

BUILDING THE NATIONAL SECURITY BENCH | 2018

Ensuring a Strong
Senior Government
Service



Executive Summary

Vacancies in key U.S. national security positions and the need to backfill departing officials in the ongoing churn of transition to and within a presidential administration remain a tremendous challenge. This threatens America's security more than it should, and has motivated Business Executives for National Security (BENS) to examine further how to improve approaches to fill senior-level federal government leadership positions within the Presidential Appointment with Senate Confirmation (PAS) process.¹ Interviews conducted with 14 former and current PAS nominees revealed a knowledge gap between those with prior government experience and those entering public service for the first time. Nominee preparedness and expectations for the process varied depending on prior experience working in the federal government. Those entering public service for the first time from the private sector were generally least prepared to navigate their own PAS nomination. These individuals believed they would have benefitted from an upfront orientation to familiarize themselves with the nomination and confirmation process in its entirety.

This analysis focuses upon two primary areas that emerged from discussions with PAS nominees: (1) education and preparation of PAS candidates, and (2) financial disclosure requirements and conflict of interest processes.

Additionally, we identify areas that show promise and warrant further inquiry, including streamlining and coordinating security investigations between and among executive branch agencies and adjusting Senate procedures regarding nominee "holds."

The assessment contains five straight-forward recommendations:

- 1 Create a Field Resource Manual** for prospective and announced PAS nominees;
- 2 Pair nominees with individuals who have served** in the same or similar PAS positions;
- 3 Establish a Trusted Advisor Portal** for PAS nominees that would provide resources and assistance in completing requisite financial disclosure forms;
- 4 Provide front-end "Accelerated" Reviews** that could indicate to prospective PAS nominees the possible financial implications of what they might have to disclose and/or divest; and
- 5 Create an electronic form that consolidates duplicative information** required of nominees from the executive and legislative branches.

Implementing these recommendations could significantly mitigate the burden shouldered by accomplished candidates seeking to enter public service, preserve transparency and accountability requirements that the privilege of such service demands, and increase opportunity to assemble with more alacrity an experienced national security team that can assist the President in managing an increasingly complex security environment.



INTRO | PREFACE

There is no United States post-election responsibility more important than ensuring a seamless transition between the most senior officials handling the country's critical national security duties. Every newly elected American president must rapidly and capably assemble and obtain confirmation for an experienced national security team. These actors step into place to help the President manage an ever-more complex security environment.² The President must be able to protect and defend the national security of the United States. A 2016 Defense Business Board report and the 9/11 Commission report both underscore the importance for an administration to staff its national security team: the last nine presidential administrations each faced a national security crisis within the first 270 days in office.³ The current administration is nearly halfway through its second year. Key national security positions throughout the federal government remain vacant.⁴ Other senior security officials have departed. Their positions must be backfilled. This has become part of the lifecycle of a modern presidential term.

National security agencies operate most effectively when presidential appointees are confirmed and sworn into their positions promptly. Career personnel who assume "acting" or transitional leadership positions for extended periods lack real decision-making authority and the necessary confidence from elected political leaders. Extended vacancies impact United States' national security interests with predictable organizational, tactical, operational, and strategic consequences.

In this assessment, we focus on two areas within the presidential appointment/senate confirmation process: (1) education and preparation of nominees, and (2) financial disclosure requirements and conflict of interest issues. We interviewed 14 former and current Presidential Appointee with Senate Confirmation (PAS) nominees from the administrations of President Reagan through to the current one. Those interviewed have diverse experiences in the public and private sectors. In addition to recommendations in our primary areas of focus, we also suggest further directed inquiry on subjects raised by multiple participants.

We are indebted to those individuals with whom we spoke. They have shaped this report. We are grateful for their partnership, the thoughtful analysis and insight they offered. Most important, we appreciate their public service, and their willingness to navigate the various challenges inherent in the PAS nomination/confirmation process. We also appreciate that their commitment to public service includes finding a way to improve the process for those that would follow them into national security leadership positions. This assessment offers promising means for national security government policy and decision makers to make improvements, now.

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EDUCATION AND PREPARATION OF PROSPECTIVE NOMINEES

Overview of PAS Process and Vetting Requirements

The Presidential Appointee with Senate Confirmation position originates in Article II, Section 2 of the Constitution. Article II, Section 2 outlines the authority for the President of the United States to “nominate, and by and with the advice and consent of the Senate, [to] appoint” key government officials. Like many key components of U.S. governance, the PAS process is one in which both the executive



and legislative branches play important roles. Vetting is a tool used by both the executive and legislature to safeguard against a candidate entering a government office where they are empowered to make decisions on behalf of the office that would benefit them personally.⁵ Vetting is a process critical to assure that a candidate is dedicated to achieving the priorities of the President and the best interests of the American people.⁶

A prospective appointee is selected by the President or President-elect’s team to be considered for a PAS position. The prospect generally interviews with the Presidential Transition Team (PTT) for the respective agency, and/or agency officials and White House Office of Presidential Personnel (PPO), if in a mature administration. Preliminary vetting ensues, consisting of reference and resume verification, and preliminary screening for information that might disqualify the nominee.⁷ When a candidate is selected for nomination and enters the formal process, the executive branch calls on investigative agencies to carry out full vetting procedures.⁸

All prospective appointees must undergo a clearance process handled by the Office of Counsel to the President.⁹ This includes completing vetting documents designed to identify/flag potential legal and ethical issues of concern to the candidate’s particular office/agency, and the White House.¹⁰ If a conflict of interest arises during this time, candidates work with their agency ethics officials and the Office of Government Ethics (OGE) to resolve that conflict. At the same time, candidates are undergoing an FBI background investigation, which includes interviews with people who know the candidate, to ensure they pose no security risk and otherwise merit holding a clearance while serving in a national security capacity.¹¹ Once any conflicts are resolved, the candidate is cleared by Office of Counsel to the President for nomination. The President then officially presents a candidate’s nomination to the Senate.¹²

Background checks and vetting of nominees is subject to Senate rules and procedures, as well. Senate committees of jurisdiction often request nominees submit additional background information for their review.¹³ A Senate committee often will ask nominees to respond in writing, asking detailed questions regarding background biography, past employment history, financial data, foreign affiliations, future employment restrictions, etc.¹⁴ Nominations – like all motions considered in the Senate – are also subject to a “hold.” A hold is a Senate parliamentary procedure allowing one or more Senators to prevent a motion such as confirming a nominee from reaching a vote on the Senate floor. Revealing the reason for a Senate hold is not required. Senators sometimes place holds on nominees because they have concerns specific to that nominee, the position the nominee will fill, or an administration’s policy with respect to that position. Nominee holds also are used, however, as a tool to provide opportunity for parliamentary influence and leverage on issues entirely extraneous to the immediate position. Every Senator has the opportunity, anonymously, to delay the advancement of a nominee at any point before it reaches a final vote on the Senate floor, entirely apart from the result of the confirmation hearing and vote in the committee of jurisdiction.

Challenges within the PAS Process

For some prospective nominees, the nomination and confirmation process is confusing and unclear. This is particularly acute for those from the private sector without previous government experience. Those with whom we spoke suggested they would have benefited from more and better information about parts of the process. This included having a clearer sense of major milestones and timelines; transition team and agency-specific contacts; financial disclosure; divestiture; background investigations; expectations for public scrutiny; and preparatory communication and research for Senate confirmation hearings.

Inconsistent guidance quality

Administrations often pair prospective nominees with a designated point of contact to serve as guide through the nomination process. For some, this guide is indispensable to the nomination and confirmation process. For others, the value of the guide varies. This forces candidates to rely on personal networks, or plunge into the nomination and confirmation process largely uninformed. The consequences for the latter group include completing required financial disclosure and security investigation forms improperly, jeopardizing key congressional relationships because of lack of assistance or appropriate initial introductions, risking results of direct uncoordinated communication between a nominee and government agencies, and lacking guidance in avoiding common controversies that may jeopardize a nominee's ability to be confirmed.

Uncertainty about confirmation timeline: family and professional implications

Due to PAS process complexities, there is no way to provide prospective nominees with a reasonable estimate on how long the confirmation process will take – how many months they should plan to put their personal and professional lives on hold. Gathering material for vetting requires time and resources. Background checks and conflicts of interest inquiries have, over time, required deeper scrutiny to avoid overlooking information that could potentially become the next crisis for an administration.¹⁵ More extensive vetting has resulted. In addition, the number of PAS positions has increased, requiring more Senate review, more votes, and more opportunities to influence the overall consideration timeline.

Becoming a PAS candidate may mean leaving current employment (if one is in a client-based position such as law or consulting that almost certainly will be necessary), possibly relocating family to Washington, DC or preparing to relocate to another location if one is accepting an ambassadorial assignment. Candidates cannot make any arrangements for their future positions until/unless they are confirmed, because to do otherwise presupposes the decisions of the Senate, which is not appropriate. And candidates cannot continue with their current professions if doing so could risk any existing or potential new clients posing conflicts. Thus, nominees awaiting confirmation often exist in personal and professional “limbo” for extended periods of time; those without financial means may find it untenable.

Challenges in preparing for Senate confirmation, and for position

As noted, in the confirmation process, candidates/nominees cannot prior to confirmation serve in the position for which they have been nominated. To do so is considered to presume the Senate's decision on their candidacy. This has presented a dilemma, at times, in counsel that nominees have received about how to best prepare for their positions, or even for their hearings for the positions. Some candidates were instructed,

we found, that they should limit their research to publicly accessible information; they should not speak with current or former agency officials associated with the agency for which they would be nominated, or outside organizations with whom they would have contact in their agency role. Such constraints may limit a PAS candidate's ability to prepare pre-confirmation.

<p>Inconsistent Guidance Quality</p> 	<p>Uncertainty about confirmation timeline: family and professional implications</p> 	<p>Challenges in preparing for Senate confirmation, and for position</p> 
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Ways Forward

Congress and the White House have made bipartisan progress in addressing system bottlenecks; this should spur yet further improvements. In 2011, the Presidential Appointment Efficiency and Streamlining Act, *P.L. 112-116*, removed the requirement of Senate confirmation for entire categories of positions. Specifically, assistant secretaries for administration and public affairs, were removed from the PAS process.¹⁶ An amended version, S. Res. 116, was also signed into law in 2012 and allowed an additional 272 PAS positions to avoid formal committee consideration as long as no single Senator opposed a nominee; taken together, both laws reduced by 31-percent the 1,400 presidential appointee positions requiring Senate confirmation.¹⁷ In March 2016, the Presidential Transitions Improvement Act, *P.L. 114-135*, was signed into law, to codify certain presidential transition best practices.¹⁸ Despite these positive steps, barriers to recruiting, challenges in keeping good candidates in the mix throughout the vetting and nomination process, and gaining confirmation of selected nominees remain.

Presidential transition teams would benefit from a dedicated approach to identifying, providing, and conveying critical information about the nomination and confirmation process as soon as possible to those they may be considering for nominations, and particularly so for national security positions, where there is added import for seamless transition. If a prospective nominee was a chief executive officer (CEO) poised to assume leadership of a private sector company or organization, the entity would focus on how to maximize the success of the new chief executive from the moment s/he came on board. What knowledge of the job would the CEO need at the front end about the position s/he was considering; what would be required for the onboarding process that provides essential information about the role, the organization, and the respective work force? These recommendations offer remedies designed to better prepare and educate a candidate on the PAS process.

1

Field Resource Manual: The field resource manual complements a private sector best practice, an onboarding packet intended to provide an immediate knowledge resource for an incoming senior level executive. The goal is to provide a prospective nominee with a breadth of resources that can help her/him to navigate and become familiar with the process, and to educate the candidate in preparation for a Senate confirmation hearing. The Presidential Transition Team and PPO should prepare the field resource manual, with tailored input from the candidate's intended agency. When a prospective nominee receives the manual, s/he also should be able to schedule a follow up discussion and briefing to address any questions that may result from review of the material.

We recommend that the field resource manual include:

- **PAS Procedures:** It would be useful to explain to prospective nominees what they will encounter in the PAS process, from vetting to confirmation, to include: process timeline; structure and hierarchy of points of contact within the White House, the agency, and congressional oversight committees; the breadth of inquiry for information during the financial disclosure and conflicts of interest process; public scrutiny and exposure; and cyber best practices.
- **Agency-Specific:** Provide overview of the candidates' respective agency or organization; its mission, operations, governance structure, protocols, jurisdictions, critical funding paths, and structures.
- **Relationships/Network Directory:** Offer relevant individuals willing to serve as resources. For example, a prospective nominee for Secretary of the Army should have contact information for former Army Secretaries, former service secretaries, former Secretaries and Deputy Secretaries of Defense, House and Senate Armed Services Committee Chairs and Rankings, House and Senate Defense Appropriations Subcommittee Chairs and Rankings, and key Hill staff, etc.

2

Prospective Nominee Pairing Model: The prospective nominee's government agency might use the relationship/network directory to pair the candidate with a former appointee who had served in a similar role, or the nominee might reach out to develop such an opportunity. A PAS nominee, particularly someone who has had little prior experience in government, would benefit from consulting with a skilled predecessor who has walked the same path.

To further orient and prepare a prospective nominee for the Senate committee hearing, the transition team can provide a contact list of recent appointees who have previously been confirmed under the same Administration. A Senate committee confirmation hearing can be tough to navigate. Having the opportunity to consult with individuals who are familiar with the Administration and with Congress would help nominees feel more prepared as they approach their hearing dates, and increase the chances they will succeed.¹⁹



FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST PROCESSES



Financial Disclosure History and Forms

High-level officials in all three branches of the federal government are required to disclose publicly detailed information concerning their financial holdings.²⁰ This includes information about income, properties, and other assets such as stocks, bonds, and mutual funds, among others.

Congress enacted the financial disclosure requirements as part of the Ethics in Government Act of 1978, which provided detailed guidance for the disclosure of financial information by certain executive branch employees, including PAS nominees.²¹ Congress passed this legislation in the wake of the Watergate investigations, President Nixon's resignation, and the aftermath.²² The 1978 law also established the U.S. Office of Government Ethics. By statute, OGE is intended as a relatively independent entity that provides leadership and oversight for executive branch ethics programs. The legislation, and the office it created, is largely designed to prevent, mitigate, and resolve conflicts of interest, and ensure those in PAS positions understand ethical obligations while serving in their official capacity.²³

OGE developed the SF278 form as the tool through which to capture detailed financial disclosure information from senior officials, including PAS nominees.²⁴ Congress has since passed additional legislation adding to the requirements included in the financial disclosure system.²⁵ Most recently, the Stop Trading on Congressional Knowledge (STOCK) Act of 2012 directed the development of an electronic system for filing executive branch financial disclosure reports. As a result, OGE developed the *Integrity* system to collect, manage, process, and store financial disclosures.²⁶

The Challenges

Public disclosure requirements facilitate "supervision, regulation, and deterrence of conflicts of interest between the *private* financial interests and the official *public* duties of federal officers."²⁷ Such regulation focuses on the possibility and/or appearance of private gain while serving in public office. Our interviewees, joined by those who have studied how the financial disclosure process has evolved over the past three decades, have noted a combination of factors that seem to have distanced the reality of the process from its intent. For example, there is a strong desire to elicit as much information as possible from a nominee out of concern for missing a detail that may develop into a public crisis. This has contributed to the extensive paperwork that is now required. But human and technological resources to vet individuals under consideration have not expanded in parallel. As a result, those being considered face a significantly heavier reporting burden, should anticipate greater public exposure while they are under consideration, and vetting time pre-Presidential nomination and pre-confirmation has grown substantially.²⁸ As these burdens and timelines have increased, the candidate remains largely alone to shoulder the responsibilities, financial, technical, and administrative, until and unless s/he is confirmed.

Resource collection

The preventative and risk averse nature of the public disclosure requirements has contributed to the development of a disclosure and divestiture regime that interviewees characterized as challenging, outdated, and time consuming. Currently, the SF278 requires detailed information on stock ownership and investment income (i.e. dividends) from publicly traded assets such as stocks and bonds, each of which the Securities and Exchange Commission (SEC) already regulates. The usefulness of public reporting should relate to what assets are held, to assess whether a conflict might exist; and perhaps whether the value of the assets is above a certain threshold amount.

A coordinated effort to assign a guide to each PAS nominee would help level the playing fields... and increase discipline in OGE interactions.

OGE requirements include a need “to know the value of publicly traded assets to evaluate the potential for conflicts of interests” and “the amount of income these highly regulated assets produce.”²⁹ The latter requirement adds little value to conflict of interest considerations as dividends are paid to all investors and “generally pose no conflict of interest distinct from the value of the filer’s investment in that stock.”³⁰ This requirement often forces prospective nominees (or their financial team of advisors, accountants, and lawyers) to spend considerable time and resources tracking down and reconciling financial statements.

For this reason, financial disclosure reporting might eliminate requirements related to income generated from publicly traded stocks at market value. Additionally, freeing the relevant OGE and other agencies’ staff from the resource collection burden could allow a greater focus on conflict of interest concerns, and, ideally, a more effective and efficient vetting process.

Differing types of OGE contacts

The Office of Government Ethics seems to have strayed from formative statute’s intent not only with respect to overly intrusive and duplicative financial disclosure queries. OGE personnel, however inadvertently, may end up interacting directly with PAS candidates with respect to financial disclosure documents. PAS candidates generally are assigned an agency-specific contact, or guide, through which communication with OGE (and other stakeholders such as Members of Congress) is facilitated. Several of those we interviewed, however, were not assigned an agency guide and either directly communicated with OGE or facilitated such conversation through their financial team of advisors. A coordinated effort to assign a guide to each PAS nominee would help level the playing field, bring greater uniformity to the process for prospective nominees, and increase discipline in OGE interactions, which would be entirely between and among government actors.

Duplicative processes

After prospective nominees emerge from the executive branch vetting as presidentially announced nominees, they face a round of legislative branch vetting, initially through their designated Senate committees of jurisdiction for confirmation. They will be asked to fill out questionnaires with identical or similar material to that contained in the SF278 or on *Integrity*.³¹ The redundancy and duplication is built into our governance system, because

the executive nominates and requires the Senate's advice and consent.³² Executive and legislative decision-makers each determine independently what information they require to evaluate a nominee's qualifications and suitability for positions. That said, the legislative branch has created the statutes that largely guide the material the executive currently collects, and they share interest, for example, in getting top national security officials into position with appropriate consideration but as efficiently as possible, to preserve and protect the security of the country. For all these reasons, a renewed review of whether there are available technologies or other means to reduce repetition and redundancy in filling out new forms with the same or similar information would be useful. This also would allow nominees to focus more attention on those specific areas that may concern the Senate that have not been addressed by the executive branch.

Ways Forward

Availability of Resources

A transition team/incoming administration needs a clear model and/or strategy to support its PAS nominees through the financial disclosure process. The model should be adapted as the administration matures, to replace those who depart PAS positions. The current SF278 form is dense and requires significant resources to complete appropriately, particularly for those who have investment portfolios beyond mutual funds, own their own businesses, or have had any challenging past filing situations. It is not atypical for prospective nominees to spend at least \$35,000 - \$50,000 in legal or other advisory fees, enlist the services of multiple teams of advisors, and spend weeks completing financial disclosure forms.

We recommend some steps that may help focus transition teams building a more effective and streamlined process, particularly for national security candidate positions:

- 1 Trusted Advisor Portal:** WH PPO works with appropriate federal agencies such as the General Services Administration (GSA) to develop an official web portal designed to offer prospective nominees help with the financial disclosure process. Modeled from the current USA.gov and American Bar Association platforms, the web portal could organize and index legal resource information to assist candidates in helping them find qualified financial advisors, lawyers, or auditors, as needed. The portal would be offered as a public service and direct prospective nominees to the services and information they seek. The portal would be intended to allow prospective nominees to make an informed decision on additional resources they may require to navigate the financial disclosure process. While the information on the portal may include information about legal issues, it would clearly indicate that it did not constitute legal advice or preference for specific legal representatives.
- 2 "Accelerated" Reviews:** WH PPO should work with OGE to be able to provide prospective PAS nominees some indication of possible financial implications were they to serve, based on initial preliminary information provided by the prospective nominee. Such an appraisal would not be binding in any way. It would serve as a preliminary tool to educate and encourage prospective nominees to make an informed decision at the front end of the nomination process.

3

Centralized and Consolidated Background Forms: The executive branch and Senate separately and appropriately request information from nominees to preserve the independence of their individual distinctive roles in government. Duplicative information can be deconflicted while preserving institutional independence. WH PPO should consider creating an electronic form, similar to *Integrity*, to harmonize the information nominees provide to the White House, OGE, and the Senate. This electronic form would compile and centralize basic biographical and background questions that both branches require for a nominee, such as personal and family background, education, employment history, places of residence, foreign relationships and affiliations, etc. This would reduce the cost and burden on nominees while getting all parties involved the information they need.

Additional Challenge Areas

Many of those we interviewed raised additional important areas for future work with regard to PAS candidates, particularly those nominated for national security positions. And, our interviewees posed some artful ways forward. Though the issues fall outside the immediate scope of this assessment, we raise them briefly to encourage further inquiry.

Streamline and coordinate security investigations between and among executive branch agencies.

The background investigation for nominees also presents an opportunity for additional reform. While Congress and the White House have made some improvements to investigation and adjudication timelines and reciprocity of clearances through the Intelligence Reform and Terrorism Prevention Act of 2004 *P.L. 108-458*, they are limited. Currently, the process for gaining appropriate secret, top secret, and top secret compartmented clearances vary depending on the national security agency or military service in which a PAS nominee may serve, and which agency or entity is undertaking the investigation. If a PAS official is working for one national security department, such as the Pentagon, and moves to another, such as the State Department, or the Central Intelligence Agency, or the Treasury Department, her/his security clearance process might have to be started anew, depending on the agency involved. The U.S. national security community would benefit from coordinated investigative resources, approach to clearance processes, renewals, and reciprocity across agencies represented within the National Security Council.³³

Modify Senate “holds” in minimalist manner, e.g., to aid key national security positions.

Under current Senate rules, any Senator may “hold” a nomination from final floor vote on confirmation, without disclosing that s/he is so doing, and without disclosing a rationale. Reforms to Senate procedure that require Senators to disclose publicly the reason for a hold would promote transparency within the confirmation process. A further step (and heavier lift) would be to introduce consideration of time limits for holds, particularly with respect to nominees for national security posts.

Conclusion

There is no United States post-election or mid-term responsibility more essential than ensuring a seamless transition between the most senior officials handling the country's most important national security duties. The 9-11 Commission described the challenge for national security decision-makers in transition between administrations, and started to identify some of the fixes. Others have worked on filling in the gaps since, with some positive bipartisan congressional and executive branch work over the years. Much more remains to be done, however. We have picked up the baton. Focusing on the practical and the immediate, we took aim with this effort on education and preparation, financial disclosure requirements and conflict of interest issues for PAS prospective nominees.

We recommend:

- 1 Create a Field Resource Manual** for PAS candidates that will be useful throughout the nomination/confirmation process;
- 2 Pair nominees with individuals who have served** in the same or similar PAS positions;
- 3 Establish a Trusted Advisor Portal** for PAS nominees that would provide resources and assistance in completing requisite financial disclosure forms;
- 4 Provide front-end “Accelerated” Reviews** that could indicate to prospective PAS nominees the possible financial implications of what they might have to disclose and/or divest; and
- 5 Create an electronic form that consolidates duplicative information** required of nominees from the executive and legislative branches.

These five recommendations could be implemented, in part, unilaterally by individual agencies to support nominees. They will be most effective when carried out as a matter of routine by transition teams for both parties' presidential candidates in 2020; and by the Presidential Personnel Office as soon as possible, to minimize current national security vacancies.

We would urge the White House PPO working with OGE to take action over the coming year on these suggested steps to help the candidates who will be moving into the current administration and lay the groundwork for the transition teams that both parties will be standing up in due course. We stand ready to assist in these efforts.

Our U.S. national security enterprise shares the same goal – across administrations – getting the best people into the right senior level positions – as swiftly and seamlessly as possible. Administrations should shape the PAS candidate search, selection, and confirmation process so that it maximizes opportunities to attract the most qualified individuals that our country has to offer to fill national security positions of trust. Our people, and the challenges we are facing, deserve no less.

Appendix A | List of Interviewees

In total, we interviewed 14 former and current PAS nominees, including:

Philip Bilden

BENS Member
Co-Founder, HarbourVest Partners, LLC

Eric Fanning

Former BENS Employee
President and CEO, Aerospace Industries Association
Secretary of the Army, 2016-2017

Debbie James

Former BENS Employee & Member
Board Member and Advisor
Assistant Secretary of Defense for Reserve Affairs,
1993-1998
Secretary of the Air Force, 2013-2017

David McCormick

CEO, Bridgewater Associates
Under Secretary of Commerce for Industry and
Security, 2005
Under Secretary of Treasury for International Affairs,
2007-2009

Andrew Puzder

BENS Member
CEO, CKE Restaurants

Dan Shapiro

Distinguished Visiting Fellow, The Institute for National
Security Studies
United States Ambassador to Israel, 2011-2017

Richard Spencer

Former BENS Advisory Council Member
Secretary of the Navy, 2017-current

Thomas Stephenson

BENS Board Member
Partner, Sequoia Capital
United States Ambassador to Portugal, 2007-2009

Richard Verma

Vice Chairman, The Asia Group
Assistant Secretary of State for Legislative Affairs,
2009-2011
United States Ambassador to India 2015-2017

Appendix B

The following national security positions remain vacant as of November 8, 2018 according to the [Washington Post/Partnership for Public Service Tracker](#):

Department of Defense

General Counsel of the Navy

Principal Deputy Undersecretary for Personnel and Readiness

Principal Deputy Undersecretary for Acquisition, Technology, and Logistics

Assistant Secretary for Research and Engineering

Assistant Secretary for Readiness and Force Management

Department of State

Assistant Secretary for Intelligence and Research

Assistant Secretary for Political-Military Affairs

Assistant Secretary for East Asian and Pacific Affairs

Assistant Secretary for Near Eastern Affairs

Assistant Secretary for South Asian Studies

Director, Office of Foreign Missions

Coordinator for Threat Reduction Programs

Department of Homeland Security

Undersecretary for Science and Technology

Assistant Secretary for Policy

Assistant Secretary for Immigration and Customs Enforcement

Inspector General

Intelligence Community

Central Intelligence Agency: Statutory Inspector General

Director of the National Counterintelligence and Security Center

Director of the National Counterterrorism Center

End Notes

¹ In May 2015 BENS released a report entitled *Making Senior Government Service More Attractive*. The report detailed multiple actions to improve candidate search, selection, and onboarding for individuals attempting to fill positions through the PAS process.

² Department of Defense. Office of the Secretary of Defense. *Summary of the 2018 National Defense Strategy of the United States of America: Sharpening the American Military's Competitive Edge*. United States Government. 2018. Page 1. [Summary of 2018 National Defense Strategy](#).

³ Department of Defense. Defense Business Board. *Focusing a Transition: Challenges Facing a New Administration*. United States Government. 2016. Page 16. [DBB Transition Report 2016](#). See also The 9/11 Commission Report, at Section 13. It describes how the 2000 election dispute, further aided by delays inherent in the PAS process, meant that President Bush's transition team did not nominate or get confirmed key deputy and subcabinet officials before spring-summer of 2001. The report suggests that the national security community might have been better prepared to predict, react, and handle the aftermath related to the September 11 terror attacks if better process involving critical agency leadership had preceded. The report makes a series of recommendations specific to improving transitions of national security personnel between administrations, for these reasons. Many of these recommendations remain to be implemented, and relevant, today. National Commission on Terrorist Attacks, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (Washington, DC: Government Printing Office, 2004): pages 422-423. Available at: [9/11 Commission Report](#).

⁴ O'Connell, Anne Joseph. "After one year in office, Trump's behind on staffing but making steady progress." The Brookings Institution. January 23, 2018. [Brookings Institution Report](#). Each administration has more than 1,200 senior leader positions that must be confirmed by the Senate. The Brookings Institution tracked data from January 20, 2017 to January 19, 2018 on the number of individuals nominated and confirmed to an agency position for the current administration, and compares this progress against four of the most recent administrations. As of January 19, 2018, 300 senior leaders have been confirmed to serve in the Trump Administration. See also Partnership for Public Service and Washington Post interactive tracker, which shows as of November 8, 2018 the key national security positions President Trump has filled so far and those that remain vacant. Available at: [Partnership for Public Service and Washington Post Tracker](#). For a list of positions that remain vacant, see Appendix B.

⁵ The Presidential Appointee Initiative, The Brookings Institution. *Staffing A New Administration: A Guide to Personnel Appointments in a Presidential Transition* (2000). Pages 6-8.

⁶ Patterson, Bradley and Pfiffner, James. "The White House Office of Presidential Personnel," *Presidential Studies Quarterly* vol. 31, no. 3 (2001). Pages 420-423.

⁷ The Presidential Appointee Initiative, *Staffing A New Administration*. Pages 6-7.

⁸ Carey, Maeve. U.S. Library of Congress. Congressional Research Service. *Presidential Appointments, the Senate's Confirmation Process, and Changes Made in the 112th Congress*. October 9, 2012. (Report No. R41872, page 4). United States of America.

⁹ The Presidential Appointee Initiative, *Staffing A New Administration*. Page 6.

¹⁰ Vetting components and documents required for clearance of a PAS candidate consist of the Standard Form (SF) 86 and the Standard Form (SF) 278. The SF86 is a United States Government form individuals complete in order for the government to conduct background investigations, reinvestigations, and continuous evaluations of persons under consideration for, or retention of, national security positions. Military personnel, government employees, and government contractors are required to complete this form to receive a requisition security clearance. The SF86 requires individuals to provide information such as employment history, residency history, ties to foreign nationals and government, and overseas travel, among other information. For more information, see the Office of Personnel Management's (OPM) National Background Investigation Bureau website. Available at: [Guide for the Standard Form \(SF\) 86](#). The SF278 is a financial disclosure report that senior United States Government officials must complete. The SF278 requires a filer to detail information such as personal assets and income, sources of compensation, spouse's employment assets and income, and liabilities, among other financial-related information. For more information, see the Office of Government Ethics (OGE) website. Available at: [OGE: Public Financial Disclosure Guide](#).

¹¹ The Presidential Appointee Initiative, *Staffing A New Administration*. Page 7.

¹² Carey, U.S. Library of Congress. Congressional Research Service, *Presidential Appointments*. Page 4.

¹³ Testimony of Clay Johnson III, U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Eliminating the Bottlenecks: Streamlining the Nominations Process*, 112th Cong., 1st sess., March 2, 2011.

¹⁴ U.S. Senate, Committee on Armed Services, *Committee on Armed Services Form: Biographical and Financial Information Requested of Nominees*, 110th Congress (2007-2008). Available at: [Senate Armed Services Questionnaire](#).

¹⁵ The National Commission on the Public Service, *Urgent Business for America: Revisiting the Federal Government for the 21st Century*, January 2003, page 18.

¹⁶ This accounted for 163 of the estimated 1,400 presidential appointee positions. Carey, U.S. Library of Congress. Congressional Research Service. *Presidential Appointments*, pages 4, 10-11.

¹⁷ *Ibid.* Pages 15-16.

¹⁸ The Presidential Transitions Improvement Act created requirements for outgoing presidents to establish a White House Transition Coordinating Council and an Agency Transition Directors Council. These councils facilitate information-sharing between eligible presidential candidates and agencies and provide guidance to agencies in preparing briefing materials requested by candidates. Lobel, Andrew. "Presidential Transitions Improvements Act of 2015 Becomes Law," Center for Presidential Transition, March 21, 2016. Available at: [Presidential Transitions Improvement Act Article](#).

¹⁹ The Department of Defense Legislative Affairs Office has a longstanding tradition in this regard. It offers its nominees, and others who face challenging Senate hearings, preparation in the form of practice sessions before a "murder board" composed in part of former staff directors from the Senate Armed Services Committee, who served chairs of both parties, and who faithfully volunteer their time for this duty. We were informed by one interviewee, who has been a nominee and also coached others, that one can observe quickly the difference between someone who has spent time in such a practice session and someone who goes before a Senate committee without such opportunity.

²⁰ Presidential nominees to positions requiring the advice and consent of the Senate (PAS) must file public financial disclosure reports with the Office of Government Ethics. Individuals nominated for judicial office or those individuals selected as Foreign Service Officers or as officers of the uniformed services have parallel obligations. The disclosure statement provides public revelation of the identity and/or value of items such as (1) the official's income, (2) gifts received, (3) assets and income-producing property (including savings accounts), (4) liabilities, (5) financial transactions in income-producing properties and securities, (6) positions held in outside businesses and organizations, (7) agreements for future employment/leaves of absence, and (8) blind trusts. For more information, see Maskell, Jack. Legislative Attorney. Congressional Research Service. January 17, 2004. *Financial Assets and Conflicts of Interest Regulation in the Executive Branch* (Report No. R43365, at 10).

²¹ P.L. 95-521, 92 Stat. 1824 (October 26, 1978), as amended; see now 5 U.S.C. app. §§ 101 *et. seq.*

²² Congress had debated the issue of financial disclosure for quite some time prior to Watergate. Congress passed various bills during the 1970s, which eventually culminated in the Ethics in Government Act of 1978. See S. 495, 94th Cong. (1975); Hr. 9, 95th Cong. (1977); S.383 95th Cong. (1977); H.R. 2835, 95th Cong. (1977); H.R. 6954, 95th Cong. (1977); H.R. 9705, 95th Cong. (1977); H.R. 1, 95th Cong. (1977); S. 555, 95th Cong. (1977).

²³ Several ethics provisions concern conflicting financial interests and reference the need for government employees to act impartially. According to the OGE website, 18 U.S.C. §§ 208 requires an employee to be disqualified ("recused") from a particular matter if it would have a direct and predictable effect on the employee's own financial interests or on certain financial interests that are treated as the employee's own. For more information, please see OGE's "Resolving Conflicts of Interest" webpage. Available at: [OGE: Resolving Conflicts of Interest](#).

²⁴ Recall our early reference to Standard Form (SF) 278 as a vetting component.

²⁵ The Ethics Reform Act of 1989 restricts Cabinet-level officials and other top Presidential appointees from lobbying anyone in the Executive Branch for a year after leaving their government job and limits outside earned income for higher-salaried, non-career employees across the federal government. The legislation appears to have been motivated by prosecution and investigation of post employment activities of a high profile Reagan administration official. The Stop Trading on Congressional Knowledge (STOCK) Act of 2012 requires regular (quarterly) transaction reporting to prompt disclosure information (and implicitly to discourage holding of stocks and move officials into mutual funds), reacting to concern with potential abuse of nonpublic information by federal employees. It is required improved systems for managing individuals' data.

²⁶ Office of Government Ethics, Public Financial Disclosure, Integrity, [OGE: Public Financial Disclosure, Integrity](#).

²⁷ Maskell, Jack. Legislative Attorney. Congressional Research Service. August 22, 2013. *Financial Disclosure by Federal Officials and Publication of Disclosure Reports* (Report No. R43186, at 1).

²⁸ Working Group on Streamlining Paperwork for Executive Nominations. *Report to the President and the Chairs and Ranking Members of the Senate Committee on Homeland Security & Governmental Affairs and the Senate Committee on Rules & Administration*. (November 2012, page 9). Washington, DC.

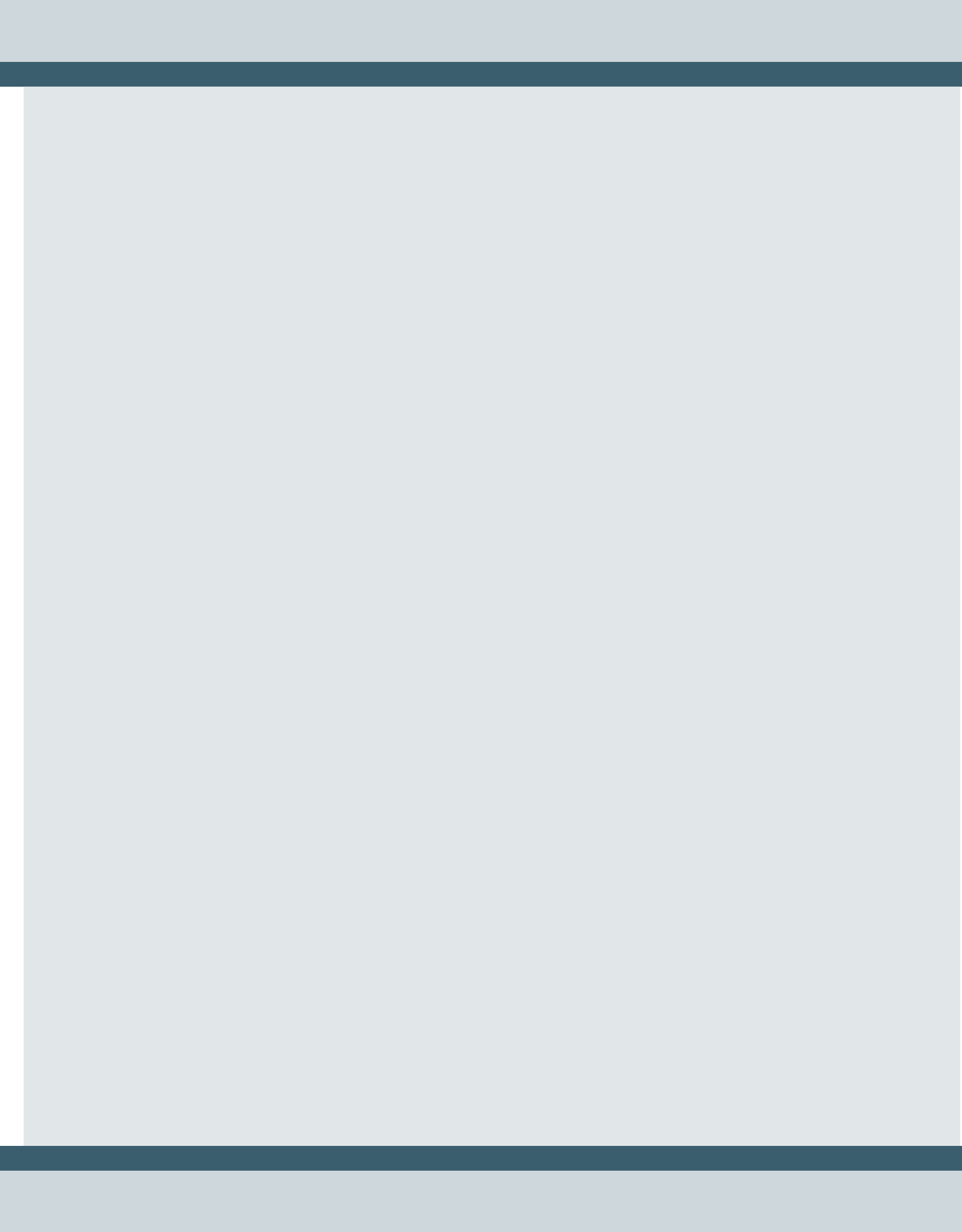
²⁹ Shaub, Jr. Walter M. Letter to Chairman Trey Gowdy and Ranking member Elijah Cummings, House Committee on Oversight and Government Reform on recommendations for legislative reform in connection with the reauthorization of the U.S. Office of Government Ethics. Campaign Legal Center. November 9, 2017, page 16. Available at: [Politico, Walter Shaub's Recommendations on OGE](#).

³⁰ *Ibid.* Page 16.

³¹ Working Group on Streamlining Paperwork for Executive Nominations. *Report to the President and the Chairs and Ranking Members*. Page 21.

³² Recall our early reference to the President's power to nominate and appoint only with the Senate's advice and consent, under Article II, Section 2 of the U.S. Constitution.

³³ The 9/11 Commission Report also recommended that "a single federal agency should be responsible for providing security clearances, ensuring uniform standards—including uniform security questionnaires and financial report requirements, and maintaining a single database." National Commission on Terrorist Attacks, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (Washington, DC: Government Printing Office, 2004): Page 422. Available at: [9/11 Commission Report](#).





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