakayama	IV
Assistant Administrator – Environmental Information	Molly O'Neill	IV
Assistant Administrator – International Affairs	Vacant	IV
Assistant Administrator – Prevention, Pesticides and Toxic Substances	James B. Gulliford	IV
Assistant Administrator – Research and Development	George M. Gray	IV
Assistant Administrator – Solid Waste and Emergency Response	Susan P. Bodine	IV
Assistant Administrator – Water	Benjamin Grumbles	IV
Chief Financial Officer ^c	Lyons Gray	IV
General Counsel	Patricia K. Hirsch (A)	IV

- a. The President may remove an inspector general (IG) from office, as he may remove most other appointed officials in the departments. In the case of an IG, however, the law provides that “[i]f an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer” (5 U.S.C. Appx. § 3 (b)).
- b. Under the provisions of 5 U.S.C. Appx. § 3 (e), “The annual rate of basic pay for an inspector general (as defined under section 12(3)) shall be the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code, plus 3 percent.”
- c. The chief financial officer may be appointed by the President with the advice and consent of the Senate, or designated by the President from among agency officials confirmed by the Senate for another position (31 U.S.C. § 901(a)(1)).

EPA Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
William L. Wehrum Jr.	Asst. Admin. – Air and Radiation	01/09/07	Withdrawn 04/11/07	
Roger R. Martella Jr.	General Counsel	01/09/07	03/29/07	79
Alex A. Beehler	Inspector General	01/09/07	Withdrawn 04/11/07	
Andrew R. Cochran	Inspector General	07/31/07	Withdrawn 10/16/07	
David R. Hill	Asst. Admin. – Air and Radiation	12/03/07	Withdrawn 03/13/08	
David R. Hill	General Counsel	03/13/08	Returned 01/02/09 ^a	
G. David Banks	Asst. Admin. – International Affairs	09/29/08	Returned 01/02/09 ^a	

- a. Returned to the President at the end of the 110th Congress under the provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

Federal Mediation and Conciliation Service (FMCS)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Director	Arthur F. Rosenfeld	III

No FMCS Nomination Action During the 110th Congress

General Services Administration (GSA)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Administrator	James A. Williams (A)	III
Inspector General ^a	Brian D. Miller	III + 3% ^b

- a. The President may remove an inspector general (IG) from office, as he may remove most other appointed officials in the departments. In the case of an IG, however, the law provides that “[i]f an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer” (5 U.S.C. Appx. § 3 (b)).
- b. Under the provisions of 5 U.S.C. Appx. § 3 (e), “The annual rate of basic pay for an inspector general (as defined under section 12(3)) shall be the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code, plus 3 percent.”

GSA Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
James A. Williams	Administrator	06/25/08	Returned 01/02/09 ^a	

- a. Returned to the President at the end of the 110th Congress under the provisions of Senate Rule XXXI, paragraph 6, of the Standing Rules of the Senate.

Millennium Challenge Corporation (MCC)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Chief Executive Officer	John J. Danilovich	II

No MCC Nomination Action During the 110th Congress

National Aeronautics and Space Administration (NASA)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Administrator	Michael D. Griffin	II
Deputy Administrator	Shana L. Dale	III
Inspector General ^a	Robert W. Cobb	III+ 3% ^b
Chief Financial Officer ^c	Ronald Spoechel	IV

- a. The President may remove an inspector general (IG) from office, as he may remove most other appointed officials in the departments. In the case of an IG, however, the law provides that “[i]f an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer” (5 U.S.C. Appx. § 3 (b)).
- b. Under the provisions of 5 U.S.C. Appx. § 3 (e), “The annual rate of basic pay for an inspector general (as defined under section 12(3)) shall be the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code, plus 3 percent.”
- c. The chief financial officer may be appointed by the President with the advice and consent of the Senate, or designated by the President from among agency officials confirmed by the Senate for another position (31 U.S.C. § 901(a)(1)).

NASA Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Ronald Spoechel	Chief Financial Officer	05/16/07	09/11/07	118

National Archives and Records Administration (NARA)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Archivist ^a	Adrienne Thomas (A)	III

- a. The president may remove the archivist at any time, but must communicate the reasons for such removal to both houses of Congress (44 U.S.C. § 2103).

No NARA Nomination Action During the 110th Congress

National Foundation on the Arts and Humanities (NFAH)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Chair – National Endowment for the Arts ^a	M. Dana Gioia	III
Chair – National Endowment for the Humanities ^b	Bruce Cole	III
Director – Institute of Museum and Library Services ^c	Anne-Imelda Radice	III

- a. Term of office is four years; when term expires, incumbent may remain in office until a successor is appointed (20 U.S.C. § 954(b)).
- b. Term of office is four years; when term expires, incumbent may remain in office until a successor is appointed (20 U.S.C. § 954(b)).
- c. Term of office is four years (20 U.S.C. § 9103(2)).

No NFAH Nomination Action for Full-time Positions During the 110th Congress

National Science Foundation (NSF)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Director ^a	Arden L. Bement Jr.	II
Deputy Director	Kathie L. Olsen	III

- a. Term of office is six years, but the President may remove the incumbent at any time. The incumbent must leave office when term expires (42 U.S.C. § 1864(a)).

No NSF Nomination Action for Full-time Positions During the 110th Congress

Office of the Director of National Intelligence (ODNI)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Director	J. Michael McConnell	I
Principal Deputy Director	Donald M. Kerr	II
Director – National Counterterrorism Center	Michael E. Leiter	II
General Counsel	Benjamin A. Powell	IV
Chief Information Officer ^a	Patrick A. Gorman (A)	IV

Note: The Office of the Director of National Intelligence was created in 2004 by the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458).

a. In the ODNI, the Chief Information Officer is also an Associate Director of National Intelligence.

ODNI Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
J. Michael McConnell	Director	01/22/07	02/07/07	16
Donald M. Kerr	Principal Deputy Director	07/11/07	10/04/07	85
Michael E. Leiter	Director – National Counterterrorism Center	03/31/08	06/10/08	71
Mean number of days to confirm				57
Median number of days to confirm				71

Office of Government Ethics (OGE)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Director ^a	Robert I. Cusick Jr.	III

a. Term of office is five years; the incumbent must leave office when the term expires (5 U.S.C. App. § 401).

No OGE Nomination Action During the 110th Congress



A Practical Guide to Preparing and Delivering
Testimony Before Congress and Congressional
Hearings for Agencies, Associations, Corporations,
Military, NGOs, and State and Local Officials

By William N. LaForge

Testifying Before Congress

Office of Navajo and Hopi Indian Relocation (ONHIR)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Commissioner	Vacant ^a	IV

- a. There has not been a confirmed Commissioner for the Office of Navajo and Hopi Indian Relocation since the resignation of Carl J. Kunasek on April 12, 1994.

No ONHIR Nomination Action During the 110th Congress

Office of Personnel Management (OPM)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Director ^a	Michael W. Hager (A)	II
Deputy Director	Howard C. Weizmann	III
Inspector General ^b	Patrick E. McFarland	III + 3% ^c

- a. Term of office is four years, but the President may remove the incumbent at any time. The incumbent must leave office when the term expires (5 U.S.C. § 1102(a)).
- b. The President may remove an inspector general (IG) from office, as he may remove most other appointed officials in the departments. In the case of an IG, however, the law provides that “[i]f an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer” (5 U.S.C. Appx. § 3 (b)).
- c. Under the provisions of 5 U.S.C. Appx. § 3 (e), “The annual rate of basic pay for an inspector general (as defined under section 12(3)) shall be the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code, plus 3 percent.”

OPM Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Howard C. Weizmann	Deputy Director	01/10/07	06/28/07	169
Michael W. Hager	Director	08/01/08	Returned 01/02/09 ^a	

- a. Returned to the President at the end of the 110th Congress under the provisions of Senate Rule XXXI, paragraph 6, of the Standing Rules of the Senate.

Office of Special Counsel (OSC)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Special Counsel ^a	William E. Reukauf (A)	V
a. Term of office is five years; incumbent may continue to serve for one year after his or her term expires. The President may remove incumbent from office only for inefficiency, neglect of duty, or malfeasance in office (5 U.S.C. § 1211(b)).		

No OSC Nomination Action During the 110th Congress

Overseas Private Investment Corporation (OPIC)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
President	Robert A. Mosbacher Jr.	III
Executive Vice President	Vacant	IV

OPIC Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Roszell D. Hunter	Executive Vice President	12/08/08	Returned 01/02/09 ^a	
a. Returned to the President at the end of the 110 th Congress under the provisions of Senate Rule XXXI, paragraph 6, of the Standing Rules of the Senate.				

Peace Corps (PC)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Director	Ronald A. Tschetter	III
Deputy Director	Josephine K. Olsen	IV

No PC Nomination Action During the 110th Congress

Selective Service System (SSS)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Director	William A. Chatfield	IV

No SSS Nomination Action During the 110th Congress

Small Business Administration (SBA)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Administrator	Santanu K. Baruah (A)	III
Inspector General ^a	Peter L. McClintock (A)	III + 3% ^b
Deputy Administrator	Jovita Carranza	IV
Chief Counsel for Advocacy	Shawne McGibbon (A)	IV

- a. The President may remove an inspector general (IG) from office, as he may remove most other appointed officials in the departments. In the case of an IG, however, the law provides that “[i]f an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer” (5 U.S.C. Appx. § 3 (b)).
- b. Under the provisions of 5 U.S.C. Appx. § 3 (e), “The annual rate of basic pay for an inspector general (as defined under section 12(3)) shall be the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code, plus 3 percent.”

SBA Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Carol D. Kissal	Inspector General	02/25/08	Withdrawn 07/23/08	
Santanu K. Baruah	Administrator	06/25/08	Returned 01/02/09 ^a	
John G. Crews II	Inspector General	09/26/08	Returned 01/02/09 ^a	

- a. Returned to the President at the end of the 110th Congress under the provisions of Senate Rule XXXI, paragraph 6, of the Standing Rules of the Senate.

Social Security Administration (SSA)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Commissioner ^a	Michael J. Astrue	I
Deputy Commissioner ^b	Jason J. Fichtner (A)	II
Inspector General ^c	Patrick P. O'Carroll Jr.	III + 3% ^d

- Term of office is six years. When a term expires, the incumbent may continue in office until a successor is appointed. The President may remove an incumbent only for neglect of duty or malfeasance in office (42 U.S.C. § 902(a)).
- Term of office is six years (42 U.S.C. § 902(b)). When a term expires, the incumbent may continue in office until a successor is appointed.
- The President may remove an inspector general (IG) from office, as he may remove most other appointed officials in the departments. In the case of an IG, however, the law provides that "[i]f an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer" (5 U.S.C. Appx. § 3 (b)).
- Under the provisions of 5 U.S.C. Appx. § 3 (e), "The annual rate of basic pay for an inspector general (as defined under section 12(3)) shall be the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code, plus 3 percent."

SSA Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Andrew G. Biggs	Deputy Commissioner	01/09/07	Withdrawn 01/23/08	
Michael J. Astrue	Commissioner	01/09/07	02/01/07	23
Andrew G. Biggs	Deputy Commissioner	Recess Appointment 04/04/07 ^a		
Andrew G. Biggs	Deputy Commissioner	05/16/07	Withdrawn 01/23/08	
Jason J. Fichtner	Deputy Commissioner	06/25/08	Returned 01/02/09 ^b	

- When a recess appointment is made, the President generally submits a new nomination for the nominee, even when an old nomination is pending, in compliance with 5 U.S.C. § 5503. In this case, the President nominated Biggs on January 9, 2007, recess-appointed him on April 4, 2007, then sent another nomination following the recess appointment on May 16, 2007. His recess appointment would have expired at the end of the 110th Congress (December 2008), but he left the position early in 2008.
- Returned to the President at the end of the 110th Congress under the provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

Trade and Development Agency (TDA)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Director	Larry W. Walther	III

TDA Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Larry W. Walther	Director	11/16/07	03/13/08	118

U.S. Agency for International Development (USAID)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Administrator	Henrietta H. Fore	II
Deputy Administrator	James R. Kunder (A)	III
Inspector General ^a	Donald A. Gambatesa	III + 3% ^b
Assistant Administrator – Sub-Saharan Africa	Katherine Almquist	IV
Assistant Administrator – Asia and Near East	Margot Ellis (A)	IV
Assistant Administrator – Latin American and Caribbean	Jose R. Cardenas (A)	IV
Assistant Administrator – Europe and Eurasia	Douglas Menarchik	IV
Assistant Administrator – Global Health	Kent R. Hill	IV
Assistant Administrator – Economic Growth, Agriculture, and Trade	Jacqueline E. Schafer	IV
Assistant Administrator – Democracy, Conflict, and Humanitarian Assistance	Michael E. Hess	IV
Assistant Administrator – Management	Drew Luten (A)	IV
Assistant Administrator – Legislative and Public Affairs	Jeffrey J. Grieco	IV

Note: USAID is an independent establishment as defined by 5 U.S.C. § 104, with certain limitations (22 U.S.C. § 6563(a)). The USAID director “shall report to and be under the direct authority and foreign policy guidance of the Secretary of State” (22 U.S.C. § 6592).

- a. The President may remove an inspector general (IG) from office, as he may remove most other appointed officials in the departments. In the case of an IG, however, the law provides that “[i]f an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer” (5 U.S.C. Appx. § 3 (b)).

- b. Under the provisions of 5 U.S.C. Appx. § 3 (e), “The annual rate of basic pay for an inspector general (as defined under section 12(3)) shall be the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code, plus 3 percent.”

USAID Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
James R. Kunder	Deputy Administrator	01/09/07	Returned 01/02/09 ^a	
Katherine Almquist	Asst. Admin. – Sub-Saharan Africa	01/09/07	05/25/07	136
Douglas Menarchik	Asst. Admin. – Europe and Eurasia	01/10/07	05/25/07	135
Paul J. Bonicelli	Asst. Admin. – Latin America and Caribbean	01/18/07	05/25/07	127
Henrietta H. Fore	Administrator	05/24/07	11/13/07	173
Sean R. Mulvaney	Asst. Admin. – Management	07/17/07	11/01/07	107
Jeffrey J. Grieco	Asst. Admin. – Legislative and Public Affairs	01/22/08	03/13/08	51
Mean number of days to confirm				122
Median number of days to confirm				131

- a. Returned to the President at the end of the 110th Congress under the provisions of Senate Rule XXXI, paragraph 6, of the Standing Rules of the Senate.

Nominations and Incumbents: Full-Time Positions in the Executive Office of the President

Council of Economic Advisers (CEA)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Chair ^a	Edward P. Lazear	II
Member	Donald B. Marron	IV
Member	Vacant	IV

- a. The chair and vice chair are designated by the President (15 U.S.C. § 1023(a)). No vice-chair had been designated since 2005.

CEA Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Donald B. Marron	Member	06/28/07	06/27/08	365
Dennis W. Carlton	Member	08/02/07	Withdrawn 01/20/08	

Council on Environmental Quality (CEQ)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Chair	James L. Connaughton	II

Note: The Council consisted of one member who served as chair.

No CEQ Nomination Action During the 110th Congress

Office of Management and Budget (OMB)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Director	Jim Nussle	I
Deputy Director	Stephen S. McMillin	II
Deputy Director – Management	Clay Johnson III	II
Controller – Office of Federal Financial Management	Daniel I. Werfel (A)	III
Administrator – Office of Federal Procurement Policy	Lesley Field (A)	IV
Administrator – Office of Information and Regulatory Affairs	Susan E. Dudley (A)	IV

OMB Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Susan E. Dudley	Admin. – Office of Information and Regulatory Affairs	01/09/07	Returned 01/02/09 ^a	
Susan E. Dudley	Admin. – Office of Information and Regulatory Affairs		Recess Appointment 04/04/07 ^b	
Susan E. Dudley	Admin. – Office of Information and Regulatory Affairs	05/16/07	Returned 01/02/09 ^a	
Jim Nussle	Director	06/25/07	09/04/07	71

- a. Returned to the President at the end of the 110th Congress under the provisions of Senate Rule XXXI, paragraph 6, of the Standing Rules of the Senate.
- b. When a recess appointment is made, the President generally submits a new nomination for the nominee, even when an old nomination is pending, in compliance with 5 U.S.C. § 5503. In this case, Dudley was nominated in January of 2007 and recess-appointed in April of 2007. The President then submitted another nomination following the recess appointment in May of 2007. Her recess appointment expired at the end of the 110th Congress (December 2008).

Office of National Drug Control Policy (ONDCP)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Director	John P. Walters	I
Deputy Director	Scott M. Burns	II
Deputy Director – Demand Reduction	Bertha K. Madras	III

Position	Incumbent	Pay Level
Deputy Director – Supply Reduction	James F. X. O’Gara (A)	III
Deputy Director – State, Local, and Tribal Affairs	David R. Murtaugh (A)	III

ONDCP Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
James F. X. O’Gara	Deputy Director – Supply Reduction	01/09/07	Returned 01/02/09 ^a	
Scott M. Burns	Deputy Director	06/27/07	12/19/07	175
David Reid Murtaugh	Deputy Director – State, Local, and Tribal Affairs	07/15/08	Returned 01/02/09 ^a	

- a. Returned to the President at the end of the 110th Congress under the provisions of Senate Rule XXXI, paragraph 6, of the Standing Rules of the Senate.

Office of Science and Technology Policy (OSTP)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Director	John H. Marburger III	II
Associate Director – Science	Sharon L. Hays	III
Associate Director – Technology	Richard M. Russell	III

No OSTP Nomination Action During the 110th Congress

Office of the U.S. Trade Representative (OUSTR)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
U.S. Trade Representative	Susan C. Schwab	I
Deputy U.S. Trade Representative	Peter F. Allgeier	III
Deputy U.S. Trade Representative	Deanna T. Okun (A)	III
Deputy U.S. Trade Representative	John K. Veroneau	III
Chief Agricultural Negotiator	A. Ellen Terpstra (A)	III

OUSTR Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Deanna T. Okun	Deputy U.S. Trade Representative	12/19/07	Returned	01/02/09 ^a
A. Ellen Terpstra	Chief Agricultural Negotiator	03/31/08	Returned	01/02/09 ^a

- a. Returned to the President at the end of the 110th Congress under the provisions of Senate Rule XXXI, paragraph 6, of the Standing Rules of the Senate.

Nominations and Incumbents: Full-Time Positions in Multilateral Organizations

African Development Bank (AfDB)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
U.S. Director	Mimi Alemayehou	— ^a
a. “The Director... representing the United States, if [a citizen] of the United States, may, in the discretion of the President, receive such compensation, allowances, and other benefits as, together with those received from the Bank and from the African Development Fund, may not exceed those authorized for a chief of mission under the Foreign Service Act of 1980” (22 U.S.C. § 290(i)(2)).		

AfDB Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Mimi Alemayehou	U.S. Director	03/11/08	08/01/08	143

Asian Development Bank (AsDB)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
U.S. Executive Director	Curtis S. Chin	— ^a
a. “The Director may, in the discretion of the President, receive such compensation, allowances, and other benefits as, together with those received by him from the Bank, will equal those authorized for a chief of mission under the Foreign Service Act of 1980.” (22 U.S.C. § 285(a)(b)).		

AsDB Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Curtis S. Chin	U.S. Director ^a	01/09/07	03/29/07	79
a. The position of U.S. Director is the title of the position as written on the nomination sent by the Senate to the President. In the Asian Development Bank, this position is known as the U.S. Executive Director.				

European Bank for Reconstruction and Development (EBRD)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
U.S. Director	Kenneth L. Peel	— ^a
a. The statutory basis for this position, 22 § 2901-1, makes no provision regarding the compensation of the position holder.		

EBRD Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Kenneth L. Peel	U.S. Director	06/03/08	08/01/08	59

Inter-American Development Bank (IADB)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
U.S. Executive Director ^a	Miguel R. San Juan	— ^b
U.S. Alternate Executive Director	Jan Boyer	— ^b
a. Term of office is three years; incumbent remains in office when a term expires until a successor is appointed (22 U.S.C. § 283a(b)).		
b. “No person shall be entitled to receive any salary or other compensation from the United States for services as ... executive director” (22 U.S.C. § 283a(c)).		

IADB Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Miguel R. San Juan	U.S. Executive Director	03/31/08	08/01/08	123

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International Bank for Reconstruction and Development (World Bank) (IBRD)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
U.S. Executive Director ^a	Eli W. Debevoise II	— ^c
U.S. Alternate Executive Director ^b	Ana M. Guevara	— ^c

- Term of office is two years; the incumbent may remain in office when a term expires until a successor is appointed (22 U.S.C. § 286a(a)).
- Term of office is two years; the incumbent may remain in office when a term expires until a successor is appointed (22 U.S.C. § 286a(b)).
- “No person shall be entitled to receive any salary or other compensation from the United States for services as ... executive director, ... alternate ...” (22 U.S.C. § 283a(d)(1)).

IBRD Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Eli W. Debevoise II	U.S. Executive Director	02/16/07	03/29/07	41
Ana M. Guevara	U.S. Alternate Executive Director	11/15/07	03/13/08	119
Mean number of days to confirm				80
Median number of days to confirm				80

International Joint Commission, U.S. and Canada (IJC)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Chair – U.S. Section	Samuel W. Speck	IV
Commissioner – U.S. Section	Irene B. Brooks	V
Commissioner – U.S. Section	Allen I. Olson	V

IJC Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Samuel W. Speck	Commissioner – U.S. Section	02/14/08	04/29/08	75

International Monetary Fund (IMF)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
U.S. Executive Director ^a	Magrethe Lundsager	—b
U.S. Alternate Executive Director ^a	Daniel D. Heath	—b

a. Term of office is two years; the incumbent may remain in office when a term expires until a successor is appointed (22 U.S.C. § 286a(a)).

b. “No person shall be entitled to receive any salary or other compensation from the United States for services as ... executive director, ... alternate ...” (22 U.S.C. § 286a(d)(1)).

IMF Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Magrethe Lundsager	U.S. Executive Director	01/09/07	03/29/07	79
Daniel D. Heath	U.S. Alternate Executive Director	07/11/07	11/01/07	113
Mean number of days to confirm				96
Median number of days to confirm				96

Nominations and Incumbents: Full-Time Positions in Legislative Branch Agencies

Architect of the Capitol (AOC)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Architect of the Capitol ^a	Stephen T. Ayers (A)	—b
<p>a. The architect is appointed to a 10-year term (2 U.S.C. § 1801(a)(1)).</p> <p>b. As provided in 2 U.S.C. § 1802, the “compensation of the Architect of the Capitol shall be at an annual rate which is equal to the lesser of the annual salary for the Sergeant at Arms of the House of Representatives or the annual salary for the Sergeant at Arms and Doorkeeper of the Senate.”</p>		

No AOC Nomination Action During the 110th Congress

Government Accountability Office (GAO)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Comptroller General ^a	Gene L. Dodaro (A)	—b
Deputy Comptroller General ^c	—d	—b
<p>a. The Comptroller General is appointed to a 15-year term, with no hold-over provision when the term expires. He may be removed before the term expires by impeachment or by a joint resolution of Congress, for permanent disability, inefficiency, neglect of duty, malfeasance, or a felony or conduct involving moral turpitude (31 U.S.C. § 703(e)(1)).</p> <p>b. Under 31 U.S.C. § 703(f), the “annual rate of basic pay of the – (1) Comptroller General is equal to the rate for level II of the Executive Schedule; and (2) Deputy Comptroller General is equal to the rate for level III of the Executive Schedule.”</p> <p>c. The term of the Deputy Comptroller General expires upon the appointment of a new Comptroller General, or when a successor is appointed.</p> <p>d. No one has been nominated to this office for at least 30 years.</p>		

No GAO Nomination Action During the 110th Congress

Government Printing Office (GPO)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Public Printer	Robert C. Tapella	— ^a
a. Under 44 U.S.C. § 303, the “annual rate of pay for the Public Printer shall be a rate which is equal to the rate for level II of the Executive Schedule under subchapter II of chapter 53 of title 5.”		

GPO Nomination Action During the 110th Congress

Nominee	Position	Nominated	Confirmed	Days to Confirm
Robert C. Tapella	Public Printer	05/24/07	10/04/07	133

Library of Congress (LOC)

Full-time PAS Positions, as of the End of the 110th Congress

Position	Incumbent	Pay Level
Librarian of Congress	James H. Billington	— ^a
a. Under 2 U.S.C. § 136a-2(1), “the Librarian of Congress shall be compensated at an annual rate of pay which is equal to the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of title 5.”		

No LOC Nomination Action During the 110th Congress

Appendix A. Summary of All Nominations and Appointments to Independent and Other Agencies

Nominee	Position	Agency	Nomination Date	Confirmation Date	Days to Confirm
Mimi Alemayehou	U.S. Director	AfDB	03/11/08	08/01/08	143
Katherine Almquist	Asst. Admin. – Sub-Saharan Africa	USAID	01/09/07	05/25/07	136
Michael J. Astrue	Commissioner	SSA	01/09/07	02/01/07	23
G. David Banks	Asst. Admin. – International Affairs	EPA	09/29/08	Returned 01/02/09	
Santanu K. Baruah	Administrator	SBA	06/25/08	Returned 01/02/09	
Alex A. Beehler	Asst. Admin. – Inspector General	EPA	01/09/07	Withdrawn 04/11/07	
Andrew G. Biggs	Deputy Commissioner	SSA	01/09/07	Withdrawn 01/23/08	
Andrew G. Biggs	Deputy Commissioner	SSA	Recess Appointment 04/04/07		
Andrew G. Biggs	Deputy Commissioner	SSA	05/16/07	Withdrawn 01/23/08	
Paul J. Bonicelli	Asst. Admin. – Latin America and Caribbean	USAID	01/18/07	05/25/07	127
Scott M. Burns	Deputy Director	ONDCP	06/27/07	12/19/07	175
Dennis W. Carlton	Member	CEA	08/02/07	Withdrawn 01/20/08	
Curtis S. Chin	U.S. Director	AsDB	01/09/07	03/29/07	79
Andrew R. Cochran	Inspector General	EPA	07/31/07	Withdrawn 10/16/07	
John G. Crews II	Inspector General	SBA	09/26/08	Returned 01/02/09	
Eli W. Debevoise II	U.S. Executive Director	IBRD	02/16/07	03/29/07	41
Susan E. Dudley	Administrator – Office of Information and Regulatory Affairs	OMB	01/09/07	Returned 01/02/09	
Susan E. Dudley	Administrator – Office of Information and Regulatory Affairs	OMB	Recess Appointment 04/04/07		
Susan E. Dudley	Administrator – Office of Information and Regulatory Affairs	OMB	05/16/07	Returned 01/02/09	
Jason J. Fichtner	Deputy Commissioner	SSA	06/25/08	Returned 01/02/09	
Henrietta H. Fore	Administrator	USAID	05/24/07	11/13/07	173
Jeffrey J. Grieco	Asst. Admin. – Legislative and Public Affairs	USAID	01/22/08	03/13/08	51
Ana M. Guevara	U.S. Alternate Executive Director	IBRD	11/15/07	03/13/08	119
Michael W. Hager	Director	OPM	08/01/08	Returned 01/02/09	
Daniel D. Heath	U.S. Alternate Executive Director	IMF	07/11/07	11/01/07	113
David R. Hill	Asst. Admin. – Air and Radiation	EPA	12/03/07	Withdrawn 03/13/08	
David R. Hill	Asst. Admin. – General Counsel	EPA	03/13/08	Returned 01/02/09	

Nominee	Position	Agency	Nomination Date	Confirmation Date	Days to Confirm
Roszell D. Hunter	Executive Vice President	OPIC	12/08/08	Returned 01/02/09	
Miguel R. San Juan	U.S. Executive Director	IADB	03/31/08	08/01/08	123
Donald M. Kerr	Principal Deputy Director	ODNI	07/11/07	10/04/07	85
Carol D. Kissal	Inspector General	SBA	02/25/08	Withdrawn 07/23/08	
James R. Kunder	Deputy Administrator	USAID	01/09/07	Returned 01/02/09	
Michael E. Leiter	Director – National Counterterrorism Center	ODNI	03/31/08	06/10/08	71
Margrethe Lundsager	U.S. Executive Director	IMF	01/09/07	03/29/07	79
Donald B. Marron	Member	CEA	06/28/07	06/27/08	365
Roger R. Martella Jr.	Asst. Admin. – General Counsel	EPA	01/09/07	03/29/07	79
J. Michael McConnell	Director	ODNI	01/22/07	02/07/07	16
Douglas Menarchik	Asst. Admin. – Europe and Eurasia	USAID	01/10/07	05/25/07	135
Sean R. Mulvaney	Asst. Admin. – Management	USAID	07/17/07	11/01/07	107
David R. Murtaugh	Deputy Director – State, Local, and Tribal Affairs	ONDCP	07/15/08	Returned 01/02/09	
Jim Nussle	Director	OMB	06/25/07	09/04/07	71
James F. X. O’Gara	Deputy Director – Supply Reduction	ONDCP	01/09/07	Returned 01/02/09	
Deanna T. Okun	Deputy U.S. Trade Representative	OUSTR	12/19/07	Returned 01/02/09	
Kenneth L. Peel	U.S. Director	EBRD	06/03/08	08/01/08	59
Paul A. Quander Jr.	Director	CSOSA	09/26/08	Returned 01/02/09	
John A. Rizzo	General Counsel	CIA	01/09/07	Withdrawn 09/25/07	
Samuel W. Speck	Commissioner – U.S. Section	IJC	02/14/08	04/29/08	75
Ronald Spoehel	Chief Financial Officer	NASA	05/16/07	09/11/07	118
Robert C. Tapella	Public Printer	GPO	05/24/07	10/04/07	133
A. Ellen Terpstra	Chief Agricultural Negotiator	OUSTR	03/31/08	Returned 01/02/09	
Larry W. Walther	Director	TDA	11/16/07	03/13/08	118
William L. Wehrum Jr.	Asst. Admin. – Air and Radiation	EPA	01/09/07	Withdrawn 04/11/07	
Howard C. Weizmann	Deputy Director	OPM	01/10/07	06/28/07	169
James A. Williams	Administrator	GSA	06/25/08	Returned 01/02/09	
Mean number of days to confirm nomination					110
Median number of days to confirm nomination					113

Source: Table created by CRS using data found in the Senate nominations database of the Legislative Information System at <http://www.congress.gov/nomis>.

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Appendix B. Nomination Action by Agency Type, 110th Congress

Agency Type	Positions	Nominations	Individual Nominees	Confirmations	Nominations Returned	Nominations Withdrawn	Mean/ Median Days to Confirm
Independent agencies	77	32	30	14	10	8	101/112.5
Executive Office of the President	23	10	9	3	6	1	204/175
Multilateral units	12	9	9	9	0	0	92/79
Legislative agencies	5	1	1	1	0	0	133/133
Total	117	52	49	27	16	9	110/113

Source: Table created by the Congressional Research Service using the data compiled for this report.

Appendix C. Agency Abbreviations

Independent Agencies

ARC—Appalachian Regional Commission

BBG—Broadcasting Board of Governors

CIA—Central Intelligence Agency

CNCS—Corporation for National and Community Service

CSOSA—Court Services and Offender Supervision Agency for the District of Columbia

DRA—Delta Regional Authority

EPA—Environmental Protection Agency

FMCS—Federal Mediation and Conciliation Service

GSA—General Services Administration

MCC—Millennium Challenge Corporation

NARA—National Archives and Records Administration

NASA—National Aeronautics and Space Administration

NFAH—National Foundation on the Arts and Humanities

NSF—National Science Foundation

ODNI—Office of the Director of National Intelligence

OGE—Office of Government Ethics

ONHIR—Office of Navajo and Hopi Indian Relocation

OPIC—Overseas Private Investment Corporation

OPM—Office of Personnel Management

OSC—Office of Special Counsel

PC—Peace Corps

SBA—Small Business Administration

SSA—Social Security Administration

SSS—Selective Service System

TDA—Trade Development Agency

USAID—United States Agency for International Development

Executive Office of the President (EOP)

CEA—Council of Economic Advisers

CEQ—Council on Environmental Quality

OMB—Office of Management and Budget

ONDCP—Office of National Drug Control Policy

OSTP—Office of Science and Technology Policy

OUSTR—Office of U.S. Trade Representative

Multilateral Banking Organizations

AfDB—African Development Bank

AsDB—Asian Development Bank

EBRD—European Bank for Reconstruction and Development

IADB—Inter-American Development Bank

IBRD—International Bank for Reconstruction and Development

IJC—International Joint Commission, U.S. and Canada

IMF—International Monetary Fund

Legislative Branch Agencies

AC—Architect of the Capitol

GAO—Government Accountability Office

GPO—Government Printing Office

LC—Library of Congress

Appendix D. Senate Intersession Recesses and Intrsession Recesses of Four or More Days, 110th Congress

Date recessed	Date reconvened	Number of days adjourned ^b	Recess Appointments
(The first session of the 110 th Congress convened on January 4, 2007.)			
02/17/07	02/26/07	9	0
03/29/07	04/10/07	12	2
05/25/07	06/04/07	10	0
06/29/07	07/09/07	10	0
08/03/07	09/04/07	32	0
10/05/07	10/15/07	10	0

Source: Table created by the Congressional Research Service using data from the *Congressional Record*.

Notes: The Senate adjourned sine die on December 31, 2007. The second session of the 110th Congress convened on January 3, 2008. The intersession (period between these two dates) was 3 days long.^b There were no intrasession recesses of four or more days during the 110th Congress, 2nd session. The Senate adjourned its second session on January 2, 2009. For the purposes of determining the length of an intrasession recess for inclusion in this table, Sundays were not counted. Under congressional precedents, Sunday is considered a “dies non,” or a day on which Congress is not expected to meet, for purposes of determining whether Congress has adjourned for “not more than three days.”

- b. The number of days adjourned was counted starting on the first calendar day after an adjournment and ending on the day of reconvening, including in the count the day the Senate reconvened. This is consistent with the House practice for counting recess days for the purposes of meeting congressional adjournment requirements in the Constitution (“Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days” Art. I, § 5, cl. 4). Under House precedents, “The House of Representatives in adjourning for not more than three days must take into the count either the day of adjourning or the day of the meeting, and Sunday is not taken into account in making this computation” U.S. Congress, House, *Constitution, Jefferson’s Manual and Rules of the House of Representatives of the United States, One Hundred Tenth Congress, 109th Cong., 2nd sess., H.Doc. 109-157* (Washington: GPO, 2007), p. 37. Senate practice appears to be consistent with this approach (Floyd M. Riddick and Alan S. Frumin, *Riddick’s Senate Procedure: Precedents and Practices, 101st Cong., 2nd sess., S.Doc. 101-28*, (Washington: GPO, 1992), pp. 15-16). Inasmuch as it has been argued that the periods during which the President could make recess appointments might be those in which the Senate is in recess pursuant to the constitutional provision just quoted, it appears that this method of calculating recess days would provide a relevant measure of recess length in the context of discussions of recess appointments. Other methods might be used in other contexts. For example, a method in which neither the day of adjournment nor the day of reconvening was counted has been used elsewhere. This method takes into account that the Senate could act on nominations on either of these days, obviating the need for a recess appointment.

Appendix E. Change in Methodology from Previous Tracking Reports

The calculations of nomination-to-confirmation intervals provided in this report counted all the days within the interval, including those during summer recesses and between sessions of the Senate. The inclusion of all days differs from the methodology used in similar CRS reports for previous Congresses.³³ In these earlier reports, days during August and intersession recesses were not included in calculations of nomination-to-confirmation intervals. The rationale for the earlier methodology was that the Senate was unlikely to continue consideration of nominations during these periods; committee hearings and votes, among other activities, typically do not occur during these times. The exclusion of days during only certain periods of adjournment—intersession recesses and August recesses, which are usually longer than 30 days—is suggested by Senate rules regarding when nominations are to be returned to the President. These provide:

Nominations neither confirmed nor rejected during the session at which they are made shall not be acted upon at any succeeding session without being again made to the Senate by the President; and if the Senate shall adjourn or take recess for more than thirty days, all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall be returned by the Secretary to the President.³⁴

This earlier methodology was also consistent with the approach of some political scientists who study executive branch appointments.³⁵

The methodology for this report is different from that which was used in previous similar reports for several reasons. First, as discussed above in the section on recess appointments, from the latter part of the first session through the end of the 110th Congress, the Senate chose to break up what would otherwise have been longer recesses into shorter recesses separated by pro forma sessions. This introduced two options for this report with regard to the calculation of nomination-to-confirmation intervals. The first option would have been to treat each series of short recesses created in this fashion as one long recess and to subtract these days from the nomination-to-confirmation interval.³⁶ The second option would have been to treat each recess in the series of short recesses created in this fashion as a short recess, and not to subtract these days from the nomination-to-confirmation interval. Arguably, the Senate and President actions were consistent with the latter construction—short recesses as short recesses. Otherwise, Senate rules would have required the return of pending nominations (or the waiver of that rule)³⁷ and the President could

³³ See, for example, CRS Report RL34744, *Presidential Appointments to Full-Time Positions on Regulatory and Other Collegial Boards and Commissions, 109th Congress*, by Henry B. Hogue et al..

³⁴ U.S. Congress, Senate Committee on Rules and Administration, *Senate Manual*, 110th Cong., 2nd sess., S.Doc. 110-1 (Washington: GPO, 2008), p. 58, Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

³⁵ For example, see Nolan McCarty and Rose Razaghian, “Advice and Consent: Senate Responses to Executive Branch Nominations 1885-1996,” *American Journal of Political Science*, vol. 43, no. 4 (October 1999), pp. 1122-1143.

³⁶ This appears to be the construction adopted by the *Congressional Directory*. See U.S. Congress, Joint Committee on Printing, *Congressional Directory, 2009-2010*, 111th Cong., 1st sess., S. Pub. 111-14 (Washington: GPO, 2009), p. 541.

³⁷ As noted above, under Senate rules, if a nomination is not acted upon by the Senate by the end of a Congress, it is returned to the President. Pending nominations also may be returned automatically to the President at the beginning of a recess of more than 30 days, but the Senate rule providing for this return is often waived. The applicable Senate rule may be found in U.S. Congress, Senate Committee on Rules and Administration, *Senate Manual*, 110th Cong., 2nd sess., S. Doc. 110-1 (Washington: GPO, 2008), p. 58, Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

have made recess appointments. The Senate and the President did not take these actions. As a result, short recesses created by pro forma sessions are treated as short recesses in the count of the length of time to confirmation. It should be noted, however, that the inclusion of these days reduces the comparability of statistics provided in this report with statistics in previous similar tracking reports, since the intervals calculated in this report include days that, in previous reports, were part of longer recesses and therefore were subtracted from the length of the interval. Although the phenomenon underlying this methodological problem first arose during the 110th Congress, it could arise again in future Congresses.

Other reasons for the methodological change are not unique to the 110th Congress. First, in some cases, committee or floor action on a nomination that could have been completed before a recess has been, instead, deferred until after the recess. For such a nomination, the period of Senate consideration arguably has been intentionally extended. Counting all days, including those during a long recess, in calculations of elapsed time reflects that extension of Senate consideration. Second, it is unlikely that all work pertaining to nominations stops over a recess, and the inclusion of recess days is a reflection of the fact that the nominee is still under consideration, even during recess. Member and committee staffs may still be considering nominations at that time, even though they may not take direct action in the form of hearings or votes on the nominees. Ongoing activities may include investigatory work and interviews with nominees. Finally, although, as mentioned above, some political scientists who study nominations do subtract recess days during calculations of nomination-to-confirmation intervals, many others do not.³⁸ In addition, the calculation of nomination-to-confirmation intervals in CRS research concerning judicial nominations does not exclude days that fall during recesses.³⁹ By using methodology that is more similar to the work of other political scientists and to CRS judicial nominations research, the research presented here could be more easily compared and combined with related work. For all of these reasons, in this report, we employ a new methodology for calculating nomination-to-confirmation intervals.

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³⁸ For example, see Lauren Cohen Bell, "Senatorial Discourtesy: The Senate's Use of Delay to Shape the Federal Judiciary," *Political Research Quarterly*, vol. 55, no. 3 (September 2002), pp. 589-607; Sarah A. Binder and Forrest Maltzman, "Senatorial Delay in Confirming Federal Judges, 1947-1998," *American Journal of Political Science*, vol. 46, no. 1 (January 2002), pp. 190-199; and Karl DeRouen Jr., Jeffrey S. Peake, and Kenneth Ward, "Presidential Mandates and the Dynamics of Senate Advice and Consent, 1885-1996," *American Politics Research*, vol. 33, no. 1 (January 2005), pp. 106-131.

³⁹ For example, see CRS Report RL33953, *Nominations to Article III Lower Courts by President George W. Bush During the 110th Congress*, by Denis Steven Rutkus, Susan Navarro Smelcer, and Maureen Bearden.

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