

A Time to Serve:

Proposals for Renewing the Civil Service

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Introduction

Every day, more than 2 million federal civilian employees go to work on behalf of the American people. Their ranks include world-renowned scientists, diplomats, engineers, IT professionals, economists, policy experts, and managers. They are individuals appointed by the president to head government agencies, as well as entry-level hires into the civil service. The demands we place on them, along with our expectation that they perform efficiently, resiliently, ethically, and expertly, have never been greater. Solving historic challenges concerning the environment, public health, economic inequality, racial injustice, and national security depends, in large part, on the performance of these public servants.

However, the personnel at the heart of critical government programs have been neglected for far too long. Across presidential administrations, federal workers have operated in a system that fails to adequately recruit, retain, compensate, and train top talent and that allows for widespread vacancies in senior political positions to persist indefinitely. Personnel have dealt with pay freezes, multiple government shutdowns, and reckless budget cuts while also being caricatured as wasteful and ineffective actors and blamed for the neglectful policy decisions of elected officials.

The situation has worsened under President Donald J. Trump. The Trump administration has actively sought to shrink the government by keeping vast swaths of the federal bureaucracy unstaffed, installing corporate hacks and wealthy donors in many of the positions it does choose to fill, and driving out career officials representing decades of institutional knowledge and expertise. Career experts, scientists, and diplomats have departed the government at a record pace,² with many reporting retaliation or pressure to leave their positions for continuing to support government programs unaligned with the president's extreme positions or for reporting abuse by political officials. As a result, the Departments of State, Justice, Homeland Security, and Interior, as well as the Environmental Protection Agency (EPA), have experienced

² See e.g., Jack Corrigan, "State Department Lost 12% of its Foreign Affairs Specialists in Trump's First 8 Months," *Government Executive*, Feb. 9, 2018, <https://www.govexec.com/management/2018/02/state-department-lost-12-its-foreign-affairs-specialists-trumps-first-8-months/145874/>; Stef Kight, "41% of Top Trump Officials Appointed in His First Year Have Left," *Axios*, Nov. 7, 2019, <https://www.axios.com/trump-white-house-turnover-top-officials-07a8ffac-bc48-41a0-a58d-193a0fd951d6.html> (citing data from the Center for Presidential Transition at the Partnership for Public Service finding the turnover rate of top officials in the Trump administration outpaces the rate of any recent administration); Kathryn Dunn Tenpas, "Tracking Turnover in the Trump Administration," *Brookings Institution*, June 2020, <https://www.brookings.edu/research/tracking-turnover-in-the-trump-administration/>.

significant turnover in their most senior ranks and face substantial personnel shortages in mission-critical areas. Surveys show the trend expanding to other agencies as well.³

This has left the federal government flat-footed at a time of unparalleled crisis. After dismantling efforts put in place by previous administrations to prepare for a global pandemic, the Trump administration has failed to mount the swift, coordinated federal response necessary to address the coronavirus outbreak. At a moment that demands the expertise of a robust federal workforce, we instead have watched White House advisers sideline government scientists and assemble a team of amateur volunteers to source personal protective equipment.⁴ Indeed, the dangerous consequences of bureaucratic decay are on full display.

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This paper charts a path forward with three basic objectives. First, we need to make fundamental, structural reforms to the personnel system, remaking and elevating the agency responsible for human resources policy within the federal government—the Office of Personnel Management (OPM)—and improving its ability to meet other agencies’ needs. Second, we need to change hiring practices to create more and better pathways into government for diverse and talented workers. This means both ensuring that the federal workforce reflects the diversity of the nation it serves, and modernizing the civil service system to allow agencies to more effectively and efficiently recruit and retain top talent while maintaining a commitment to meritocratic principles. And finally, we must keep political positions filled with effective and accountable leaders by reining in observed abuses and protecting democratic accountability and quality in the appointments process.

³ Nicole Ogrysko, “Shutdowns, relocations and mergers defined a whirlwind 2019 for the federal workforce,” *Federal News Network*, Dec. 27, 2019, <https://federalnewsnetwork.com/workforce/2019/12/shutdowns-relocations-and-mergers-defined-a-whirlwind-2019-for-the-federal-workforce/>; Michael Stratford, “Trump’s Been President for 3 Years. Government Morale Has Dropped for Two of Them,” *Politico*, Dec. 17, 2019, <https://www.politico.com/news/agenda/2019/12/17/government-morale-trump-federal-administration-084835>; C. Ryan Barber, “‘Slammed’: What Has Driven Departures From Trump’s Justice Department,” *National Law Journal*, Sept. 18, 2019, <https://www.law.com/nationallawjournal/2019/09/18/slammed-what-has-driven-departures-from-trumps-justice-department/?sreturn=20191130144236>; Lisa Friedman, Marina Affo, and Derek Kravitz, “E.P.A. Officials, Disheartened by Agency’s Direction, Are Leaving in Droves,” *New York Times*, Dec. 22, 2017, <https://www.nytimes.com/2017/12/22/climate/epa-buyouts-pruitt.html>; Erich Wagner, “These Agencies Have Lost the Most Workers Under Trump,” *Government Executive*, Aug. 15, 2018, <https://www.govexec.com/management/2018/08/these-agencies-have-lost-most-workers-under-trump/150577/>.

⁴ Yasmeen Abutaleb and Ashley Parker, “Kushner Coronavirus Effort Said to be Hampered by Inexperienced Volunteers,” *The Washington Post*, May 5, 2020, https://www.washingtonpost.com/politics/kushner-coronavirus-effort-said-to-be-hampered-by-inexperienced-volunteers/2020/05/05/6166ef0c-8e1c-11ea-9e23-6914ee410a5f_story.html.

Whatever the outcome of the 2020 election, it is clear the next administration will inherit a nation that is reeling from the effects of a global health pandemic, deep economic crisis, and generations of racial injustice. It will be essential for a new administration to begin tackling these challenges immediately, but if left unaddressed, a broken personnel system will fundamentally hamper its response.

A Broken Branch

Established in response to public unrest over the political patronage system of the 1880s, the federal civil service is fundamentally a testament to the belief that government works best when it serves the interests of the people. The rules, practices, and systems that govern the federal bureaucracy were largely instituted to further these meritocratic principles. Following the abuses of the Watergate era, it became clear that a robust set of ethics rules were needed to prevent public officials from using their positions for profit or personal gain. Hence, the Civil Service Reform Act and the Ethics in Government Act of 1978. However, in the more than 40 years since those major reforms were passed, the guardrails they put in place have been so thoroughly mangled that they have instead begun to impede the government from hiring and retaining the qualified, competent, and ethical personnel needed to staff it.

The Great Democracy Initiative (GDI) released a paper in May 2018 titled *Unstacking the Deck: A New Agenda to Tame Corruption in Washington*, which proposed reforms for combating corruption in the executive branch and ensuring that government works for the public's interest. A competent and functioning civil service dedicated to working for the American people is essential to that endeavor.

To repair the government's personnel system, it is necessary to first understand how it is currently structured. The federal civil service system generally refers to the competitive service, the excepted service, and the senior executive service (SES). Positions in the competitive service must be filled using a "practical" examining system that "fairly [tests] the capacity and fitness of the applicants for the appointment sought."⁵ Administered by OPM, this process is completed using a rating and ranking system and must be open

⁵ Congressional Research Service (CRS), "Categories of Federal Civil Service Employment: A Snapshot," March 26, 2019, <https://fas.org/sfp/crs/misc/R45635.pdf>.

to all applicants.⁶ While the majority of federal employees have been hired through the competitive service,⁷ competitive hiring is on the decline. For example, less than a quarter of all new federal employees were hired under competitive examining in 2014, and only three agencies (of the 24 covered by the Chief Financial Officers Act) used competitive examining for a majority of their new hires that year.⁸ This is partly because in some cases, OPM has delegated competitive hiring to specific agencies through direct hiring authority, which allows those agencies to oversee their own personnel processes.⁹ Congress has also granted hiring authorities to agencies other than OPM such as through the Foreign Service Act, which provides for the appointment of positions to the foreign service.¹⁰

Some positions are exempted from the competitive service by statute, the president, or OPM because of a determination that it is impracticable to examine candidates for such roles. Ranging from attorneys, chaplains, political appointees, and others, these positions—which account for about one-third of the federal workforce—comprise the excepted service.

There are also 4,000 political positions that are appointed by the president.¹¹ Of those, over 1,200 also require Senate confirmation (known as Presidential Appointment needing Senate confirmation, or “PAS,” positions), and about 1,500 are so-called Schedule C positions, in which individuals work in a confidential or policy role.¹²

Another roughly 7,000 federal workers belong to the SES, which includes a cohort of high-level government administrators (career and political appointees) who are tasked with managing large government programs.¹³ Often, these are key positions that serve as the lynchpin between top presidential appointees and the career civil service workforce.

Across these varied types of employment, four major problems plague efforts to staff the government:

⁶ See 5 U.S.C. §§ 3304-3319 and 5 C.F.R. parts 332 and 337.

⁷ Office of Personnel Management (OPM), “Excepted Service Hiring Authorities: Their Use and Effectiveness in the Executive Branch,” July 2018, <https://www.opm.gov/policy-data-oversight/hiring-information/excepted-service/excepted-service-study-report.pdf>, p. i.

⁸ Government Accountability Office (GAO), “Federal Hiring: OPM Needs to Improve Management and Oversight of Hiring Authorities,” August 2016, <https://www.gao.gov/assets/680/678879.pdf>, p. 12.

⁹ OPM, “Direct Hiring Authority,” n.d., <https://www.opm.gov/policy-data-oversight/hiring-information/direct-hire-authority/#url=Fact-Sheet>.

¹⁰ Foreign Service Act of 1980, <https://www.govtrack.us/congress/bills/96/hr6790/text>.

¹¹ Partnership for Public Service, “Rethinking the American Presidency,” <https://ourpublicservice.org/blog-rethinking-the-american-presidency/>.

¹² US Senate Committee on Homeland Security and Government Affairs, “Policy and Supporting Positions,” December 1, 2016, <https://www.govinfo.gov/content/pkg/GPO-PLUMBOOK-2016/pdf/GPO-PLUMBOOK-2016.pdf>, p. 216.

¹³ CRS, “Categories of Federal Civil Service Employment: A Snapshot,” March 26, 2019, <https://fas.org/sgp/crs/misc/R45635.pdf>.

First, the government’s hiring practices are too slow to keep up with its personnel needs. For years, the Government Accountability Office (GAO) has listed human capital management as a high-risk issue for agencies to address.¹⁴ More recently, it zeroed in on the federal government’s persistent failure to close mission-critical skill gaps as a primary concern.¹⁵ On average, it takes more than 106 days to fill an open position in the civil service—much longer than in the private sector—and despite good faith efforts to speed up the process, that number has been on the rise since 2012.¹⁶

Unless we develop a plan to fill in the holes left by a departing generation of workers, performance will inevitably suffer.

These difficulties are exacerbated by two modern trends. The long-term trend is that the federal government is aging rapidly, risking a massive loss in institutional knowledge and expertise.¹⁷ Unless we develop a plan to fill in the holes left by a departing generation of workers, performance will inevitably suffer. Of more immediate concern, a flood of experts, scientists and other career workers has left government during the Trump administration, and whether by design or not, hiring has failed to keep up with the departures.¹⁸ Any new administration will have to make it a priority to quickly fill empty positions and replenish the federal workforce.

¹⁴ GAO, “OPM and Agencies Need to Strengthen Efforts to Identify and Close Mission-Critical Skills Gaps,” January 2015, <https://www.gao.gov/assets/670/668202.pdf>, p 4-5. See also, Partnership for Public Service, “Bracing for Change: Chief human capital officers rethink business as usual,” August 2012, <https://presidentialtransition.org/wp-content/uploads/sites/6/2012/08/ef9eaa485017775d6b888f66d9adac43-1399996082.pdf>, p. 3 (“More than half of the 53 CHCOs and HR leaders we interviewed five years ago have since left government.”)

¹⁵ Id. at 4-5.

¹⁶ Statement of Mark Reinhold, Testimony Before the U.S. Senate Subcommittee on Regulatory Affairs and Federal Management of the Committee of Homeland Security and Government Affairs, March 1, 2018, <https://www.hsgac.senate.gov/imo/media/doc/Mark%20Reinhold%20TESTIMONY1.pdf>, p. 2.

¹⁷ Eric Katz, “The Federal Agencies Where the Most Employees are Eligible to Retire,” *Government Executive*, June, 18, 2018, <https://www.govexec.com/pay-benefits/2018/06/federal-agencies-where-most-employees-are-eligible-retire/149091/> (“Nearly 1.5 in ten federal employees are eligible to retire today, according to data maintained by the government’s human resources office, though in five years that number will spike to three in ten.”)

¹⁸ Erich Wagner, “These Agencies Have Lost the Most Workers Under Trump,” *Government Executive*, August 15, 2018, <https://www.govexec.com/management/2018/08/these-agencies-have-lost-most-workers-under-trump/150577/>. See also e.g., Jack Corrigan, “State Department Lost 12% of its Foreign Affairs Specialists in Trump’s First 8 Months,” *Government Executive*, Feb. 9, 2018, <https://www.govexec.com/management/2018/02/state-department-lost-12-its-foreign-affairs-specialists-trumps-first-8-months/145874/>; Stef Kight, “41% of Top Trump Officials Appointed in His First Year Have Left,” *Axios*, Nov. 7, 2019 (citing data from the Center for Presidential Transition at the Partnership for Public Service that finds the turnover rate of top officials in the Trump administration outpaces the rate of any recent administration), <https://www.axios.com/trump-white-house-turnover-top-officials-07a8ffac-bc48-41a0-a58d-193a0fd951d6.html>; Kathryn Dunn Tenpas, “Tracking Turnover in the Trump Administration,” *Brookings Institution*, June 2020, <https://www.brookings.edu/research/tracking-turnover-in-the-trump-administration/>.

Second, the civil service system and OPM require modernization and reform.

The last comprehensive civil service reform legislation was signed into law in 1978. The human resources (HR) landscape, not to mention the broader labor market, has substantially changed since then. Instead of evolving to match its competition, the federal government's HR functions have essentially stalled. Though individual agencies have been given certain flexible hiring authorities,¹⁹ the federal government continues to use a pay and classification system that puts them at an inherent disadvantage when competing for talent against private sector employers. The results are seen in the difficulties agencies face in filling mission-critical positions, particularly in the science, technology, engineering, math, and medical fields. These challenges are compounded by resource constraints in HR offices that have aging IT systems and a shortage of personnel with expertise in the increasingly complex patchwork of federal hiring authorities.²⁰ Furthermore, OPM's own IT and staff limitations make it unable to meet agencies' demands for hands-on technical assistance.²¹

Third, the nomination and confirmation process for political appointees has

become unmanageable and is prone to abuse. More than 1,200 positions now require nomination by the president and confirmation by the Senate, and even months into the first term of recent administrations, only a sliver of these positions has been filled.²² The process does not become easier during a president's second term; according to one recent study spanning administrations from President Jimmy Carter to President George W. Bush, these positions were vacant (or filled by an acting official) one-quarter of the time on average.²³

¹⁹ United States Office of Personnel Management, "Excepted Service Hiring Authorities: Their Use and Effectiveness in the Executive Branch," <https://chcoc.gov/sites/default/files/OPM%20Special%20Study%20%E2%80%93%20Excepted%20Service%20Hiring%20Authorities.pdf>; Margaret M. Weichert to Heads of Departments and Agencies, *United States Office of Personnel Management*, Oct. 11, 2018, <https://chcoc.gov/content/announcing-government-wide-direct-hire-appointing-authorities>.

²⁰ Partnership for Public Service and Grant Thornton LLP, "Embracing Change: CHCOs Rising to the Challenge of an Altered Landscape," 2014, https://ourpublicservice.org/wp-content/uploads/2018/09/Embracing_Change_CHCOs_Rising_to_the_Challenge_of_an_Altered_Landscape-2014.05.20.pdf, pp. 24–25; "skills of many [HR professionals has] become outdated or... some simply lacked the skills needed. . . . [T]here is a shortage of HR personnel with the ability to classify positions. . . . Experts on position descriptions [and classification] almost can't be found."

²¹ Partnership for Public Service and Grant Thornton LLP, "Bracing for Change: Chief Human Capital Officers Rethink Business as Usual," 2012, https://ourpublicservice.org/wp-content/uploads/2018/09/Bracing_for_Change_Chief_Human_Capital_Officers_Rethink_Business_as_Usual-2012.08.09.pdf, p. 4. Chief Human Capital Officers (CHCOs) generally report that Office of Management and Budget (OMB) and OPM "need more employees below the leadership level with agency experience that enables them to understand agency needs and challenges."

²² Anne Joseph O'Connell, "Trump's staffing record in the first 100 days was slow, but not catastrophic," *Brookings Institution*, May 5, 2017, <https://www.brookings.edu/research/trumps-staffing-record-in-the-first-100-days-was-slow-but-not-catastrophic/>.

²³ Anne Joseph O'Connell, "Vacant offices: Delays in Staffing Top Agency Positions," *Southern California Law Review*, 2009, <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2597&context=facpubs>, p. 921.

Whether you blame the Senate’s intransigence or the president’s personnel selections (or lack thereof), the process is broken. Unfortunately, more and more PAS positions are being left vacant or filled by temporary “acting” officials. This harms executive branch operations in multiple ways: critical offices are less likely to exert influence over the White House’s policymaking apparatus; opportunities for reform or to advance new agency priorities are more likely to be delayed or ignored; agency morale usually suffers; and, in the worst case scenario, critical, nonpartisan government functions are weaponized for partisan benefit.

And fourth, partisan attacks on government workers have diminished the appeal of government employment in the eyes of potential and current workers alike. Critics inside and outside of government have called into question the loyalty and abilities of public servants to further their own political interests—and these partisan blows have only intensified during the Trump administration. Political officials have imposed reckless budget cuts and shrugged as federal workers complained of the inevitable consequences. They have interfered with agency science and retaliated against scientists for pushing back. They have pushed out our most experienced foreign service officers and allowed our diplomatic capacity to deteriorate in their absence. It should be no surprise that federal employee morale, both overall and at most individual agencies, lags significantly behind the private sector and appears to be on the decline.²⁴

A strong civil service is essential to ensuring that the government works to advance the interests of the American people. Until we reverse the trends described above and institute key reforms, government will have increasing difficulty attracting the best and the brightest to serve, making it easier for detractors to justify bad faith changes and circumvent key checks built into the design of the federal appointments process.

²⁴ Partnership for Public Service & Boston Consulting Group, “Best Places to Work,” 2018, <https://bestplacestowork.org/analysis/>.

Proposals For Reform

Simply put, it has become too hard to staff the government. Systemic human resources failures have posed serious challenges to meeting the demands on government in the years ahead. They have also contributed to an overall decline in faith and trust in government's ability to perform efficiently, effectively, and in the public's interest.

Simply put, it has become too hard to staff the government.

Yet, almost without exception, government employees serve their country ethically and with dignity, in many cases forgoing better salaries or more prestigious positions to do so. Many of America's greatest accomplishments—curing disease, advancing civil rights, landing on the moon—have been the result of the dedicated efforts, exerted over many years, of hardworking government employees. For too long, these public servants have been under siege. We need to recommit ourselves to the idea that public service is a public trust.

The problems facing our federal personnel system are complex and multiple, but they can be fixed. With careful, well-designed reforms, we can reinvigorate an effective, honorable federal workforce to meet the challenges of tomorrow.

I. STRUCTURAL REFORMS TO THE FEDERAL PERSONNEL SYSTEM

In 2019, the Trump administration put forward a proposal to dissolve OPM—the primary agency for administering federal personnel policies and programs—and divide its responsibilities across the General Services Administration (GSA) and the Office of Management and Budget (OMB) in the Executive Office of the President. Rather than advocate for constructive reform,²⁵ the Trump administration pushed for OPM's demise²⁶—a move that some believed foreshadowed the administration's plans to abolish other federal agencies.²⁷ Tellingly, no members of Congress endorsed the initiative, a step too far for even the most stalwart of the president's supporters, and the administration dropped the proposal by the end of the year.²⁸

We are under no illusions about OPM's deficiencies. It currently lacks sufficient personnel to respond to agencies' demands for technical advice. The 1980s technology behind its retirement processing system, which requires labor-intensive paper components,²⁹ compounds problems. Although OPM devised a plan in 2013 to transition to a new, completely electronic retirement processing system, the project remains incomplete seven years later.³⁰ Most significantly, from 2005 until 2019, OPM was

²⁵ In a May 2019 press briefing, Acting OPM Director Margaret Weichert cited OPM's \$70 million budget shortfall after moving background checks to the Department of Defense as a justification for the planned General Services Administration merger. Adam Mazmanian, "Weichert: Budget shortfall, legacy IT woes drive planned OPM merger," *FCW*, May 14, 2019, <https://fcw.com/articles/2019/05/14/opm-merger-weichert-legacy.aspx>.

²⁶ In 2019, the Trump administration released the business case for splitting OPM's functions between GSA and a new personnel office at OMB. Executive Office of the President, "Qualitative Business Case and Value Proposition for the GSA/OPM Merger," 2019, https://www.whitehouse.gov/wp-content/uploads/2019/05/Qualitative-Business-Case-and-Value-Proposition-for-the-GSA-OPM-Merger_FINAL.pdf.

²⁷ Lisa Rein and Damian Paletta, "If Trump has his way, this major federal agency is on the way out," *Washington Post*, April 10, 2019, https://www.washingtonpost.com/politics/if-trump-has-his-way-this-major-federal-agency-is-on-the-way-out/2019/04/09/9335e2df-e54c0-11e9-9136-f8e636f1f6df_story.html.

²⁸ Lisa Rein and Josh Dawsey, "After bipartisan pushback, Trump ditches effort to kill major federal agency," *Washington Post*, December 11, 2019, https://www.washingtonpost.com/politics/after-bipartisan-pushback-trump-ditches-effort-to-kill-major-federal-agency/2019/12/11/bbce1c10-16d8-11ea-a659-7d69641c6ff7_story.html.

²⁹ Josh Mayo, "GAO: OPM Needs Stronger IT Modernization Plan for Retirement Applications," *MeriTalk*, June 17, 2019, <https://www.meritalk.com/articles/gao-opm-needs-stronger-it-modernization-plan-for-retirement-applications/>.

³⁰ Nicole Ogrysko, "Inconsistent leadership behind OPM's failed attempts to modernize retirement claims process, GAO says," *Federal News Network*, June 28, 2019, <https://federalnewsnetwork.com/retirement/2019/06/inconsistent-leadership-behind-opms-failed-attempts-to-modernize-retirement-claims-process-gao-says/>.

responsible for administering and storing data related to background investigations for individuals serving in sensitive or national security positions, until highly publicized data breaches³¹ led Congress to transfer this responsibility to the Department of Defense (DoD).³² As part of the transfer, 3,300 OPM employees and 6,000 contractors moved to DoD in 2019.

OPM must undergo a set of structural reforms, but such reforms should bolster the agency and the workforce it represents—not dismantle it.

OPM must undergo a set of structural reforms, but such reforms should bolster the agency and the workforce it represents—not dismantle it. To that end, we propose reforms aimed at improving the experience of agencies that rely on OPM by creating capacity at OPM to assume more resource-intensive hiring tasks; instituting a desk officer system to improve communication between OPM and federal agencies; establishing a Presidential Task Force to study the existing classification and pay structures and issue recommendations for their improvement; and elevating OPM to a Cabinet-level agency to highlight its role in supporting the federal workforce and the other agencies in the Cabinet. Together, these changes will make OPM more nimble, effective, and responsive to the needs of other agencies and the federal workforce writ large.

³¹ In 2014, USIS, a private company contacted by OPM to carry out background checks, was hit by a cyber attack that affected an estimated 25,000 government employees. Sean Lyngaas, "Former DHS official: Response to USIS hack could have been better coordinated," FCW, November 13, 2014, <https://fcw.com/articles/2014/11/13/dhs-officials-outline-cyberattack.aspx?m=1>. Following the attack, the government declined to renew the contract with USIS and transferred most of the work to KeyPoint, another contractor. However, later in 2014, KeyPoint reported that they too had been hacked, possibly exposing the personal information of 48,000 federal workers. Christian Davenport, "KeyPoint network breach could affect thousands of federal workers," *Washington Post*, December 18, 2014, https://www.washingtonpost.com/business/economy/keypoint-suffers-network-breach-thousands-of-fed-workers-could-be-affected/2014/12/18/e6c7146c-86e1-11e4-a702-fa31ff4ae98e_story.html. Then, in 2015, OPM reported that two major data breaches of their systems had resulted in the theft of sensitive information about roughly 22 million people, including government employees, contractors, and their families and friends. Ellen Nakashima, "Hacks of OPM databases compromised 22.1 million people, federal authorities say," *Washington Post*, July 9, 2015, <https://www.washingtonpost.com/news/federal-eye/wp/2015/07/09/hack-of-security-clearance-system-affected-21-5-million-people-federal-authorities-say/>.

³² Mark Hosenball, "Top secret: Trump's revamp of U.S. security clearances stumbling - officials, report," *Reuters*, June 19, 2019, <https://www.reuters.com/article/us-usa-security-clearances/top-secret-trumps-revamp-of-u-s-security-clearances-stumbling-officials-report-idUSKCN1TK127>.

RECOMMENDATION 1:

Restructure OPM to Effectively Handle Resource-Intensive Hiring Tasks

Despite the need for more diverse, streamlined, and robust pathways into the civil service, a cumbersome examining process remains the bedrock hiring authority for entering the competitive service. Under this process, agencies must publicly post job openings, accept and review applications, rank candidates based on specific criteria, apply statutory priorities such as veterans' preference, and choose from a limited selection of the highest-ranked candidates. Since 1996, OPM has delegated authority for conducting this process to individual agencies.³³

Unfortunately, in recent years the process has been bogged down. HR staffs within agencies are often small and overworked, and the competitive examining process is necessarily resource-intensive. Federal human capital officers identify the rating and ranking process as the biggest source of delays in hiring,³⁴ while agency chief financial officers (CFOs) and other managers routinely list HR as one of the most "broken" areas of their agency.³⁵ The problem is especially acute in smaller agencies, which have particular difficulty achieving the economies of scale necessary to run efficient hiring processes. As a result, under delegated examining, agencies take an average of 106 days to complete their hiring process. That's a significantly longer period than the 80-day goal set by OPM,³⁶ and several times longer than comparable hiring timelines in the private sector.³⁷

³³ GAO, "OPM Needs to Improve Management and Oversight of Hiring Authorities," August 2016, <https://www.gao.gov/assets/680/678814.pdf>, p. 7.

³⁴ Hearing Before the US Senate Subcommittee on Regulatory Affairs and Federal Management, Committee of Homeland Security and Government Affairs, "Examining Federal Managers' Role in Hiring," March 1, 2018, <https://www.govinfo.gov/content/pkg/CHRG-115shrg30256/pdf/CHRG-115shrg30256.pdf>, p. 33.

³⁵ Partnership for Public Service & Deloitte, "Helping Government Deliver II," March 2015, <https://ourpublicservice.org/wp-content/uploads/2015/03/acd9e6602f177f81b0f319b4e85e08a5-1426196834.pdf>, p. 7. In fact, OPM and the Chief Human Capital Officers Council identified human resources as one of six mission-critical occupational categories in which skills gaps jeopardize government's ability to accomplish its mission. Partnership for Public Service & Grant Thornton, "Embracing Change," May 2014, https://ourpublicservice.org/wp-content/uploads/2018/09/Embracing_Change_CHCOs_Rising_to_the_Challenge_of_an_Altered_Landscape-2014.05.20.pdf, p. 32.

³⁶ Statement of Mark Reinhold, Testimony Before the U.S. Senate Subcommittee on Regulatory Affairs and Federal Management of the Committee of Homeland Security and Government Affairs, March 1, 2018, <https://www.hsgac.senate.gov/imo/media/doc/Mark%20Reinhold%20TESTIMONY1.pdf>, p. 2.

³⁷ Statement of Max Stier, Testimony Before the House Committee on Oversight and Government Reform, March 16, 2018, <https://ourpublicservice.org/wp-content/uploads/2018/05/df6bf6c9c9ff23358d137144f663db0b7-1526493902.pdf>, p. 4.

While individual agencies should continue to take the lead in the hiring process, we cannot continue to place such a high burden on overworked HR staffs. Instead, OPM should contribute its resources and expertise to helping agencies that affirmatively request OPM's assistance to manage the competitive examining process, including by assuming some of the most time- and resource-intensive functions of federal hiring. In particular, OPM should take on the day-to-day work of publishing and disseminating vacancy announcements, receiving applications, evaluating applications in accordance with legal and job-specific requirements, and rating and ranking applicants, while agencies would continue to oversee the hiring process and make final hiring choices. This will require OPM to expand its capacity in these areas, but it does not mean replacing existing HR professionals within agencies. Rather, the goal is to supplement those professionals with OPM's added expertise.

By conducting these and other tasks directly, OPM can eliminate redundancies, create economies of scale, and expedite some of the most time-consuming parts of the federal hiring process. For instance, many federal agencies must hire cybersecurity professionals, but it makes little sense for each agency to invest resources to develop duplicative sets of expertise on how to do so.³⁸ This consolidation of government functions resembles "shared services" that assist multiple agencies, such as the National Finance Center, which provides payroll services for agencies across the government. OPM involvement will also help ensure that merit principles are applied fairly and consistently in hiring.

To better respond to agency-specific requests, each federal agency should also be assigned an individual desk officer at OPM to facilitate inter-agency coordination. A desk officer system will improve communication between OPM and its client agencies, allow one or more OPM officials to develop context and relative expertise in each agency's hiring needs and authorities, and provide an efficient avenue for transmitting personnel policy to agencies, which should help avoid needless delays and obstacles in the hiring process.³⁹

³⁸ Some agencies have already moved toward sharing hiring lists. See <https://www.gao.gov/assets/710/700657.pdf> at p. 11. This practice would be utilized more widely and would likely be more effective. It would also be consistent with competitive service rules, if centrally administered through OPM. Currently, agencies have only started to pilot such programs. Hearing Before the U.S. Senate Subcommittee on Regulatory Affairs and Federal Management, Committee of Homeland Security and Government Affairs, "Examining Federal Managers' Role in Hiring," March 1, 2018, <https://www.govinfo.gov/content/pkg/CHRG-115shrg30256/pdf/CHRG-115shrg30256.pdf>, p. 33.

³⁹ Agency CHCOs generally report that increased coordination and communication with OPM and OMB employees below the leadership level with expertise that enables them to understand agency needs and challenges is necessary. See Partnership for Public Service & Grant Thornton, "Bracing for Change," August 2012, <https://presidentialtransition.org/wp-content/uploads/sites/6/2012/08/ef9eaa485017775d6b888f66d9adac43-1399996082.pdf>, p. 4.

As an additional benefit, OPM should use its increased involvement in the hiring process to maintain a centralized slate of qualified candidates for positions of high need in the federal government, such as HR and IT positions. Although many promising candidates are ultimately not selected to fill the position for which they originally applied, some are suitable candidates for similar postings. Maintaining a centralized pool of candidates would also allow OPM to better identify areas where diverse candidate recruitment remains weak and to develop appropriate remedies. In 2016, Congress passed the Competitive Service Act to allow agencies to share lists of qualified candidates that could be drawn upon to recruit employees for in-demand positions, but agencies have been slow to take advantage of this new authority in part because OPM's implementing regulations require agencies to coordinate with one another directly.⁴⁰ Instead, these regulations should be amended to allow OPM to facilitate this process, particularly for critical hires.

SPECIFIC RECOMMENDATIONS:

- OPM should assume responsibility, when requested by the hiring agency, for publishing and disseminating vacancy announcements, receiving and evaluating applications, and providing an initial rating and ranking of applicants.
- OPM should undergo internal restructuring to provide each agency with at least one designated officer within OPM who is responsible for meeting agency requests.
- OPM should amend 5 CFR § 332.408 so that OPM may maintain a centralized list of promising candidates that agencies can reference when filling vacancies.

⁴⁰ See 5 CFR § 332.408.

RECOMMENDATION 2:

Establish a Presidential Task Force to Recommend Reforms on Pay and Classification

The federal hiring process is governed by a job classification system that was established in 1949—more than half a century ago. A human resources agency cannot succeed in the 21st century if it is obligated to operate under antiquated rules and tools. Despite reform initiatives over the years,⁴¹ almost all federal civil service employees are still paid according to the General Schedule (GS). As former President George W. Bush’s OPM director Kay Cole James explains: “The bedrock principle of the government’s employee classification system was—and is—that job description and time in service determine one’s compensation, not skill nor training nor education nor performance.”⁴² This rigid system may have made sense at the time of its adoption, when 75 percent of the federal workforce consisted of clerical positions, but it’s much harder to see its usefulness today when less than 30 percent of federal positions are considered clerical.⁴³

A human resources agency cannot succeed in the 21st century if it is obligated to operate under antiquated rules and tools.

It is time to revamp the federal government’s pay and classification system.⁴⁴ A classification system that includes over 1,000 unique classifications creates both an obstacle for first time candidates to federal service who are unfamiliar with the system, and a needless administrative burden for agency human resource

⁴¹ For example, the Clinton administration’s National Performance Review resulted in a significant reduction of the federal workforce. It also led to the adoption of the Government Performance and Results Act (GPRA), which required agencies to use strategic planning and performance measurements in their programs. Both the George W. Bush and Obama administrations built on the reforms in the GPRA. See Elaine Kamarck, “Lessons for the Future of Government,” *Brookings Institution*, June 18, 2013, <https://www.brookings.edu/testimonies/lessons-for-the-future-of-government-reform/>.

⁴² OPM, “A Fresh Start for Federal Pay: the Case for Modernization,” April 2002, <https://ourpublicservice.org/wp-content/uploads/2002/04/5f728681c9c408cb255f816a352a7d4f-1414080128.pdf>.

⁴³ *Ibid.*

⁴⁴ Others have called for this as well. See, e.g., Report of the National Commission on the Public Service, “Urgent Business: Revitalizing the Federal Government for the 21st Century,” January 2003, <https://www.brookings.edu/wp-content/uploads/2016/06/01governance.pdf>; Partnership for Public Service & Grant Thornton, “Bracing for Change,” August 2012, <https://presidentialtransition.org/wp-content/uploads/sites/6/2012/08/ef9eaa485017775d6b888f66d9adac43-1399996082.pdf>, p. 16.

professionals.⁴⁵ It also provides insufficient flexibility for determining competitive starting salaries or rewarding high performers, which threatens an agency's ability to retain talent.⁴⁶ Even the majority of Chief Human Capital Officers (CHCOs) agree that the existing system puts the federal government at a significant disadvantage relative to private sector competitors.⁴⁷

To address these concerns, the president should establish a Presidential Task Force within the first 100 days of the next administration to study the federal hiring and classification systems from root to branch. Members of this Task Force should include past federal personnel officials or other personnel experts; representatives from federal employee unions; academics who specialize in public administration; and experts on diversity, equity, and inclusion.

The Task Force should consider adjusting the number of job classifications and broadening pay bands to better align the federal system with the general market. In addition, the Task Force should judge whether hiring managers should be given greater flexibility to determine starting salaries within the broader pay bands, as well as to reward high performers and hold poor performers accountable, consistent with existing merit system principles and due process protections. The Presidential Task Force should study each of these factors and determine the best approach to modernize the existing pay and job classification system to ensure that the complexity of these systems is not a barrier to retaining a highly-qualified, competent civil service.

In conjunction with these reforms, the Task Force should also consider complementary changes to the performance management system to ensure that it includes updated and relevant ratings, captures best practices, and tracks performance throughout the year—not just during annual performance ratings. Within six months of appointing its members, the Task Force should propose its recommendations and the president should commit to pushing forward legislation in Congress to codify them.

⁴⁵ Jeff Neal, "Rethinking Position Classification," *Federal News Network*, July 28, 2017, <https://federalnewsnetwork.com/commentary/2017/07/rethinking-position-classification/>. Indeed, it's almost impossible to find HR professionals with expertise to draft position descriptions and review applications consistent with the existing classification process. See [Embracing Change](#) at 24-25 ("the skills of many [HR professionals have] become outdated. . . . [T]here is a shortage of HR personnel with the ability to classify positions Experts on position descriptions [and classification] almost can't be found."

⁴⁶ Partnership for Public Service & Grant Thornton, "Bracing for Change," August 2012, <https://presidentialtransition.org/wp-content/uploads/sites/6/2012/08/ef9eaa485017775d6b888f66d9adac43-1399996082.pdf>, p. 16.

⁴⁷ *Id.* at 16.

SPECIFIC RECOMMENDATION:

- Within the first 100 days of the next administration, the president should establish a Presidential Task Force to examine the federal hiring and classification systems. The Task Force must issue a report within six months with recommendations that the president will commit to advance in Congress.

RECOMMENDATION 3:

Make the Office of Personnel Management a Cabinet-level agency

OPM was established by the Civil Service Reform Act of 1978 and is an independent establishment in the executive branch.⁴⁸ Employing over 2,000 workers, the agency responds to the government's human resources needs across human capital management and benefits, and supports federal workers in achieving their goals. A well-resourced and high-functioning personnel system is paramount to maintaining a high-quality and effective civil service. But OPM has suffered from a reputation of poor performance, while outdated and fragmented IT systems have compounded the agency's challenges in recruiting and retaining a talented and competitive federal workforce.⁴⁹

Maintaining a highly competent and well-functioning civil service has never been more important, and our government should reflect as much.

While OPM's critics have used these challenges to justify dissolving the agency, we recommend a different approach. Maintaining a highly competent and well-functioning civil service has never been more important, and our government should reflect as much. So that OPM can better meet the human resource needs across the federal government and advocate for the interests of federal workers, the president should give OPM Cabinet

⁴⁸ See 5 U.S. Code § 104.

⁴⁹ David E. Lewis, "Here's why Trump is threatening federal layoffs if Congress won't shut this agency down," *Washington Post*, June 24, 2019, <https://www.washingtonpost.com/politics/2019/06/24/heres-why-trump-is-threatening-federal-layoffs-if-congress-wont-shut-this-agency-down/>.

rank and invite the director of OPM to regularly attend meetings of the president's Cabinet. Elevating OPM to the Cabinet will signal the significance of personnel to the president's agenda, while providing the Cabinet as a whole with a direct line to OPM as the agency primarily responsible for the government's human capital functions. It will further serve to help the president recruit capable leadership, improve oversight of the government's personnel systems, and ensure that the agency's needs are given the urgent attention they deserve. As part of this process, the president should restore OPM's ability to communicate directly with Congress and end GSA's role as an intermediary.

SPECIFIC RECOMMENDATIONS:

- The president should elevate OPM to the Cabinet and invite the director of OPM to regularly attend Cabinet meetings.
- The president should restore OPM's ability to communicate directly with Congress, including its ability to formally submit its own budget requests.

II. IMPROVE GOVERNMENT'S ABILITY TO RECRUIT AND RETAIN DIVERSE AND EFFECTIVE CIVIL SERVANTS

Our country requires a dynamic, responsive government, which means we need a government staffed with bright, creative, and motivated employees. But in critical civil service and political positions alike, vacancies frequently linger for months or even years. A combination of difficulties in recruiting and retaining top employees, unnecessarily time-intensive processes, and outdated rules and HR systems make filling positions in the federal government too difficult.⁵⁰ In addition, while there are over 100 different authorities agencies may use to hire new personnel, the vast majority are underutilized. A 2016 GAO report found that just 20 hiring authorities accounted for over 90 percent of new hires.⁵¹ If we want a high-functioning federal government, the status quo personnel processes are simply inadequate.

More and more essential government functions are being conducted by private businesses with little accountability to the public and none of the merit system protections that have historically guaranteed a quality civil service.

Difficulties in hiring employees have also contributed to a massive increase in the outsourcing of government work to private contractors.⁵² While some level

⁵⁰ Partnership for Public Service and Grant Thornton LLP, "Embracing Change: CHCOs Rising to the Challenge of an Altered Landscape," 2014, https://ourpublicservice.org/wp-content/uploads/2018/09/Embracing_Change_CHCOs_Rising_to_the_Challenge_of_an_Altered_Landscape-2014.05.20.pdf, p 16-18, 23-25. See also: Partnership for Public Service & Grant Thornton, "Bracing for Change," August 2012, <https://presidentialtransition.org/wp-content/uploads/sites/6/2012/08/ef9eaa485017775d6b888f66d9adac43-1399996082.pdf>, p. 4; Report of the National Commission on the Public Service "Urgent Business for America: Revitalizing the Federal Government for the 21st Century," 2003, https://www.brookings.edu/wp-content/uploads/2016/06/01_governance.pdf, p. 4 and 8-9.

⁵¹ GAO, "OPM Needs to Improve Management and Oversight of Hiring Authorities," August 2016, <https://www.gao.gov/assets/680/678879.pdf>, p. 8.

⁵² Paul R. Verkuil, "Valuing Bureaucracy: The Case for Professional Government," 2017, p. 1, 14-15.

of contracting is necessary, more and more essential government functions are being conducted by private businesses with little accountability to the public and none of the merit system protections that have historically guaranteed a quality civil service.⁵³ For example, outsourcing of responsibility for prisons and detention centers to private companies has led to unacceptable and dangerous conditions, with minimal accountability from the public and perverse incentives to cut back on safety protections.⁵⁴ While outside the scope of this analysis, government contracting will be covered in a future paper.

To improve government's ability to recruit and retain diverse and effective civil servants, we recommend instituting robust protections for federal workers, strengthening channels for diverse hiring and promotion, attracting a new generation of civil servants by centralizing and simplifying the process for hiring interns and post-graduates, and making it easier for former public servants to return to government by expanding reinstatement authority.

RECOMMENDATION 4:

Defend Federal Workers

In recent years, life as a federal worker has been characterized by austerity and insecurity. Leaders of both political parties have imposed a litany of cutbacks and freezes on the civil service, forcing them to go about their lives in the face of serious financial uncertainty. A brief list of recent actions taken against the interests of federal workers includes a two-year pay freeze imposed by President Obama followed by another statutory pay freeze from Republicans in Congress, a 90-day hiring freeze imposed by President Trump at the beginning of 2017, two prolonged government shutdowns in 2013 and 2018 (extending into 2019), and a sustained effort by President Trump to undercut federal employee unions, including three executive orders that dramatically curtailed collective bargaining rights.

⁵³ From 1996 to 2017, the number of federal contractors increased from about 3 million to 4.1 million. Janet Nguyen, "The U.S. government is becoming more dependent on contract workers," *Marketplace*, January 17, 2019, <https://www.marketplace.org/2019/01/17/rise-federal-contractors/>.

⁵⁴ Paul R. Verkuil, "Valuing Bureaucracy: The Case for Professional Government," 2017, p. 72-74.

The harms of these actions are twofold. First, they impose real economic harm on federal workers, and their inherently haphazard and unpredictable nature means the prospect of their imposition carries a cost even when the relevant provisions are not triggered. Second, and perhaps equally as important, these cutbacks send a message to federal employees that they and their work are of little value. The latest government shutdown, for instance, was accompanied by a message from Council of Economic Advisors Chairman Kevin Hassett that federal workers benefited from a “vacation” during the shutdown,⁵⁵ while the president himself retweeted an article from an anonymous federal official concluding that “[w]e do not want most employees to return, because we are working better without them.”⁵⁶

It should come as no surprise that federal human resource officials cite these types of attacks on workers as a key factor in diminishing morale and decreased performance.⁵⁷ As the former chief human capital officer of the Department of Homeland Security (DHS) put it, “I don’t think people like being a political football.”⁵⁸ The long-term result is that the federal government will have more difficulty attracting and retaining talented employees.

“I don’t think people like being a political football.”

Ultimately, no policy proposal can protect federal workers if Congress is fully committed to marginalizing them. But cutbacks can be made more difficult by ensuring that they only go into effect when Congress proactively passes legislation. That’s why Congress should first eliminate the president’s authority, pursuant to 5 U.S.C. §§ 5303 and 5304a, to deny or otherwise diminish automatic statutory cost-of-living adjustments to federal workers’ salaries. Congress must make it clear that these adjustments are mandatory unless a statute says otherwise.

⁵⁵ Caitlin Oprysko, “White House economic adviser appears to compare shutdown to ‘vacation’ for furloughed workers,” *Politico*, January 11, 2019, <https://www.politico.com/story/2019/01/11/white-house-economic-adviser-shutdown-vacation-for-workers-1098380>.

⁵⁶ Morgan Gstalter, “Trump shares article blasting federal workers, calling for long shutdown,” *The Hill*, January 15, 2019, <https://thehill.com/homenews/administration/425377-Trump-shares-article-blasting-federal-workers-calling-for-long-shutdown> (referencing Senior Trump Official, “I’m A Senior Trump Official, And I Hope A Long Shutdown Smokes Out The Resistance,” *Daily Caller*, January 14, 2019, <https://dailycaller.com/2019/01/14/smoke-out-resistance/>).

⁵⁷ Lisa Rein and Andrew Ba Tran, “How the Trump era is changing the federal bureaucracy,” *Washington Post*, December 2, 2017, https://www.washingtonpost.com/politics/how-the-trump-era-is-changing-the-federal-bureaucracy/2017/12/30/8d5149c6-daa7-11e7-b859-fb0995360725_story.html. See also, Michael Stratford, “Trump’s Been President for 3 Years. Government Morale Has Dropped for Two of Them.” *Politico*, December 17, 2019, <https://www.politico.com/news/agenda/2019/12/17/government-morale-trump-federal-administration-084835>; Partnership for Public Service & Grant Thornton, “Bracing for Change,” August 2012, <https://presidentialtransition.org/wp-content/uploads/sites/6/2012/08/ef9eaa485017775d6b888f66d9adac43-1399996082.pdf>, p. 8.

⁵⁸ Chase Gunter, “Even short shutdowns complicate federal hiring,” *FCW*, January 22, 2018, <https://fcw.com/articles/2018/01/22/short-shutdown-federal-hiring.aspx>.

Congress should also ban the president from unilaterally imposing across-the-board salary or hiring freezes on a government- or agency-wide basis. Of course, good federal personnel management sometimes requires tinkering with federal wages or hiring policies. But even for those inclined to support federal downsizing, across-the-board freezes are blunt instruments that fail to reflect the diversity of needs and circumstances across different federal agencies and positions. To the extent that emergencies demand unusually drastic measures, Congress will always retain the authority to proactively scale back the size or scope of the executive branch.

In addition, Congress should consider legislation that would automatically fund federal salaries when appropriations expire, at a level equal to prior appropriations plus an inflation adjustment. Inaction should not allow Congress and the president to harm federal workers, as when they fail to pass appropriations legislation and trigger a government shutdown. That prior shutdowns have been followed by laws authorizing back pay for furloughed employees argues in favor of reform.⁵⁹ The ease with which current law allows drastic harm to be imposed on employees makes it too dangerous a tool for even sympathetic politicians who aim to demonstrate toughness or belt-tightening. This proposal should not be misconstrued as a mandatory raise—it isn't. Rather, it ensures that the real spending power of federal salaries are not reduced as a result of government inaction. While this proposal would raise additional questions about federal budgetary negotiations and the relationship between the president and Congress that are beyond the scope of this paper, Congress and the president should at the very least seriously consider the long-term impact on the federal workforce before allowing prolonged government shutdowns to go into effect.

Labor rights for federal workers must also be restored—and expanded.

Labor rights for federal workers must also be restored—and expanded. The next administration should repeal the three executive orders President Trump issued that sharply undermine the power of federal unions, including by limiting “official time” and grievance procedures.⁶⁰ Congress should also pass legislation giving federal workers the right to strike under the National Labor Relations Act.

⁵⁹ See e.g., S. 24 Government Employee Fair Treatment Act of 2019, P.L. No. 116-1 (1/16/19), “Furloughed Feds Will Receive Back Pay Once the Shutdown Ends,” Jan. 16, 2019, <https://www.govexec.com/pay-benefits/2019/01/its-official-furloughed-feds-will-receive-back-pay-once-shutdown-ends/154222/>.

⁶⁰ Joe Davidson, “Trump’s orders show unwavering attack on federal unions, employees,” *Washington Post*, May 29, 2018, <https://www.washingtonpost.com/news/powerpost/wp/2018/05/29/trumps-orders-show-unwavering-attack-on-federal-unions-employees/>.

Finally, federal workers who are exercising their due process rights should not have to wait years for a judgment. The US Merit Systems Protection Board (MSPB), which adjudicates employee appeals claims, has lacked a quorum for over three years and has been without a single member since March 2019.⁶¹ As a result, the MSPB faces a backlog of at least 3,000 pending claims.⁶² It is essential to get the MSPB back up and running as soon as possible.

SPECIFIC RECOMMENDATIONS:

- Congress should pass legislation eliminating the president's authority, pursuant to 5 U.S.C. §§ 5303 and 5304a, to deny or otherwise diminish automatic statutory cost-of-living adjustments to federal workers' salaries.
- Congress should pass legislation banning the president from unilaterally imposing across-the-board salary or hiring freezes on a government- or agency-wide basis.
- Congress should pass legislation to automatically fund federal salaries at a level equal to prior appropriations plus an inflation adjustment, when appropriations expire.
- The president should repeal Executive Orders 13836, 13837, and 13839.
- Congress should pass legislation amending the National Labor Relations Act to give federal workers the right to strike.
- The president should prioritize restoring a quorum to the US Merit Systems Protection Board.

⁶¹ Nicole Ogrysko, "Lack of quorum hits 3-year mark at MSPB, with no clear end in sight," *Federal News Network*, January 24, 2020, <https://federalnewsnetwork.com/workforce/2020/01/lack-of-quorum-hits-3-year-mark-at-mspb-with-no-clear-end-in-sight/>.

⁶² Juliegrace Brufke, "Administration pushes for Senate to move on MSPB chair nomination," *The Hill*, July 2, 2020, <https://thehill.com/homenews/administration/505719-administrations-mspb-chair-pick-calls-for-senate-to-move-on-his>.

RECOMMENDATION 5:

Establish Robust Channels for Diverse Hiring and Promotion

In 2011, President Obama issued an executive order “establishing a coordinated government-wide initiative to promote diversity and inclusion in the federal workforce.” In line with this directive, OPM’s 2014-2018 strategic plan listed the retention of a diverse and effective workforce as one of its top priorities.⁶³ However, the Trump administration has abandoned this goal. Not only does OPM’s strategic plan for fiscal years 2018-2022 not include diversity as an agency goal, it only mentions the word “diversity” once in the 25-page report.⁶⁴ Moreover, the Trump administration’s first OPM director admitted during his Senate confirmation hearing that he was not even familiar with the Obama-era executive order on diversity and inclusion.⁶⁵

To be most effective, the federal civil service must reflect the diversity of the nation it serves.

To be most effective, the federal civil service must reflect the diversity of the nation it serves. In fiscal year 2017, the last year for which data is available, self-identified minorities comprised 37.1 percent of the permanent federal workforce, a 0.7 percentage point improvement over the previous year.⁶⁶ But these figures vary widely across federal departments and agencies. For example, 22.3 percent of employees at the Department of Homeland Security identified as Hispanic, compared to just 3.6 percent of employees at the Department of Health and Human Services.⁶⁷ And while self-identified Black employees comprised 38.6 percent of employees at the Department of Education, they represented just 5.5 percent of employees at the Department of the Interior.⁶⁸

⁶³ OPM, “Strategic Plan FY 2014-2018,” <https://www.opm.gov/about-us/budget-performance/strategic-plans/2014-2018-strategic-plan.pdf>, p.8.

⁶⁴ OPM, “OPM Strategic Plan: Fiscal Years 2018-2022,” February 2018, <https://www.opm.gov/about-us/budget-performance/strategic-plans/2018-2022-strategic-plan.pdf>.

⁶⁵ Joe Davidson, “New OPM chief presses for civil service overhaul, but administration is less interested in diversity,” *Washington Post*, May 1, 2018, <https://www.washingtonpost.com/news/powerpost/wp/2018/05/01/new-opm-chief-presses-for-civil-service-overhaul-but-administration-is-less-interested-in-diversity/>.

⁶⁶ OPM, “Federal Equal Opportunity Recruitment Program Report,” October 2019, <https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reports/feorp-2017.pdf>, p. 2.

⁶⁷ *Id.* at p. 21.

⁶⁸ *Id.* at p. 12.

In the senior executive service, data show that workers of color are disproportionately underrepresented, comprising just 20.7 percent of SES employees in fiscal year 2017.⁶⁹ Self-identified women accounted for just one-third of all employees in the senior executive service, compared to 43 percent of employees in the federal workforce overall.⁷⁰ Less is known about the demographic makeup of political appointees. In fact, a 2019 GAO report stated that “no single source of data on political appointees exists that is comprehensive, timely, and publicly available.”⁷¹ However, one independent analysis reported that, in the first year of the Trump administration, the president had named twice as many male political appointees as female—and in some departments, male appointees outnumbered female appointees five to one.⁷² The Partnership for Public Service, which tracks appointments for roughly 700 key executive branch appointments, shows that this trend has persisted throughout the administration.⁷³ Another analysis discovered that, of President Trump’s first 1,000 political appointees, 88 percent identified as non-Hispanic white.⁷⁴

Diversity, equity, and inclusion efforts must be prioritized throughout the federal government. First, the president should reinstate President Obama’s executive order “establishing a coordinated, government-wide initiative to promote diversity and inclusion in the federal workforce,” which requires agencies to prioritize diversity and inclusion in their strategic plans.⁷⁵ In selecting members of his Cabinet, the president should require that any person who is being considered for a Cabinet-level position commit to prioritizing diversity, equity, and inclusion in hiring, training, and retention as a condition of their nomination, and all confirmed Cabinet officials should be held personally accountable for meeting these goals.

The president should further direct OPM to outline a clear plan, in coordination with agencies, the President’s Management Council, and federal employee unions, to eliminate racial and gender gaps in the federal civil service across agencies,

⁶⁹ Id. at p. 93.

⁷⁰ Id. at p. 2.

⁷¹ GAO, “Government-wide Political Appointee Data and Some Ethics Oversight Procedures at Interior and SBA Could Be Improved,” March 2019, <https://www.gao.gov/assets/700/697593.pdf>, p. 10.

⁷² Annie Lowrey and Steven Johnson, “The Very Male Trump Administration,” *Atlantic*, March 28, 2018, <https://www.theatlantic.com/politics/archive/2018/03/the-very-male-trump-administration/556568/>.

⁷³ *The Washington Post*, “Tracking how many key positions Trump has filled so far,” <https://www.washingtonpost.com/graphics/politics/trump-administration-appointee-tracker/database/>.

⁷⁴ Jason Lange, “White and male: broader bureaucracy mirrors Trump cabinet’s profile,” *Reuters*, October 20, 2017, <https://www.reuters.com/article/us-trump-effect-diversity/white-and-male-broader-bureaucracy-mirrors-trump-cabinets-profile-idUSKBN1CP1D1>.

⁷⁵ Executive Order 13583: Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce, August 18, 2011, <https://obamawhitehouse.archives.gov/the-press-office/2011/08/18/executive-order-13583-establishing-coordinated-government-wide-initiative>.

classifications, and pay scales by 2028.⁷⁶ In evaluating the diversity of the federal workforce, OPM should also expand the categories it uses to report on racial diversity, including disaggregating data for employees who are Asian American and Pacific Islander, and Middle Eastern and North African. While federal employee surveys include questions on sexual orientation, gender identity, and disability status, these data are not captured in OPM's reports on diversity and inclusion, though they should be.

OPM should also establish formal recruiting programs at Historically Black Colleges and Universities, Tribal Colleges and Universities, Hispanic-Serving Institutions, and other Minority-Serving Institutions to ensure that students attending these institutions have clear pathways into internships and full-time positions in the civil service. Rather than rely on applicants to seek employment with the federal government, OPM should proactively recruit students from these institutions and remove barriers that may make diverse applicants less likely to seek employment in the civil service.

The senior ranks of the civil service should also meet the same diversity standards as the rest of the federal workforce. To accomplish this, OPM should update its recruiting processes to attract a diverse pool of experienced applicants for senior positions, open up promotion pathways and invest in training and development for workers of color within the civil service, and establish government-wide mentorship programs to support and elevate workers of color.

The senior ranks of the civil service should also meet the same diversity standards as the rest of the federal workforce.

In addition, the president should undertake efforts to ensure political appointees reflect the diversity of the nation. As part of this process, Congress should make it easier for the public to identify senior government officials and hold the administration accountable for diverse appointments when vacancies emerge. Every four years, Congress publishes the *United States Government Policy and Supporting Positions* (also known as the PLUM book), which

⁷⁶ The President's Management Council comprises the Chief Operating Officers of major federal government agencies, primarily Deputy Secretaries, Deputy Administrators, and agency heads from the General Services Administration and OPM. The President's Management Council advises the President and the Office of Management and Budget on government reform initiatives, provides performance and management leadership throughout the Executive Branch, and oversees implementation of government-wide management policies and programs. General Services Administration (GSA), "President's Management Council (PMC)," accessed on August 14, 2020, <https://www.gsa.gov/governmentwide-initiatives/shared-solutions-and-performance-improvement/presidents-management-council-pmc>.

lists roughly 9,000 federal civil service leadership and support positions. However, because this publication only documents a point in time, its usefulness rapidly diminishes. Instead, Congress should authorize OPM to produce an online directory capable of offering a dynamic accounting of these positions and their occupants in real time.

The Presidential Personnel Office (PPO) in the White House should also restart the professional development and training programs initiated during the Obama administration, in partnership with OPM and non-governmental experts. These programs served to prepare political appointees for their current and future roles in government, reduced inherent barriers for promotion, and established mentorship programs. Together, this programming resulted in the most diverse set of political appointees in history and record retention rates.⁷⁷

While these steps will advance diversity, equity, and inclusion in the civil service, they do not capture the 40 percent of federal workers who are private contractors.⁷⁸ Contracting is outside the scope of this paper, but we believe there is ample room for the president to build upon previous executive orders to apply pressure on federal contractors to meet high standards for diversity, equity, and inclusion, such as by publishing workforce demographic data, as a first step.

SPECIFIC RECOMMENDATIONS:

- The president should reinstate Executive Order 13583 requiring all agencies to prioritize diversity and inclusion in their strategic plans. The order should further direct OPM, in coordination with the Office of Management and Budget, the Equal Employment Opportunity Commission, and the President's Management Council, to work with agencies and federal employee unions to close racial and gender gaps across the federal civil service by 2028.
- The president should require individuals under consideration for Cabinet-level appointments to commit to prioritizing diversity, equity, and inclusion as a condition of their nomination.

⁷⁷ Testimony of Rudy Mehrbani, House of Representatives Committee on Oversight and Reform, Feb. 6, 2019, https://www.scribd.com/document/398986364/Testimony-in-Support-of-the-For-the-People-Act#from_embed, Attachment A.

⁷⁸ Paul C. Light, "The True Size of Government," *Volcker Alliance*, October 5, 2017, <https://www.volckeralliance.org/publications/true-size-government>.

- OPM should establish formal recruiting programs at Historically Black Colleges and Universities, Tribal Colleges and Universities, Hispanic-Serving Institutions, and Minority-Serving Institutions.
- OPM should update recruiting processes for senior hires, expand promotion pathways, dedicate resources to training and development, and implement government-wide mentorship programs for workers of color.
- Congress should pass the PLUM Act to create an online public directory of political appointees.
- The president should direct the Presidential Personnel Office to prioritize diversity in political appointments, restart training and development programs, and make demographic data on political appointees publicly available.

RECOMMENDATION 6:

Attract a New Generation of Federal Workers

For years, observers have warned that an imminent “retirement tsunami” might crash down on the federal government.⁷⁹ While the worst fears have yet to materialize, there’s no denying the asymmetry of the federal government’s age curve. Approximately 30 percent of federal workers are younger than 40, much less than the 45 percent of workers under 40 in the civilian labor force as a whole,⁸⁰ and there are more than twice as many workers over the age of 60 than under the age of 30.⁸¹ This picture isn’t improving; the federal workforce is trending older at a pace that exceeds that of the private sector.⁸²

Of course, there’s nothing problematic about older workers, and the collective experience of long-time workers at federal agencies is an important asset. But the age

⁷⁹ Mike Causey, “Retirement tsunami or aging in place?,” *Federal News Network*, March 12, 2019, <https://federalnewsnetwork.com/mike-causey-federal-report/2019/03/retirement-tsunami-or-aging-in-place/>.

⁸⁰ Statement of Robert Goldenkoff Before the Senate Subcommittee on Regulatory Affairs and Federal Management, Committee on Homeland Security and Governmental Affairs, “Lessons Learned for Engaging Millennials and Other Age Groups,” September 29, 2016, <https://www.gao.gov/assets/690/680107.pdf>, p. 4.

⁸¹ Jeff Neal, “Government hiring of young people continues to be terrible,” *Federal News Network*, May 1, 2019, <https://federalnewsnetwork.com/commentary/2019/05/government-hiring-of-young-people-continues-to-be-terrible/>.

⁸² Danny Vinik, “America’s government is getting old,” *Politico*, September 27, 2017, <https://www.politico.com/agenda/story/2017/09/27/aging-government-workforce-analysis-000525>.

distribution should raise a red flag about the federal government’s ability to attract younger workers, and what might happen if the retirement tsunami finally arrives. If the federal government is going to surmount its hiring challenges in the future, it needs to use every tool in the toolbox, including programs that transition promising students into the civil service. However, as the numbers indicate, existing programs to recruit and hire young people out of school are not up to the task.

The Obama administration created the Pathways Programs for recent graduates and interns, which consolidated a variety of previous programs with the shared goal of recruiting young people into the civil service. The Pathways Programs have had positive results, but administrative constraints have limited their impact.⁸³ The programs allow agencies to hire interns or recent graduates on a temporary basis, bypassing the competitive examination process, and allow for non-competitive conversions to the civil service after the temporary appointment is complete.⁸⁴ However, a public notice requirement and low capacity and bandwidth to sift through the flood of entry-level applicants that inevitably respond to the notice limits agencies’ ability to utilize the program.⁸⁵ The process is especially difficult because students usually have shorter resumes that are less distinguishable from each other. The results bear this out. A recent two-year review by OPM found that agencies were not using the Pathways Programs to fill mission-critical occupations,⁸⁶ and permanent hires made under the competitive examination process were about six times more common than permanent hires under the Pathways Programs.⁸⁷

As the government leader in federal personnel policy, OPM must assume a larger role in ensuring that federal agencies are developing the next generation of agency workers. While agencies should retain the flexibility to recruit and hire through the Pathways Programs on their own schedule, they also need an easier alternative.

OPM should establish a new centralized program—or a revised version of the Pathways Programs—for interns and recent graduates, to ease the burden on agencies and

⁸³ See Partnership for Public Service & Grant Thornton, *Embracing Change*, May 2014, <https://ourpublicservice.org/wp-content/uploads/2014/05/afaa2107859b3c3b3ba1a601c842f660-1413398928.pdf>, pp. 2, 16.

⁸⁴ In addition to the internship and recent graduates programs, a third Pathways Program, the Presidential Management Fellows Program, is targeted toward individuals with advanced degrees who wish to pursue management opportunities in the federal government. This program, which is significantly smaller than the other two, operates with a somewhat different structure.

⁸⁵ Partnership for Public Service & Grant Thornton, *Embracing Change*, May 2014, <https://ourpublicservice.org/wp-content/uploads/2014/05/afaa2107859b3c3b3ba1a601c842f660-1413398928.pdf>, p. 17.

⁸⁶ OPM, “The Pathways Programs: Their Use and Effectiveness Two Years After Implementation,” August 2016, <http://federalnewsnetwork.com/wp-content/uploads/2016/08/report-on-special-study-of-the-pathways-programs2.pdf>, p. 18

⁸⁷ *Id.* at 34.

encourage them to invest in the next generation of the federal workforce. These reforms are even more critical as students graduating during the coronavirus pandemic enter one of the worst job markets on record. Here's how it would work: On a regular schedule, applicants would apply for internships through OPM and indicate any preferences they have for agency, location, or type of work. OPM would perform an initial screening, including potentially a preliminary interview with promising candidates, and then use this information to develop a diverse pool of candidates that meet the minimum criteria based on academic success, professional experience, background, and other relevant indicators. Within the pool, OPM would indicate the candidate's preference for agency, location, or type of work, as well as the candidate's unique skills. Agencies could then hire directly from this pool for temporary internships and post-graduate positions, and OPM could also respond to requests from agencies for a list of candidates drawn from the pool that meet a specific set of qualifications.

As in the existing Pathways Programs, agencies would have the option to convert successful interns or recent graduates at the end of their temporary positions into full-time members of the civil service without going through the competitive examination process. But, unlike the current Pathways Programs, OPM would do a preliminary vet to create a narrower pool of diverse, qualified candidates for federal agencies to choose from. OPM could further add to the pool any individuals who successfully completed their positions with high performance ratings, but whose agency declined to bring them on. Because the pool would be centralized, OPM could create specific lists of candidates with particular backgrounds and skill sets in response to agency requests.⁸⁸ This process would ease the burden for agencies by allowing OPM to take advantage of its expertise in fairly sorting through and evaluating candidate applications, as well as for potential interns and job applicants, who often have to hunt down individual postings to locate suitable opportunities under the current programs.

⁸⁸ Rather than creating a program wholly separate from the Pathways Programs, the proposed program could also serve as a supplemental program under the auspices of the Pathways Programs.

SPECIFIC RECOMMENDATION:

- OPM should develop a pool of candidates who meet a minimum set of criteria based on academic success, professional experience, diversity, and other indicators that agencies could draw upon for temporary internships and post-graduate positions. Like other candidates within the Pathways Program, agencies could hire from this pool to fill temporary positions, bypassing the competitive examining process, and allow for non-competitive conversions to the civil service after the temporary appointment is complete.

RECOMMENDATION 7:

Ease the Way for Returns to Public Service

The arrival of the Trump administration has been accompanied by the departure of waves of civil servants throughout the federal government. Faced with regular attacks on the civil service and a president hostile to the missions of many agencies, it should be no surprise that many federal workers have decided to seek employment elsewhere. In the first nine months of Trump's presidency, 79,637 employees across the federal government chose to depart—a 40 percent jump over the comparable period in the Obama administration.⁸⁹ Within individual agencies, the picture is often even more dire. At the EPA, for instance, 1,600 employees left during the administration's first 18 months, and less than a quarter were replaced with new hires.⁹⁰ The State Department lost nearly a tenth of its workforce in the two years after the president's election.⁹¹

But even if this administration has witnessed an especially large number of exits, the existence of some amount of churn in the early days of a new administration is hardly unique. At the beginning of every administration, senior officials leave office at a high

⁸⁹ Max Stier, "The Federal Exodus," *Politico*, March 16, 2018, <https://www.politico.com/magazine/story/2018/03/16/civil-servant-exodus-washington-217644>.

⁹⁰ Brady Dennis, Juliet Eilperin, and Andrew Ba Tran, "With a shrinking EPA, Trump delivers on his promise to cut government," *Washington Post*, September 8, 2018, https://www.washingtonpost.com/national/health-science/with-a-shrinking-epa-trump-delivers-on-his-promise-to-cut-government/2018/09/08/6b058f9e-b143-11e8-a20b-5f4f84429666_story.html?noredirect=on&utm_term=.802588f980b8.

⁹¹ Loren DeJonge Schulman, "Managing the National Security Workforce Crisis," *CNAS*, May 2019, <https://s3.amazonaws.com/files.cnas.org/documents/Key-Issues-for-Congress-Schulman-1.pdf?mtime=20190509150436>, p. 2.

rate—particularly at agencies that are regarded as ideologically out of step with the incoming administration.⁹²

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While large numbers of exits represent a serious threat to agencies in the short-term, we should also see these departed workers as a long-term opportunity. Individuals who served in these positions and succeeded in them but no longer work in government represent a critical resource for staffing the federal government in the future. These people have what it takes to contribute to agency work, and in many cases, they will want to return with the additional expertise they have gained outside of government. Yet current government policy closes the door to returning workers.

Future administrations should have the tools to quickly rehire former high performing civil servants who are interested in resuming government service, so long as they meet strict ethics and revolving door protections. There are two avenues generally pursued by former federal employees wishing to return to government service. For those who are retired and have qualified to receive an annuity under the federal retirement system, they may return as rehired annuitants.⁹³ However, only a small fraction of retired employees pursue opportunities to return to federal service, with a smaller number being rehired by agencies.⁹⁴

The second, more widely used avenue is “reinstatement” authority. Agencies can only choose to invoke reinstatement authority to fast-track the rehiring of a former employee if the employee returns to the same job as they previously held, or to other jobs at the same or lower grade level.⁹⁵ But workers who have left the government usually have acquired

⁹² Alexander Bolton, John M. de Figueiredo, and David E. Lewis, “Elections, Ideology, and Turnover in the U.S. Federal Government, Working Paper 22932,” revised February 2019, <https://www.nber.org/papers/w22932.pdf>, p. 23-24.

⁹³ These rehired annuitants may be rehired without having to apply through the competitive process. See 5 U.S.C. §§ 8344, 9902; 5 CFR § 837.

⁹⁴ OPM does not collect statistics on the number of rehired annuitants employed government-wide, but the number from available data is relatively small. For example, the Social Security Administration’s (SSA’s) Office of Inspector General reported in 2014 that rehired annuitants constituted approximately one percent of the SSA’s workforce. See *Federal News Network*, “Rehired annuitants help bridge agency gaps, but are they enough?,” April 28, 2015, <https://federalnewsnetwork.com/management/2015/04/rehired-annuitants-help-bridge-agency-skills-gaps-but-are-they-enough/>.

⁹⁵ See 5 CFR § 315.401 (providing agencies with general authority to reinstate a person within three years following the date of their separation from a career appointment, and providing for an extension of time if certain conditions are satisfied).

additional experience in the intervening years, and they frequently will be overqualified for their former roles. If an out-of-government worker wants to apply for a job at a higher grade level, they must compete in the same strenuous and time-consuming competitive process as all other applicants, and may lose out on the job even if they are highly qualified for the position.⁹⁶ Together, these limitations curtail the usefulness of reinstatement authority, which agencies invoked for less than 2 percent of all hires in a recent year.⁹⁷

The federal government's hiring rules should acknowledge the value of these workers and their heightened understanding of how government operates and how to get things done within it. OPM took a promising first step by promulgating a proposed rule in December 2019⁹⁸ to allow former government employees to bypass the competitive examination process for all competitive service positions—so long as they resigned from their previous position at least one year prior to applying for reinstatement and are qualified for the position—regardless of whether the position is at a higher grade level or has more promotional potential than the employee's last position.⁹⁹ Though the rule will require close monitoring to ensure compliance with ethics rules that protect against government employees working on matters that implicate a former employer, this proposed rule should be finalized.

In addition, OPM should amend existing regulations to allow employees without career tenure to be eligible for reinstatement authority within five years of their date of separation instead of three. Current regulations generally place unduly burdensome limits on the ability of non-tenured employees to return to government under reinstatement authority. While employees who have acquired career tenure by working for the federal government for three years may be hired under reinstatement authority at any time, those who have worked for less than three years can only be rehired within three years of leaving government.¹⁰⁰ Thus, untenured employees who leave their positions in the first year of a new administration are not eligible for reinstatement at the time the next administration may begin hiring. OPM should expand the period of eligibility from three to five years to allow former federal employees without career tenure to be quickly rehired.

⁹⁶ See 5 CFR § 335.103(c)(1)(vi).

⁹⁷ GAO, "OPM Needs to Improve Management and Oversight of Hiring Authorities," August 2016, <https://www.gao.gov/assets/680/678814.pdf>, p. 9.

⁹⁸ *Federal Register*, "Promotion and Internal Placement," proposed on December 6, 2019, <https://www.federalregister.gov/documents/2019/12/26/2019-27715/promotion-and-internal-placement>.

⁹⁹ Former employees would only be eligible for this expanded authority if they received acceptable performance ratings in their previous position(s).

¹⁰⁰ See 5 CFR § 315.401(b).

Lengthening this period of eligibility will understandably raise revolving door concerns, since employees will have more freedom to move in and out of government service. That's why these changes must be paired with strong guardrails, like those suggested in *Unstacking the Deck: A New Agenda to Tame Corruption in Washington*, to ensure officials entering or departing government, or the firms employing them, do not abuse these rules for personal or political gain.¹⁰¹

SPECIFIC RECOMMENDATIONS:

- OPM should finalize its proposed rule on Promotion and Internal Placement to allow former federal employees to be reinstated to competitive service positions of a higher grade or with higher promotion potential, so long as they resigned from their previous position at least one year before applying for reinstatement.
- OPM should amend 5 CFR § 315.401 to increase the number of years that former federal employees with non-career tenure are eligible for reinstatement from three to five. These changes must be paired with strong anti-corruption protections.

¹⁰¹ "Unstacking the Deck: A New Agenda to Tame Corruption in Washington," May 2018, <https://greatdemocracyinitiative.org/wp-content/uploads/2018/05/Unstacked.pdf>.

III. KEEP POLITICAL POSITIONS FILLED WITH EFFECTIVE AND ACCOUNTABLE LEADERS

Ensuring future administrations keep political positions filled with effective and accountable leaders is essential to any meaningful reform effort. Indeed, the ability to appoint these officials is among a president's most significant powers. These officials are largely responsible for implementing the president's agenda and effectuating the changes that presidents so often promise to the American people. They serve on the frontlines, and are responsible for developing and executing administration policies, responding to crises, and providing accountability for government programs to Congress and to the public.

The most important positions in our government are often filled by individuals who benefit from neither the legitimacy of Senate approval nor its check on abuse.

As Senate confirmation has become more daunting, presidents have relied on temporary "acting" officials who are not confirmed by the Senate for their position and in many cases are never confirmed by the Senate at all. What was intended as a stopgap provision to ensure continuity in leadership between Senate-confirmed nominees is increasingly becoming a way to bypass Senate approval altogether, even for the highest-ranking administration officials. "I like acting because I can move so quickly," President Trump has said, adding that "it gives me more flexibility."¹⁰² The end result is that the most important positions in our government are often filled by individuals who benefit from neither the legitimacy of Senate approval nor its check on abuse.

¹⁰² Philip Bump, "Trump relies on acting Cabinet officials more than most presidents. It's not an accident," *Washington Post*, April 8, 2019, https://www.washingtonpost.com/politics/2019/04/08/trump-relies-acting-cabinet-officials-more-than-most-presidents-its-not-an-accident/?utm_term=.e5a6aba14e29.

It is surprising, then, that the observed abuses in the political appointments process, which have resulted in a substantial number of positions remaining vacant or filled by “acting” officials for extended periods of time, have not resulted in widespread calls for reform. Thankfully, experts, academics, members of the media, and some current and former government officials are beginning to notice. For example, a bipartisan group of former government leaders brought together by the Brennan Center for Justice at NYU School of Law—under the moniker of the National Task Force on Rule of Law and Democracy—recently proposed a number of fixes to ensure that qualified and ethical appointees occupy the highest positions in the federal government.

Among the Task Force’s recommendations are proposals for reducing the number of political positions that require Senate confirmation (PAS positions) and reforming the Federal Vacancies Reform Act (FVRA), the law governing the use of “acting” officials to fill political positions requiring Senate confirmation. We support these reforms and build upon them in the recommendations below.

RECOMMENDATION 8:

Reduce the Number of Political Appointees Requiring Senate Confirmation

Over the past several administrations, nominations have been left to linger at various stages of the process for increasing periods of time, with the process now taking on average more than twice as long as it did 40 years ago.¹⁰³ Part of this may be attributed to the increase in the number of PAS positions: Only about 200 positions required Senate confirmation in 1961,¹⁰⁴ but that number has shot up to over 1,200 in 2020. Other factors, such as more frequent use of the filibuster, lengthy paperwork requirements, and Senate politicking have also slowed the confirmation process.¹⁰⁵ During the Obama

¹⁰³ Center for Presidential Transition, “Senate Confirmation Process Slows to a Crawl,” June 1, 2020, <https://presidentialtransition.org/wp-content/uploads/sites/6/2020/01/Senate-Confirmations-Issue-Brief.pdf>, p. 1.

¹⁰⁴ The Brookings Institution, “Staffing a New Administration: A Guide to Personnel Appointments in a Presidential Transition,” November 2000, <https://www.brookings.edu/wp-content/uploads/2016/06/20000711staffing.pdf>.

¹⁰⁵ Partnership for Public Service, “Senate Confirmation Process Slows to a Crawl,” June 1, 2020, <https://presidentialtransition.org/wp-content/uploads/sites/6/2020/01/Senate-Confirmations-Issue-Brief.pdf>, p. 2.

administration, senators went to unprecedented lengths to tie political nominations to unrelated policy goals, often in secret, essentially turning nominees into bargaining chips.¹⁰⁶ The Senate also began holding pro forma sessions to prevent President Obama from making recess appointments while Congress was adjourned, removing an avenue for temporarily filling positions, a practice that has continued in the Trump era.¹⁰⁷

These vacancies result in real costs to executive branch operations. Without leaders who have the requisite political capital or imprimatur of Senate confirmation, the perspectives of critical offices are not given appropriate weight in the White House's policymaking process. Agencies forego necessary reforms or cost-saving efforts without political leaders to champion them, and agency morale generally declines.

The delays are not only due to Senate intransigence; the president is also to blame. The Obama administration could have moved faster to fill all PAS positions; even when Democrats controlled the Senate, it took more than four months for action on a typical executive or judicial nomination.¹⁰⁸ President Trump has openly admitted that he has no interest in filling all of the senior positions in his administration.¹⁰⁹ As a result, just over two-thirds of the roughly 700 most important PAS positions, as defined by the Partnership for Public Service, are filled.¹¹⁰ The nominees that Trump has put forward are often less qualified and more hostile to their prospective agency's mission than their predecessors, making Senate confirmation more difficult. In some cases, Trump has nominated or appointed hyperpartisans to positions that are typically filled with nonpartisan experts—for example, by nominating a campaign aide to serve as chief scientist at the United States Department of Agriculture (USDA),¹¹¹ an advocate for

¹⁰⁶ Thomas E. Mann and Norman J. Ornstein, *It's Even Worse Than It Looks* (New York: Basic Books, 2016), 98–100. See also David Welna, "Senators Fed Up with Secret Blocks on Nominees," NPR, June 3, 2010, <https://www.npr.org/templates/story/story.php?storyId=127368817>.

¹⁰⁷ See David Welna, "Congress Won't Recess to Block Obama Appointments," NPR, Dec. 9, 2011, <https://www.npr.org/2011/12/09/143458518/congress-wont-recess-to-block-obama-appointments>; Jordain Carney, "Senate Blocks Trump from Making Recess Appointments over Break," *The Hill*, Aug. 3, 2017, <https://thehill.com/homenews/senate/345261-senate-blocks-trump-from-making-recess-appointments-over-break>.

¹⁰⁸ Anne Joseph O'Connell, "Shortening Agency and Judicial Vacancies Through Filibuster Reform? An Examination of Confirmation Rates and Delays from 1981 to 2014," *Duke Law Journal*, 2015, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3814&context=dlj>, p. 1652.

¹⁰⁹ In responding to a question about unfilled senior positions in government, President Trump said, "we don't want to fill those jobs . . . I look at some of the jobs and it's people over people over people. I say, 'What do all these people do?' You don't need all those jobs." Cody Derespina, "Trump: No plans to fill 'unnecessary' appointed positions," *Fox News*, February 28, 2017, <https://www.foxnews.com/politics/trump-no-plans-to-fill-unnecessary-appointed-positions>.

¹¹⁰ Washington Post & Partnership for Public Service, "Tracking how many key positions Trump has filled so far," Updated June 8, 2020, <https://www.washingtonpost.com/graphics/politics/trump-administration-appointee-tracker/database/>.

¹¹¹ Amy Mayer, "Trump's Nominee To Be USDA's Chief Scientist Is Not a Scientist," NPR, September 4, 2017, <https://www.npr.org/2017/09/04/547934012/trumps-nominee-to-be-usdas-chief-scientist-is-not-a-scientist>.

privatizing weather data to serve as the head of the National Oceanic and Atmospheric Administration (NOAA),¹¹² and a political scientist hostile to competitive elections to serve as the deputy of the Census Bureau.¹¹³ These controversial picks result in legitimate objections from senators on both sides of the aisle.

Confirmation delays might be deemed a necessary evil if there truly were more than 1,200 positions demanding Senate consideration. But a quick glance at the ranks of political appointees subject to Senate confirmation reveals that many appointees must run the gauntlet of Senate confirmation despite being nominated for positions that are substantively similar to many positions that do not require advice and consent. For instance, the United States Agency for International Development (USAID) Assistant Administrator for Legislative and Public Affairs, the three members of the Metropolitan Washington Airport Authority Board of Directors, and Chief Financial Officers throughout the federal agencies all must receive Senate confirmation. Indeed, a large proportion of newly created Senate-confirmable positions have been part-time, commission, or advisory positions that are not assigned significant responsibilities.¹¹⁴ Although these roles are important, they are not positions that wield significant policymaking authority or otherwise demand the attention of the Senate. And across the government, many similar positions are often directly appointable by the president without any Senate input.

The proliferation of political appointees subject to Senate confirmation not only increases delays for nominees, as the Senate struggles to wade through the backlog of appointees, it also creates delays on the front end as well, as the President must devote additional resources to vetting nominees to avoid public embarrassment or rejection by the Senate. The slow and politically problematic process also dissuades some qualified candidates from accepting a nomination. The end result is high vacancy rates and a partially staffed executive branch poorly equipped to meet the challenges it confronts.

The solution is not a novel one: Reduce the number of political appointees that are subject to Senate confirmation, converting these positions into career civil service jobs or positions fillable through the president's or an agency head's direct appointment.

¹¹² James Samenow, "Trump taps AccuWeather CEO to head NOAA, breaking with precedent of nominating scientists," *Washington Post*, October 12, 2017, <https://www.washingtonpost.com/news/capital-weather-gang/wp/2017/10/12/trump-taps-barry-myers-accuweather-ceo-to-head-noaa-choice-seen-as-controversial/>.

¹¹³ Danny Vinik & Andrew Restuccia, "Leading Trump Census pick causes alarm," *Politico*, November 21, 2017, <https://www.politico.com/story/2017/11/21/trump-census-pick-causes-alarm-252571>.

¹¹⁴ David E. Lewis, "The Politics of Presidential Appointments: Political Control and Bureaucratic Performance," 2008, p. 214.

Congress has the power to make such adjustments, and has in fact previously supported a reduction in PAS appointments on a bipartisan basis.¹¹⁵ Further reductions have also been supported by a number of nonpartisan experts.¹¹⁶

The focus should be on preserving the check of advice and consent for significant policy decision-making roles. Positions with less policymaking responsibility or, as the GAO has suggested, those with a primarily managerial focus,¹¹⁷ should not demand the Senate's oversight. The Presidential Appointment Efficiency and Streamlining Act, passed in 2012, made a good start in eliminating 163 of these positions, but the original bill included dozens of additional reductions along the same lines that were not included in the final bill. These omitted positions are good candidates for additional reforms.

While other reductions should be made carefully and on a position-by-position and agency-by-agency basis, Congress should closely consider converting some positions to career civil service jobs, beginning with positions at agencies that have an unusually large number of political appointees relative to their size, as well as positions focused on effective management of an agency, such as chief financial officers, chief human capital officers, and others.¹¹⁸

Further offices that should not require Senate confirmation include:

- Part-time positions, positions on multi-member boards without binding authority, and positions that only affect regional policy;
- Current sub-Cabinet positions whose roles are strictly managerial or operational, without substantive policymaking authority, and who report to other Senate-confirmed appointees; and
- Positions that play an important communicative or representative role but have little policymaking authority, such as assistant secretaries for congressional relations or public affairs.

¹¹⁵ Report of the Committee on Homeland Security and Government Affairs, June 21, 2011, <https://www.congress.gov/112/crpt/srpt24/CRPT-112srpt24.pdf>.

¹¹⁶ Tevi Troy, "Fixing the Confirmation Process," *National Affairs*, 2011, <https://www.nationalaffairs.com/publications/detail/fixing-the-confirmation-process>; Partnership for Public Service "Rethinking the American presidency," May 31, 2019, <https://ourpublicservice.org/rethinking-the-american-presidency/>; Brookings Institution, "To Form a Government: A Bipartisan Plan to Improve the Presidential Appointments Process," 2001, <https://www.brookings.edu/research/to-form-a-government-a-bipartisan-plan-to-improve-the-presidential-appointments-process/>; James Pfiffner, Dwight Ink, David Lewis, and Anne O'Connell, "Strengthening Administrative Leadership: Fixing the Appointments Process," *National Academy of Public Administration and ASPA*, 2012, https://www.napawash.org/uploads/FINAL_AppointeeProcess.pdf.

¹¹⁷ GAO, "Suggested Areas for Oversight for the 110th Congress," November 11, 2006, <https://www.gao.gov/new.items/d07235r.pdf>, p. 40.

¹¹⁸ David E. Lewis, "How to solve the vacancies problem that looms over federal government," *The Hill*, June 2020, <https://thehill.com/opinion/white-house/501101-how-to-solve-the-vacancies-problem-that-looms-over-federal-government>.

Reducing the number of Senate-confirmable positions frees up both the president and the Senate to focus their resources on the most critical policymaking nominations, expediting the confirmation process and ensuring a better, more careful vetting process. At the same time, the vacancy crisis perennially faced by administrations will be blunted by enabling the president and agency heads to make direct appointments to non-policymaking positions.

To guard against underqualified nominees and the risk that a president might use this additional flexibility to select nominees for solely political or personal reasons, Congress should attach new qualification requirements to positions that are no longer subject to Senate confirmation. These qualification requirements could mandate a certain number of years of relevant issue area or government management experience, or demonstrated achievement in relevant areas. While qualification requirements have sometimes appeared toothless in the past, allowing an independent actor, like a new public integrity agency that has been proposed elsewhere,¹¹⁹ to determine whether these qualifications have been met would help ensure that presidents do not abuse their newly granted authority.

Furthermore, for any position converted to a PA appointment (presidential appointment without Senate confirmation) with a qualifications requirement, the president could be allowed to nominate someone for Senate confirmation instead of appointing someone who meets the stated requirements.

SPECIFIC RECOMMENDATIONS:

- Congress should pass legislation eliminating Senate confirmation for part-time positions; positions on multi-member boards without binding authority; positions that only affect regional policy; sub-Cabinet positions whose roles are strictly managerial or operational; and positions that play an important communicative or representative role, but that have little policymaking authority.
- Congress should require that positions previously meriting Senate confirmation meet specific qualifications, which a new public integrity agency could monitor and evaluate to ensure compliance.
- In lieu of appointing someone who satisfies the stated congressional requirements, Congress should allow the president to nominate an individual for Senate confirmation.

¹¹⁹ "Unstacking the Deck: A New Agenda to Tame Corruption in Washington," *Roosevelt Institute*, May 2018, <https://greatdemocracyinitiative.org/wp-content/uploads/2018/05/Unstacked.pdf>.

RECOMMENDATION 9:

Reform the Law Governing the Appointment of "Acting" Officials

Given severe delays in the confirmation process, it is perhaps not surprising that recent presidents have looked for alternative means for getting preferred candidates into positions. The Federal Vacancies Reform Act provides presidents with the ability to temporarily appoint "acting" officials for PAS positions even without any Senate action. The core rationale behind this authority is a sensible concession to the realities of government; if a PAS position remains empty after an appointee leaves office, it could potentially disrupt agency functions or prevent a president from implementing their policy agenda for extended periods.

Unfortunately, as the nominations process has slowed, an option intended to be a short-term backstop has become ripe for abuse. President Trump has frequently delayed nominating anyone for critical administration positions, instead choosing handpicked nominees. Over two years into his administration, for an extended time, President Trump's Cabinet was filled with five officials who were serving in an acting capacity, including the heads of the Department of Homeland Security and Office of Management and Budget, the administrator of the Small Business Administration, and the Director of National Intelligence. Many other smaller agency heads and other leadership positions throughout the federal government are filled with acting officials who were not confirmed for their positions.¹²⁰

Moreover, key personnel decisions are being made to deliberately circumvent legal requirements for filling vacancies. For instance, federal law reasonably allows "first assistants" to serve in acting positions. But because federal law does not identify the first assistant for most PAS positions, the process has been abused. For instance, the president named Ken Cuccinelli as the acting head of the US Bureau of Citizenship and Immigration Services (USCIS) at the Department of Homeland Security. Cuccinelli, despite having no agency or federal government experience prior to the selection,

¹²⁰ Missy Ryan, Dan Lamothe, and Paul Sonne, "Acting defense secretary bows out of running to be confirmed as Pentagon chief," *Washington Post*, June 18, 2019, https://www.washingtonpost.com/world/national-security/acting-defense-secretary-bows-out-of-running-to-be-confirmed-as-pentagon-chief/2019/06/18/8113f4d8-911c-11e9-b570-6416efdc0803_story.html?utm_term=.3f00f5c9f7ce.

was tapped by the president to fill a newly created position—the principal deputy director of USCIS. That new position was then immediately designated by DHS as the “first assistant” to the director of USCIS. A federal judge later invalidated Cuccinelli’s appointment, but to guard against a potential appeal and avoid future litigation, Congress should make clear in statute that this unprecedented attempt to designate an acting official violates the FVRA. Presidents should not be able to circumvent the Senate’s advice and consent authority to hand select individuals, whether or not they are currently serving in the federal government, to lead entire agencies.

Presidents should not be able to circumvent the Senate’s advice and consent authority to hand select individuals, whether or not they are currently serving in the federal government, to lead entire agencies.

The Trump administration has also gone to extremes to install stalwart and controversial allies as acting agency heads. For example, when former Attorney General Jeff Sessions resigned from the Department of Justice, Trump elevated the Chief of Staff to the Attorney General Matthew Whitaker to serve as acting attorney general, circumventing a standing order on succession that would have elevated the deputy attorney general instead.¹²¹ More recently, the GAO alarmingly found that the acting secretary and acting deputy secretary of DHS were unlawfully serving in those roles for nine months. There, the GAO determined that the administration had unlawfully circumvented DHS’s standing order of succession by designating Kevin McAleenan as acting secretary of DHS. Accordingly, McAleenan’s subsequent amendment to DHS’s standing order of succession, which sought to enable the Under Secretary for Strategy, Policy, and Plans Chad Wolf to serve as the acting secretary and Cuccinelli to serve as the acting deputy secretary, was invalid.¹²²

While presidents should be able to ensure continuity by placing acting officials in charge while they consider and nominate replacement nominees, an overreliance on

¹²¹ Charlie Savage, “Whitaker’s Appointment as Acting Attorney General Faces Court Challenge,” *New York Times*, November 13, 2018, <https://www.nytimes.com/2018/11/13/us/politics/matt-whitaker-lawsuit-illegal-appointment.html?action=click&module=Top%20Stories&pgtype=Homepage>.

¹²² GAO, “Decision. Matter of: Department of Homeland Security—Legality of Service of Acting Secretary of Homeland Security and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland Security,” August 14, 2020, <https://www.gao.gov/assets/710/708830.pdf>.

acting officials carries with it two distinct risks. First, even in the best of circumstances, acting officials are less effective than nominees who receive the Senate’s approval. Because of their temporary nature, they are less able to establish a coherent agenda than bona fide appointees; it is difficult for an acting official to develop staff buy-in for a new or significant initiative requiring agency resources and time. Likewise, the lack of Senate approval may carry with it a lack of stature that makes it more difficult for the acting official to effectively direct employees under their supervision.

Perhaps more significantly, though, the Senate’s second layer of review helps ensure that appointees will act in the public’s interest and remain accountable to Congress. While Senate confirmation is cumbersome—and, as this paper argues, should be eliminated for many less significant nominees—it is a vital constitutional requirement for a reason. The people in the highest positions in government should be responsive to the public as a whole, and requiring them to testify before a Senate Committee and win the Senate’s approval helps, in an imperfect but real way, ensure that they are.

With those ideas in mind, Congress should modify the FVRA to cut back on abuse by restricting both who can serve and the amount of time they can serve. Temporary appointees must be a backstop, not a workaround. That means the FVRA should be attentive to *how* and *why* an acting official is put in place, not simply who the replacement official is. We should also reserve greater scrutiny for deliberate attempts to put specific acting officials in charge.

First, for heads of agencies, Congress should reduce the number of days an acting agency head can serve from 210 to 120, as put forward by US Representative Katie Porter (D-CA) in her Accountability for Acting Officials Act.¹²³ As under current law, this time period should be extendable once the president nominates a permanent replacement.

Where possible, Congress should also adopt unambiguous agency-specific lines of succession identifying the officials eligible to serve as an acting agency head in the event of a vacancy. Agency heads are not like normal appointees. They are typically nominated much more quickly than lower-level appointees, and once nominated, their nominations usually receive prompt and careful Senate consideration. At the same time, their unique status and lack of accountability to other political appointees (other than

¹²³ Additional time could be provided if the vacancy exists on a new president’s inauguration day or occurs within 60 days after the inauguration, as is currently provided in the FVRA. See 5 U.S.C. § 3349a(b) (allowing an acting officer to serve for an additional 90 days).

the president) means that the democratic deficit is greatest when an acting official heads an entire government agency. The FVRA should therefore be less flexible when the vacant position is the top position at an agency.

Congress should further establish a catchall provision banning presidential attempts to place preferred individuals in positions for the primary purpose of bypassing the FVRA and making those individuals eligible to serve as acting officials. No person should be allowed to serve as an acting official due to their status as a first assistant under 5 U.S.C. § 3345(a)(1) unless they have served for 60 days in that role before the vacancy emerged. If the first assistant is ineligible, then only a senior career official who has served for at least 60 days should be eligible to serve as the acting official.

SPECIFIC RECOMMENDATIONS:

- Congress should pass the Accountability for Acting Officials Act to reduce the number of days an acting agency head can serve as the head of an agency from 210 to 120 days.
- Congress should pass legislation that outlines unambiguous agency-specific lines of succession for agency heads.
- Congress should pass legislation that prevents any person from serving as an acting official due to their status as a first assistant under 5 U.S.C. § 3345(a)(1) unless they have served for 60 days in that role before the vacancy emerged. Congress should further clarify that if the first assistant is ineligible, then only a senior career official who has served for at least 60 days should be eligible to serve as the acting official.¹²⁴

¹²⁴ The president would retain authority under 5 USC § 3345(a)(2) & (3) to designate a Senate-confirmed official or a senior official satisfying the requirements therein to serve as the acting official.

Conclusion

While the last three years have posed an unprecedented threat to federal workers and the civil service system, they have also made clear that a highly-skilled, competent, and accountable workforce is essential to the integrity of the federal government. More importantly, recent political abuses, mismanaged public health and economic crises, and a national reckoning on racial injustice have created a real pathway for reforms that can both modernize the civil service and ensure that the interests of the American people are served for generations to come. We hope elected officials will seize the moment.

Bibliography

- Abutaleb, Yasmeeen, and Ashley Parker. "Kushner Coronavirus Effort Said to be Hampered by Inexperienced Volunteers." *The Washington Post*, May 5, 2020. https://www.washingtonpost.com/politics/kushner-coronavirus-effort-said-to-be-hampered-by-inexperienced-volunteers/2020/05/05/6166ef0c-8e1c-11ea-9e23-6914ee410a5f_story.html.
- Barber, Ryan C. "'Slammed': What Has Driven Departures From Trump's Justice Department." *National Law Journal*, Sept. 18, 2019. <https://www.law.com/nationallawjournal/2019/09/18/slammed-what-has-driven-departures-from-trumps-justice-department/?return=20191130144236>.
- Bolton, Alexander, John M. de Figueiredo, and David E. Lewis. "Ideology, and Turnover in the U.S. Federal Government." Washington, DC: National Bureau of Economic Research. <https://www.nber.org/papers/w22932.pdf>.
- Bump, Philip. "Trump relies on acting Cabinet officials more than most presidents. It's not an accident." *Washington Post*, April 8, 2019. https://www.washingtonpost.com/politics/2019/04/08/trump-relies-acting-cabinet-officials-more-than-most-presidents-its-not-an-accident/?utm_term=.e5a6aba14e29.
- Brookings Institution. "Staffing a New Administration: A Guide to Personnel Appointments in a Presidential Transition." Washington, DC: The Brookings Institution. <https://www.brookings.edu/wp-content/uploads/2016/06/20000711staffing.pdf>.
- Brookings Institution. "To Form a Government: A Bipartisan Plan to Improve the Presidential Appointments Process." Washington, DC: Brookings Institution. <https://www.brookings.edu/research/to-form-a-government-a-bipartisan-plan-to-improve-the-presidential-appointments-process/>.
- Brufke, Juliegrace. "Administration pushes for Senate to move on MSPB chair nomination." *The Hill*, July 2, 2020. <https://thehill.com/homenews/administration/505719-administrations-mspb-chair-pick-calls-for-senate-to-move-on-his>.
- Casey, Mike. "Retirement tsunami or aging in place?." *Federal News Network*, March 12, 2019. <https://federalnewsnetwork.com/mike-casey-federal-report/2019/03/retirement-tsunami-or-aging-in-place/>.
- Carney, Jordain. "Senate Blocks Trump from Making Recess Appointments over Break." *The Hill*, August 3, 2017. <https://thehill.com/homenews/senate/345261-senate-blocks-trump-from-making-recess-appointments-over-break>.
- Center for Presidential Transition (CPT). "Senate Confirmation Process Slows to a Crawl." Washington, DC: CPT. <https://presidentialtransition.org/wp-content/uploads/sites/6/2020/01/Senate-Confirmations-Issue-Brief.pdf>.
- Chase Gunter. "Even short shutdowns complicate federal hiring." *FCW*, January 22, 2018. <https://fcw.com/articles/2018/01/22/short-shutdown-federal-hiring.aspx>.
- Committee on Homeland Security and Government Affairs. "Report of the Committee on Homeland Security and Government Affairs." Washington, DC: Committee on Homeland Security and Government Affairs. <https://www.congress.gov/112/crpt/srpt24/CRPT-112srpt24.pdf>.
- Congressional Research Service (CRS). "Categories of Federal Civil Service Employment: A Snapshot." Washington, DC: CRS. <https://fas.org/sqp/crs/misc/R45635.pdf>.
- Corrigan, Jack. "State Department Lost 12% of its Foreign Affairs Specialists in Trump's First 8 Months." *Government Executive*, Feb. 9, 2018. <https://www.govexec.com/management/2018/02/state-department-lost-12-its-foreign-affairs-specialists-trumps-first-8-months/145874/>.
- Davenport, Christian. "KeyPoint network breach could affect thousands of federal workers." *Washington Post*, December 18, 2014. https://www.washingtonpost.com/business/economy/keypoint-suffers-network-breach-thousands-of-fed-workers-could-be-affected/2014/12/18/e6c7146c-86e1-11e4-a702-fa31ff4ae98e_story.html.
- Davidson, Joe. "New OPM chief presses for civil service overhaul, but administration is less interested in diversity." *Washington Post*, May 1, 2018. <https://www.washingtonpost.com/news/powerpost/wp/2018/05/01/new-opm-chief-presses-for-civil-service-overhaul-but-administration-is-less-interested-in-diversity/>.
- Davidson, Joe. "Trump's orders show unwavering attack on federal unions, employees." *Washington Post*, May 29, 2018. <https://www.washingtonpost.com/news/powerpost/wp/2018/05/29/trumps-orders-show-unwavering-attack-on-federal-unions-employees/>.
- Dennis, Brady, Juliet Eilperin, and Andrew Ba Tran. "With a shrinking EPA, Trump delivers on his promise to cut government." *Washington Post*, September 8, 2018. https://www.washingtonpost.com/national/health-science/with-a-shrinking-epa-trump-delivers-on-his-promise-to-cut-government/2018/09/08/6b058f9e-b143-11e8-a20b-5f4f84429666_story.html?noredirect=on&utm_term=.802588f980b8.

Dunn Tenpas, Kathryn. "Tracking Turnover in the Trump Administration." *Brookings Institution*, July 2020, <https://www.brookings.edu/research/tracking-turnover-in-the-trump-administration/>.

Federal News Network. "Rehired annuitants help bridge agency gaps, but are they enough?" April 28, 2015. <https://federalnewsnetwork.com/management/2015/04/rehired-annuitants-help-bridge-agency-skills-gaps-but-are-they-enough/>.

Federal Register. 2019. "Promotion and Internal Placement." Proposed on December 26, 2010. <https://www.federalregister.gov/documents/2019/12/26/2019-27715/promotion-and-internal-placement>.

Foreign Service Act of 1980, Pub L.96-465, 94 Stat. 2071 (1980). <https://www.govtrack.us/congress/bills/96/hr6790/text>.

Friedman, Lisa, Marina Affo, and Derek Kravitz. "E.P.A. Officials, Disheartened by Agency's Direction, Are Leaving in Droves." *New York Times*, Dec. 22, 2017. <https://www.nytimes.com/2017/12/22/climate/epa-buyouts-pruitt.html>.

General Services Administration (GSA). "President's Management Council (PMC)." Washington, DC: GSA. <https://www.gsa.gov/governmentwide-initiatives/shared-solutions-and-performance-improvement/presidents-management-council-pmc>.

Government Accountability Office (GAO). "Decision. Matter of: Department of Homeland Security—Legality of Service of Acting Secretary of Homeland Security and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland Security." Washington, DC: GAO. <https://www.gao.gov/assets/710/708830.pdf>.

GAO. "Federal Hiring: OPM Needs to Improve Management and Oversight of Hiring Authorities." Washington, DC: GAO. <https://www.gao.gov/assets/680/678879.pdf>.

GAO. "Government-wide Political Appointee Data and Some Ethics Oversight Procedures at Interior and SBA Could Be Improved." Washington, DC: GAO. <https://www.gao.gov/assets/700/697593.pdf>.

GAO. "OPM and Agencies Need to Strengthen Efforts to Identify and Close Mission-Critical Skills Gaps." Washington, DC: GAO. <https://www.gao.gov/assets/670/668202.pdf>.

GAO. "OPM Needs to Improve Management and Oversight of Hiring Authorities." Washington, DC: GAO. <https://www.gao.gov/assets/680/678814.pdf>.

GAO. "Suggested Areas for Oversight for the 110th Congress." Washington, DC: GAO. <https://www.gao.gov/new.items/d07235r.pdf>.

Government Employee Fair Treatment Act of 2019, S. 24, 116th Cong. (2019). <https://www.congress.gov/bill/116th-congress/senate-bill/24>.

Government Executive. "Furloughed Feds Will Receive Back Pay Once the Shutdown Ends." January 16, 2019. <https://www.govexec.com/pay-benefits/2019/01/its-official-furloughed-feds-will-receive-back-pay-once-shutdown-ends/154222/>.

Gstalter, Morgan. "Trump shares article blasting federal workers, calling for long shutdown." *The Hill*, January 15, 2019. <https://thehill.com/homenews/administration/425377-Trump-shares-article-blasting-federal-workers-calling-for-long-shutdown>.

Hosenball, Mark. "Top secret: Trump's revamp of U.S. security clearances stumbling -officials, report." *Reuters*, June 19, 2019. <https://www.reuters.com/article/us-usa-security-clearances/top-secret-trumps-revamp-of-u-s-security-clearances-stumbling-officials-report-idUSKCN1TK127>.

Kamarck, Elaine. "Lessons for the Future of Government." *Brookings Institution*, June 18, 2013. <https://www.brookings.edu/testimonies/lessons-for-the-future-of-government-reform/>.

Katz, Eric. "The Federal Agencies Where the Most Employees are Eligible to Retire." *Government Executive*, June 18, 2018. <https://www.govexec.com/pay-benefits/2018/06/federal-agencies-where-most-employees-are-eligible-retire/149091/>.

Kight, Stef. "41% of Top Trump Officials Appointed in His First Year Have Left." *Axios*, November 7, 2019. <https://www.axios.com/trump-white-house-turnover-top-officials-07a8ffac-bc48-41a0-a58d-193a0fd951d6.html>.

Lange, Jason. "White and male: broader bureaucracy mirrors Trump cabinet's profile." *Reuters*, October 20, 2017. <https://www.reuters.com/article/us-trump-effect-diversity/white-and-male-broader-bureaucracy-mirrors-trump-cabinets-profile-idUSKBN1CP1D>.

Lewis, David E. "How to solve the vacancies problem that looms over federal government." *The Hill*, June 2020. <https://thehill.com/opinion/white-house/501101-how-to-solve-the-vacancies-problem-that-looms-over-federal-government>.

Lewis, David E. *The Politics of Presidential Appointments: Political Control and Bureaucratic Performance*. Princeton: Princeton University Press.

Light, Paul C. "The True Size of Government." New York: Volcker Alliance. <https://www.volckeralliance.org/publications/true-size-government>.

Lowrey, Annie, and Steven Johnson. "The Very Male Trump Administration." *The Atlantic*, March 28, 2018. <https://www.theatlantic.com/politics/archive/2018/03/the-very-male-trump-administration/556568/>.

Lyngaas, Sean. "Former DHS official: Response to USIS hack could have been better coordinated." FCW, November 13, 2014. <https://fcw.com/articles/2014/11/13/dhs-officials-outline-cyberattack.aspx>.

Mann, Thomas E. and Norman J. Ornstein. *It's Even Worse Than It Looks*. New York: Basic Books, 2016.

Mayer, Amy. "Trump's Nominee To Be USDA's Chief Scientist Is Not a Scientist." *NPR*, September 4, 2017. <https://www.npr.org/2017/09/04/547934012/trumps-nominee-to-be-usdas-chief-scientist-is-not-a-scientist>.

Mayo, Josh. "GAO: OPM Needs Stronger IT Modernization Plan for Retirement Applications." *MeriTalk*, June 17, 2019. <https://www.meritalk.com/articles/gao-opm-needs-stronger-it-modernization-plan-for-retirement-applications/>.

Mazmanian, Adam. "Weichert: Budget shortfall, legacy IT woes drive planned OPM merger." *FCW*, May 14, 2019, <https://fcw.com/articles/2019/05/14/opm-merger-weichert-legacy.aspx>.

Mehrbani, Rudy testimony House of Representatives Committee on Oversight and Reform, Feb. 6, 2019, Attachment A, available at https://www.scribd.com/document/398986364/Testimony-in-Support-of-the-For-the-People-Act#from_embed.

Nakashima, Ellen. "Hacks of OPM databases compromised 22.1 million people, federal authorities say." *Washington Post*, July 9, 2015. <https://www.washingtonpost.com/news/federal-eye/wp/2015/07/09/hack-of-security-clearance-system-affected-21-5-million-people-federal-authorities-say/>.

The National Commission of the Public Service. "Urgent Business: Revitalizing the Federal Government for the 21st Century." Washington, DC: The Brookings Institution. https://www.brookings.edu/wp-content/uploads/2016/06/01_governance.pdf/.

Neal, Jeff. "Government hiring of young people continues to be terrible." *Federal News Network*, May 1, 2019. <https://federalnewsnetwork.com/commentary/2019/05/government-hiring-of-young-people-continues-to-be-terrible/>.

Neal, Jeff. "Rethinking Position Classification." *Federal New Network*, June 28, 2017. <https://federalnewsnetwork.com/commentary/2017/07/rethinking-position-classification/>.

Nguyen, Janet. "The U.S. government is becoming more dependent on contract workers." *Marketplace*, January 17, 2019. <https://www.marketplace.org/2019/01/17/rise-federal-contractors/>.

O'Connell, Anne Joseph. "Trump's staffing record in the first 100 days was slow, but not catastrophic." *Brookings Institution*, May 1, 2017. <https://www.brookings.edu/research/trumps-staffing-record-in-the-first-100-days-was-slow-but-not-catastrophic/>.

O'Connell, Anne Joseph. "Shortening Agency and Judicial Vacancies Through Filibuster Reform? An Examination of Confirmation Rates and Delays from 1981 to 2014." *Duke Law Journal*, Vol. 64:16 (2015): p. 1652 <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3814&context=dj>.

O'Connell, Anne Joseph. "Vacant offices: Delays in Staffing Top Agency Positions." *Southern California Law Review*, Vol. 82 (May): 913-1001. <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2597&context=facpubs>.

Office of Personnel Management (OPM). "Excepted Service Hiring Authorities: Their Use and Effectiveness in the Executive Branch." Washington, DC: OPM. <https://www.opm.gov/policy-data-oversight/hiring-information/excepted-service/excepted-service-study-report.pdf>.

OPM. "Federal Equal Opportunity Recruitment Program Report." Washington, DC: OPM. <https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reports/feorp-2017.pdf>.

OPM. "A Fresh Start for Federal Pay: the Case for Modernization." Washington, DC: OPM. <https://ourpublicservice.org/wp-content/uploads/2002/04/5f728681c9c408cb255f816a352a7d4f-1414080128.pdf>.

OPM. "Hiring Information: Direct Hiring Authority." Washington, DC: OPM. <https://www.opm.gov/policy-data-oversight/hiring-information/direct-hire-authority/#url=Fact-Sheet>.

OPM. "The Pathways Programs: Their Use and Effectiveness Two Years After Implementation." Washington, DC: OPM. <http://federalnewsnetwork.com/wp-content/uploads/2016/08/report-on-special-study-of-the-pathways-programs2.pdf>.

OPM. "Strategic Plan FY 2014-2018." Washington, DC: OPM. <https://www.opm.gov/about-us/budget-performance/strategic-plans/2014-2018-strategic-plan.pdf>.

OPM. "Strategic Plan FY 2018-2022." Washington, DC: OPM. <https://www.opm.gov/about-us/budget-performance/strategic-plans/2018-2022-strategic-plan.pdf>.

Ogrysko, Nicole. "Inconsistent leadership behind OPM's failed attempts to modernize retirement claims process, GAO says." *Federal News Network*, June 28, 2019. <https://federalnewsnetwork.com/retirement/2019/06/inconsistent-leadership-behind-opms-failed-attempts-to-modernize-retirement-claims-process-gao-says/>.

Ogrysko, Nicole. "Lack of quorum hits 3-year mark at MSPB, with no clear end in sight." *Federal News Network*, January 24, 2020. <https://federalnewsnetwork.com/workforce/2020/01/lack-of-quorum-hits-3-year-mark-at-mspb-with-no-clear-end-in-sight/>.

Ogrysko, Nicole. "Shutdowns, relocations and mergers defined a whirlwind 2019 for the federal workforce." *Federal News Network*, December, 27, 2019. <https://federalnewsnetwork.com/workforce/2019/12/shutdowns-relocations-and-mergers-defined-a-whirlwind-2019-for-the-federal-workforce/>.

Oprysko, Caitlin. "White House economic adviser appears to compare shutdown to 'vacation' for furloughed workers." *Politico*, January 1, 2019. <https://www.politico.com/story/2019/01/11/white-house-economic-adviser-shutdown-vacation-for-workers-1098380>.

Partnership for Public Service and Boston Consulting Group. "Government-Wide Analysis of Overall Findings and Private Sector Comparison." *Best Places to Work*, 2018, <https://bestplacestowork.org/analysis/>.

Partnership for Public Service (PPS). "Bracing for Change: Chief human capital officers rethink business as usual." Washington, DC: PPS. <https://presidentialtransition.org/wp-content/uploads/sites/6/2012/08/ef9eaa485017775d6b888f66d9adac43-1399996082.pdf>.

PPS and Deloitte. "Helping Government Deliver II." Washington, DC: PPS and Deloitte. <https://ourpublicservice.org/wp-content/uploads/2015/03/acd9e6602f177f81b0f319b4e85e08a5-1426196834.pdf>.

PPS and Grant Thornton LLP. "Embracing Change: CHCOs Rising to the Challenge of an Altered Landscape." Washington, DC: PPS and Grant Thornton. https://ourpublicservice.org/wp-content/uploads/2018/09/Embracing_Change_CHCOs_Rising_to_the_Challenge_of_an_Altered_Landscape-2014.05.20.pdf.

PPS. "Rethinking the American Presidency." Washington, DC: PPS. <https://ourpublicservice.org/blog-rethinking-the-american-presidency/>.

Pfiffner, James, Dwight Ink, David Lewis, and Anne O'Connell. "Strengthening Administrative Leadership: Fixing the Appointments Process." Washington, D.C.: National Academy of Public Administration and ASPA. https://www.napawash.org/uploads/FINAL_AppointeeProcess.pdf.

Rein, Lisa, and Damian Paletta. "If Trump has his way, this major federal agency is on the way out." *Washington Post*, April 10, 2019. https://www.washingtonpost.com/politics/if-trump-has-his-way-this-major-federal-agency-is-on-the-way-out/2019/04/09/935e2dfe-54c0-11e9-9136-f8e636f1f6df_story.html.

Rein, Lisa, and Andrew Ba Tran. "How the Trump era is changing the federal bureaucracy." *Washington Post*, December 20, 2017. https://www.washingtonpost.com/politics/how-the-trump-era-is-changing-the-federal-bureaucracy/2017/12/30/8d5149c6-daa7-11e7-b859-fb0995360725_story.html.

Rein, Lisa, and Josh Dawsey. "After bipartisan pushback, Trump ditches effort to kill major federal agency." *Washington Post*, December 11, 2019. https://www.washingtonpost.com/politics/after-bipartisan-pushback-trump-ditches-effort-to-kill-major-federal-agency/2019/12/11/bbce1c10-16d8-11ea-a659-7d69641c6ff7_story.html.

Reinhold, Mark. "Testimony Before the U.S. Senate Subcommittee on Regulatory Affairs and Federal Management of the Committee of Homeland Security and Government Affairs." Washington, DC, March 1, 2018. United States of Personnel Management. <https://www.hsgac.senate.gov/imo/media/doc/Mark%20Reinhold%20TESTIMONY1.pdf>.

Roosevelt Institute. "Unstacking the Deck: A New Agenda to Tame Corruption in Washington." New York: Roosevelt Institute. <https://greatdemocracyinitiative.org/wp-content/uploads/2018/05/Unstacked.pdf>.

Ryan, Missy, Dan Lamothe, and Paul Sonne. "Acting defense secretary bows out of running to be confirmed as Pentagon chief." *Washington Post*, June 18, 2019. https://www.washingtonpost.com/world/national-security/acting-defense-secretary-bows-out-of-running-to-be-confirmed-as-pentagon-chief/2019/06/18/8113f4d8-911c-11e9-b570-6416efdc0803_story.html?utm_term=.3f00f5c9f7ce.

Samenow, James. "Trump taps AccuWeather CEO to head NOAA, breaking with precedent of nominating scientists." *Washington Post*, October 12, 2017. <https://www.washingtonpost.com/news/capital-weather-gang/wp/2017/10/12/trump-taps-barry-myers-accuweather-ceo-to-head-noaa-choice-seen-as-controversial/>.

Savage, Charlie. "Whitaker's Appointment as Acting Attorney General Faces Court Challenge." *New York Times*, November 13, 2018. <https://www.nytimes.com/2018/11/13/us/politics/matt-whitaker-lawsuit-illegal-appointment.html?action=click&module=Top%20Stories&pgtype=Homepage>.

Schulman, Loren DeJonge. "Managing the National Security Workforce Crisis." Washington, DC: Center for a New American Security. <https://s3.amazonaws.com/files.cnas.org/documents/Key-Issues-for-Congress-Schulman-1.pdf?mtime=20190509150436>.

Stratford, Michael. "Trump's Been President for 3 Years. Government Morale Has Dropped for Two of Them." *Politico*, December 17, 2019. <https://www.politico.com/news/agenda/2019/12/17/government-morale-trump-federal-administration-084835>.

Troy, Tevi. "Fixing the Confirmation Process." *National Affairs*, 2011. <https://www.nationalaffairs.com/publications/detail/fixing-the-confirmation-process>.

- U.S. Senate Committee on Homeland Security and Government Affairs. 2016. "Policy and Supporting Positions." December 1, 2016. <https://www.govinfo.gov/content/pkg/GPO-PLUMBOOK-2016/pdf/GPO-PLUMBOOK-2016.pdf>.
- U.S. Senate Subcommittee on Regulatory affairs and Federal Management and Committee of Homeland Security and Government Affairs. "Examining Federal Managers' Role in Hiring." May 1, 2018. <https://www.govinfo.gov/content/pkg/CHRG-115shrg30256/pdf/CHRG-115shrg30256.pdf>.
- Stier, Max. "The Federal Exodus." *Politico*, March 16, 2018. <https://www.politico.com/magazine/story/2018/03/16/civil-servant-exodus-washington-217644>.
- Verkuil, Paul R. *Valuing Bureaucracy: The Case for Professional Government*. Cambridge: Cambridge University Press.
- Vinik, Danny. "America's government is getting old." *Politico*, September 27, 2017. <https://www.politico.com/agenda/story/2017/09/27/aging-government-workforce-analysis-000525>.
- Vinik, Danny and Andrew Restuccia. "Leading Trump Census pick causes alarm." *Politico*, November 21, 2017. <https://www.politico.com/story/2017/11/21/trump-census-pick-causes-alarm-252571>.
- Wagner, Erich. "These Agencies Have Lost the Most Workers Under Trump." *Government Executive*, Aug. 15, 2018. <https://www.govexec.com/management/2018/08/these-agencies-have-lost-most-workers-under-trump/150577/>.
- Washington Post & Partnership for Public Service. "Tracking how many key positions Trump has filled so far." Last updated July 27 2020. <https://www.washingtonpost.com/graphics/politics/trump-administration-appointee-tracker/database/>.
- The White House: President Barack Obama. "Executive Order 13583: Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce." August 18, 2011. <https://obamawhitehouse.archives.gov/the-press-office/2011/08/18/executive-order-13583-establishing-coordinated-government-wide-initiative>.
- Welna, David. "Congress Won't Recess to Block Obama Appointments." *NPR*, December 9, 2011. <https://www.npr.org/2011/12/09/143458518/congress-wont-recess-to-block-obama-appointments>.
- Welna, David. "Senators Fed Up with Secret Blocks on Nominees." *NPR*, June 3, 2010. <https://www.npr.org/templates/story/story.php?storyId=127368817>.

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