



# Ready to Serve Webinar Series

An Overview of Vetting Forms: What Aspiring Political Appointees Should Know

**Session One**  
September 30, 2020



PARTNERSHIP FOR PUBLIC SERVICE

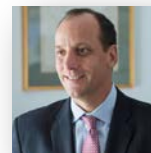
CENTER *for* PRESIDENTIAL TRANSITION

# Today's Agenda

Welcome and introductions

**David Marchick**

*Director, Center for Presidential Transition*



Political appointments

**Charles Borden**

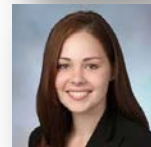
*Partner, Holland & Knight LLP*



Financial disclosure

**Dianna Mullis**

*Political Law Attorney  
Former Associate, Steptoe & Johnson LLP*



Background investigations and security clearances

**Robert Rizzi**

*Partner, Steptoe & Johnson LLP*



Vetting and Senate confirmation process

**Heather Samuelson**

*Former Assistant White House Counsel  
Former State Dept. White House Liaison*



# Ready to Serve Webinar Series

## **Session 1: Wednesday, Sept. 30**

An Overview of Vetting Forms: What Aspiring Political Appointees Should Know

## **Session 2: Wednesday, Oct. 7**

Tips for Aspiring Political Appointees: Security Clearances and Background Investigations

## **Session 3: Wednesday, Oct. 21**

Tips for Aspiring Political Appointees: Financial Disclosure, Taxes and Conflicts of Interest

# The Vetting Process

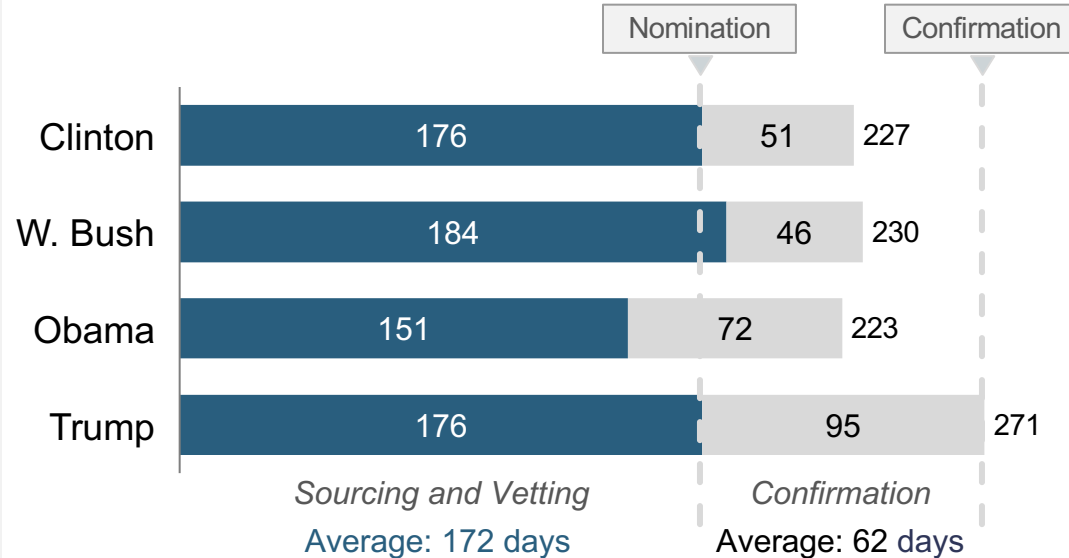
Complex, lengthy and often overlooked.

Consistent pain point for aspiring appointees.

Requires multiple stakeholders' input (e.g., White House, specific agency, the Office of Government Ethics, Senate, Department of Justice)

Most of the time is spent on the appointments process occurs during the vetting stage.

## Average Number of Days for Year One Nominations and Confirmations<sup>1</sup>

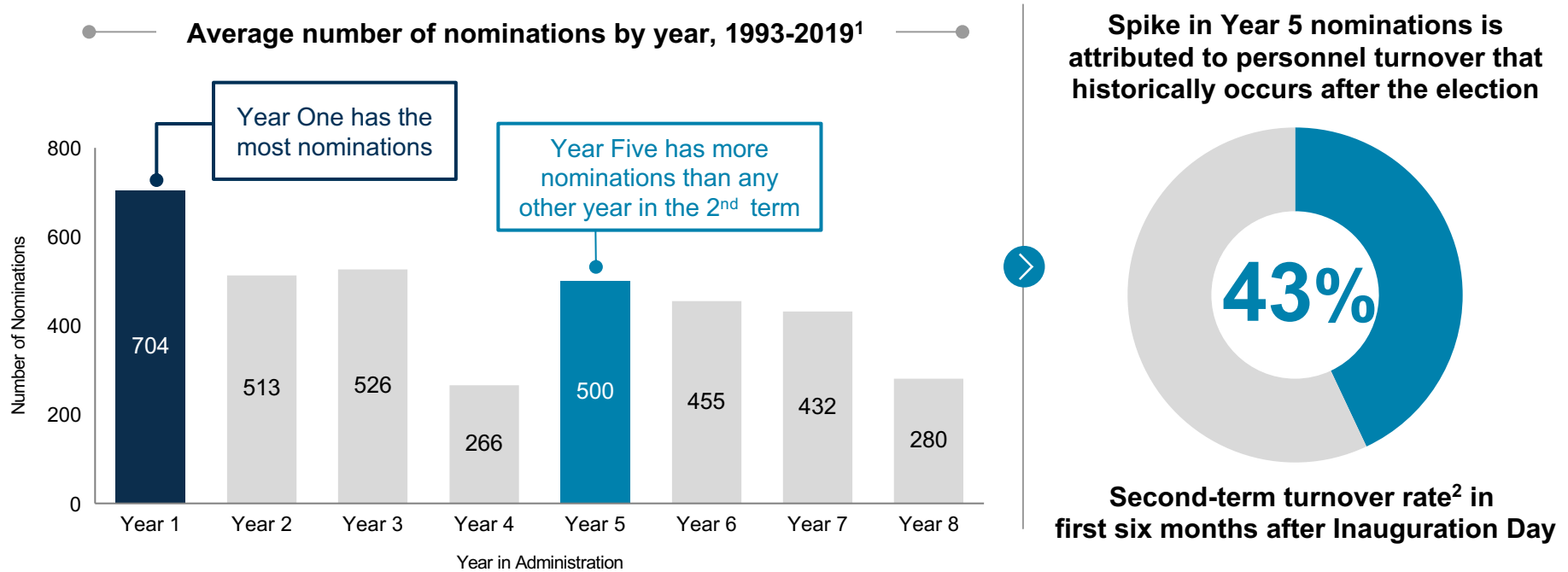


**72%**

Time allocated to vetting, selection and paperwork compared to the 28% spent after the nomination is submitted to the Senate

1. For selected departments and agencies. These include 15 Cabinet-level departments and the Environmental Protection Agency, Central Intelligence Agency, Commodity Futures Trading Commission, Executive Office of the President, Federal Communications Commission, Federal Reserve System, General Services Administration, Office of Personnel Management, Office of the Director of National Intelligence, Securities and Exchange Commission, Small Business Administration, Social Security Administration and United States Agency for International Development.  
Source: Congress.gov; Center for Presidential Transition

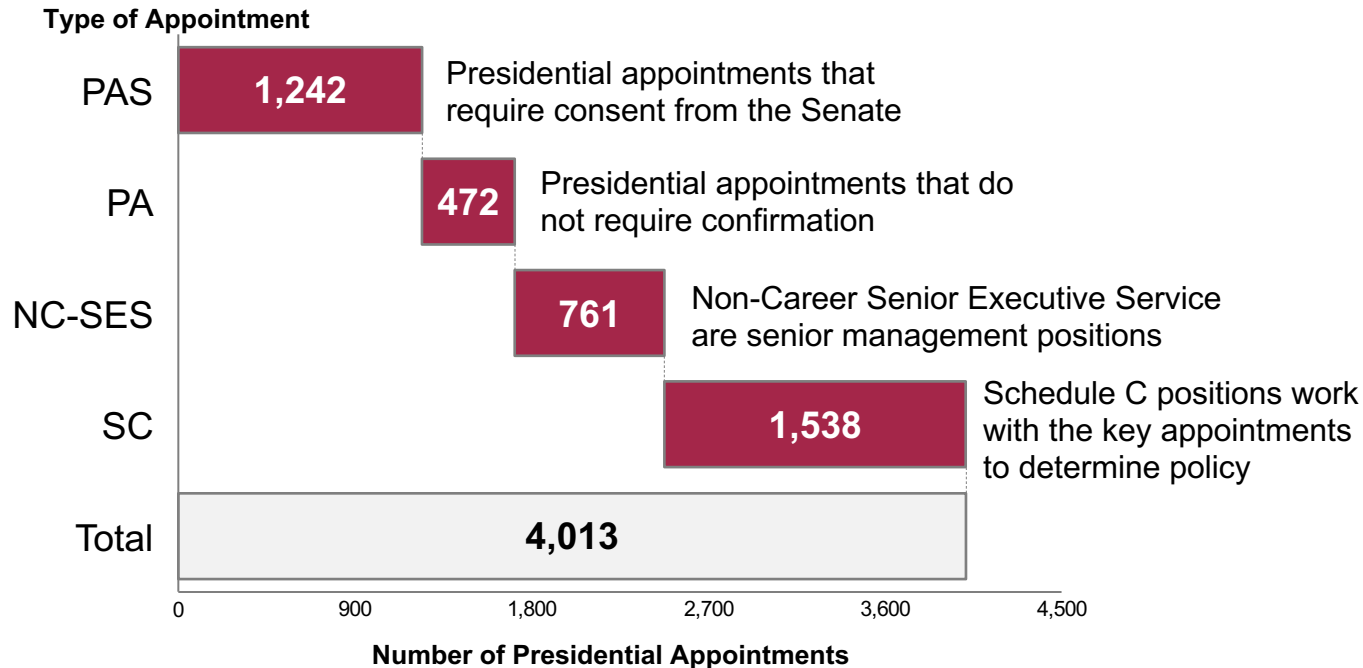
# Significant change in personnel expected in 2020 regardless of the election result



1. Includes nominations from Jan. 20, 2017 to Dec. 31, 2019. 2. Includes appointments in 15 Cabinet level executive branch departments at the levels of secretary, deputy secretary and undersecretary for Clinton, Bush and Obama  
Notes: The confirmation period is calculated as the number of days between the date the nomination was received in the Senate to the date of the successful confirmation vote. Includes all nominations and confirmations sent from the president to the Senate. This includes multiple nominations for concurrent positions (e.g. ambassador to the United Nations and ambassador to the United Nations Security Council; appointment to and chair of a board or commission, etc.) and nominations withdrawn and resubmitted regardless of reason.  
Source: Center for Presidential Transition; Congress.gov.

# Types of Presidential Appointments

There are four types of presidential appointments:



**Other related federal service categories may occasionally include:**

Experts and consultants under the authority of 5 U.S.C. § 3109 to serve as special government employees (SGE)

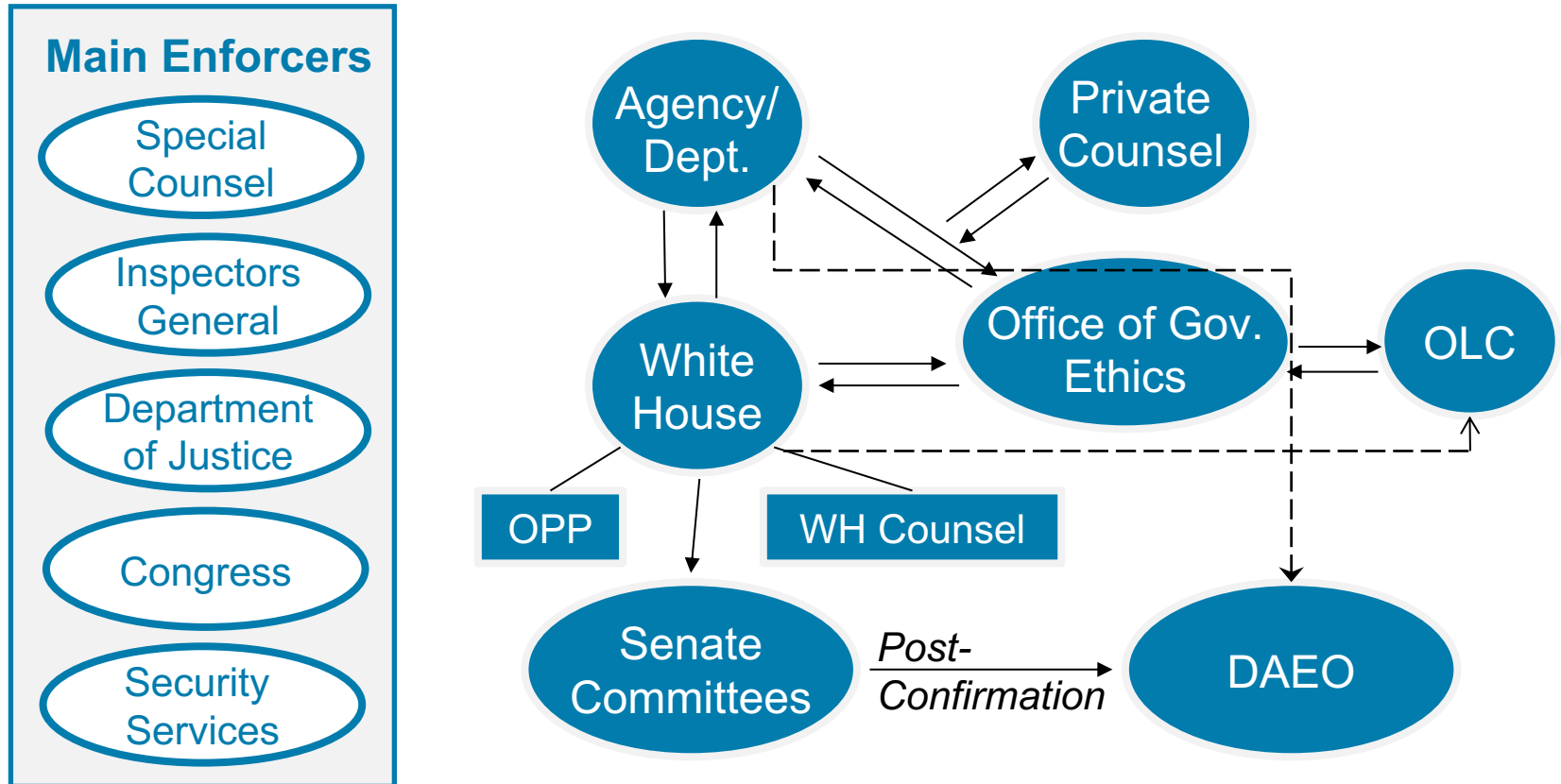
Independent Contractors (not subject to many ethics restrictions)

FACA representatives

Note: Data comes from the 2016 Plum Book. The number of positions and organizational structure described above represent the end of the Obama administration, and may vary for other administrations.

Source: U.S. Policy and Supporting Positions (Plum Book), 2016; Center for Presidential Transition

# Regulators and Gatekeepers: The Players



# Statutory Architecture



## **Government ethics regulation rests on two statutory pillars**

- 18 USC §§ 201 et seq., including Bribery Statute, anti-revolving door and criminal law conflict-of-interest statutes
- 5 U.S.C. App 4 §§ 101 et seq., financial disclosure requirements

## **These two regimes are supplemented by multiple statutes, regulations, Constitutional Clauses and Executive Orders**

- Emoluments Clauses
- Mail Fraud & Honest Services Fraud
- False Statements (18 USC § 1001)
- Executive Orders on Principles, Security Clearances and Ethics Pledges
- STOCK Act
- Hatch Act

## **Office of Government Ethics (OGE) regulations to implement statutory requirements and Executive Orders**

- Individual agencies also have their own ethics regulations



# Steps in Full Vetting of PAS Appointees (I/II)

## PTT/Government Actions

1. PTT/PPO Contact

3. Distribute 86, 278, Releases and PDS or Senate Q's

5. Field Investigation

7. Formal Interview

8. Conflicts Review

9. Draft Ethics Agreement

## Nominee Actions

2. Decision to Proceed

4. Complete Form 86/86 Supp

6. Complete Form 278 / Committee Questionnaire

10. Negotiate Ethics Agreement

11. Announcement

# Steps in Full Vetting of PAS Appointees (II/II)

## PTT/Government Actions

12. Hearing Prep

13. Committee Hearing and Vote

15. Senate Confirmation

16. Commission Issued

18. Oath of Office

19. Issue Certificate of Divestiture

## Nominee Actions

10. Courtesy Visits w/Senators

11. Complete Final Senate Questionnaire

14. Respond to QFRs

17. Apply for Certificate of Divestiture

20. Divest Conflicted Assets

21. Ready to Assume Official Responsibilities



# Forms, Process, Law and Ethics of Confirmations

## White House Personal Data Statement Questionnaire\*

### SF 86 Questionnaire for National Security Positions

- Basis for background investigations

### SF 86 Supplement

### OGE Form 278e Executive Branch Personnel Public Financial Disclosure Report

- Assets and sources of income
  - Includes spouse and dependent children
  - Includes most trusts
- Liabilities
- Positions held outside the government (for example, non-profit boards)
- Clients

### Ethics Agreements

### Senate Committee Questionnaires (for PAS appointees)

# Administration Vetting Process

## Goals

Suitability  
Protect administration  
and candidate  
No surprises!



## Types of Vetting Concerns

Financial  
Policy  
Professional  
Personal

## Administration vetting may include:

### Public Records Review

- Review of all information available in the public record about you, your family, and your business relationships.
- This includes: new articles, social media, criminal and civil filings, judgements and liens, public statements and writings.

### Transition or White House Questionnaire

### Vetting Interview

- Discuss items from the public records review and your completed paperwork, as well as questions asked of all nominees.

# OGE Form 278e Public Financial Disclosure

Filers are required to report:

- ✓ All positions held outside the government
- ✓ All assets with a value over \$1,000
- ✓ All sources of income over \$200
- ✓ All liabilities over \$10,000
- ✓ Trusts, non-profit boards
- ✓ Employment Agreements and Arrangements
- ✓ Executive Compensation Agreements (i.e. accelerated vesting of stock options)
- ✓ Participation in retirement plans or defined benefit plans

#	DESCRIPTION		EIF	VALUE	INCOME TYPE	INCOME AMOUNT
20	Royal Bank of Canada	See Endnote	N/A	None (or less than \$1,001)		None (or less than \$201)
21	Bank of America stock Cap TR XIV Fixed to FLTG RT Hybrid Bond		N/A	\$50,001 - \$100,000	Dividends	\$2,501 - \$5,000
22	Mellon Capital IV stock Fix to FLTG Bond		N/A	\$1,001 - \$15,000	Dividends	\$201 - \$1,000
23	NELNET Inc Fixed to Fltg CAP Efficient Bond		N/A	\$1,001 - \$15,000	Interest	\$201 - \$1,000
24	Fifth Third Bancorp stock Dep SHS REPSTG	See Endnote	N/A	None (or less than \$1,001)	Dividends	\$2,501 - \$5,000
25	Everbank CD - tracks Metals		N/A	\$1,001 - \$15,000		None (or less than \$201)
26	PA 529 Conservative Income Portfolio Fund		Yes	\$1,001 - \$15,000		None (or less than \$201)
27	MFS INTL NEW DISCOVERY CL 1		Yes	\$50,001 - \$100,000		\$201 - \$1,000
28	Russell R Global Equity CLS		Yes	\$15,001 - \$50,000		\$201 - \$1,000
29	Vanguard II Mid CAP Index Admiral CL		Yes	\$50,001 - \$100,000		\$1,001 - \$2,500
30	GUAM PWR Auth Rev Ser A bond		N/A	\$15,001 - \$50,000	Interest	\$201 - \$1,000
31	Pennsylvania St TPK CommN TPK REV SUB SER B bond		N/A	\$50,001 - \$100,000	Interest	\$2,501 - \$5,000
32	Denver CO City and CNTY AROT REV RFDG SYS SERV B B/E bond		N/A	\$100,001 - \$250,000	Interest	\$2,501 - \$5,000
33	New York City HSG DEV CORP MULTFAM HSG REV SER F B/E bond		N/A	\$50,001 - \$100,000	Interest	\$1,001 - \$2,500
34	New York City, NY bond		N/A	\$50,001 - \$100,000	Interest	\$2,501 - \$5,000
35	Bank of America stock CAP TR XIV PFD HYBRID INCOME TERM NOTE		N/A	\$50,001 - \$100,000	Dividends	\$2,501 - \$5,000

# OGE Form 450: Confidential Financial Disclosure Report

**When is OGE 450 Form used vs. OGE Form 278e?**

Typically for positions below GS-15 or O-7 involving contracting, procurement, or administering grants, subsidies, and licenses

**OGE Form 450 is very similar to OGE Form 278e, with three major exceptions:**

- 1 The filer is required to report the names of assets and the sources of income, but is not required to report the specific values
- 2 The filer is not required to report transactions
- 3 The form is not available to the public.

# What Can You Do Now?

## ○ Gather past account statements

- Income reporting period for nominees: preceding calendar year and the current calendar year up the date of filing

## ○ Prepare list of clients

- Directly provided services generating fees over \$5,000
- Typically applies to lawyers and consultants

## ○ Don't forget those old 401(k)s!

## ○ Understand trusts

- Must be reported if you have a **vested** beneficial interest in principal or income or you are a trustee





# Section 208: Acts Affecting a Personal Financial Interest

Prohibits an executive branch employee from participating **personally and substantially** in a **particular matter** if it would have a **direct and predictable** effect on the employee's financial interest

- In practice, § 208 is often applied on a preventative basis
  - Determination of **potential** conflicts is made at agency level (DAEO), but depends upon forecasts of official duties, etc.
- Applies to financial interests of the employee, their spouse, minor children, certain partnerships and organizations, and prospective employers

# Potential Conflicts of Interest

How do you handle a potential conflict?

1

Recuse

2

Divest

3

Waiver

4

Qualified Trust  
(very rarely practical)

# Architecture of Security Clearances



**Background investigation is part of “technical vetting” and personnel system**

Granting and withholding of clearance in effect operates as political vetting system



**Security clearances required for many positions that do not require access to classified information**

A “suitability” test for political appointees



**Security clearances also a “franchise” for government-related employment**

Government contracts require many employees of private companies to “hold” security clearances



**Grants of “interim” clearances and presidential actions granting and withholding security clearances have created exceptions and special treatment issues, and could impact future of security clearance process**

# Security Clearances and Classified Information

## Basic Levels of Security Clearances

- **Secret**
- **Top Secret** (“unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security”)
- **Sensitive Compartmented Information (SCI)** handling restrictions
  - Code Word clearances/Special Access Programs
  - “Q” Clearances

Generally takes 4 months for "secret" clearance and 10 months for "top-secret" clearance.

During Transition, special “tracks” to accelerate clearance and background checks, including prior to the Election.

# Sample SF-86 Questions

Standard Form 86  
Revised November 2016  
U.S. Office of Personnel Management  
5 CFR Parts 731, 732, and 736

## QUESTIONNAIRE FOR NATIONAL SECURITY POSITIONS

Form approved:  
OMB No. 3206 0005

### Section 19 - Foreign Contacts - *(Continued)*

Complete the following if you responded 'Yes' to have, or have had, close and/or continuing contact with a foreign national.

### Section 20B - Foreign Business, Professional Activity, and Foreign Government Contacts - *(Continued)*

**20B.3** Has any foreign national In the last seven (7) years offered you a job, asked you to work as a consultant, or consider employment with them?  YES  NO *(If NO, proceed to 20B.4)*

**20B.4** Have you **In the last seven (7) years** been involved in any other type of business venture with a foreign national not described above (own, co-own, serve as business consultant, provide financial support, etc.)?  YES  NO *(If NO, proceed to 20B.5)*

### Section 20C - Foreign Travel

Have you traveled outside the U.S. **in the last seven (7) years?**  YES  NO *(If NO, proceed to Section 21)*

# The SF-86 Supplement

**Separate document connected to SF-86 but generated by WH, not OPM**

**Designed to provide information not directly related to security clearance criteria**

- Questions change by administration and create “chronology of scandal and error” (responding to past, high-profile vetting problems, such as taxes and “embarrassment to the president”)

**Examples of 86 Supp Questions (Obama examples)**

- Added real estate ownership questions (Ques. 2S.)?
- Asks about membership in clubs with “restricted membership” (Q.8S)?

**Each administration develops its own list of “hot button” questions (Trump example)**

“Have you or your spouse ever registered as an agent for, performed work for, received any payments from and/or made any payments to, any foreign government, foreign business, or non-profit organization with any foreign government ownership” (Q.1.)?


# What Should You Do Now?

- **Get ready to complete SF-86 as soon as you have access to e-QIP**
- **Prepare vetting “package” by gathering required SF-86 data now:**
  - Foreign travel information (including calendars and current and expired passports), on spreadsheet using data fields from SF-86
  - Prior addresses (especially when look-back period is 15 years)
  - Contact information for personal references and extended family members
  - Legal documents for lawsuits or other legal matters
  - Tax documents
- **Raise with private counsel any “ambiguous” areas (e.g., arrests, past drug use) before filling out form**
- **Always include full, complete and truthful responses to all questions**

# What is the Senate confirmation process?



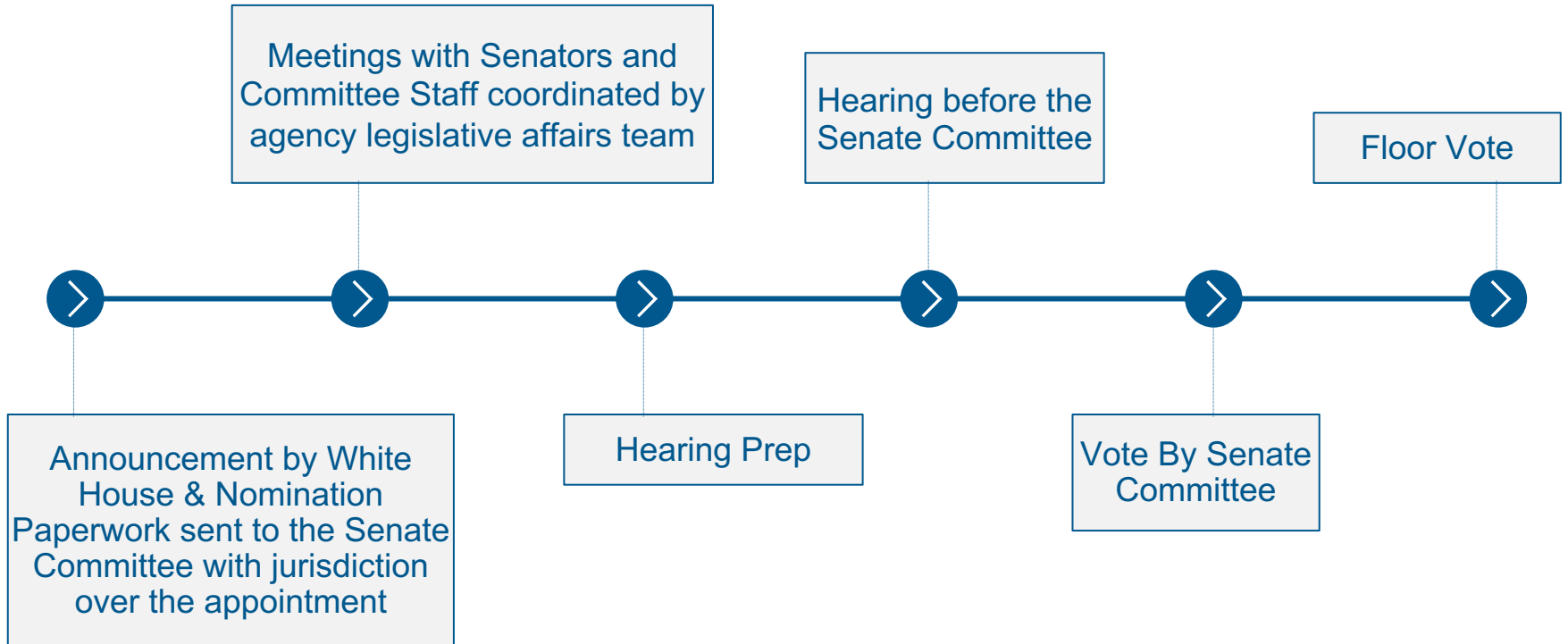
1,242 presidential appointments require “advice and consent” by the Senate.



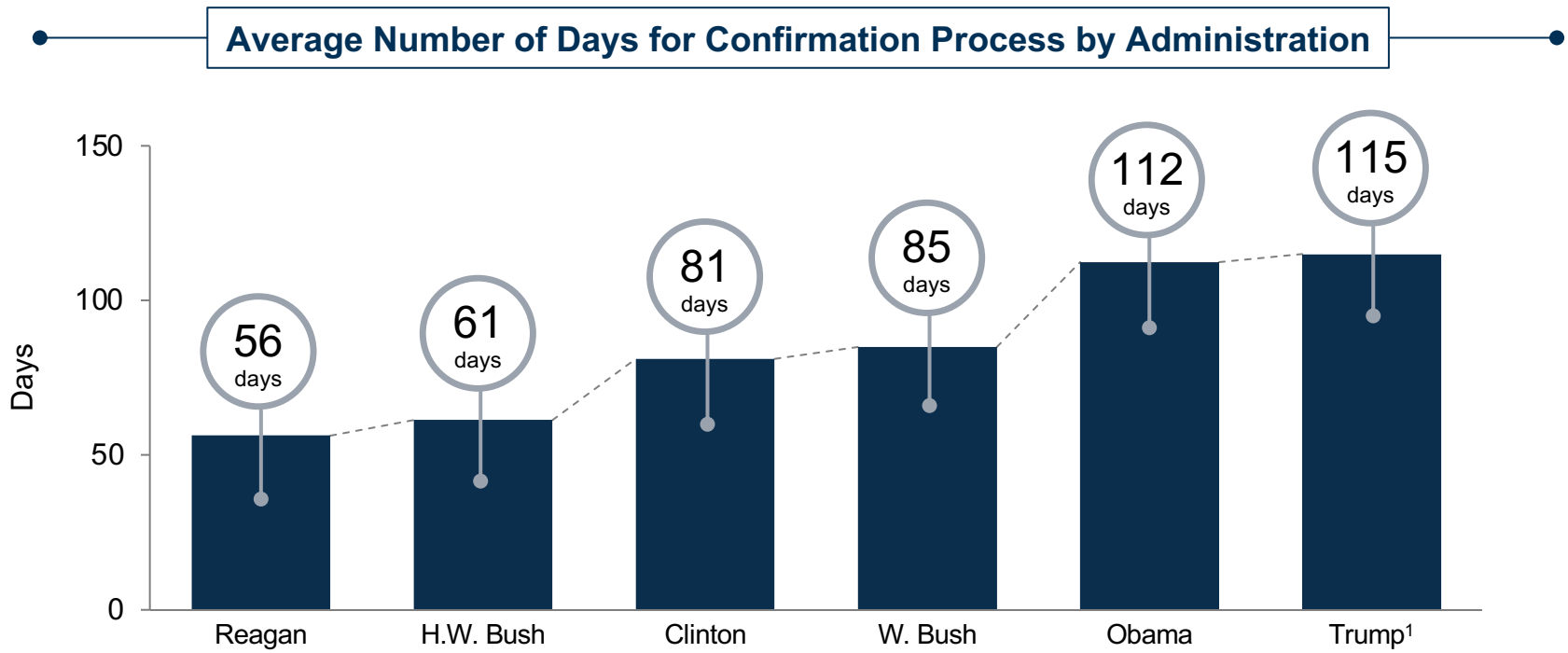
This includes: Cabinet members, Deputy Secretaries, Under Secretaries, Assistant Secretaries, and Ambassadors, as well as some Board positions.



# Key Milestones



# The average Senate confirmation process takes more than twice as long under Trump as it did under Reagan



1. Includes nominations from Jan. 20, 2017 to Dec. 31, 2019.

Notes: The confirmation period is calculated as the number of days between the date the nomination was received in the Senate and the date of the successful confirmation vote. Includes all nominations and confirmations sent from the president to the Senate. This includes multiple nominations for concurrent positions (e.g. ambassador to the United Nations and ambassador to the United Nations Security Council; appointment to and chair of a board or commission, etc.) and nominations withdrawn and resubmitted regardless of reason. Only includes civilian nominations.

Source: Congress.gov; Center for Presidential Transition

# How to Avoid Pitfalls: Identifying Issues During Vetting Process, Prior to Nomination



## Accurate and Complete Paperwork

- Each Committee has its own questionnaire. Complete the questionnaire at the same time as the financial disclosure (SF 278) & security clearance form (SF 86).
- Make sure the forms are consistent and information is accurate.



## Be Forthcoming with PPO Before Nomination

- Talk to WH or Transition about anything disconcerting in professional or private life early in the interview and paperwork process. Once nominated, it's too late.
- What is an "issue" can be a moving target.



## Get Your House in Order

- Know what is on your social media pages.
- Be ready to explain any concerning writings, tax problems, differing policy positions from the Administration, and old tweets.

# How to Avoid Pitfalls: Navigating the Process



## Identify Cheerleaders and Detractors

- Identify supporters on the Senate Committee (especially a senator of the other party), and those that will oppose the nomination.



## Do Your Homework

- Study up on the position and current issues at the agency / bureau / office.
- Take prep and meetings seriously.



## Be Patient and Respectful

- Many aspects of the process are out of the candidate's control, and timing can be unknown.

# What Should You Do Now?

## ➤ Review the SF 86 and SF 278 Paperwork

## ➤ Get Your House in Order

- Know what's on your social media pages
- Review old writings in today's light and in comparison to Administration policy
- Make sure you are up to date on all taxes and your tax returns are accessible
- Identify any old lawsuits or other legal matters
- Think hard about anything in your professional or family life that, if became public, could be potentially embarrassing for you, your family, or the Administration, and be ready to discuss that.

## ➤ Research issues that have come up for prior nominees

## ➤ Identify supporters, validators, and critics

# Resources

[Ready to Serve](#)

[SF 86](#)

[Political Appointment Self-Assessment](#)

[SF 85P](#)

[Demystifying the Vetting Process](#)

[SF 85P-S](#)

[Office of Government Ethics Public Disclosure Guide](#)

[OGE Form 450](#)