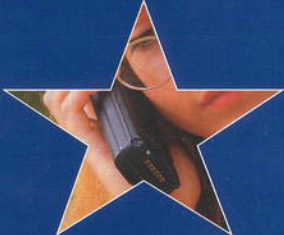




# Science and Technology

in the National Interest

## THE PRESIDENTIAL APPOINTMENT PROCESS



To create a stronger economy, a cleaner environment, improved public health, and a secure national defense, the nation requires the judgment and skills of its most qualified scientists and engineers in key government service positions. To recruit these leaders, including some from key sectors of the new economy, the President and the Congress must smooth the path and reduce the barriers to government service.

# Science and Technology

in the National Interest

## THE PRESIDENTIAL APPOINTMENT PROCESS

Committee on Science, Engineering, and Public Policy

NATIONAL ACADEMY OF SCIENCES  
NATIONAL ACADEMY OF ENGINEERING  
INSTITUTE OF MEDICINE

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The Committee on Science, Engineering, and Public Policy (COSEPUP) is a joint committee of the NAS, the NAE, and the IOM. It includes members of the councils of all three bodies. For more information on COSEPUP see [www.nationalacademies.org/cosepup](http://www.nationalacademies.org/cosepup).

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# PREFACE

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In recent years, there has been a substantial change in the number and breadth of issues coming before the US President that require science and technology (S&T) knowledge and judgement. S&T appointees can be crucial in assisting the next President in addressing the inevitable issues raised by the end of the Cold War and the evolution of the “new economy,” from new technical issues of missile defense to the changing role of regulation in telecommunications and biotechnology.

The federal government plays an increasingly important role in nurturing scientific and technological advancements and bringing their full benefits to society. At the same time, insights generated by research empower government decision-making in most major domains, from economic productivity and national security to public health, the environment, and agriculture by providing the data and analysis needed to make better decisions. The President needs the wise guidance of scientific and technical experts to achieve the nation’s policy goals in these areas.

The United States stands virtually alone among the industrialized nations in filling a wide variety of federal S&T positions with appointees selected by the President. In most advanced countries, these positions are held by career government employees, and the election of new political leadership brings the replacement of only the heads of cabinet departments. The American system of government requires the selection of thousands of new appointees every few years.<sup>1</sup> At the highest levels, these appointees are nominated by the President and confirmed by the Senate (and are known as PAS appointees).

The Presidential appointment system brings both benefits and drawbacks. Among its benefits are the enhanced ability of a president to carry out his policy agenda and the introduction to Washington of fresh ideas and new energy. Among its drawbacks are the difficulty of persuading talented leaders outside Washington to set aside their careers for a term in government and the challenge of making effective use of the time of these appointees during their terms in office.

In 1992, a previous panel of the Committee on Science, Engineering, and Public Policy (COSEPUP) wrote a report titled *Science and Technology Leadership in American Government: Ensuring the Best Presidential Appointments*. This report plus several other excellent reports (some focusing on science and technology, others concerning all presidential appointees) had findings virtually identical with those described below.

In its 1988 report *Science & Technology and the President*, the Carnegie Commission on Science and Technology recommended that, because of the significance and pervasiveness of S&T in presidential decision-making and the increased complexity of technological issues, “the S&T advisory function to the President not be fragmented and that there be a single senior staff assistant reporting to the President on S&T matters with the title of Assistant to the President for Science and Technology [APST].” That recommendation was followed, and later directors of the White House Office of Science and Technology Policy (OSTP) also held the APST rank.

The Carnegie Commission also identified key presidential S&T appointments, as did COSEPUP in its 1992 analysis. But the key report in this regard was *The Prune Book: The 60 Toughest Science and Technology Jobs in Washington*, which provided descriptions of the positions and lists of the persons who held them.

General reports not focused on S&T were also issued. The most important was from the Twentieth Century Fund in 1996, *Obstacle Course: The Report of the Twentieth Century Fund Task Force on the Presidential Appointment Process*.

The most recent data on this issue have been generated for a joint project of the Brookings Institution and the Heritage Foundation, which interviewed appointees in the Reagan, Bush, and Clinton administrations. The report, *The Merit and Reputation of an Administration: Presidential Appointees on the Appointments Process*, provides valuable insights into the recruitment of current and previous presidential appointees.

The authors of this report are scientists and engineers who have served in senior positions in the federal government in Washington, DC, and who have found their experience to be stimulating and satisfying. They encourage their colleagues in all sectors to make contributions in government service. To that end, this report seeks to make government service more accessible and fair for leading scientists and engineers and for appointees in other fields.

This panel’s report is intentionally brief and does not attempt to repeat the documentation of the 1992 report or of the other reports noted above. The appendix is provided to supplement the printed version with additional examples and supportive evidence for the key findings. The appendix is organized around each finding and subfinding in the main report. The support for each comes from both the reports mentioned and new analyses conducted by the panel.

Mary Good  
Panel Chair

---

<sup>1</sup>According to the General Accounting Office (GAO), the President relies on about 3,000 political appointees to make policy decisions on his behalf and promote his policies among the civil service. The President also depends on about 8,000 career executives to provide the continuity, knowledge, and institutional memory needed to manage the agencies and departments.

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*Veronica de la Garza*, Science & Technology Appointments, White House Office of Presidential Appointments

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*Paul Light*, Vice President and Director of Governmental Studies and Founding Director of the Center for Public Service, Brookings Institution

*Elizabeth Prostic*, Professional Staff Member, Senate Commerce Committee

Next, we would like to thank the reviewers of this report. This guide has been reviewed in draft form by individuals chosen for their diverse perspectives and technical expertise, in accordance with procedures approved by the National Research Council's Report Review Committee. The purpose of this independent review is to provide candid and critical comments that will assist the institution in making the published report as sound as possible and to ensure that the report meets institutional standards for objectivity, evidence, and responsiveness to the study charge. The review comments and draft manuscript remain confidential to protect the integrity of the deliberative process. We wish to thank the following individuals for their participation in the review of this report:

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**REPORT**



# Executive Summary

## Findings

### 1. Timely selection of scientists and engineers is important.

- Before and after the presidential election, the eventual President-elect needs advisors with expertise in science and technology (S&T) to advise on policy issues and help to locate a candidate for the position of Assistant to the President for Science and Technology (APST).
- Soon after the election, the APST candidate is needed to help set priorities, plan strategy, advise the President-elect and cabinet designees, and find qualified candidates for key S&T positions.

### 2. The pool of talented S&T candidates for presidential appointments is less broad and deep than it should be.

- The pool of qualified candidates for presidential S&T appointments is insufficiently broad (representation from industry is low) and deep (some qualified candidates do not agree to enter the pool).
- The attractiveness of government service to scientists and engineers is often diminished by professional losses (the need to interrupt research, an irreversible career shift toward management, and time away from a fast-moving field) and financial losses (unduly complex and restrictive preemployment and post employment requirements).
- Variations in preemployment and postemployment requirements among agencies, departments, and congressional committees create an environment of uncertainty and inequity for appointees.
- The executive and legislative branches share the responsibility of reducing the preemployment and post-employment restrictions and requirements, which serve as obstacles to public service for S&T leaders.

### 3. The appointment process is slow, duplicative, and unpredictable.

- From 1964 to 1984, almost 90% of presidential appointments were completed within 4 months (from the time of first White House contact to Senate confirmation); from 1984 to 1999, only 45% were completed in 4 months.
- Many S&T nominees already have high-level security clearances.
- The White House nominee-tracking system is slow and inconsistent. Candidates do not receive timely status reports.

## Recommendations

### 1. Initiate the appointment process for key S&T leadership early.

- In advance of the election, each presidential candidate should appoint advisors with S&T expertise to the transition team.
- Soon after the election, the President-elect, with the advice of this transition team, should identify the candidate for the position of APST to consult on urgent S&T questions.
- Once identified, the APST-designee should work with the transition team to identify candidates for science and technology leadership posts (see "50 Most Urgent Science and Technology Presidential Appointments" list) for the President-elect.

### 2. Increase the breadth and depth of the pool of candidates by reducing the financial and vocational obstacles to government service.

- The executive and legislative branches should take action immediately to reduce as many financial and vocational obstacles as possible before the President-elect begins recruiting candidates for presidential appointments requiring Senate confirmation (PAS) positions.
- The President and Congress should establish a bipartisan framework—including representatives from the executive branch, Congress, and the Office of Government Ethics—to identify actions that should be taken by the President and Congress to broaden and deepen the pool of qualified persons willing to consider presidential appointments. The objectives of these actions should be to clarify and standardize preemployment and post employment restrictions, reduce unreasonable financial and professional losses for those who serve, and suggest other ways to enlarge the pool of qualified candidates.

### 3. Accelerate the approval process for all nominees in S&T positions.

- The President should, in collaboration with the Senate, adopt the goal of completing the appointment process for 80-90% of nominees within 4 months.
- The procedure for FBI background checks should be streamlined, incorporating results of previous investigations.
- The White House should deliver timely reports to candidates on the status of their appointments.

# Introduction

Central to the federal role in promoting and managing research are some 80 senior scientists and engineers appointed by the President and confirmed by the Senate. The positions listed on page 7 are 50 of the most sensitive and influential of these positions that we believe should be filled as soon as possible by each new administration.

High-quality appointees are crucial in providing guidance on changing societal issues (especially those which pertain to the “new economy”), managing large research and development programs, and overseeing regulatory activities that have large technical components. Our own experience leads us to believe that the quality of past appointees has been high and that the nation’s global leadership depends on continued success in recruitment. However, we and many of our peers are concerned that the pool of talented people drawn to the nation’s capital is reduced by the growing obstacles to government service.

A series of relevant reports (see page 6) have illuminated shortcomings in the appointment process—not only in S&T, but in every field. An increasingly complex web of restrictions makes it difficult for appointees to enter government service and then resume their careers after government service. Despite sound suggestions for improvements, conditions have remained the same or worsened.

We believe that the many deterrents to government service identified in this and similar reports can be reduced by initiating the nomination process earlier, reducing financial and professional obstacles to service, and shortening key phases of the approval process. In the remainder of this report, we focus on those three essential steps, using the information in the earlier reports as a basis. Information from these past reports is indicated by superscript references to the list at the end of this report.

More details on our methodology and background data on our findings are available at our Web site at [www.nationalacademies.org/presidentialappointments](http://www.nationalacademies.org/presidentialappointments).

## Finding 1

### Timely selection of scientists and engineers is important.

Recent decades have seen a steady increase in the number and complexity of issues coming before the President.<sup>5</sup> These issues arise from increases in scientific knowledge and technological development, their application in society, and increased understanding of their impact on society. Resolution of such issues requires S&T expertise and balanced judgment.

For a new administration, a fast start in identifying and nominating highly qualified scientists and engineers to fill key positions is impor-

tant—beginning with the Assistant to the President for Science and Technology (APST). Initiating the appointment process for other key S&T leadership early is also important, because appointees need to be in office by late spring or early summer if they are to interact with Congress on the current budget submission and to begin preparation of the next. To meet that deadline, the President needs to submit nominees to the Senate no later than April.

A “qualified” candidate for an S&T presidential appointment would likely have an advanced degree (probably a doctorate) in science or engineering, management and leadership capability, and a good reputation among peers.

The President-elect needs a trusted and respected APST-designee as early as possible to help identify S&T leaders for agencies and departments, set initial policy priorities for the new administration, and address budgetary questions concerning S&T investments in health, defense, energy, and other major components of the imminent budget message to Congress. That person also should have connections within the S&T community to make it possible to identify qualified candidates for S&T leadership positions in the new administration.

## Recommendation 1

### Initiate the appointment process for key S&T leadership early.

The first step toward building technical competence in the new administration is to ensure that the transition team has expertise in science and technology. In advance of the election, each presidential candidate should appoint advisors with S&T experience to their transition team.

Soon after election, the President-elect, with the guidance of these advisors, should identify a respected and compatible candidate for the position of APST. This should be a person who can advise the new President on strategic planning and who is familiar with major issues that require daily attention. The approval process for the APST should be put on a cabinet-level fast track.

The APST should be both a senior member of the White House staff, consulting on policy and budgetary issues, and the director of the statutory Office of Science and Technology Policy (OSTP).

Once identified, the APST-designee should work with the transition team quickly to begin the process of identifying and recruiting scientists and engineers for S&T leadership posts (see “50 Most Urgent Science and Technology Presidential Appointments”). A list of candidates should be submitted to the President-elect as early as possible.

## Finding 2

### The pool of talented S&T candidates for presidential appointments is less broad and deep than it should be.

To make the best use of the nation's S&T expertise, the President must be able to draw on a broad and deep pool of talent. That is not now the case. In a recent poll of all presidential appointees, only 11% said that their fellow appointees represented the “best and brightest,” whereas 79% reported that they were a “mixed lot”—some highly talented, others less so. Respondents also said that just over one-third deserved a grade of “high competence” for their service in government.<sup>2</sup>

In our collective experience, many prospective candidates refuse even to be considered for government posts. The pool of qualified candidates for presidential S&T appointments is insufficiently broad (representation from industry is low) and deep (some qualified candidates do not agree to enter the pool).

No records are kept of how many people have declined nomination or withdrawn early or their reasons for doing so. However, we can

analyze the institutional origin of appointees just before nomination as a surrogate measure. As shown in figure 1, the percentage of S&T appointees who came directly from industry declined significantly from 25% in the Reagan-Bush years to 12% in the Clinton years. Of particular concern is the low representation of people with managerial experience in the pharmaceutical, chemical, and information-technology industries. Recruitment of leaders in emerging fields (for example, biotechnology and information technology) is especially difficult.

The attractiveness of government service to scientists and engineers is often diminished by professional losses (the need to interrupt research, an irreversible career shift toward management, and time away from a fast-moving field) and financial losses (unduly complex and restrictive preemployment and postemployment requirements).

One cause of decline that a new administration can help to control is preemployment and postemployment restrictions. Sensible standards clearly are necessary to prevent conflicts of interest, but we believe that the number and complexity of requirements have risen steadily and to the point where they deter potential candidates from accepting presidential appointments.

A move to Washington, D.C., to undertake an appointment might require severing all ties with employers; forgoing pension benefits; selling stock, options, or other financial interests in companies at unfavorable terms; and forgoing options that are not yet vested (a particular problem for those in emerging fields). The recent discussion of the options provided by a company to one of the vice-presidential candidates is an example of the financial losses that might be incurred if an appointment is accepted.

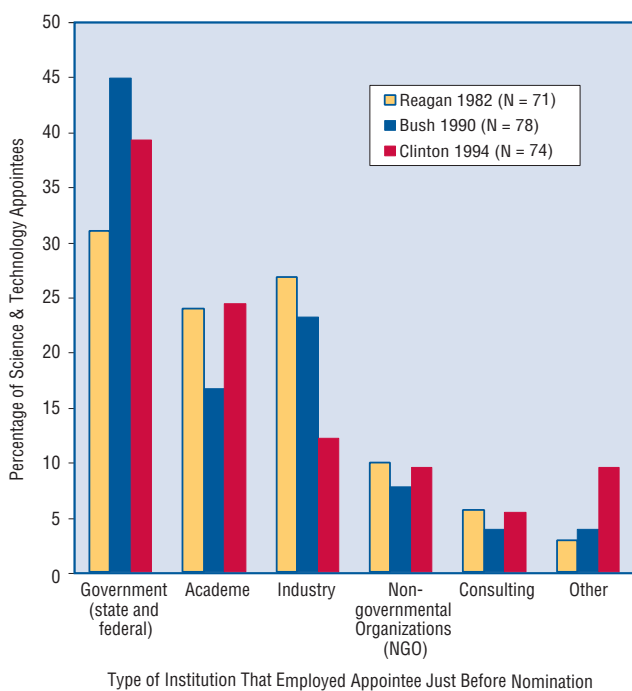
Departure from Washington can also carry restrictions for science or technology appointees. These restrictions can include permanent bans from any attempts to influence the government on matters in which they participated, 2-year prohibitions against communicating with the government on matters that were pending during service, and bans from communicating with one's former agency. The restrictions can curtail one's professional postgovernment options, especially in industry.

Furthermore, variations in preemployment and postemployment restrictions among agencies, departments, and congressional committees create an environment of uncertainty and inequity for appointees. All those entities can impose supplemental restrictions or specific interpretations. For examples, see [www.usoge.gov/usoge006.html#supplemental](http://www.usoge.gov/usoge006.html#supplemental).

In sum, on the basis of our experience, we believe that the decline in the number of S&T appointees from business and industry from the Reagan-Bush years to the Clinton years is due not to philosophical differences between the two parties, but rather to the preemployment and postemployment restrictions.

The panel found, in its discussions with members of the legal com-

Figure 1. Science and technology appointees in the second year of the Reagan, Bush, and Clinton administrations, by institutional background.



Source: Data collected by the National Academies' Panel on Ensuring the Best Science and Technology Presidential Appointments.

munity, that because many of the restrictions cited above are statutory, few substantial changes can be made without the participation of Congress. For that reason, the executive and legislative branches share the responsibility for reducing the obstacles to public service for S&T leaders. Changes in preemployment and postemployment restrictions and requirements would need action by both.

## Recommendation 2

### Increase the breadth and depth of the pool of candidates by reducing the financial and vocational obstacles to government service.

The President-elect should make every reasonable effort to increase the “breadth and depth of the pool.” This can begin with basic steps to improve recruitment, such as ensuring S&T expertise in the Office of Presidential Personnel. The President-elect can also make more effective use of recruiting by departments and agencies. Similarly, academe, industry, and disciplinary societies should actively encourage midcareer scientists and engineers to take leadership positions in the federal government.

Because the next transition is just around the corner and the nation needs to recruit from a broad and deep pool of qualified appointees, the executive and legislative branches should take action immediately

to reduce as many financial and vocational obstacles as possible.

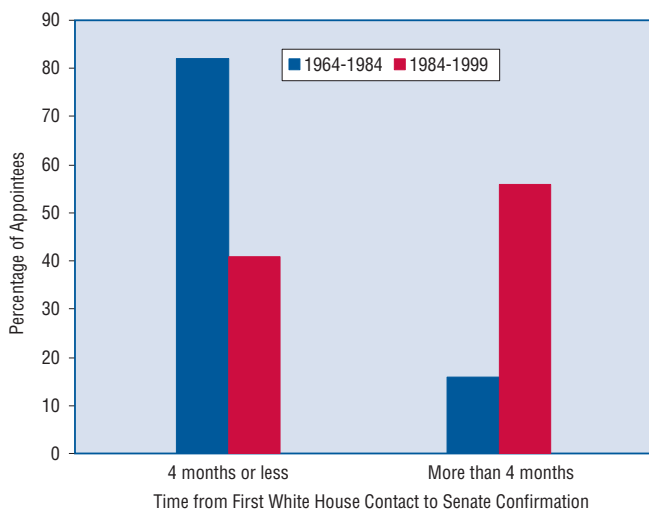
Since both the executive and legislative branches share responsibility for reducing the obstacles to public service, the President and Congress should establish a bipartisan framework—that includes representatives of the executive branch, Congress, and the Office of Government Ethics—to identify actions that should be taken by the President and Congress to broaden and deepen the pool of qualified persons willing to consider presidential appointments.

Specifically, the bipartisan framework should clarify and standardize preemployment and postemployment restrictions, strive to reduce unreasonable financial and professional losses for those who serve, and suggest other ways to enlarge the pool of qualified candidates.

Some specific changes that could be evaluated are a *de minimis* rule (limiting required divestiture if only a small percentage of a company or a small portion of one’s assets is involved), reduction in the restrictiveness of blind trusts, continuation of health-insurance and pension-plan coverage, and maintenance of equitable treatment of the unvested portion of options.

We are reluctant to recommend a framework, because of the time needed to form and implement such an activity. However, given the many reports issued on this topic in the last 10 years and the complicated legal nature of the issues, a bipartisan discussion among the parties involved seems to be the only answer where long-term solutions are needed.

Figure 2. Time for nominees to complete the presidential appointment process, 1964-1984 and 1984-1999.



Note: Time to complete the presidential appointment process is defined in the report below as the time between first White House contact indicating consideration for appointment and Senate confirmation.

Source: *The Merit and Reputation of an Administrator: Presidential Appointees on the Presidential Appointments Process*, page 8. The Brookings Institution and The Heritage Foundation, April 28, 2000.

## Finding 3

### The appointment process is slow, duplicative, and unpredictable.

As shown in figure 2, the time to complete the appointment process has steadily increased in recent years. From 1964 to 1984, almost 90% of presidential appointments were completed within 4 months—from the time that appointees were informed by the White House that they were being considered for appointment to Senate confirmation. From 1984 to 1999, only 45% of appointments were completed within 4 months.<sup>2</sup>

The President has control over only the prenomination portion of the process. This includes the timeliness of identification, recruitment, and checking the background of potential candidates as well as the timing and timeliness of the checks performed by the Federal Bureau of Investigation (FBI).

The current prenomination evaluation of a candidate is linear. The background check on a candidate is not begun until a number of other steps are completed. Because a check for a political appointment includes issues beyond those for a security clearance, the clearance process is repeated by the FBI for all persons who have not already had



political-appointment clearances.

Many scientists and engineers—especially those who might be asked to serve in the largest mission-based agencies (for example, the Department of Defense and the Department of Energy)—already have high-level security clearances, which could be used to jump-start the more extensive clearances for a presidential appointment.

Moreover, White House tracking procedures frequently fail to provide timely reports to candidates while they are making their way to nomination status. That is often the time when prospective nominees are most in need of information from the White House. After nomination, the legislative-affairs and related offices of the department or agency involved typically take the lead in shepherding nominees through the Senate and providing update information.

One recent nominee reported: “I assumed that this was going to be a reasonably expeditious process. . . . Had I known that I was going to be a ship adrift in the sea, I probably would have taken more personal initiative to ensure that the matter was being pushed along.”<sup>2</sup>

### Recommendation 3

#### Accelerate the approval process for all nominees in S&T positions.

The White House should streamline its own approval procedures and work closely with the Senate to speed the appointment process. The President should, in collaboration with the Senate, adopt the goal of *completing 80-90% of appointments within 4 months*, which was the norm from 1964 to 1984. If additional personnel are needed to meet that goal, special funding should be requested from Congress to hire them.

The background investigations of candidates should be streamlined, incorporating results of previous investigations.

The White House should improve its tracking system so that it can deliver timely reports to candidates on the status of their appointment during stages in which it has control over the process.

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[www.nationalacademies.org/presidentialappointments](http://www.nationalacademies.org/presidentialappointments)

# 50 Most Urgent Science and Technology Presidential Appointments\*

## EXECUTIVE OFFICE OF THE PRESIDENT

### White House Office

Assistant to the President for Science and Technology<sup>†</sup>

### Office of Science and Technology Policy

Director<sup>†</sup>

Associate Director for National Security and International Affairs

Associate Director for Science

Associate Director for Environment

Associate Director for Technology

### Council of Economic Advisors

Chairman and members

### Council on Environmental Quality

Chairman

## DEPARTMENTS AND INDEPENDENT AGENCIES

### Agriculture

Under Secretary for Research, Education and Economics

Under Secretary for Food Safety

### Commerce

Under Secretary for Technology

Administrator, National Telecommunications and Information Administration

Director, National Institute of Standards and Technology

Administrator, National Oceanic and Atmospheric Administration

Under Secretary for Economic Affairs

Director, Census Bureau

Commissioner of Patents and Trademarks

### Defense

Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics

Director, Defense Research and Engineering

Assistant Secretary of Defense for Health Affairs

Assistant Secretary of the Air Force for Acquisition

Assistant Secretary (Acquisitions, Logistics, and Technology), Army

Assistant Secretary (Research, Development, and Acquisitions), Navy

### Education

Assistant Secretary for Educational Research and Improvement

### Energy

Under Secretary for Energy, Science, and the Environment

Under Secretary for Nuclear Security<sup>‡</sup>

Assistant Secretary for Energy Efficiency and Renewable Energy

Deputy Administrator for Defense Programs

Director, Office of Science

Director, Energy Information Administration

### Health and Human Services

Assistant Secretary for Public Health and Science<sup>§</sup>

Assistant Secretary for Planning and Evaluation

Surgeon General<sup>§</sup>

Director, National Institutes of Health

Commissioner, Food and Drug Administration

### Housing and Urban Development

Assistant Secretary for Policy Development and Research

### Interior

Assistant Secretary for Water and Science

Director, US Fish and Wildlife Service

Director, US Geological Survey

### State

Under Secretary for Arms Control and International Security Affairs

Under Secretary for Economic, Business, and Agricultural Affairs

Under Secretary for Global Affairs

Assistant Secretary, Oceans and International, Environmental, and Scientific Affairs

Assistant Administrator, Bureau of Global Programs, Field Support, and Research, Agency for International Development

### Transportation

Administrator, Federal Aviation Administration

Administrator, National Highway Traffic Safety Administration

Administrator, Research and Special Programs Administration

### Veterans Affairs

Under Secretary for Medical Affairs

### Environmental Protection Agency

Assistant Administrator for Research and Development

### National Aeronautics and Space Administration

Administrator

### National Science Foundation

Director

Deputy Director

\*This list is based on the panel's judgment as to which of the roughly 80 S&T positions are the most urgent. This list includes both positions that are important for science and engineering research policy and those that provide scientific and technical analysis to inform decision-makers on many societal issues.

<sup>†</sup>In recent years, the same person has held the post of Assistant to the President for Science and Technology and Director of the White House Office of Science and Technology Policy (OSTP).

<sup>‡</sup>This person currently also directs the National Nuclear Security Administration.

<sup>§</sup>In recent years, the same person has held the post of Assistant Secretary for Public Health and Science and Surgeon General, but this has not always been the case.



# PANEL BIOGRAPHIES



## PANEL

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**D. Allan Bromley** is the Sterling Professor of the Sciences and dean of engineering at Yale University. He served as the assistant to the president for science and technology and was the director of the White House Office of Science and Technology Policy from 1989 to 1993. At Yale, he has served as the associate director of the Heavy Ion Laboratory, the chairman of the Physics Department, and the director of the A. W. Wright Nuclear Structure Laboratory. He received his PhD in physics from the University of Rochester. Dr. Bromley was awarded the US National Medal of Science in 1989. He is a fellow of the American Academy of Arts and Sciences, the American Association for the Advancement of Science, and the American Physical Society. He is a member of the National Academy of Sciences.

**E. Edward David** is the president of EED, Inc and consults on R&D, strategic planning and management, intellectual property, technology transfer, enhancing corporate research programs, and developing corporate-academic research partnerships for the Washington Advisory Group. He received his PhD in electrical engineering from the Massachusetts Institute of Technology. Dr. David served as science advisor to the president and director of the Office of Science and Technology Policy from 1970 to 1973. From 1977 to 1986, he was president of Exxon Research and Engineering Company. Dr. David spent the first 2 decades of his research career at Bell Telephone Laboratories, finally as executive director. He is on the boards of several businesses and on technical advisory boards nationally and abroad. Dr. David is a member of the National Academy of Engineering and the National Academy of Sciences.

**John H. Gibbons** is Special Advisor, US Undersecretary of State for Global Affairs. He served as assistant to the president for science and technology and as the Director of the Office of Science and Technology Policy, both beginning in 1993. Before then, he was the director of Office of Technology Assessment (1979-1993) of the US Congress. He was a professor of physics and the director of energy, environment and resources at the University of Tennessee (1974-1979). He received his PhD in physics from Duke University. He is a member of the National Academy of Engineering.

**Mary L. Good (Chair)** is Dean, Donaghey College of Information Science and System Engineering, University of Arkansas at Little Rock, and a managing member at Venture Capital Investors, LLC. She received her PhD in inorganic chemistry and radiochemistry from the University of Arkansas. Dr. Good served as the undersecretary for technology in the US Department of Commerce from 1993 until recently. Before that, she worked as a Senior vice president for technology, and director of research for Allied Signal, Inc (1985-1993). She also served as a vice president and director of research at UOP, Inc. (formerly Universal Oil Products) from 1980 to 1985. She has served as the vice-chairman and chairman of the National Science Board and is a member of the National Academy of Engineering.

**M.R.C. Greenwood** is chancellor and professor of biology at the University of California, Santa Cruz, a position she has held since July 1, 1996. Earlier, she served as dean of graduate studies, vice provost for academic outreach, and professor of biology and internal medicine at the University of California, Davis. Previously, Dr. Greenwood taught at Vassar College, where she was the John Guy Vassar Professor of Natural Sciences, chair of the Department of Biology, and director of the Undergraduate Research Summer Institute. She received her PhD in physiologic developmental biology and neuroscience from Rockefeller University. From November 1993 to May 1995, Dr. Greenwood was associate director for science at the Office of Science and Technology Policy. She was, in 1998, president of the American Association for the Advancement of Science and now serves as its Board chair. She is a member of the Institute of Medicine.

**Anita K. Jones** is a professor in the Department of Computer Science at the University of Virginia. She was an assistant and then associate professor of computer science at Carnegie-Mellon University until 1982. From 1981 to 1987 she was vice president and cofounder of Tartan Laboratories. She received her PhD in computer science from CMU. In 1988, she started at the University of Virginia as a professor and chair of the Department of Computer Science. From 1993 to 1997 she served at the US Department of Defense, where, as director of defense research and engineering, she oversaw the department's science and technology program, research laboratories, and the Defense Advanced Research Projects Agency. She has received the US Air Force Meritorious Civilian Service Award, a Distinguished Public Service Award, and a tribute in the Congressional Record from Senator Charles Robb. She now serves on the National Science Board and the Defense Science Board. She is a member of the National Academy of Engineering.

**Martha A. Krebs** is a Senior Fellow at the Institute for Defense Analysis in Alexandria, Virginia. She was director of the Office of Science of the US Department of Energy from 1993 to 2000. Previously, she was associate laboratory director of the Lawrence Berkeley Laboratories, deputy staff director and then staff director of the Subcommittee on Energy Development and Applications of the House Committee on Science and Technology, and a consultant to the House Committee on Science and Technology. She received her PhD in physics from Catholic University.

**John P. McTague** was the vice president for technical affairs at the Ford Motor Company. He received his PhD in physical chemistry from Brown University. Dr. McTague also served as the acting science adviser to the president and the deputy director and later acting director, of the Office of Science and Technology Policy, beginning in 1986. Before that he taught chemistry at University of California, Los Angeles and Columbia University and was the director of the National Synchrotron Light Source of Brookhaven National Laboratory. He is a member of the National Academy of Engineering.

**John H. Moxley III** is a vice president and partner at Korn/Ferry International and serves as the managing director of its North American Health Care Division. He received his MD from Colorado University. He has been a senior vice president of the American Medical International in Beverly Hills (1981-1988) and an assistant secretary of defense (1980-1981). He also served as chancellor of health sciences and the dean of the School of Medicine at the University of California - San Diego, associate professor of medicine and dean of the School of Medicine at the University of Maryland, and instructor of medicine and assistant to the dean at Harvard University. He is a member of the Institute of Medicine.

**H. Guyford Stever** is trustee of various scientific organizations and a consultant on science issues. He was science and technology advisor to President Ford in 1976-1977. From 1972 to 1976, he was director of the National Science Foundation. He was president of Carnegie-Mellon University from 1965 to 1972, chief scientist of the Air Force from 1955 to 1965, and professor of aeronautical engineering at the Massachusetts Institute of Technology from 1964 to 1965. He received degrees from Colgate University and the California Institute of Technology. In 1991, he was awarded the National Medal of Science. He is a member of the National Academy of Sciences and National Academy of Engineering, of which he was a foreign secretary in 1984-1988.

**Janet L. Yellen** is the Eugene E. and Catherine M. Trefethen Professor of Business Administration at the Haas School of Business, where she has worked since 1980, and is also a professor of economics at the University of California, Berkeley. She was chair of the Council of Economic Advisors (1997-1999) and a member of the Board of Governors of the Federal Reserve System (1994-1997). She received her PhD in economics from Yale University. Dr. Yellen is a senior adviser for the Brookings Panel on Economic Activity, and an adviser for the Congressional Budget Office.

## STAFF

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**Richard E. Bissell** is executive director of Policy and Global Affairs of the National Research Council and director of the Committee on Science, Engineering, and Public Policy. He served as coordinator of the Interim Secretariat of the World Commission on Dams (1997-1998) and as a member and chair of the Inspection Panel at the World Bank (1994-1997). He held senior positions at the US Agency for International Development from 1986-1993 as head of both the Bureau of Science and Technology and the Bureau of Program and Policy Coordination. He has published widely in political economy and has taught at Georgetown University and the University of Pennsylvania. He received his BA from Stanford University (1968) and his MA and PhD from Tufts University (1970 and 1973).

**Deborah D. Stine** is study director and associate director of the Committee on Science, Engineering, and Public Policy (COSEPUP), director of the Office of Special Projects, and director of the National Academies Christine Mirzayan Internship Program. She has worked on various projects in the National Academies since 1989. She received a National Research Council group award for her first study for COSEPUP, on policy implications of greenhouse warming, and a Commission on Life Sciences staff citation for her work in risk assessment and management. She holds a bachelor's degree in mechanical and environmental engineering from the University of California, Irvine; a master's degree in business administration from Texas A&M; and a PhD in public administration, specializing in policy analysis, from the American University. Before coming to the National Academies, she was a mathematician for the US Air Force, an air-pollution engineer for the state of Texas, and an air-issues manager for the Chemical Manufacturers Association.

**William G. Wells, Jr.** is a domestic and international consultant and trainer and a professor of management science at the School of Business and Public Management of George Washington University, Washington, DC. He is associated with the University of California, Santa Cruz as a consultant to the chancellor. He served in the US Air Force for 22 years in operational and management positions (he retired as a colonel), on the staff of the US House of Representatives for 14 years, and with the American Association for the Advancement of Science as a senior executive for 5 years. He served as chief of staff to President Bush's science and technology adviser (D. Allan Bromley) and as senior consultant to President Clinton's science and technology advisers (Jack Gibbons and Neal Lane) on a variety of issues, including S&T-related appointments.

**Colleen Preston** heads her consulting business, Preston and Associates, which focuses on business process re-engineering and the federal acquisition system. She began her career as an associate in the Orlando firm of Akerman, Senteritt, and Eidson. A member of the Florida Board and the American Bar Association Section of Public Contract Law, Mrs. Preston served as an attorney-adviser in the Office of the General Counsel, Office of the Secretary of the US Air Force. She received her law degree from the University of Florida. She gained much experience in acquisition and procurement through her service as counsel to the Air Force Contract Adjustment Board and Debarment and Suspension Board. She then broadened her experience in government service as a subcommittee assistant general counsel and then general counsel for the House Armed Services Committee. Her next position was special assistant to the secretary of defense for legal matters, after which she served as the first deputy under secretary of defense for acquisition reform in 1993-1997.

**APPENDIX**





# Finding 1

## Timely Selection of Scientists and Engineers Is Important

**Before and after the presidential election, the eventual President-elect needs advisors with expertise in science and technology (S&T) to advise on policy issues and help to locate a candidate for the position of Assistant to the President for Science and Technology (APST).**

The Carnegie Commission on Science, Technology, and Government's report *Science & Technology and the President*<sup>2</sup> identified key areas where the President will need S&T advice. These include

- National Security
- Space Policy
- Civilian Technology and Economic Competitiveness
- Health
- Environment
- Large-scale S&T programs
- Scientific and Technical Education and Research
- Government Technical Personnel.

However, the array of issues where S&T guidance is critical is even broader than the Carnegie Commission list. A scan of the positions identified by the panel as the top S&T positions (see report) includes almost every cabinet department.

- Agriculture
- Commerce
- Defense
- Education
- Energy
- Health and Human Services
- Housing and Urban Development
- Interior
- State
- Transportation
- Veteran Affairs
- Environment
- Space
- Science

The President-elect needs advisors who have expertise in S&T to advise on such policy issues. This advice not only deals with science and engineering research policy, but is also based on scientific and technical analysis to inform the eventual President-elect so that wise decisions can be made. These advisors can also help locate a candidate for the position of APST.

<sup>2</sup>Carnegie Commission on Science, Technology, and Government. 1988. *Science & Technology and the President*. New York: Carnegie Commission. [www.carnegie.org/sub/pubs/science\\_tech/nextadm.htm](http://www.carnegie.org/sub/pubs/science_tech/nextadm.htm)

**Soon after the election, the APST candidate is needed to help set priorities, plan strategy, advise the President-elect and cabinet designees, and find qualified candidates for key S&T positions.**

Even before inauguration, a new president must address a number of issues that will affect the success of the new administration's S&T policy. The Carnegie Commission on Science, Technology, and Government<sup>3</sup> summarized these issues as follows:

- Set initial policy priorities for the new administration.
- Resolve budgetary questions concerning S&T investments in defense, space, health, energy, and other major programs that will affect the first budget message to Congress.
- Make several dozen key S&T appointments.
- Organize the White House and Executive Office staffs.

The Carnegie Commission report goes on to delineate the reasons that the new president needs direct and frequent access to trusted expertise in dealing with S&T issues. Providing this perspective is the reason for the office of Assistant to the President for Science and Technology.<sup>4</sup> Because these issues require attention at the very outset of the new president's term (especially issues related to the first budget message), the President can benefit from trusted advice immediately. And because a president can afford to trust high-level advice only when he has confidence in the person delivering it, a personal as well as professional relationship with an APST needs to predate the start of an Administration.

To be effective in such a highly visible and complex position, the APST must have multiple attributes. The person must be a distinguished scientist or engineer who has the respect of the scientific community, the trust of the President, and good working relationships with other key presidential advisers. He must also have experience in making policy decisions to assist the President across a wide agenda of issues.

Once the term of office begins, the APST, according to the Carnegie Commission report, has six main responsibilities:

- Advising and assisting the President and his staff.
- Participating in the formulation of policy involving S&T.
- Advising the President on funding priorities for S&T.
- Tracking the implementation of S&T-related policies.

<sup>3</sup>Carnegie Commission on Science, Technology, and Government. 1988. *Science & Technology and the President*. New York: Carnegie Commission. [www.carnegie.org/sub/pubs/science\\_tech/nextadm.htm](http://www.carnegie.org/sub/pubs/science_tech/nextadm.htm)

<sup>4</sup>Presidents traditionally have sought S&T advice from outside the government. A formalized structure for receiving this advice began in 1957 with the launching of Sputnik, when President Eisenhower brought James Killian into the White house as Special Assistant to the President. In 1972, President Nixon removed the science-advising function from the White House, but it was restored by President Ford in more or less its present form.

- Alerting the President to new developments in S&T and their policy significance.
- Helping agencies to respond to emergencies, such as electricity blackouts, technoterrorism, computer breakdown, and natural disasters.

The APST has to work closely with other senior members of the President's staff, such as those at the Office of Management and Budget, and with Cabinet members as they come together in the National Security Council, Domestic Policy Council, and National Economic Council.

The APST also serves as director of the statutory Office of Science and Technology Policy (OSTP).<sup>5</sup> OSTP is charged with helping to:

- Advise the President of S&T considerations involved in areas of national concern.
- Evaluate the scale, quality, and effectiveness of the federal programs in S&T.
- Advise the President on S&T considerations with regard to the federal budgets.
- Assist the President in providing general leadership and coordination of R&D programs of the federal government.

The other PAS appointments of importance in OSTP are four associate directorships, which also must be filled as soon as possible in a new presidency. These posts should be used to reinforce the policy functions of the office and to improve the collaboration between OSTP and the offices and councils in the Executive Office of the President.

Long-standing vacancies in top positions seriously disrupt the smooth operations of the government and make management improvement exceedingly difficult, if not impossible.<sup>6</sup>

The APST must perform essential tasks from the point of view of the broader recruiting effort. The challenge of recruiting is compounded by the fact that scientists and engineers (S&Es) do not usually consider a term as a political appointee to be a normal step in their careers. A well-connected and dedicated APST can speak to such colleagues as a peer, using a common language and set of professional values. Personnel in the Office of Presidential Personnel (OPP), in contrast, might not possess S&T expertise and might be handicapped when approaching S&T candidates.

The APST is seen as a national role model and can do much to improve White House outreach to the S&T community and to

encourage the White House, industry, academe, and disciplinary societies to work together in expanding the pool of candidates.

In attracting the best S&Es for these leadership positions, the importance of presidential leadership is paramount, even where cabinet secretaries and agency heads take the lead in identification and recruitment. When the President is perceived in the S&T community as someone who understands the value of science, it becomes easier to recruit and select the most talented S&T candidates.

<sup>5</sup> OSTP was mandated by the National Science and Technology Policy, Organization, and Priorities Act of 1976 (PL 94-282).

<sup>6</sup> See U.S. General Accounting Office (GAO), *Service to the Public: How Effective and Responsive is the Government?*, GAO/T-HRD-91-26 (Washington, DC: US General Accounting Office, May 8, 1991). A broader finding of this report is that "good management requires stable leadership in key positions, and most government institutions fall short of that mark."

## Finding 2

### The Pool of Talented S&T Candidates for Presidential Appointments Is Less Broad and Deep Than It Should Be.

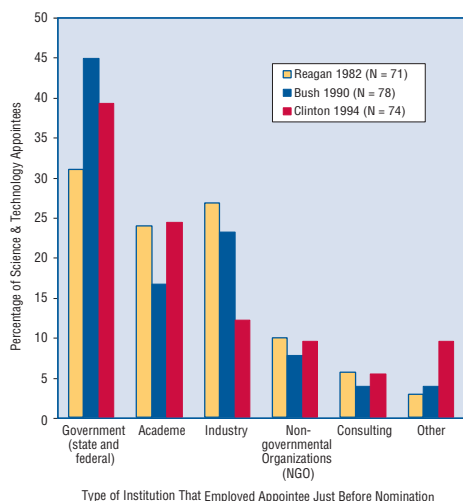
The pool of qualified candidates for S&T presidential appointments is insufficiently broad (representation from industry is low) and deep (some qualified candidates do not agree to enter the pool).

In the panel's collective experience, many prospective candidates refuse even to be considered for government posts. No records are kept of how many people have declined a nomination or withdrawn early for such reasons. However, we can analyze the origin of appointees just before nomination as a surrogate measure.

*Appointments from industry:* From their personal experience, the members of the panel were concerned about the number of appointments from industry in recent years. To test its impression, the panel identified the persons who held S&T appointments in the second years of the Reagan, Bush, and Clinton administrations and then ascertained the position that each of these appointees had held immediately before entering government service. The results of the analysis are shown in Figure A-1 and Table A-1.

As shown here, the percentage of S&T appointees who came from industry declined from 25% the Reagan-Bush years to 12% in the Clinton years. This decline is statistically significant. Of particular concern is the low representation of people with managerial experience from the pharmaceutical, chemical, and information-technology industries.

Figure A-1. Science and technology appointees in the second year of the Reagan, Bush, and Clinton administrations, by institutional background. Source: Data collected by the National Academies' Panel on Ensuring the Best Science and Technology Presidential Appointments.



	Clinton 1994		Bush 1990		Reagan 1982	
	N	% of total	N	% of total	N	% of total
Government (state and federal)	28	38%	35	45%	22	31%
Academe	18	25%	13	17%	17	24%
Industry	9	12%	18	23%	19	27%
Non-governmental organizations	7	10%	6	8%	7	10%
Consulting	4	5%	3	4%	4	6%
Other	7	10%	3	4%	2	3%
TOTAL *	73		78		71	

\*Total numbers are not consistent across administrations because of vacancies and changes in positions. S&T positions in the Carter Administration were too different to include. Some positions today did not exist during the Carter administration as Cabinet departments were created during that period.

Table A-1. Science and technology appointees in the second year of the Reagan, Bush and Clinton administrations by background. Source: Data collected by the National Academies' Panel on Ensuring the Best Science and Technology Presidential Appointments.

\*Background is defined as the position held by the appointee immediately before government appointment.

tries. Recruitment of leaders in emerging fields (biotechnology and information technology) is especially difficult.

Table A-2 from the *Obstacle Course* report shows the compliance actions that presidential appointees had to undertake.

*The quality of appointees:* It is difficult, if not impossible, to measure the quality or effectiveness of presidential S&T appointees. On the basis of their particular experiences, the members of our panel felt that it was generally high. In the Brookings survey of all PAS appointees, the picture is less positive. When respondents were asked to comment on the quality of their colleagues, some (11%) gave high marks and only a few (8%) were disappointed. The vast majority felt that they were a "mixed lot", including some who were of high quality and some who were not. The percentage of those expressing reservations about their colleagues rose from 78% in 1984 to 87% in 1999.

**The attractiveness of government service to scientists and engineers is often diminished by both professional losses (the need to interrupt research, an irreversible career shift toward management, time away from a fast-moving field) and financial losses (unduly complex and restrictive preemployment and postemployment requirements).**

For members of some professions, such as the law and economics, a tour of government service offers career advantages, including an expanded circle of professional contacts. For most S&T leaders, however, the decision to go into government for a few years often means an interruption of a research career, removal from the cutting edge of one's field, and perhaps a career shift toward management and away from bench research and teaching. Thus some S&T leaders are naturally resistant to recruitment efforts, especially if they are not couched in terms that indicate good understanding of the importance of S&T policy. A White House staff must understand the importance of

Compliance Action	Percentage of Appointees
No action required	32.8
Created blind trust	11.6
Created diversified trust	1.5
Sold stock or other assets	32.3
Resigned positions in corporations or other organizations	40.9
Executed recusal statement	16.7

Source: Analysis of National Academy of Public Administration Survey database, 1985, as presented in *Obstacle Course: The Report of the Twentieth Century Fund Task Force on the Presidential Appointment Process*. The Twentieth Century Fund, 1996, p. 60.

Table A-2. Compliance actions required of presidential appointees serving June 1979-December 1984.

recruiting qualified talent for positions that require scientific and technical judgment.<sup>7</sup>

For those scientists and engineers who are willing to consider presidential appointments, a key barrier to the willingness of these people to take the next step are the unduly complex and restrictive preemployment and postemployment requirements. These are described in more depth in the following sections.

*Preemployment requirements:* The need for reasonable regulations to promote ethical conduct in government is clear, and most ethics laws, especially those requiring public financial disclosure and prohibiting federal employees from participating in matters in which they have a financial interest, are necessary. But recent efforts to achieve a scandal-proof government can deter talented and experienced S&T personnel from taking senior government positions.

The financial consequences of accepting a presidential nomination or appointment can be severe, in particular for senior people in the S&T communities. That is because many senior people in these career fields often accept stock in private firms—especially small technology companies—as compensation. Such stocks are often not publicly traded and thus afford no ready outlet at a market price for sale of an individual’s shares. In addition, much of the value of such stock depends on long-term growth of the company after substantial investment in research and development. Depending on the stage of the company’s growth, forced divestiture at an arbitrary time can mean selling the stock before its value has appreciated.

Similar situations occur when people have been compensated with stock options in a company and are required to divest themselves of all interests in that company. In some instances, the option has not vested yet and cannot be sold. In others, a substantial downturn in the market value of a particular sector (such as the slump in defense-industry

stocks in the early 1990s) can mean that the value of a stock is lower than the option’s exercise price at the time a person is required to divest. This difficulty cannot be readily solved by a blind trust, which requires the sale of all assets placed into the trust. Nor can a company ordinarily advance the vesting schedule in favor of an employee; such an action could be tantamount to paying the employee to go into the government and thus constitute a violation of the criminal code.

Congress recently attempted to mitigate losses by those who are forced to divest themselves of stock by allowing them to “roll over” the value of such stock into an acceptable diversified fund. But that is only a partial solution. It is true that the person is not forced to recognize the capital gains on the stock until after the sale of the fund, thus deferring capital gains as though there had been no sale at that time. That does nothing, however, to alleviate the adverse impact on those forced to liquidate stock or stock options at inopportune times, those who do not have a ready market for their stock, or those whose options have not vested. Although the Office of Government Ethics regulations implementing this statute give employees a reasonable time in which to divest, that period may not exceed 90 days, which can be insufficient.

Nominees are also forced to divest themselves of any financial interest in companies that might have business before their agency as a result of interpretations of 18 U.S.C. 208. That law requires that government employees refrain from personal and substantial participation (even through supervision of a subordinate) in any matter in which they, their spouse, minor children, partners, or prospective employers have a direct and predictable financial interest. To impute a child’s, spouse’s, or partner’s interests to a person is to cast a broad net of financial interests. Agencies have authority to exempt individuals from this criminal prohibition, but in practice they have done so only in instances where the financial interest is deemed *de minimis* because the holdings are in a diversified fund or regulated investment company and the impact of any actions on the person’s actual holdings is remote or inconsequential.

In addition, although the agency might be willing to waive the requirements, a Senate committee may still require the person to sell the offending stock before the agency even has an opportunity to consider the waiver. Many Congressional committees have taken the position that it would be impossible for people to do their job, if they have to refrain from making decisions regarding the companies in which they might have a financial interest. Thus, nominees are required to divest themselves of their stock or any other financial interest in order to secure an appointment. Often, it is this strict approach by the oversight committees that causes disparate treatment of presidential appointees, rather than differing interpretation of the statutes or regulations.

<sup>7</sup> Trattner, John H. 1992. *The Prune Book: The 60 Toughest Science and Technology Jobs in Washington*. Lanham, Md.: Madison Books. [www.excelgov.org/publication/prune97/prune97.htm](http://www.excelgov.org/publication/prune97/prune97.htm).

In an effort to mitigate the effect of the prohibition on holding stocks in companies that might do business with a nominee's agency, the statutes and regulations authorize the use of two types of financial vehicles that avoid the appearance of conflict of interest: qualified blind trusts and qualified diversified trusts. A qualified blind trust is one in which the investor has no knowledge of the assets. A qualified diversified trust is one that the Office of Government Ethics has judged to hold a widely diversified portfolio of readily marketable securities and to be free initially of securities of any entities having substantial activities in which the nominee has an interest.

With respect to using both types of trusts, the forced sale of existing financial holdings that do not meet the criteria outlined above and reinvesting in one of the authorized trusts at what could be an inopportune time can still pose a problem. Because a blind trust is considered blind only with regard to trust assets about which a person has no knowledge (see section 2634.403, Code of Federal Regulations), nominees desiring to put their holdings in a blind trust must first sell all their current assets. In addition, any legal or other fees required to establish the trust must be born by the nominee.

*Postemployment restrictions:* In its 1992 study of this issue,<sup>8</sup> COSEPUP's panel reported that presidential recruiters, as well as scientists and engineers who have been approached by recruiters, found that the laws restricting postgovernment employment have become the biggest disincentive to public service. Overlapping, confusing, and in some respects over broad measures that were suspended with the passage of the 1989 Ethics Reform Act have come back into effect, and there is constant pressure to broaden the restrictions further by banning officials involved in specific procurement actions from working in any capacity for any competing contractors for periods of 1, 2, or 3 years.

Confusion often results from the wording of Sec. 207 of the Ethics in Government Act: a government employee's postemployment options may be judged by the degree of involvement in an agency's specific contracting actions. For example, a former government appointee might be barred from employment with a company with which that person had "personal and substantial" responsibilities for dealing while in government or with a company whose activities were "under his/her responsibility". These relationships can be difficult to determine, and their interpretation can vary among employers or attorneys.

The degree of involvement also governs the period, after government, during which a former employee must not "communicate [with his or her former agency] with intent to influence" various actions. That might not bar a person from employment itself, but it bars such communications. Some people can avoid this difficulty in their post-

government employment, and some cannot—it depends on the type of job one had in the government, the nature and extent of involvement with contracting, and the nature of the postgovernment job.

In particular, a person is banned forever from making any communication or appearance before the government with the intent to exert influence on behalf of another person with regard to any particular matter involving a specific party in which he or she participated personally and substantially as a government employee. One is prohibited for 2 years from communicating or appearing before the government on any particular matter involving a specific party that was pending under one's responsibility. Senior officials are also prohibited for 1 year from appearing before or communicating, on behalf of another, with their former agency.

The basic features of those restrictions are statutory and afford little flexibility. In addition, President Clinton, by executive order on his first day in office, increased the "cooling-off period" during which one cannot communicate with one's former agency from 1 year to 5 years for particular senior employees. For a scientist or engineer, that can mean the inability to seek a research grant from an agency even if that agency had been a primary source of support before government service. (In this case, however, the scientific community is assisted by the exception allowed for persons representing degree-granting institutions of higher learning. In addition, an agency is allowed to make an exception for communications furnishing scientific or technological knowledge.) Finally, the 1-year ban prohibiting lobbying a person's agency was extended to 5 years by the Clinton Administration for all appointees paid at a rate of ES-5 or above.

There are additional limitations on procurement personnel in the Department of Defense, but their application to senior appointees is fairly narrow. To be subject to them, an appointee would have to have been the government's primary representative in the negotiation or settlement of a claim in excess of \$10 million or personally and substantially participated in a decision-making capacity through direct contact with a contractor. The latter would be highly unusual for any person at the senior level.

### **Variations in preemployment and postemployment requirements among agencies, departments, and congressional committees create an environment of uncertainty and inequity for appointees.**

Standards of ethical conduct are specified for all employees of the federal government by the Ethics Reform Act of 1989. In theory, this uniform set of standards applies equally to all employees, including presidential appointees. In practice, however, there are many variations among the agencies and departments that employ the appointees and

<sup>8</sup>Committee on Science, Engineering, and Public Policy. 1992. *Science and Technology Leadership in American Government: Ensuring the Best Presidential Appointments*. Washington, DC: National Academy Press.



the Senate committees that approve them.

Such variations (and their interpretations) are extensive and constitute a source of uncertainty and sometimes inequity for those considering nominations to PAS positions. For example, agencies, departments, and Senate committees may issue or impose their own supplemental standards of ethical conduct, which are initially unknown to the nominee.

Appointees with the power to award or approve contracts with private firms can encounter variations that are both specific and complex. For example, appointees to the Department of Defense (DOD) are subjected to supplemental rules that can have a tremendous impact on the financial interests of some appointees by requiring divestitures that are not limited to companies in the appointees' direct purview. So, for example, the Director of Defense Research and Engineering is typically required to shed any holding in any company that does business with the DOD—not just those likely to have research and development contracts. This encompasses a large universe of companies when one includes all the firms that sell through the commissaries, all the utility companies that DOD buys power from, and so on.

In addition, one may be required to divest oneself of holdings that are so common among Americans as to be customary, such as those found in virtually all diversified mutual funds. For example, employees of the Environmental Protection Agency who work in or with the Office of Mobile Sources are prohibited from holding stock in any automobile manufacturer (such as General Motors). Similarly, employees who work in or with the Office of Pesticide Programs are prohibited from holding stock in any company that manufactures pesticide products (such as Monsanto).

Senate committees have their own standards for judging ethical conduct. Each committee receives its initial information on nominees from the Office of Government Ethics. It may then ask for additional information with regard to candidates, their spouses, and their children and ask for remedies of any conflicts or potential conflicts it perceives. These remedial measures include recusal agreements, divestitures, resignations, waivers, and qualified trusts.

Additional details about supplementary requirements can be found at the Web site of the Office of Government Ethics:  
<http://www.usoge.gov/usoge006.html#supplemental>.

**The executive and legislative branches share the responsibility of reducing the preemployment and postemployment restrictions and requirements, which serve as obstacles to public service for S&T leaders.**

As is apparent from the description above, both the executive and legislative branches are the source of preemployment and postemployment restrictions. A full list is provided at the OGE Web site, but

some specific examples are:

**Executive Orders**

*Executive Order 12674 of April 12, 1989.* Principles of Ethical Conduct for Government Officers and Employees.

*Executive Order 12731 of October 17, 1990.* Principles of Ethical Conduct for Government Officers and Employees.

*Executive Order 12834 of January 20, 1993.* Ethics Commitments by Executive Branch Appointees.

**Legislation**

*Ethics in Government Act of 1978,* Pub.L. 95-521, 92 Stat. 1824-1867.

*Ethics Reform Act of 1989,* Pub. L 101-194, 202, 103 Stat. 1716, at 1724.

**Statutes**

*18 U.S.C. § 207.* Restrictions On Formers Officers, Employees, and Elected Officials of The Executive And Legislative Branches.

*18 U.S.C. § 208.* Acts Affecting A Personal Financial Interest.

**Regulations**

*5 C.F.R. Part 2634.* Executive Branch Financial Disclosures, Qualified Trusts, and Certificates of Divestiture.

*5 C.F.R. Part 2635.* Standards of Ethical Conduct for Employees of the Executive Branch.

Therefore, action is needed by both the executive and legislative branches for changes to occur.

# Finding 3

## The Appointment Process Is Slow, Duplicative, and Unpredictable.

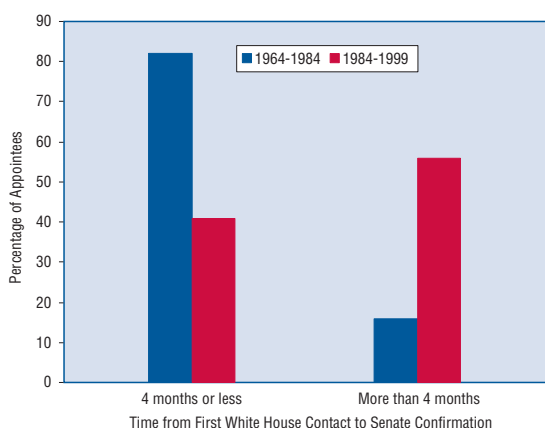
From 1964 to 1984, almost 90% of presidential appointments were completed within 4 months (from the time of first White House contact to Senate confirmation); from 1984 to 1999, only 45% were completed in 4 months.

The period from the point when the President first notifies a candidate of the intent to nominate to final approval by the Senate has lengthened considerably, according to a poll conducted for the Brookings Institution and the Heritage Foundation of all appointees in the last several administrations. As shown in Figure A-2, from 1964 to 1984, almost 90% of presidential appointments were completed in 4 months; from 1984 to 1999, only 45% were completed in 4 months. Among the 1964 to 1984 cohort of appointees, only 5% reported that approval took more than 6 months; nearly one-third (30%) of the 1984-1999 group waited more than 6 months. Similarly, almost half the 1964-1984 respondents said that approval took only 1-2 months, but only 15% of the 1984-1999 respondents were approved this quickly.

As shown in Figure A-3, in the most recent administration, the approval process for all new appointees (in all fields) was not completed until an average of 8.5 months after the President’s inauguration.

Table A-3 shows that both the mean and median in the time from receipt of the nomination to confirmation by the Senate have more than doubled since the Johnson administration.

Figure A-2. Time for nominees to complete the presidential appointment process, 1964-1984 and 1984-1999.



Note: Time to complete the presidential appointment process is defined in the report below as the time between first White House contact indicating consideration for appointment and Senate confirmation.

Source: *The Merit and Reputation of an Administrator: Presidential Appointees on the Presidential Appointments Process*, page 8. The Brookings Institution and The Heritage Foundation, April 28, 2000.

Administration	Mean	Median
Johnson	6.8	4
Nixon	8.5	7
Ford	11	8
Carter	11.8	10
Reagan (through 1984)	14.6	14

Source: MacKenzie, Calvin G., and Robert Shogaan. 1996. *Obstacle Course: The Report of the Twentieth Century Fund Task Force on the Presidential Appointment Process*. New York: The Twentieth Century Fund Press, p. 64.

Table A-3. Number of weeks from receipt of nomination to confirmation by the Senate, 1964-1984.

Where delays occur: Respondents who felt that the process “took longer than necessary” rose from 24% to 39% with regard to Senate confirmation between the 1964-1984 and the 1984-1999 cohorts, from 13% to 34% with regard to filling out financial-disclosure forms, from 24% to 30% for FBI field investigations; from 15% to 27% in other White House reviews of the nomination, and from 6% to 17% in the conflict-of-interest review. These delays did not affect all levels of the appointment process equally. High-level appointees (executive levels I-III, or secretary, deputy secretary, and under secretary) reported fewer frustrations than lower-level appointees (executive level IV, or assistant secretary).

Financial disclosure: Of the 1984-1999 cohort, 41% said that financial-disclosure requirements and conflict-of-interest laws were reasonable measures to protect the public interest. But almost as many (37%) said that the laws as formulated were not very reasonable or go too far. This figure was slightly lower than that for the 1964-1984 group. However, the number who described the process as somewhat or very difficult was twice as high as in the latter group (32% vs. 17%).

### Many S&T nominees already have high-level security clearances.

*Forms, Required Information, and Background investigations:* A common source of delay and frustration, especially for S&T nominees, is the background investigation (BI) by both the White House and FBI. A BI normally contains three elements. First is completion of several sets of detailed questionnaires that require the recording of similar information in different ways. Second, the FBI performs a check of computer records to search for information that might indicate illegal or potentially embarrassing activities. Third is the FBI “full-field investigation”, which involves dozens of interviews conducted by FBI agents with neighbors, business associates, and others. One feature of background checks that many respondents objected to is the duplication of

<sup>9</sup>The financial-disclosure form (SF-278), the Personal Data Statement (White House), the FBI personal-history form (SF-86), and forms required by Senate committees.

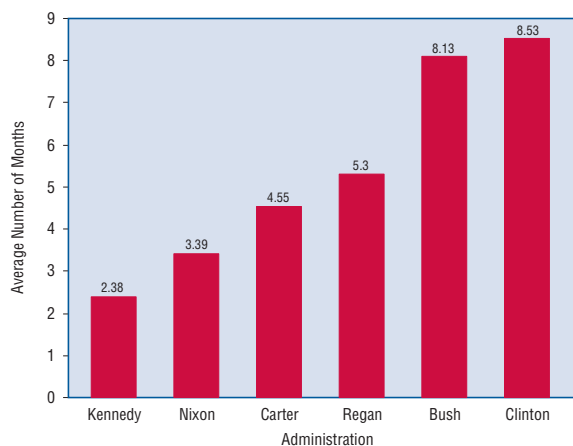
forms and effort. Each party to the approval process has its own extensive form,<sup>9</sup> several require substantially the same information in different formats. Therefore, the nominee is compelled to complete the details of each form separately, often compiling the same information in different ways.

Of respondents to the Brookings survey, four in 10 wanted a more efficient system for collecting information from nominees. Many urged simplification of financial-disclosure and other personal information forms and a standardization in data-collection forms for sharing among departments, agencies, and Senate committees. One source of redundancy is that each Senate committee has its own forms, which often differ from the BI forms of the White House.

One respondent wrote, “I think that you need to have one set of forms that you go through. Basically, the questions which are asked by the White House, by the Senate, and by the agency involved are basically the same questions. But they are all asked in a little different form. So it would certainly streamline the process if you could have an agreed-upon set of questions and inquiries.”

Respondents to the survey were also asked what would make the approval process easier for them. Some 37% of the appointees answered that making the information collection more efficient and the details of the process clearer would make the approval process easier for them; 28% said that the approval process would be easier if the process were faster; and 11% said that it would be easier if it were less partisan and less confrontational. A conclusion mentioned earlier bears repeating: that the availability of more information improves nominees’ impression of the process, reducing both embarrassment and confusion.

**Figure A-3.** Average number of months from inauguration to confirmation for initial PAS appointees, by administration. *Source:* Mackenzie, Calvin G., and Robert Shogan. 1996. *Obstacle Course: The Report of the Twentieth Century Fund Task Force on the Presidential Appointments Process.* New York: Twentieth Century Fund Press, p. 72.



Nominees also believe that the clearance process could be streamlined. For example, many S&T nominees already have high-level security clearances. One respondent to the Brookings/Heritage survey made the following comment: “One dimension which I find really bizarre is the special security clearances. I came to the offer with a lot of security clearances already granted me, including access to very sensitive material. I did not believe it was necessary to go over the whole thing again—as if I were a total unknown to the system. That . . . took a large amount of time and I don’t think it was done very well.”

From the information available, COSEPUP has concluded that the presidential appointment process is both complex and burdensome and is likely to dissuade some of the most qualified and desirable candidates from seeking or accepting presidential appointments. In the words of G. Calvin Mackenzie, a distinguished scholar of the appointments process who directed the Twentieth Century Fund’s task force:

Securing a Presidential appointment is a long and winding road. . . . Many such people now have no interest in being Presidential appointees, even if the opportunity presents itself. They have no wish to have every aspect of their personal and professional lives scraped over by the President’s enemies. They only want to serve their country. But the price of that service has become too high.

### The White House nominee-tracking system is slow and inconsistent. Candidates do not receive timely status reports.

White House tracking procedures often fail to provide timely reports to candidates on the status of their appointment. As one recent nominee reported: “I assumed that this was going to be a reasonably expeditious process. . . . Had I known that I was going to be a ship adrift in the sea, I probably would have taken more personal initiative to ensure that the matter was being pushed along.”<sup>10</sup>

Among the questions asked of former presidential appointees in the Brookings Institution survey,<sup>11</sup> many had to do with how nominees are informed and assisted by White House personnel and with the quality of that experience. A number of responses identify features of the experience that would discourage S&T leaders from accepting the invitation to government service and that thereby could limit the pool of potential candidates.

*Insufficient information:* A total of 39% of respondents said that they had not enough information from the White House or no infor-

<sup>9</sup> Light, Paul C., and Virginia L. Thompson, 2000. *The Merit and Reputation of an Administration: Presidential Appointees on the Appointments Process.* Washington, D.C.: The Brookings Institution and the Heritage Foundation. [www.appointee.brookings.org/survey.htm](http://www.appointee.brookings.org/survey.htm)

<sup>11</sup> Light, Paul C., and Virginia L. Thompson, 2000.



mation at all about the rules and obligations of service. Over 30% had to pay \$1,000 or more for outside legal and financial advice; about half of those spent more than \$6,000.

*An unduly complex approval process:* One-fourth (23%) called it “embarrassing”, and two-fifths (40%) said it was confusing. The number finding it “embarrassing” rose between 1984 and 1999 from 14% to 25%. The perceived quality of the approval process correlated positively with the amount of information nominees were given early in the process. For example, appointees who said they did not have enough information were more likely to describe the process as an embarrassment (31%) or a necessary evil (57%) than those who were well briefed (embarrassing, 17%; necessary evil, 29%). Similarly, well-informed appointees (80%) were more likely than their less-informed colleagues (59%) to say that the process was fair.

*Presidential personnel:* The first and continuing point of contact for most nominees is the Office of Presidential Personnel, which handles all paperwork. This office received mixed grades from appointees. When asked to grade the office’s helpfulness in a variety of issues, from competence to staying in touch, half or fewer awarded the grade of A or B. Half gave high grades for competence (50% gave As or Bs) and personally caring whether the appointee was confirmed (46%); half gave Cs (21%) or lower (30%) for staying in touch during the relationship.

To widen the pool of potential candidates, a successful recruitment process must be rigorous enough to ensure that individual nominees are fit for their jobs. At the same time, it must give nominees enough information to act in their own best interest throughout the process, move fast enough to bring departments and agencies the leadership they need, and be fair enough to draw talented people into service. Unfortunately, the process today falls short in a number of respects. As indicated by Professor Mackenzie,

Too many good people now decline Presidential appointments when they are offered, and, according to reports of recent Presidential personnel aides, recruiting difficulties seem to be growing. . . . The federal management system relies heavily on lateral entry at the top. When the most talented people refuse to enter because they find the prospect of public service and the process of entry so unappealing, the quality of government performance is in jeopardy.<sup>12</sup>

A year later, in a followup paper, Professor Mackenzie updated that, in the wake of its 1996 report, “all the reform proposals have stalled.” The paper concluded that “the appointment process is too slow and too procedurally complex.”

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<sup>12</sup> Mackenzie, Calvin, 1998. *Starting Over: The Presidential Appointment Process in 1997*. New York: The Twentieth Century Fund.