

# Federal Personnel Policy

## Ensuring government leaders are qualified, ethical, and accountable

The president has the power to appoint executive branch leaders to carry out policy objectives, subject to the advice and consent of the Senate. Other leadership positions in the executive branch do not require Senate confirmation but are just as critical to the efficient and effective administration of government. Congress has taken steps to ensure that public officials serve the public interest, through the establishment of a merit system for civil service hiring and promotion, as well as ethics and disclosure rules. Presidents have nonetheless appointed agency leaders who have strong financial ties to the same industries they are charged with regulating, and have appointed people lacking scientific backgrounds to positions that require scientific understanding.

To demonstrate their commitment to qualified and accountable public servants, the president should commit to reforms of personnel practices and ethics rules. Such reforms would restore public trust in government and ensure federal agencies are equipped to carry out their statutory missions. These recommendations have strong support from science, public health, human rights, environmental, and good-government organizations.

### Background

Presidents rely on appointees to lead federal agencies and implement their policy agenda. These appointees should be qualified and ethical professionals who have the experience and expertise to make complex policy decisions in the public interest. From a science perspective, this means that those with the authority to make policy about health, the environment, and worker and food safety (among other things) should possess sufficient subject matter expertise to make educated decisions based on the best available science. Public trust in government's ability to make decisions that serve the public interest has suffered when presidents have put unqualified political allies, personal associates, and people with conflicts of interest into leadership positions and avoided the Senate confirmation process by appointing "acting" officials.

Laws such as the 1978 Ethics in Government Act and the 1998 Federal Vacancies Reform Act, which places limits on who can serve as acting officials as well as the amount of time that acting officials can serve, have helped ensure the appointment of ethical and qualified executive branch personnel. Additionally, Congress has imposed statutory qualifications regarding the professional training and experience of political appointees in numerous executive branch positions. These reforms are significant, but they have limitations that allow unqualified and unethical people to serve in government. Sometimes appointees serve as acting officials for long periods of time without undergoing the Senate confirmation process that their positions require. On occasion, judges have found acting officials to be improperly serving in their positions, resulting in the overturning of regulatory decisions they have issued—even if justified on the merits. To ensure that key federal positions are held by qualified, ethical, and accountable people, the president must pledge to adopt and enforce key personnel reforms concerning vacancies, qualifications of appointees, and ethics.

### Recommendations for the Next Presidential Term

#### 1. Issue a robust ethics pledge that creates strong requirements for appointees. (first 30 days)

The president's ethics pledge should prohibit appointees from participating in matters involving parties related to their former employers or clients, and require appointees who leave government service to adhere to post-employment restrictions on communications with their former agencies. The pledge should include additional restrictions on federal employment for those who served as registered lobbyists prior to their appointment—although the president should allow for well-reasoned waivers in cases where the best interests of the country support it—as well as for appointees leaving government to become lobbyists.

These measures will help ensure political appointees make decisions based on the best available science, not the financial interests of past or future employers.

**2. Establish criteria for, and increase transparency of, ethics waivers. (first 30 days)**

The president should issue an executive order establishing criteria for granting conflict-of-interest waivers, which must be articulated in writing and transmitted to the Office of Government Ethics (OGE) within 30 days of issuance. The order should also direct the OGE to disclose the waiver to the public.

**3. Commit to filling positions with highly qualified personnel. (first 30 days)**

The White House should establish criteria for critical executive branch positions, including necessary subject matter expertise and other relevant experience. The president should commit to selecting nominees who meet the requisite criteria to the greatest extent possible.

**4. Commit to filling vacancies promptly. (first 30 days)**

To reduce vacancies and reliance on acting officials, the president should direct White House staff to establish

procedures that facilitate the timely nomination of qualified candidates for executive branch appointments, such as streamlining the background investigation process. The president should also direct executive branch agencies to routinely publish lists of all vacancies that require Senate confirmation as well as acting appointments.

**5. Establish a presumption of disclosure for agency leaders' calendars. (first 30 days)**

To deter the potential undue influence of special interests in agency decisionmaking, the president should establish a presumption that agency leaders' calendars will be publicly disclosed on a monthly basis, except for items subject to Freedom of Information Act (FOIA) exemptions. This will increase public accountability and reduce the need for members of the public to submit FOIA requests for such documents.

## Additional Resources

- Forthcoming Brennan Center for Justice report on executive actions (Summer 2020 release expected)
- *Presidential Recommendations for 2020* (2020 report from the Union of Concerned Scientists)
- *Proposals for Reform Volume II: National Task Force on Rule of Law & Democracy* (2019 report from the Brennan Center for Justice)

## ENDORSED BY

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