



STREAMLINING PAPERWORK FOR EXECUTIVE NOMINATIONS

Report to the President and the Chairs and
Ranking Members of the Senate Committee on
Homeland Security & Government Affairs and the
Senate Committee on Rules & Administration

Working Group on Streamlining
Paperwork for Executive Nominations

NOVEMBER 2012





WORKING GROUP ON
STREAMLINING PAPERWORK FOR
EXECUTIVE NOMINATIONS

President Barack Obama
The White House
Washington DC 20500

The Honorable Joseph Lieberman
The Honorable Susan Collins
Senate Committee on Homeland
Security & Governmental Affairs
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Office Building
Washington DC 20510

The Honorable Charles Schumer
The Honorable Lamar Alexander
Senate Committee on
Rules & Administration
305 Russell Senate
Office Building
Washington DC 20510

November 5, 2012

Dear Mr. President, Chairman Lieberman, Chairman Schumer, Ranking Member Collins, and Ranking Member Alexander:

On August 10, 2012, the President signed the Presidential Appointment Efficiency and Streamlining Act of 2011, which created the Working Group on Streamlining Paperwork for Executive Nominations. The White House-constituted, bipartisan Working Group is made up of former Senators; current and former senior White House officials, including Directors of the White House Office of Presidential Personnel; current and former Directors of the Office of Personnel Management; representatives from the Federal Bureau of Investigation and the Office of Government Ethics; and the United States Chief Technology Officer and Federal Chief Information Officer. Its Chair is the Acting Federal Chief Performance Officer.

The Presidential Appointment Efficiency and Streamlining Act of 2011 directed the Working Group to submit to you two reports on streamlining the executive nomination and confirmation process. The first report, due 90 days after the enactment of the Act (November 8, 2012), is to make recommendations for streamlining the paperwork required of Presidential nominees who require Senate confirmation (PAS nominees). The second report, due 180 days later (May 7, 2013), is to review background investigation requirements for PAS nominees. The Working Group is pleased to present you with the attached first report.

One Presidential nominee famously borrowed from Thomas Hobbes in describing the nomination and confirmation process as “nasty and brutish without being short.” Onerous and duplicative paperwork is only part of the problem—partisan disputes, increased scrutiny by an expanding and diversified media, and internet access to volumes of information on a nominee all play a role. While the Working Group can do nothing to change the political climate or turn back the information age, it can recommend significant reforms to the paperwork involved in the process to ease unnecessary burden on nominees, while more quickly providing all parties with the information they need to determine nominees’ suitability for office. Our proposed reforms would reduce the time it takes for nominees to complete their paperwork and for the paperwork to be submitted to the White House and the Senate. If implemented, they will help to staff the government more effectively and expeditiously.

The Working Group's effort has bridged both partisan divides and the gap that often exists between the legislature and the executive branch. Our members hail from both branches of government and our outreach has been similarly bipartite. We have worked with the White House as well as all 17 of the Congressional Committees that confirm Presidential nominees to develop our recommendations. The Presidential Appointment Efficiency and Streamlining Act of 2011 began the process of improving the nominations and confirmation process, and the recommendations in this report seek to continue it. We urge the Administration and Congress to seize this moment of nonpartisan goodwill by considering seriously the recommendations set forth in this report and working together to implement them prior to the wave of new nominations sure to come early next year, regardless of the outcome of the Presidential election.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Lisa Brown", with a stylized flourish at the end.

Lisa Brown
Chair



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Working Group on Streamlining Paperwork for Executive Nominations

The Honorable Lisa Brown

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Federal Chief Performance Officer (Acting)
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The Honorable Edward E. "Ted" Kaufman

United States Senator (2009-2010)

The Honorable Janice R. Lachance

*Director
Office of Personnel Management (1997-2001)*

The Honorable Thomas F. "Mack" McLarty III

White House Chief of Staff (1993-1994)

The Honorable Todd Park

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The Honorable Steven L. VanRoekel

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The Honorable George V. Voinovich

United States Senator (1999-2011)



Table of Contents

Executive Summary	1
Background	7
The Working Group's Mandate	7
The Problem	8
The Forms Required for Nomination and Confirmation.	9
Process and Findings	12
Recommendations	18
Eliminate Repetition and Reduce Overlapping and Duplicative Questions	18
Reduce Unnecessary Burden on Nominees	22
Vary the Paperwork Required for Candidates for Part-Time PAS Positions.	27
Build an Electronic System with a "Smart Form".	29
Time Frame for Implementing Recommendations	33
Conclusion	35
Appendix A : Summary of Recommendations Regarding Each Form	37
Appendix B : Proposed Core Questions for Presidential Nominees Requiring Senate Confirmation	38
Appendix C : Major Points Raised in Interviews and Literature	47



Executive Summary

Observers of the nominations and confirmation process over the past three decades have, in the words of the Senate Committee on Homeland Security & Governmental Affairs (HSGAC), “consistently found that the process for identifying, nominating, and confirming an individual to a Senate-confirmed position has gradually lengthened, become more burdensome, and has discouraged qualified individuals from seeking nominations.”¹ Regardless of which party is in

power, we cannot afford to delay the appointment of the most able and qualified public servants to take up the challenges facing our country.

“[I]t’s time to have a bipartisan look at the whole appointments process. It takes too long to get somebody confirmed. It’s too bureaucratic. You have two and three levels of investigation. I think it’s excessive.”²

—PRESIDENT WILLIAM JEFFERSON CLINTON

To address problems with the nominations and confirmation process, Congress passed the Presidential Appointment Efficiency and Streamlining Act of 2011 (the Act). The Act eliminated the need for Senate confirmation of 169 nominees, thereby freeing Senate resources

to focus on the remaining higher profile nominees and move them through the system at a faster pace. It also established the Working Group on Streamlining Paperwork for Executive Nominations, which it directed to submit a report to the President, HSGAC, and the Senate Committee on Rules & Administration (Rules) that would include:

- (i) recommendations for the streamlining of paperwork required for executive nominations; and
- (ii) a detailed plan for the creation and implementation of an electronic system for collecting and distributing background information from potential and actual Presidential nominees for positions which require appointment by and with the advice and consent of the Senate.

In accordance with this mandate, the Working Group—a bipartisan group of current and former government officials with expertise in the nominations process—is pleased to present the following report.

The basic forms to be filled out by Presidential nominees who require Senate confirmation (PAS nominees or candidates)³ have remained relatively consistent across recent administrations. The major forms include: the Standard Form 86 Questionnaire for National Security Positions (SF86), the Supplement to Standard Form 86 (86 Supplement), the Office of Government Ethics (OGE) Form 278 Executive Branch Personnel Public Financial Disclosure Report (OGE278), sometimes a White House Personal Data Statement (WHPDS), and Senate Committee questionnaires. Since each of these forms has been designed, in greater or lesser part, to assess the suitability of candidates for their potential positions in

1. S. REP. NO. 112-24, at 5 (2012).

2. “Obstacle Course, A Report on the Twentieth Century Fund Task Force of the Presidential Appointment Process,” Twentieth Century Fund Press, New York (1996), p. 7.

3. This report uses the terms “candidate” and “nominee” to refer to individuals being considered for PAS positions at different points in time. A PAS “candidate” becomes a PAS “nominee” when the White House announces his or her nomination. Thus, individuals are candidates when they complete the SF86, 86 Supplement and OGE278 during the vetting process, but are nominees when they finalize their Senate questionnaires.

government, they cover many of the same topics and are considerably duplicative. Eighteen topics make up an average of 60% of the total topics addressed by each of the major executive and Senate forms currently in use.⁴ While the topics are similar, the exact questions differ across forms, often requiring candidates to tailor their answers to account for small differences in questions intended to elicit more-or-less the same information relevant to the candidate's fitness for office. In addition to duplicative questions, each of the forms includes questions that appear unnecessarily broad and burdensome on nominees.⁵

This report makes concrete recommendations for streamlining the paperwork by eliminating this duplication and unnecessary burden, and building an electronic system with a "Smart Form". All of the recommendations are essential to achieving meaningful reform. While technology can facilitate the process by enabling nominees to answer identical questions only once and reduce inconsistent answers, it cannot alone eliminate the duplication and unnecessary burden built into the current system. Fundamental streamlining of the process will only be achieved if the White House and the various Senate Committees work together to refine and implement all of the Working Group's recommendations, particularly the development of a common set of core questions. The result will benefit all parties: the candidate's experience will be less onerous, and the executive branch and Senate Committees will get the information they need more expeditiously.

*"We take some self-respecting U.S. citizen, and the President invites them to come take a position in the Federal Government of honor and dignity, and suddenly they find themselves immersed in a series of duplicative interrogations from all directions in which they must fill out forms that define words such as 'income' in different ways, all of which is designed to lead them before a committee, not to really assess their qualifications but to see if they can be trapped and turned into an apparent criminal."*⁵

—SENATOR LAMAR ALEXANDER

The Working Group's recommendations are summarized below, and a chart summarizing the recommendations with regard to each form is attached as Appendix A:

1. Eliminate Repetition and Reduce Overlapping Questions

- A. Develop a common set of core questions for the executive branch and each Senate Committee to use, while allowing each to ask supplemental questions.** The single most important step that the executive branch and Senate could take to expedite and streamline the nominations paperwork would be to work together to arrive at a common set of core questions that each would use in place of their varying questions on core topics. Each could then judiciously supple-

4. The eighteen topics are: basic biographical information; education; employment; publications; memberships; political activity; criminal convictions; criminal investigations, citations, charges, and arrests; civil litigation and administrative or legislative proceedings; breach of professional ethics; tax compliance; outside positions; agreements or arrangements; assets; liabilities; income; and gifts and travel reimbursements. These topics make up between 36 percent and 82 percent of the topics covered on each of the forms, with an average of 60 percent.

5. 157 CONG. REC. S3991, S4004 (daily ed. June 22, 2011) (statement of Sen. Lamar Alexander).

ment the core with additional questions, including (1) questions on topics outside the core and (2) questions on core topics that elicit information not captured by core questions that, upon studied reflection, it finds necessary to its inquiry. Analogous to the “common application” that hundreds of four-year colleges have adopted, this common set of core questions would encompass the topics currently addressed in both the executive branch and the Senate forms. Just as individual colleges supplement the common application with additional essays tailored to their specific needs, individual executive branch entities and Senate Committees could supplement the core with questions tailored to their individual inquiries. The Working Group has developed a proposed set of core questions as a starting point for conversation, a copy of which is attached as Appendix B. The Working Group is currently discussing this proposed core with Senate Committees and the response has been positive.

B. *Reduce the 86 Supplement’s and Senate questionnaires’ duplication of questions covered by the nominee’s OGE278 and Ethics Agreement.* If the White House and Senate Committees could take one action right now to streamline nominations paperwork, even before agreeing on a common core, it should be to eliminate questions on their own forms that call for financial disclosure and conflicts of interest information already provided by law on the nominee’s OGE-certified OGE278 and accompanying ethics agreement. We recommend that both the White House and the Senate Committees simply request information they need that is not covered by the nominee’s OGE278 and ethics agreement.

C. *Eliminate the use of a White House Personal Data Statement.* The White House Office of Presidential Personnel has at times required candidates for PAS positions to complete a sometimes extensive questionnaire often referred to as the White House Personal Data Statement (WHPDS). The WHPDS has typically contained questions that are duplicative of questions in the SF86 and OGE278. The Obama Administration does not currently use a WHPDS, relying instead on oral interviews and the other paperwork involved in the vetting process, and the Working Group recommends that future White House staff continue this practice.

2. Review All the Forms and, Where Appropriate, Revise Questions to Reduce Unnecessary Burden on Nominees

In addition to the duplicative questions that exist across forms and need to be rationalized through the adoption of a common set of core questions, each of the executive branch forms and the Senate forms includes broad questions that appear unnecessarily burdensome. We recommend that the White House, OGE, Senate Committees, and the executive branch’s Suitability and Security Clearance Performance and Accountability Council (PAC) (which oversees the SF86) each review their forms carefully to see if they can more narrowly tailor questions to elicit more directly the information they need without imposing an undue burden on a candidate.

A. *SF86:* The Working Group recommends that the PAC direct the Director of National Intelligence (DNI), as the Security Executive Agent, and the Director of the Office of Personnel Management (OPM), as issuer of the form, to engage in a concerted process to examine the SF86 questions with the goal of reducing, restructuring, or rewording questions where possible to reduce burden on nominees while still gathering the information necessary to make an appropriate assess-

ment of the candidate's suitability for employment and access to national security information. SF86 questions meriting review, for example, are those on foreign travel, past residences and former employers. The Working Group suggests, if consistent with national security interests, narrowing the current questions' requirement to provide the dates of all foreign travel along with detailed information on attendance at various meetings abroad as well as the requirement to provide street addresses of all past residences and former employers disclosed on the form.

- B. OGE278:** The Ethics in Government Act of 1978 established the current public financial disclosure requirements for PAS candidates, Congressional representatives and staff, and approximately 27,000 additional executive branch filers. The Working Group recommends that Congress consult with OGE and amend the executive branch disclosure requirements to reduce or eliminate requests for information that are unnecessary to the conflict-of-interest analysis. Two areas particularly ripe for reform are: (1) eliminating the requirement to report investment income, because it is the ownership of the asset and not its dividend or the profit from its sale that creates the conflict; and (2) raising and rationalizing minimum reporting thresholds across reporting categories to exclude the disclosure of financial items too insignificant to raise a concern over conflict of interest.
- C. 86 Supplement:** The Working Group recommends that the White House reduce unnecessary burden on candidates by reviewing and, where appropriate, revising questions on the 86 Supplement to obtain the necessary information in a more targeted way. Two questions that merit review, for example, are those on memberships and investigations. The memberships question could be narrowly tailored to extract information on only those memberships relevant to the candidate's suitability for a position, and the investigations question could be revised to exclude investigations into an entity associated with the candidate that did not involve actions taken by the candidate.
- D. Senate Questionnaires:** The Working Group recommends that Senate Committees review the questions they ask outside of the core to reduce unnecessary burden upon nominees. Two areas highlighted by experts, stakeholders, and former nominees as particularly burdensome are the request for lists and copies of speeches and interviews and the request for a net worth statement. The Working Group recommends that Committees consider narrowing their requests for speeches and interviews by subject matter or time frame, and consider asking questions narrowly tailored to obtain necessary information not disclosed on the OGE278 instead of requesting full net worth statements.

3. Vary the Paperwork Required for Candidates for Part-time PAS Positions Depending Upon the Nature of the Position for Which They Are Being Considered

The Working Group recommends that, where appropriate, the executive branch and the Senate tier levels of scrutiny based on whether a position is part- or full-time. While part-time positions on boards and commissions are important and carry significant responsibility, we do not believe they should automatically require similar levels of scrutiny as cabinet members or other full-time PAS nominees. The Working Group recommends that both branches tailor their paperwork and review of

these positions to reflect the nature of the position and particularly its need for a security clearance and legally required level of financial disclosure.

A. *Background Investigation Paperwork:* The SF86 is the standard form created to help evaluate whether someone can be trusted with classified information or to occupy a national security sensitive position. Many of the positions on boards and commissions are not sensitive and do not require access to classified information. The Working Group recommends that candidates for part-time positions on boards and commissions that do not require a security clearance should fill out the far less extensive SF85 for non-sensitive positions or the SF85P for “public trust” positions, along with a comparably pared down 86 Supplement.

B. *Senate Questionnaires:* Certain Senate committees have already taken steps to design a separate questionnaire, more limited in scope, for nominees for particular part-time PAS positions, and the Working Group recommends that this practice be expanded and more widely adopted so that, where appropriate, both background and financial disclosure questions reflect the part-time nature of the position at hand.

4. **Build an Electronic System with a “Smart Form”**

The Working Group has developed the requirements and design for an electronic system with a *Smart Form*, which, when coupled with the adoption of a common set of core questions, would enable a candidate to “answer all vetting questions one way, at a single time”⁶ and dramatically streamline the PAS paperwork process. Similar to tax filing software, the system would guide PAS candidates through a series of questions that, when answered, would automatically populate the various forms. Assuming adoption of the set of core questions, we estimate that design and development of the electronic system will take 8-12 months, and will cost \$5 million to develop, with annual operating expenses of \$1 million. This investment of time and money is eminently worthwhile if the executive branch and a critical mass of the Senate Committees have agreed to adopt a common set of core questions, as there is no question that the combined impact of a *Smart Form* and a common set of core questions would significantly streamline the completion and delivery of the paperwork required of PAS nominees.



In this report, the Working Group makes recommendations that will streamline the process for nominees, whatever their political party, and get necessary information to all of the decision makers more expeditiously and effectively. With concerted action, improvements can be implemented by both branches soon and in time for the inevitable spate of nominations beginning in January 2013, regardless of who is elected. We therefore recommend focusing first on the recommendations that both the White House and the Senate Committees individually or together can move on quickly, specifically working to adopt a common set of core questions, to tier the scrutiny applied to part-time positions on boards and commissions based on the nature of the position, and to revise individual White House and Senate questions

6. Presidential Appointment Efficiency and Streamlining Act of 2011, Pub. L. No. 112-166, § 4, 126 Stat. 1283, 1293 (2012).

STREAMLINING PAPERWORK FOR EXECUTIVE NOMINATIONS

to reduce unnecessary burden as soon as possible and no later than when the Senate convenes for the 113th Congress. Our meetings with Senate Committees make us optimistic about the prospect for reform, and we feel confident that the ongoing cooperative process will result in the improvement and implementation of the Working Group's recommendations.

We are at an important moment in the history of the Presidential nominations process. When Congress passed the Presidential Appointment Efficiency and Streamlining Act of 2011, and the White House eliminated the Personal Data Statement, each did so with the simple, nonpartisan goal of filling leadership positions in the Federal Government more effectively and expeditiously. The Working Group offers the recommendations in this report with this same goal in mind. We urge all parties to consider, refine, and adopt these recommendations, and we stand ready to assist in this ongoing process.



Background

The Working Group's Mandate

The Presidential Appointment Efficiency and Streamlining Act of 2011, which the President signed into law on August 10, 2012, created the Working Group on Streamlining Paperwork for Executive Nominations to recommend improvements to the paperwork and background investigations required of Presidential nominees who require Senate confirmation. The bipartisan measure directed the Working Group to conduct two studies culminating in reports to the President, the Senate Committee on Homeland Security & Governmental Affairs, and the Senate Committee on Rules & Administration. The first report, due 90 days after the enactment of the Act (November 8, 2012), is to make recommendations for streamlining paperwork; the second, due 180 days later (May 7, 2013), is to review background investigation requirements for PAS nominees. Senator Lamar Alexander, one of the Senators who introduced the legislation, described the reports as:

an effort between the Senate and the Executive to take a look at streamlining the process so that we can staff the government more quickly, so we can stop wasting so much time here in duplicative ways, so we can stop the expense of that wasted time, and so we can treat with respect the men and women any President invites to become a member of the administration.⁷

Congress set forth its expectations for this first report with specificity, mandating that it include:

- (i) recommendations for the streamlining of paperwork required for executive nominations; and
- (ii) a detailed plan for the creation and implementation of an electronic system for collecting and distributing background information from potential and actual Presidential nominees for positions which require appointment by and with the advice and consent of the Senate.⁸

This first report responds to these directives by making concrete recommendations to streamline the paperwork and build an electronic system. Both sets of recommendations are essential to achieving meaningful reform. While technology can facilitate the process by enabling nominees to answer identical questions only once and reduce inconsistent answers, it cannot alone eliminate the duplication and unnecessary burden built into the current system. Fundamental streamlining of the process will only be achieved if the White House and the various Senate Committees work together to reduce the current duplication, overlap, and unnecessary burden of questions posed to PAS candidates. Streamlined questions and the creation of an electronic system will enable candidates to complete forms more quickly, the executive branch to finish its vetting process sooner, and the Senate to receive and consider a nomination in less time. All parties will benefit: the nominee's experience will be less unnecessarily

7. 157 CONG. REC. S3991, S4007 (daily ed. June 22, 2011) (statement of Sen. Lamar Alexander).

8. Presidential Appointment Efficiency and Streamlining Act of 2011, Pub. L. No. 112-166, § 4, 126 Stat. 1283, 1292-94 (2012).

time-consuming and onerous, and the executive branch and Senate Committees will get the information they need more expeditiously.

The Problem

As HSGAC stated in its June 21, 2011, Report on the Presidential Appointment Efficiency and Streamlining Act of 2011, “[t]he need for reforms in the federal appointments process is not a new topic.”⁹ Indeed, it is decades old. The Committee noted that “[i]n the past three decades, an abundance of commissions, academics, think tanks, and good government groups have turned their sights on this problem.”¹⁰ The Committee Report summarizes their consensus findings as follows: “These groups have consistently found that the process for identifying, nominating, and confirming an individual to a Senate-confirmed position has gradually lengthened, become more burdensome, and has discouraged qualified individuals from seeking nominations.”¹¹

Many have deemed this process a “gotcha game,” which Senator Alexander lamented quite succinctly: “Too often the confirmation process has degenerated into a time-consuming, unfair ordeal that creates an ‘innocent until nominated’ syndrome.”¹² This is not a system designed to draw the best and the brightest into government service. As Senator Joseph Lieberman remarked, “if we don’t fix what is broken in this system, I fear we risk discouraging some of our Nation’s most talented individuals from accepting nominations, thus leaving important positions unfilled.”¹³

Our Nation’s interest demands that we staff the Federal Government promptly with the most able and qualified public servants, regardless of which party is in power. Two examples of failures to do this at critical times in the country’s recent history are often cited in the literature. First, President Obama’s Secretary of the Treasury had to operate without other senior appointees in the Treasury Department at the height of the financial crisis.¹⁴ Second, as the 9/11 Commission recognized in its report, President George W. Bush’s Administration did not have its national security team, including critical subcabinet

9. S. REP. NO. 112-24, at 4 (2012).

10. *Id.* at 4-5 (“These include: the National Academy of Public Administration (in 1983 and 1985); the National Commission on the Public Service (1989 and 2003); the President’s Commission on the Federal Appointments Process (1990); the National Academies of Sciences and Engineering and the Institute of Medicine (1992); the Twentieth Century Fund (1996); the Brookings Institution’s Presidential Appointee Initiative (co-chaired by former Senator Nancy Kassebaum and former Director of the Office of Management and Budget Franklin Raines) (2001). More recently, the Partnership for Public Service has looked closely at these issues, as has the Commission to Reform the Federal Appointments Process, a joint effort of the Aspen Institute and Rockefeller Foundation, co-chaired by Clay Johnson, former Assistant to the President for Presidential Personnel, Mack McLarty, former White House Chief of Staff, and former Senators Bill Frist and Chuck Robb.”).

11. *Id.* at 5.

12. *Schumer, Alexander, Lieberman, Collins Announce House Passage Of Bipartisan Deal To Streamline Senate Confirmation Process—Legislation Now Heads To President’s Desk* (July 31, 2012), available at <http://www.lieberman.senate.gov/index.cfm/news-events/news/2012/7/>.

13. 157 CONG. REC. S1978, 1989 (daily ed. March 30, 2011) (statement of Sen. Joseph Lieberman).

14. *See id.* at 1986; *see also Eliminating the Bottlenecks: Streamlining the Nominations Process: Hearing Before the S. Comm. on Homeland Sec. and Governmental Affairs*, 112th Cong. 1 (2011) (statement of Max Stier, President and CEO, Partnership for Public Service); WILLIAM A. GALSTON AND E.J. DIONNE, JR., *A HALF-EMPTY GOVERNMENT CAN’T GOVERN: WHY EVERYONE WANTS TO FIX THE APPOINTMENTS PROCESS, WHY IT NEVER HAPPENS, AND HOW WE CAN GET IT DONE 1* (Brookings Institution, December 14, 2010), available at <http://www.brookings.edu/research/papers/2010/12/14-appointments-galston-dionne>.

officials, confirmed and on the job until at least six months after the Administration took office.¹⁵ It is particularly unacceptable to have only a partially staffed Federal Government during times of crisis, but there is a need for senior leadership under any circumstances. Important policies, decisions, and initiatives in every federal agency can be delayed, often at great cost, pending the appointment of leadership.¹⁶

The Presidential Appointment Efficiency and Streamlining Act of 2011 was a significant step in addressing bottlenecks in the system. Eliminating the need for Senate confirmation of 169 nominees to lower profile, part-time or junior positions freed Senate resources to move the remaining nominees through the system at a faster pace. Congress should be commended for taking this action.

The next step is to streamline the process for the remaining estimated 1,152 PAS nominees.¹⁷ A number of factors influence the pace of the PAS nomination and confirmation process. Extensive paperwork, the desire to obtain the maximum amount of information for fear of missing something that becomes the newest scandal, resource constraints that limit the number of individuals who can be vetted at any one time, and, of course, politics, all contribute to the lengthy timeline. As Senator Charles Schumer said in his remarks on the Act, “the confirmation process has often become dangerously close to being gridlocked.”¹⁸ While a call on both branches to ratchet back the political gamesmanship involved in the appointment process might be in order, such a rallying cry is beyond the scope of the Working Group’s mandate. Our role is to make recommendations for improving the often unnecessarily onerous, time-consuming process of filling out the numerous forms that the Senate and the White House require of potential Presidential appointees, while ensuring that each receives the critical information it needs to evaluate the suitability, character, and viability of candidates for our highest offices.

By streamlining the nominations process, we can expedite delivery of essential information to executive branch and Senate officials while saving some of the Nation’s most accomplished corporate and civic leaders many of the countless frustrating hours answering duplicative and unnecessarily onerous questions that can follow the honorable decision to raise one’s hand in service to the country. We can do better for our government and our public servants.

The Forms Required for Nomination and Confirmation

The basic forms to be completed by a candidate for a PAS position have varied little across recent administrations. The major forms and their uses are as follows:

- **Standard Form 86 Questionnaire for National Security Positions (SF86).** All PAS candidates currently complete the SF86, which is used to evaluate a candidate’s fitness to be trusted in a position that may affect national security and could entail access to classified information.¹⁹

15. NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT, 422 (2004).

16. See, e.g., Anne Joseph O’Connell, Vacant Offices: Delays in Staffing Top Agency Positions, 82 S. CAL. L. REV. 913, 937-38 (2009) (“Vacancies in key executive agency positions have several deleterious consequences for policymaking. These effects include agency inaction, confusion among nonpolitical workers, and decreased agency accountability.”).

17. The estimated total number of PAS positions excludes those that no longer require Senate confirmation pursuant to the Presidential Appointment Efficiency and Streamlining Act of 2011, as well as nominees for judicial appointment, U.S. Attorney, U.S. Marshal, and military or foreign service officer.

18. 157 CONG. REC. S1978, 1988 (daily ed. March 30, 2011) (statement of Sen. Charles Schumer).

19. PAS nominees are only a small portion of the government employees and contractors who must complete the SF86; any government employee or contractor who needs a security clearance fills out the SF86.

Use of the SF86 began in 1953 following President Dwight D. Eisenhower's signing of Executive Order 10450, which instructed government agencies to investigate employees and prospective employees to determine whether their employment in the federal service "is clearly consistent with the interests of the national security."²⁰

The Suitability and Security Clearance Performance and Accountability Council (PAC) oversees the content of the SF86. Established by Executive Order 13467 in 2008, the PAC is chaired by the Deputy Director for Management in the Office of Management and Budget and includes the Director of OPM, who serves as the Suitability Executive Agent, and the DNI, who serves as the Security Executive Agent.²¹ As part of its mandate to oversee the investigative and adjudicative processes for government employees and contractors in sensitive positions or with access to classified materials, the PAC oversees changes to the SF86.

Candidates for non-PAS government positions who do not need a security clearance and whose positions are not national-security sensitive may be required to complete an SF85 for non-sensitive positions or an SF85P for "public trust" positions. These forms seek less information from the filer and require less time to complete than the SF86. The PAC also oversees changes to the SF85 and SF85P.

The SF86, 85P, and 85 are all automated. Candidates fill out the relevant form through the Electronic Questionnaires for Investigation Processing (e-QIP) system operated by OPM. The e-QIP system allows candidates to complete the various security questions at their own pace, storing their answers in a secure database before electronically signing their completed form and submitting it to the FBI.

The FBI uses the SF86 to conduct background investigations of PAS candidates. Once the background investigation is complete, the FBI prepares a background investigation report that is delivered to the White House. The background investigation report contains sensitive and personal information, and its distribution is very limited.

- **Supplement to Standard Form 86 (86 Supplement).** Several administrations have used an 86 Supplement to pose additional focused questions to candidates regarding their suitability for PAS positions. Revised by different administrations, the 86 Supplement is a White House document used to vet candidates that is provided to the FBI to assist in their background investigation. Topics addressed by the 86 Supplement now and in previous administrations include, among others, criminal history, memberships and associations, and civil litigation. Candidates fill out the 86 Supplement using standard word-processing software.
- **OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report (OGE278).** In 1978, Congress passed the Ethics in Government Act, which provided detailed instructions for the disclosure of financial information by certain executive branch employees, including all full-time PAS nominees. The purpose of the disclosure is to identify and rectify any potential conflicts of interest that a filer might have, including personal assets that might be affected

20. Exec. Order No. 10,450, 18 Fed. Reg. 24893 (April 27, 1953).

21. Exec. Order No. 13,467, 73 Fed. Reg. 38103 (July 2, 2008).

by decisions made by the filer while in office, arrangements for future employment, and positions held outside the government. The Office of Government Ethics developed the OGE278 to capture Congress' detailed disclosure requirements in a form, and almost any change to the content of the form would require legislation.

PAS candidates for part-time positions (boards and commissions) who serve for 60 days or less during a calendar year—nearly 30 percent of PAS positions—are not required to fill out the OGE278.²² For those nominees, OGE requires the more limited OGE Form 450, Confidential Financial Disclosure Report.

PAS candidates currently complete the OGE278 on a fillable, savable PDF or Excel file. Once complete, they submit a scanned signature file via email or an original in hard copy. While several federal agencies have employed various technology solutions to assist OGE278 filers, no government-wide or EOP system currently exists to automate the OGE278 process for every filer. The Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) requires OGE to develop systems to enable electronic filing of the OGE278, and OGE is in the very early stages of developing an electronic system available for use government-wide.

The candidate's draft OGE278 is reviewed by OGE, the Designated Agency Ethics Official in the agency associated with the relevant PAS position, and the White House ethics team. The review process generally entails a number of communications with the candidate and revisions of the form. The candidate will often provide additional information and revise the draft while finalizing an ethics agreement, addressed to the relevant agency and signed by the candidate, which outlines the steps that the candidate has agreed to take in accordance with the Ethics in Government Act in order to resolve all identified potential conflicts. Among other things, the ethics agreement spells out the candidate's agreement to divest any holdings that present a conflict of interest and identifies any matters that require recusal due to the nominee's affiliations or previous work. The candidate then finalizes the OGE278 and it is certified by the agency ethics official and OGE. If the candidate is nominated, OGE is required by law to send the certified OGE278 to the relevant Senate Committee with a cover letter "expressing the [OGE] Director's opinion whether... the nominee has complied with all applicable conflict laws and regulations."²³ OGE includes the ethics agreement with its transmission to the Senate Committee.

- **White House Personal Data Statement (WHPDS).** Administrations have used various versions of a WHPDS. It has at times been the first form that a potential nominee is asked to complete and has included a wide range of questions, including sensitive questions that could preclude nomination. Experts have cited the WHPDS as a significant source of overlap in the executive branch inquiry.²⁴ The Obama Administration does not currently use a WHPDS.

22. Some appointees occupy a full-time PAS position and a second part-time PAS position on a board or commission. Both positions are included in this calculation where the two positions are separately confirmed.

23. 5 C.F.R. § 2634.605(c)(3) (2012).

24. Terry Sullivan, *Repetitiveness, Redundancy, and Reform: Rationalizing the Inquiry of Presidential Appointees*, in INNOCENT UNTIL NOMINATED: THE BREAKDOWN OF THE PRESIDENTIAL APPOINTMENTS PROCESS 200-01 (Calvin G. Mackenzie ed., 2001).

- **Senate Committee Questionnaires.** Each of the 17 Senate Committees with jurisdiction over PAS nominees has its own questionnaire, and some have created more than one form to be used for different positions. Generally speaking, the Committee questionnaires cover a wide range of topics from biographical information to criminal history to financial disclosure to honors and awards, and are used by the Committees in their review of PAS nominees to determine their suitability for confirmation. Each individual Committee develops its own questionnaire, which is made available to nominees in standard, savable word processing or PDF format.

In addition to the forms discussed above, candidates must complete certain consent forms and, for full-time positions, an ethics pledge, along with providing fingerprints (often taken at a local police station) and, for some positions, copies of tax returns.

Based on the review of all these documents and the results of the vet, the background investigation, and the ethics review, the White House decides whether to nominate a candidate. If a candidate is nominated, the White House makes a public announcement and notifies the relevant Senate Committee of the nomination. The announcement typically includes a short biography summarizing the candidate's employment history and accomplishments. Soon after the nomination, OGE delivers to the Committee the nominee's OGE278 along with the signed ethics agreement and OGE's letter opining that the nominee has complied with all applicable conflict laws and regulations.²⁵ The Committee also receives the answers to its questionnaire soon after the nomination once it has been completed by the nominee.

Process and Findings

The Working Group is comprised of a bipartisan group of current and former government officials with expertise in the nominations process. It includes representatives of every government stakeholder in the process—former Senators, individuals who have run the personnel process in different administrations, current and former directors of OPM, representatives of the FBI and OGE, and current and former senior staff in the Executive Office of the President. Several of the Working Group members have themselves served in PAS positions.

The Working Group's study of the paperwork required by the executive appointments process occurred expeditiously due to the 90-day statutory deadline, encompassing a detailed analysis of the forms that PAS nominees must complete; a review of major literature on reforming the appointments process; interviews with experts who have written or spoken on the subject, including former Senators, former White House staff, leaders of good government groups, and academics (a list of interviewees is attached at the end of Appendix C); and extensive conversations with stakeholders, including consultation with Senators and Senate staff, White House staff, and personnel at relevant agencies, including the FBI, OPM, and OGE.²⁶

25. Although there is no mandated timeframe for OGE's transmission of the certified OGE278 and accompanying documents, it is generally delivered within five days for nominees for full-time positions, although it occasionally takes longer.

26. The Working Group did not review the nomination and confirmation process for judicial appointments, U.S. Attorneys, U.S. Marshals, or military or foreign service officers, as these follow a slightly different process from other PAS candidates. However, the recommendations for streamlining set forth in this report should be considered for those processes where they are applicable.

The observations of the experts and stakeholders we consulted were consistent with the points made regularly in the literature. Indeed the consensus on both the need for reform and the steps necessary to improve the process was striking. While a number of suggestions for improving the nominations process exceeded the Working Group's mandate, the consensus that drove our recommendations can be summarized as follows. (Further detail is included in Appendix C.) The current system seeks to eliminate risk wherever possible, resulting in a tendency to add ever more broadly phrased questions for nominees so as not to miss any potential issues. Questions regarding common issues in a nominee's background are framed slightly differently across the forms, creating a potential "gotcha" scenario where the nominee is forced to defend innocent or immaterial mistakes or differences in answers. In addition, some of the questions seem unduly burdensome and not necessary to the inquiry at hand. The Administration and the Senate should work together to standardize the basic information requested on the various forms and arrive at a common set of core questions tailored to provide each of the parties the basic information they need to assess the candidate. Each of the players should evaluate each question on their forms and ask whether it is phrased so as to elicit the information that they care about as opposed to information that is either unnecessary to their inquiry or will not affect whether a candidate is nominated or confirmed.

The Working Group embarked upon an analysis of the major forms used in the appointments process in order to understand in detail the level of overlap and redundancy. The forms included the SF86, the 86 Supplement, the OGE278, and 17 Senate Committee questionnaires (Agriculture, Nutrition, & Forestry; Armed Services; Banking, Housing & Urban Affairs; Budget; Commerce, Science & Transportation; Energy & Natural Resources; Environment & Public Works; Finance; Foreign Affairs; Health, Education, Labor & Pensions; Homeland Security & Government Affairs; Indian Affairs; Intelligence; Judiciary; Rules & Administration; Small Business & Entrepreneurship; Veterans' Affairs).²⁷ This analysis revealed some overlap across executive branch forms and a substantial amount of overlap between the information requested by the Senate questionnaires and that requested by the executive branch forms (SF86, 86 Supplement, and OGE278). This was not intentional; it is simply the result of each entity asking for the information it needs. All of the forms call for much the same basic biographical information (name, date of birth, address, etc.). In addition, a considerable number of questions focus on the same "topics" (e.g., criminal convictions, tax compliance, memberships, etc.) and seek essentially the same information, although they are worded in slightly varying ways. Our findings on overlap across the forms can be broadly summarized as follows:

Overlap Between Different Executive Branch Forms.²⁸ There is currently only minimal overlap between the various executive branch forms.²⁹ The overlap between the SF86 and OGE278 is almost exclusively in the area of basic biographical information (e.g., name and address). Moreover, since tens of thousands of non-PAS officials complete either the SF86 or the OGE278, but not both, the

27. Although some Committees use different questionnaires for different nominees, in each case the Working Group analyzed the form used for nominees for most PAS non-judicial, civilian positions.

28. "Overlap" occurs when two questions call for some of the same information, thereby requiring the candidate to repeat some or all of the answer to one question in the answer to the other. While identical questions overlap completely, other questions share only discrete areas of overlap.

29. Previous overlap across executive branch forms has been significantly reduced by the current Administration's elimination of the White House Personal Data Statement. As noted in the recommendation section below, the Working Group urges future Administrations not to re-adopt a Personal Data Statement or other similarly redundant form.

minimal duplication cannot be eliminated. Similarly, limited overlap exists between the OGE278 and the 86 Supplement (largely on the topic of outside positions previously held by the nominee); while efforts should be made to eliminate even this minimal overlap, it will have only a concomitantly limited impact. Finally, while both the SF86 and the 86 Supplement have questions on a handful of similar topics (e.g., criminal convictions, charges, and investigations; civil litigation; tax compliance; and cohabitant citizenship and immigration information), many of the 86 Supplement's questions augment (rather than repeat) those on the SF86, and any overlap helps protect a candidate's privacy given the distinct functions and end users of the forms.

Overlap Between the Executive Forms and the Senate Questionnaires.³⁰ There is considerable overlap between information requested by the Senate in its 17 questionnaires and that sought by the executive branch in its SF86, 86 Supplement, and OGE278. The two branches ask almost identical questions about basic biographical information as well as similar questions on 17 additional topics that fall into two broad categories: suitability and conflict of interest. In fact, basic biographical information and the 17 additional topics make up an average of 60% of the total topics addressed by each of the major executive and Senate forms currently in use.³¹ The 17 substantive topics covered by both the executive forms and nearly all of the 17 Senate questionnaires are:³²

Biographical Information:

- Name and maiden/former name(s), position to which nominated, date of nomination, date and place of birth, residential and office addresses, marital status, spouse's name and maiden/former name(s), children's names and ages;³³
- education;
- employment;
- publications;
- memberships;
- political activities;

30. While there is considerable overlap across different Senate questionnaires, this overlap is not particularly relevant to streamlining paperwork because only a few nominees are required to appear before more than one Committee and thus will rarely have to enter the same information on more than one Senate questionnaire.

31. Depending on the particular form, the core topics comprise between 36% and 82% of the topics addressed. The SF86 is the form with the smallest percentage of topics in the core (36%), which is unsurprising in light of its length and security-related questions; one of the Senate questionnaires had 82% of its topics in the core.

32. To analyze overlap, the Working Group divided the questions on the forms into distinct topics which it then compared, rather than simply comparing discrete questions because of the variation in how questions were posed on the different forms. For example, one form would cover a topic by asking one question with numerous elements, while another would approach the same topic by phrasing the elements as individual questions themselves; we concluded that the best way to determine how the two overlapped was to compare in the aggregate all of the questions regarding a particular topic.

33. The Working Group classified all of the individual questions in this bullet regarding name, date of birth, etc. under a single topic called basic biographical information.

Suitability:

- criminal convictions;
- criminal investigations, citations, charges, and arrests;
- civil litigation and administrative or legislative proceedings;
- breach of professional ethics;
- tax compliance;

Conflict of Interest:

- outside positions;
- agreements or arrangements;
- assets;
- liabilities;
- income; and
- gifts and travel reimbursements.

The questions asked about each of these topics are similar but not identical across all of the forms, and solicit slightly varying and overlapping information. Consider, for example, the similar questions on breach of professional ethics posed by the 86 Supplement and one of the Senate Committee questionnaires set forth in the following table:

Breach of Professional Ethics	
86 Supplement	Sample Senate Questionnaire
Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or are you currently the subject of a formal complaint procedure in any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please give full details.	Have you ever been the subject of a complaint to any court, administrative agency, bar association, disciplinary committee, or other professional group for a breach of ethics, unprofessional conduct or a violation of any rule of practice? If so, provide full details.

The two questions in the table above are not identical, but they are nearly so, and they both appear aimed at eliciting the same essential information. At a minimum, nominees answering both questions must repeat information, but they must also determine where the questions differ and make sure their answers are both consistent and individually accurate.

Overlap can also be found between questions that are not quite so similar. To give just one example, the questions in the table below on outside positions as posed by the OGE278 and one of the Senate Committee questionnaires differ in both time frame and scope:

Outside Positions	
OGE278	Sample Senate Questionnaire
For the preceding two calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.	List below all corporations, partnerships, foundations, trusts, or other entities toward which you or your spouse have fiduciary obligations or in which you or your spouse have held directorships or other positions of trust during the past five years.

Both of the questions in the table above are intended to discover any positions outside the government that may pose a conflict of interest for a nominee. But nominees will need to scrutinize the subtle differences between the questions to determine which positions to list on one form but not the other. Such overlapping questions occur on numerous topics, leading one observer of the nominations process to write that the need to customize answers to such overlapping questions “gives [nominees] an impression of the process as a senseless dance seemingly orchestrated merely for the sake of making them dance.”³⁴

Clearly, introducing a standard set of core questions across executive and legislative forms would significantly “streamlin[e] the paperwork involved in the nominations process.”³⁵ Eliminating the wasted time caused by making nominees retype answers on multiple forms, wrestle with exactly what information may be asked for by one question but not another, and reconcile their answers on the various forms to avoid specious suggestions of deliberate inconsistency will expedite the process and reduce unnecessary burden on nominees.

The Working Group and White House staff have engaged in an ongoing dialogue with Senate Committees to explore ways to reduce overlap across the Senate and executive forms. Our first Senate meeting was with Senator Alexander and his staff, followed quickly by a meeting with senior staff for the Majority and Minority Leaders as well as HSGAC and Rules. Soon thereafter, we met with three of the committees that handle some of the greatest numbers of nominations: the Committee on Health, Education, Labor & Pensions, the Finance Committee, and the Judiciary Committee. At these initial meetings, we sought input into the Working Group’s process and recommendations. Staff indicated their receptiveness to working together to standardize common questions and expressed a desire for the Working Group to come back to them with a proposed set of core questions. We did just that, and then proceeded to

34. Terry Sullivan, Reducing the Adversarial Burden on Presidential Appointees: Feasible Strategies for Fixing the Presidential Appointments Process, 69 PUB. ADMIN. REV 1124, 1127 (2009).

35. Presidential Appointment Efficiency and Streamlining Act of 2011, Pub. L. No. 112-166, § 4, 126 Stat. 1283, 1293 (2012).

schedule and hold meetings with all of the Committees that review PAS nominees to discuss our proposed set of core questions, which Committee staff are in the process of examining and helping to refine.³⁶ These encouraging meetings have begun an ongoing cooperative process between the Working Group, the Senate Committees, and the White House, which we feel confident will result in the improvement and implementation of the Working Group's proposed set of core questions.

36. At the time that this report went to print on November 5, 2012, the Working Group had met with 14 of the 17 Senate committees and had meetings scheduled with the remaining three prior to the November 8, 2012, delivery of this report.



Recommendations

In developing recommendations to streamline the paperwork involved in the executive nominations process, the Working Group was guided by the following principles:

- Decision makers in both the executive and legislative branches must have access to the information necessary to evaluate a nominee's qualifications and suitability for a position;
- The nomination and confirmation process should be expedited and minimize confusion and redundancy;
- Questions should be posed in plain language and in ways that avoid unnecessary burden on nominees;
- Recommendations to improve the process must not add complexity, confusion, or additional burden into the process; and
- Recommendations should include both short-term and longer-term reforms.

While some of these principles can at times be in tension, the Working Group believes that the following recommendations promote a harmonious balance among them.³⁷

1. Eliminate Repetition and Reduce Overlapping Questions

A. Develop a common set of core questions for the executive branch and each Senate Committee to use, while allowing each to ask supplemental questions.

The single most important step that the executive branch and Senate could take to expedite and streamline the nominations paperwork would be to work together to arrive at a common set of core questions that each would use in place of their varying questions on core topics. Senator Susan Collins endorsed this idea in her remarks on the Presidential Appointment Efficiency and Streamlining Act of 2011:

A second area ripe for reform is to develop a consistent, common form for the nominees to complete in order to streamline the process, save time, and increase accuracy. This also would reduce the cost and burden on nominees. The White House, Office of Government Ethics, and the Senate need to work together to reconcile the various questions that are asked of nominees.³⁸

When this idea was raised with Senate staff, they asked the Working Group to develop a proposed set of core questions for consideration, which we have done. A copy of the Working Group's proposed core is attached as Appendix B, and has been discussed at meetings between the White House and Senate Committees. The reception has been quite positive; with continued, concerted effort, the branches could reach agreement on a common set of core ques-

37. The Working Group's recommendations with regard to each form are summarized in a chart in Appendix A.

38. 157 CONG REC S1978, 1990 (daily ed. March 30, 2011) (statement of Sen. Susan Collins).

tions quite expeditiously. Reducing unnecessary duplication will dramatically speed up the paperwork process for everyone involved and largely address the “gotcha game” phenomenon. We recommend that the inter-branch meetings continue with a goal of having a common set of core questions in place as soon as possible, but no later than when the Senate convenes for the 113th Congress.³⁹

To be clear, the Working Group is not recommending a comprehensive set of questions to be used by everyone in all instances. The executive branch and the Senate Committees each need certain information that is unique to their inquiries. We simply recommend that the branches agree on a subset of core questions that cover the information that they both need. Each could of course still pose additional questions attuned to their individual needs. Section A of each Senate Committee questionnaire, for example, would include the common set of core questions, while Section B would include any additional questions asked by the Committee.⁴⁰ Similarly, the 86 Supplement would be revised to accommodate the core while introducing any supplemental questions. Supplemental questions could include additional questions on topics outside the core as well as any additional questions needed on core topics themselves framed in as narrow a manner as possible. If, however, an executive branch entity or Senate Committee were to simply supplement the core with all of the questions it currently asks on those topics that are not specifically covered in the core, little streamlining would be accomplished. The Working Group recommends that the executive branch and each Senate Committee use the creation of the core as an opportunity to think carefully about what, if any, supplemental information they genuinely need.

A “common set of core questions” is analogous to the common application that hundreds of four-year colleges have adopted. In the past, most colleges had their own applications, all with different questions trying to elicit the information necessary to determine the qualifications of prospective students. Each prospective student applying to more than one college had to spend significant time tailoring essays to accommodate the slight differences between similar questions. Now, most colleges have agreed to accept one common application that each then supplements with additional questions particular to their individual inquiry. Similarly, the executive branch and the various Senate Committees could agree to core questions that each could in turn supplement with additional questions necessary to their particular evaluation of PAS nominees.

The Working Group recommends that the set of core questions cover the biographical, suitability, and conflict of interest topics summarized above which are currently asked by both the executive branch and all, or nearly all, Senate questionnaires: education; employment; publications; memberships; political activity; criminal convictions; criminal investigations, citations, charges, and arrests; civil litigation and administrative or legislative proceedings; breach of professional ethics; tax compliance; outside

39. By recommending a common set of core questions, the Working Group does not intend to change the FBI’s background investigation process. Accordingly, when a core question asks for more information than that covered by the SF86, the executive branch’s adoption of the core question would occur by modifying the 86 Supplement rather than the SF86 itself.

40. During meetings on the core, staff from certain Senate Committees expressed a desire for nominees to deliver their answers to the core (Section A) as soon as possible and then send their answers to the remaining questions (Section B) separately, while staff from other Committees said they would prefer to receive both Sections at the same time. The White House could accommodate either, and the creation of a *Smart Form* would make it even easier to deliver the Senate Questionnaires according to the preferences of the Committees. Regardless, the questions would continue to be divided into public and confidential sections pursuant to Committee practice.

positions; agreements or arrangements; assets; liabilities; income; and gifts and travel reimbursements.⁴¹ The executive branch and the Senate Committees would then revise their forms to include the core set of questions, along with any additional questions. Absent such revisions to the existing forms, the set of core questions would simply add work and delay to the process; the benefits will only accrue if each party replaces the questions on these subjects in its current forms with the core questions, supplementing with other questions uniquely pertinent to the requester.

The Working Group's proposed set of core questions is intended to be a conversation starter, something concrete that the White House and Senate Committees can use to develop an agreed-upon set of core questions. It is not intended to be a definitive answer; the "right answer" is simply what works for both the White House and the Senate Committees that will reduce unnecessary duplication.

In developing the proposed core, the Working Group attempted to craft questions that elicited the core information sought by all of the entities. The questions are not simply a comprehensive aggregation of all the elements in the various questions on a particular topic. Rather, recognizing that some Committees need additional information because of the particular position at issue and that they will always be free to ask individualized questions, the proposed set is an effort to get at the basic information that appeared to be at the heart of the various questions.

Looking at the etymology of one of the core questions—criminal convictions—will help demonstrate our approach. The SF86, 86 Supplement, and all but one of the Senate questionnaires address candidates' criminal convictions.⁴² The questions that the nominees must currently answer on each of the forms vary. The SF86 asks, "Have you been convicted of or sentenced for a crime in any court?" In answering this question, PAS candidates must go back fifteen years or, in the case of nominees to cabinet and certain other high-profile positions, to age 18. In addition, the SF86 asks whether candidates have ever been incarcerated for one year or more, or if they have ever been convicted of "an offense involving domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common?" By contrast, the 86 Supplement and all of the Senate Committee questionnaires inquire about *any* criminal conviction that the nominee has *ever* committed (with the exception of the one Senate Committee questionnaire that does not address criminal convictions at all). In addition, one Senate Committee questionnaire requires a nominee to disclose convictions for "any partnership or closely held corporation or other entity in which you have an interest." Finally, some of the Committee questionnaires specifically exclude minor traffic offenses.

The Working Group proposes the following core question: "Since (and including) your 18th birthday, have you been convicted of or sentenced for a crime in any court?"

We believe that this proposed core question will harmonize the executive and legislative forms while getting all parties the information they need (and, in at least one case, more information than they

41. Also included in the proposed core is a topic on Honors and Awards. Although the executive forms do not require candidates to list their honors and awards, it is included in the proposed core because all of the Senate Committee questionnaires include a question on this topic.

42. In the core, as in nine of the 16 questionnaires to address criminal history, convictions are treated separately from investigations, citations, charges, and arrests.

currently require). The time frame—longer than that in the SF86 for some crimes but shorter than that in the 86 Supplement or most Senate questionnaires—reflects the fact that most States restrict access to juvenile criminal records while recognizing the relevance of adult criminal history without regard to time frame. We did not include convictions of entities associated with the nominee that did not explicitly involve allegations regarding the nominee because only one Senate Committee requested that information. That Committee could, however, include a supplemental question on entity convictions in Part B of its questionnaire if it found that information salient. Finally, we interpret the modifier “in any court” to exclude any minor traffic violations save those contested in court.

The Working Group encourages the White House and Senate Committees to continue consulting on a set of core questions with the goal of agreeing on and adopting a common core before the Senate convenes for the 113th Congress. We are optimistic that, with good faith effort, they can quickly agree on a robust set of core questions, and amend their forms accordingly. As they implement the core, we hope they will think carefully about exactly what additional information they need and tailor their supplemental questions to elicit targeted information that will impact a nominee’s selection or confirmation. Nowhere is this more true than in the area of conflicts of interest.

B. Reduce the 86 Supplement’s and Senate questionnaires’ duplication of questions covered by the nominee’s OGE278 and Ethics Agreement

If the White House and Senate Committees could take one action right now to streamline nominations paperwork—even before agreeing on a common core—it should be to eliminate questions on their own forms that call for information already disclosed by law on a nominee’s OGE-certified OGE278 and accompanying ethics agreement. In the words of the Bipartisan Policy Center in its letter praising the Presidential Appointment Efficiency and Streamlining Act of 2011: “[W]e hope that in the future the Senate will continue to work to improve the confirmation process by coordinating senate committee financial disclosure forms with the executive branch disclosure forms.”⁴³

As described above, the OGE278 is a creature of statute. It embodies the strictures of the Ethics in Government Act, requiring nominees to disclose information and conflicts of interest specified by the Act. The ethics agreement between the nominee and the relevant agency details the actions—such as recusals, divestitures, or resignations—that the nominee has agreed to take in order to remedy an actual or potential conflict of interest. OGE is required by law to transmit the completed OGE278 to the Senate along with a letter stating whether the nominee has complied with all applicable conflict laws and regulations. OGE also includes the ethics agreement with this transmittal.

Most of the conflict of interest questions asked in the White House’s 86 Supplement and the Senate Committee questionnaires call for information that is already disclosed on the nominee’s OGE-certified OGE278 and ethics agreement. For example, the OGE278, the 86 Supplement, and most Senate questionnaires require candidates to list information about outside positions, agreements, and arrangements. And most Senate Questionnaires ask for detailed information about income, assets, and liabilities that is largely covered by the OGE278 and ethics agreement. During meetings with the Working Group, staff for

43. 157 CONG. REC. S3991, S4000 (daily ed. June 22, 2011) (letter from the Bipartisan Policy Committee).

more than one Senate Committee expressed exasperation over the time and effort required to reconcile nominees' financial disclosures on the OGE278 with those on their own questionnaires.

Regardless of the outcome of the core set of questions, we recommend that both the White House and the Senate Committees revise their forms to eliminate questions that are encompassed by the mandated OGE278 and ethics agreement, and simply ask for any additional information they need that neither covers. A number of committees have already adopted this approach. Some ask nominees to simply attach their OGE278 and ethics agreement in response to questions about conflicts of interest and financial disclosure. Others ask candidates to supplement the information disclosed on the OGE278 with narrow additions relevant to their deliberations. The Working Group encourages other Committees to adopt one of these models.

C. Eliminate the use of a White House Personal Data Statement

The White House Office of Presidential Personnel has at times required candidates for PAS positions to complete a sometimes extensive questionnaire often referred to as the White House Personal Data Statement (WHPDS). The WHPDS has typically contained questions that are duplicative of questions in the SF86 and OGE278. The Obama Administration does not currently use a WHPDS, relying instead on oral interviews and the other paperwork involved in the vetting process. Discontinuing the use of the WHPDS eliminated much of the duplication and burden internal to the executive branch that experts have cited,⁴⁴ and the Working Group strongly recommends that future White House staff continue this practice and not require candidates for PAS positions to complete a personal data statement.

2. The Executive Branch and the Senate Committees Should Review Their Respective Forms and, Where Appropriate, Revise Questions to Reduce Unnecessary Burden on Nominees

In addition to the many questions across forms that are similar or identical and in need of rationalization, each of the executive branch forms and most, if not all, of the Senate forms include broad questions that are often burdensome to answer with unclear relevance to the inquiry at hand. The Working Group heard frequent complaints about certain questions that require extensive time and resources for candidates to answer where they did not see a clear need for the information. We recommend that the White House, the Suitability and Security Clearance Performance and Accountability Council (PAC), OGE, and the Senate Committees each review their forms carefully to see if they can more narrowly tailor questions to get vital information without imposing an undue burden on nominees. Burden could be mitigated, for example, by setting minimum disclosure amounts, limiting the time frames covered by questions, refining the type of information requested, or asking narrow questions that would only "trigger" additional questions for candidates who answer affirmatively.

The Working Group offers suggestions below on specific questions worthy of revision that interviewees repeatedly cited as being amongst the most unnecessarily burdensome. It is the responsibility of those

44. Terry Sullivan, *Repetitiveness, Redundancy, and Reform: Rationalizing the Inquiry of Presidential Appointees*, in INNOCENT UNTIL NOMINATED: THE BREAKDOWN OF THE PRESIDENTIAL APPOINTMENTS PROCESS 200-01 (Calvin G. Mackenzie ed., 2001).

with authority or oversight over the forms to change each form—the PAC and its Security Executive Agent (SF86), the White House (86 Supplement), the Senate Committees (Senate questionnaires), and OGE and Congress (OGE278)—to ensure that their forms are drafted to elicit the specific information they need, and no more. In light of the numerous nominations sure to come in 2013, it is particularly important that the White House and the various Senate Committees revise their forms as soon as possible. We stand ready to work with each of the parties in any way that would be helpful.

A. SF86

The Working Group recommends that the PAC direct the DNI, as the Security Executive Agent on the PAC, and the Director of OPM, as issuer of the form, to examine the SF86 questions with the goal of reducing, restructuring, or rewording questions where possible to reduce burden on nominees while still gathering the information necessary to make an appropriate assessment of the candidate's suitability for employment in a national security sensitive position and/or access to national security information.

SF86 questions meriting review, for example, are those on foreign travel and those asking for addresses of former residences of the candidate and addresses of former employers. Former nominees and experts on the appointments process frequently queried whether the extensive information requested by these questions was necessary to the suitability determination and vet.

Foreign Travel: PAS candidates must list any travel outside the United States in the past fifteen years (or since their 18th birthday for certain positions) on the SF86. They must detail dates of travel; any conferences, trade shows or meetings attended; and any subsequent contact with any foreign national as a result of any such conferences, trade shows or meetings. In a global economy where frequent, even weekly, business travel is not unusual, answering these questions can literally take weeks for some candidates. Questions about foreign travel have been included in the SF86 since its inception in 1953, when such travel was rare and thus an indication of potential espionage—a far cry from today when business and leisure routinely take people out of the country. That international travel by itself is no longer suspect activity can be gleaned from the SF86 itself, which now asks filers a series of follow-up questions, such as, “While traveling to or in this country, were you contacted by, or in contact with any person known or suspected of being involved or associated with foreign intelligence, terrorist, security, or military organizations?” and “While traveling to or in this country, were you contacted by, or in contact with anyone attempting to obtain classified information or unclassified, sensitive information?” The answers to these follow-up questions, or similar targeted questions, appear more relevant to the background investigation than do the precise dates of travel or the contacts with foreign nationals subsequent to conferences, trade shows, or meetings.

The PAC should direct the DNI and the Director of OPM to revise the SF86 to reduce unnecessary burden on filers. Revisions could perhaps require filers to list the countries that they have visited along with an *estimate* of the number of visits to each country and, if necessary, an *estimate* of the number of conferences, trade shows, and meetings attended in each country. Then, the filer could be required to answer the current follow-up questions on contact with foreign intelligence and the like. Filers could be spared the time-consuming exercise of detailing the dates of each trip, conference, trade show, and meeting and the subsequent contacts with foreign nationals. The background investigator could request that information during an interview with the filer if it is deemed relevant—for example, if the filer reveals

contacts with foreign intelligence or travel to countries on the State Department's list of state sponsors of terrorism. At the very least, consideration could be given to exempting disclosure of travel to certain countries, such as members of the North Atlantic Treaty Organization.⁴⁵

Addresses: Interviewees also cited as burdensome the SF86 requirement that filers list the addresses of the places they have lived for the past fifteen years (or since age 18 for certain positions) as well as addresses for former employers, which often requires digging through files to find street addresses for post-college apartments occupied for less than a year or trolling the internet for addresses of now-defunct companies. While this information may be of some value when attempting to identify the filer in certain databases or in reaching out to former employers, we recommend that consideration be given to whether the exact address is required for all prior addresses and employers listed on the form, or if city and state would generally be sufficient. Again, the background investigator could request more detailed information from the filer if it became necessary.

B. OGE278

The Ethics in Government Act of 1978 established the current public financial disclosure requirements for PAS candidates, Congressional representatives and staff, and approximately 27,000 executive branch filers.⁴⁶ Those requirements stand largely unchanged today. The OGE278 is the form created by OGE to capture this information from executive branch employees. Although Members of Congress disclose the same information, the purpose of their form is quite different from the purpose of the OGE278. Senators and Members of Congress need only disclose their conflicts of interest. Federal law does not require them to remedy those conflicts, leaving the voters to decide if a potential conflict should stand in the way of re-election. Executive branch employees, on the other hand, including PAS candidates, must remedy their actual or potential conflicts of interest, primarily through divestiture, recusal, a waiver, or resignation. In short, Congress has created a transparency regime for the legislative branch and a conflict removal regime for the executive branch.

Congress has several times asked OGE to recommend changes to the OGE278, including in two mandated reports that were submitted in 2001 and 2005. Each of these reports detailed changes that OGE recommended to reduce burden by eliminating requests for information not necessary to their conflicts of interest analysis. OGE has done what it can administratively to improve its disclosure forms and reduce unnecessary burden on filers, but the remaining recommendations would require Congress to amend the Ethics in Government Act. We recommend that Congress consult with OGE and amend the executive branch disclosure requirements to reduce or eliminate requests for information that are unnecessary to the conflict of interest analysis—a reform that would decrease unnecessary burden on nominees for

45. In addition to the United States, the members of NATO are Albania, Belgium, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, and the United Kingdom. See NATO Member Countries, available at http://www.nato.int/cps/en/SID-67AA81E1-9B043315/natolive/nato_countries.htm.

46. "In the executive branch, much attention, historically, has been given to the effect of the filing requirements on Presidential appointees. Such filers, however, are only a small subset of the approximately 20,000 executive branch public filers." OFFICE OF GOV'T ETHICS, REPORT TO CONGRESS EVALUATING THE FINANCIAL DISCLOSURE PROCESS FOR EMPLOYEES OF THE EXECUTIVE BRANCH, AND RECOMMENDING IMPROVEMENTS TO IT 1, n.1 (2005). According to information given to the Working Group by OGE, the number of non-PAS executive branch public filers has risen above 27,000.

PAS positions and help expedite the nominations process while still protecting the vital public interest of ensuring that public officials do not have conflicts of interest.

The Working Group highlights below two exemplary changes that would reduce unnecessary burden on candidates for PAS positions.

Investment Income: OGE, outside experts, and nominees themselves have noted that the requirement to report the source and amount of *investment income* exceeding \$200 is unnecessary to the analysis of whether a candidate has an actual or potential conflict of interest. It is the ownership of the asset and not its dividend or the profit from its sale that creates the conflict. Requiring filers to determine their basis in a sale—information that is frequently not easily accessible—is a burden unrelated to a regime focused on removing conflicts, given that an official is not required to do anything based on the disclosure of their investment income. Congress should consider eliminating this requirement for executive branch filers.⁴⁷

Minimum Disclosure: Much of the required content in the OGE278 dates back to the 1978 passage of the Ethics in Government Act. As a consequence, many of the minimum values meant to exclude disclosures too small to raise a conflict of interest have not been adjusted for inflation and are considerably out of date. Moreover, the minimum disclosure amounts vary confusingly for different categories.⁴⁸ Past reports from OGE, as well as several of the outside experts that we interviewed, made a number of recommendations to update and rationalize these varying minimum reporting values. The Working Group recommends that Congress update and rationalize the OGE278's minimum reporting requirements. Such a change would relieve PAS nominees, as well as the tens of thousands of other OGE278 filers, of the confusion and effort required to report items that are unlikely to raise a conflict of interest.

C. 86 Supplement

The 86 Supplement is intended to elicit information that might call into question a candidate's fitness for office that has not been captured in the candidate's SF86 and OGE278. Many of these questions will be eliminated if the executive branch and the Senate committees adopt a common set of core questions as recommended above. In the meantime, however, the White House should take immediate steps to reduce unnecessary burden on candidates by reviewing and, where appropriate, revising questions on the 86 Supplement to obtain the necessary information in a targeted way.

The Working Group specifically suggests that the White House revise the 86 Supplement's questions on memberships and investigations to align with those included in the proposed set of core questions. The question on memberships, for example, calls for candidates to "provide all affiliations as a member or office holder of any social clubs or organizations since age 18." This question leaves some nominees wondering if they should include their auto-repair membership, discount club, sports teams, or

47. Should Congress eliminate the requirement to report the source and amount of *investment income*, OGE278 filers will still have to report the source and amount of *earned* income as well as the ownership and value of investment *assets* that they continue to hold.

48. Minimum values currently include assets valued at \$1,000 or more, or which generated \$200 in income; earned income exceeding \$200 for a nominee and \$1,000 for a nominee's spouse; honoraria over \$200 for a nominee or spouse; transactions exceeding \$1,000; gifts and travel-related reimbursements above \$350; liabilities above \$10,000; and compensation above \$5,000.

participation in parent-teacher associations. We recommend excluding these uncontroversial groups, as done in the proposed core. Similarly, the question requiring nominees to provide information on investigations into entities associated with the candidate could be more narrowly tailored to exclude investigations into an entity associated with the candidate that did not involve actions taken by the candidate.

D. Senate Questionnaires

Senate Committee questionnaires will continue to include questions on topics outside the proposed core. The Working Group recommends that the Committees review these questions to ensure that they are narrowly tailored to obtain the information needed without imposing unnecessary burden upon nominees. We highlight below questions frequently raised with us that particularly merit attention.

Speeches: Nominees have pointed out that the requirement to list and provide copies, transcripts, or notes for past speeches can entail hours spent collecting information from their past which may or may not be pertinent to the PAS position they are nominated to fill. Senate Committee requests for nominees' speeches vary in time frame and scope, with some Committees asking for only recent speeches or speeches relevant to the particular nomination and other Committees requiring all speeches.⁴⁹ We encourage Committees that ask the more burdensome questions to consider tailoring their requests, depending upon the nature and profile of the position, to focus on speeches relevant to the particular position and within a reasonable period of time.

Interviews: A few Committees require nominees to provide information on interviews given to the media. A representative question is, "List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and copies of the clips or transcripts of these interviews where they are available to you." As with questions on speeches, the Working Group suggests that Committees consider focusing their requests on interviews relevant to the particular nomination within a reasonable time frame.

Net Worth Statements: The Committee question cited most frequently by experts, stakeholders, and former nominees as extremely burdensome is the request for a net worth statement. Many nominees devote more time and resources to disclosing their financial information than to any other aspect of the nominations process. While information about a nominee's assets and liabilities is necessary to assess potential conflicts, we encourage Committees that require a net worth statement or similarly detailed financial statement to rely on the OGE278 and narrowly tailor any additional questions to obtain necessary information not disclosed on the OGE278 (e.g., ask specific follow-up questions about a particular

49. One question asks:

Provide one copy of transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke. ATTACH A SEPARATE SHEET IF NECESSARY!" (Emphasis in original.)

asset or liability or ask for specific, relevant information exempted from disclosure on the OGE278 such as information on mortgages or family loans).

Like the OGE278, the net worth statement requires nominees to list their assets and liabilities. But, unlike the OGE278, the net worth statement calls for the exact value of each asset and liability, as opposed to the range into which the value of the asset or liability falls. Since the value of an asset rises and falls between the time the net worth statement is drafted and finalized, and months often separate the pre-nomination signing of the OGE278 and the post-nomination finalization of the net worth statement, the nominee must spend a good deal of time cross-checking and updating the net worth statement to avoid any inadvertent errors that would concern the Committee (staff for which likewise reported it frustrating to reconcile the OGE278 and net worth statement). The Working Group encourages Committees that include Net Worth Statements on their questionnaires to evaluate whether they need the exact value of assets and liabilities that are listed on the OGE278 in specific value ranges set by Congress in the Ethics and Government Act, given the burden on the nominee of providing the additional information.⁵⁰

3. Vary the Paperwork Required for Candidates for Part-time PAS Positions Depending Upon the Nature of the Position for Which They Are Being Considered

The Working Group recommends that the executive branch and the Senate tier levels of scrutiny based on whether a position is part- or full-time and, for part-time positions, the nature of the position itself and its need for a security clearance. Roughly 335 PAS positions—nearly 30 percent of all PAS positions—involve part-time service. They typically involve service on a federal board or commission and are often without remuneration beyond a standard government per diem. Many of these positions do not entail access to classified information and thus do not require a security clearance. Similarly, part-time positions do not require the same level of financial disclosure as do full-time positions; candidates who will serve for 60 days or less during a year are only required to complete the OGE450 confidential financial disclosure form. While these positions are important and carry significant responsibility, we do not believe they should automatically require similar levels of scrutiny as cabinet members or other full-time PAS nominees.

Currently, all PAS candidates, regardless of whether they would be filling full-time or part-time positions, are required to complete the SF86 and 86 Supplement. Similarly, with a few exceptions, PAS nominees complete the same Senate questionnaire, regardless of whether they are a candidate for a full-time or part-time position. This generally includes not only the comprehensive set of background questions, but also the full set of financial disclosure questions even if they are only required to complete the OGE 450; indeed, a few committees require nominees for part-time positions to complete an OGE278

50. If the purpose of the net worth question is to determine whether a nominee is solvent, a Committee could instead ask questions narrowly tailored to obtain that information. Two Committees, for example, ask the following:

Are you or your spouse now in default on any loan, debt or other financial obligation? Have you or your spouse been in default on any loan, debt or other financial obligation in the past [five or ten, depending on the Committee] years? If the answer to either question is yes, please provide details.

Or, if the purpose is specifically to know the nominee's net worth, the Committee could directly ask for the dollar range into which the nominee's net worth falls.

even if they are not required to do so.⁵¹ As described above, the SF86 is used for a full, comprehensive background investigation required when a candidate needs a security clearance, while candidates for appointments to positions that do not require a security clearance generally fill out the SF85 or SF85P depending upon the nature of their position. Similarly, the law specifies that candidates for full-time PAS positions complete the OGE278, while those for part-time positions need only complete the OGE450. The Working Group recommends that the executive branch and Senate paperwork required for part-time PAS positions turn on the nature of their position and/or whether it needs a security clearance or is a national security sensitive position.

A. Background Investigation Paperwork

The SF86 is the standard form created to help evaluate whether someone can be trusted with classified information or to occupy a national security sensitive position. Many of the positions on boards and commissions are not sensitive and do not require access to classified information. Based on information provided by the Office of the DNI, the Working Group estimates that 60% of all part-time PAS positions do not require a security clearance.⁵² Accordingly, requiring these PAS nominees to complete an SF86 serves little, if any, security function, but does delay the process by requiring the nominee to fill out the extensive SF86 and the FBI to conduct a comprehensive background investigation at considerable government expense. This is not to say that no background investigation is required. Candidates for part-time positions on boards and commissions that are not security sensitive positions and do not require a security clearance should fill out the far less extensive SF85 for non-sensitive positions or the SF85P for “public trust” positions. The agency affiliated with the board or commission can and should determine whether the positions on that board or commission are non-sensitive, public trust, high-risk public trust, or otherwise require access to classified information. PAS candidates should then complete the form that corresponds to the position they will occupy. This process is used for non-PAS government officials and should similarly be used for PAS officials. Likewise, the White House should create a pared-down version of the 86 Supplement for candidates for relevant part-time positions on boards and commissions.

Adopting this change would result in an immediate and significant reduction in paperwork for candidates for a considerable number of part-time PAS positions and expedite the process accordingly.⁵³

B. Senate Questionnaires

Certain Senate Committees have already taken steps to design a separate, scaled-down questionnaire for nominees for particular part-time PAS positions, and the Working Group recommends that this practice be expanded and more widely adopted so that both background and financial disclosure questions reflect the part-time nature and responsibilities of the position at hand. As stated earlier, nominees for

51. Approximately one hundred candidates for part-time PAS positions are required by a Senate Committee to complete the OGE278 even though the Ethics in Government Act does not require them to do so. 5 C.F.R. § 2634.204(a) (2012) (“Any public filer or nominee who, as determined by the official specified in this paragraph, is not reasonably expected to perform the duties of an office or position described in § 2634.201(c) or § 2634.202 of this subpart for more than 60 days in any calendar year shall not be subject to the reporting requirements of § 2634.201 (b), (c), or (e) of this subpart.”).

52. At the time of this report, ODNI was in the process of updating its list of the PAS positions that require clearances. Accordingly, the percentage included here is based on ODNI’s best information at the time of this report.

53. The Working Group plans to delve more deeply into this area in its second set of recommendations due in May 2013.

part-time PAS positions are currently required to complete most if not all of the same Senate questionnaires required for nominees for full-time positions, regardless of the responsibilities of their position and even though their positions only require them to fill out the OGE450 because they entail 60 days or less of service per year. Nominees to certain sensitive boards and commissions may continue to merit the same level of scrutiny applied to nominees for high-ranking full-time positions. For nominees to the remaining part-time positions, however, creating scaled-down Senate Committee questionnaires that do not, among other things, exceed the financial disclosure requirements set by the Ethics in Government Act, would reduce unnecessary burden while freeing resources to scrutinize full-time nominees.

The Senate recently supported the principle that not all PAS positions deserve the same level of scrutiny when, concurrent with passing the Presidential Appointment Efficiency and Streamlining Act of 2011, it passed Senate Resolution (S.R.) 116. S.R. 116, which created a class of “privileged” PAS positions that would receive expedited treatment on the Senate calendar. Most of these positions were on boards and commissions. The resolution was designed to retain the Senate’s right to advice-and-consent on these positions, while at the same time acknowledging that they did not require the same cautious scrutiny applied to more senior positions.⁵⁴ We recommend extending this principle to modify the forms required of nominees to part-time PAS positions, depending upon the nature of the position.

4. Build an Electronic System with a “Smart Form”

As outlined above, the Presidential Appointment Efficiency and Streamlining Act of 2011 directed that this report include “a detailed plan for the creation and implementation of an electronic system for collecting and distributing background information” from potential PAS nominees. Congress was clear in specifying that the system should offer “less burden” for PAS candidates; provide for “faster delivery of background information” to Congress, the White House and other key entities; and cut down on “errors of omission”. It specifically stated that the system should contain a “*Smart Form*” that shall:

- (I) be free to the nominee and easy to use;
- (II) make it possible for the nominee to answer all vetting questions one way, at a single time;
- (III) secure the information provided by a nominee;
- (IV) allow for multiple submissions over time, but always in the format requested by the vetting agency or entity;
- (V) be compatible across different computer platforms;
- (VI) make it possible to easily add, modify, or subtract vetting questions;

54. Senator Schumer explained the rationale of the S.R. 116 as follows:

The resolution piece of the package will create a streamlined process for part-time positions on boards or commissions. A majority of these boards require political balance - a certain number of Democrats and a certain number of Republicans. We are doing this rather than eliminating Senate consideration in its entirety in order to ensure that these politically balanced boards remain bipartisan. This was actually a recommendation, I believe, by Senator McConnell, and I think it is an apt one. 157 CONG. REC. S1978, 1988 (daily ed. March 30, 2011) (statement of Sen. Charles Schumer).

- (VII) allow error checking; and
- (VIII) allow the user to track the progress of a nominee in providing the required information.⁵⁵

The Working Group worked with the Federal Chief Information Officer, United States Chief Technology Officer, and Chief Information Officer for the Executive Office of the President to develop the requirements for and design of an electronic system meeting the aforementioned legislative specifications, as well as several others they thought important, including that:

- (IX) system be web-based and available to users on a 24/7 basis;
- (X) data be stored with encryption to ensure security;
- (XI) rights be controlled;
- (XI) The White House and any transition team have access to the system, but neither be able to access the other's data; and
- (XII) system have built-in flexibility, enabling it to adapt to changing circumstances, be they a revised Senate Committee questionnaire, a candidate's decision to hire and grant access to a new lawyer, or a change in the position to which the candidate is nominated. In particular, questions could be added, subtracted, or deleted from a *Question Database* containing all the questions asked on all executive branch forms (aside from the SF86, SF85, and SF85P filled out through e-QIP) and all Senate questionnaires.⁵⁶

The system described below, when coupled with the adoption of a common set of core questions, would dramatically streamline and automate the PAS paperwork process. It is important to note however that, absent agreement on a common set of core questions, the *Smart Form* would only automate a broken process, resulting in only marginal improvements. Only the two together will satisfy the statutory mandate to "make it possible for the nominee to answer all vetting questions one way, at a single time."⁵⁷

A. Description of Electronic System with Smart Form

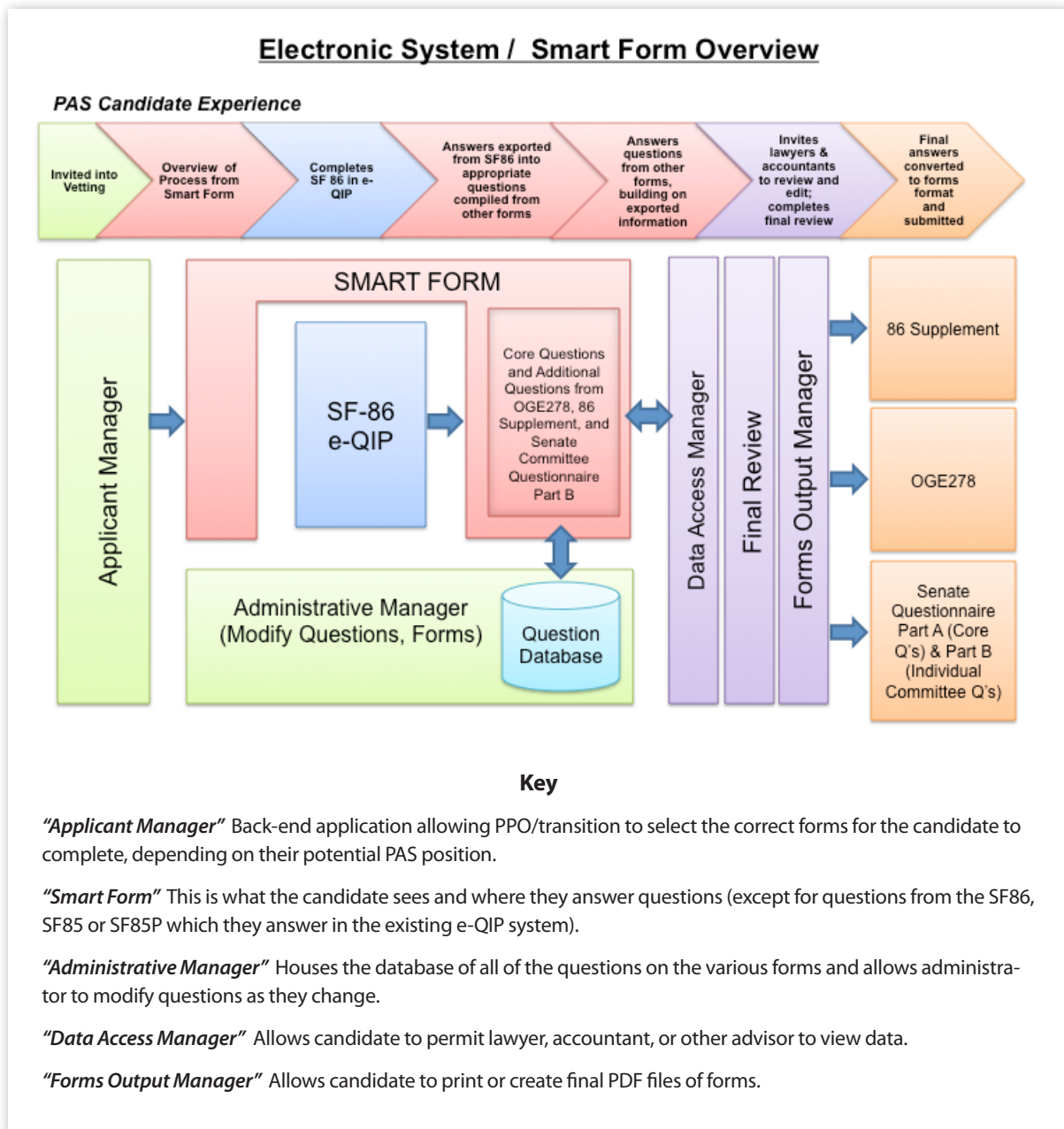
In its report on the Presidential Appointment Efficiency and Streamlining Act of 2011, HSGAC described its vision for an electronic system as follows: "Likened by some to software such as Turbo Tax, such an electronic system, or '*Smart Form*,' would allow a nominee to enter answers to the same or similar questions one way and one time and then, ideally, would populate this information into each of the various forms the nominee is asked to complete during the course of the nomination process."⁵⁸ The Working Group's proposal for an electronic system embodies this vision, guiding PAS candidates, as tax filing software does, through a series of questions that, when answered, would automatically populate the various forms. The graphic below depicts both the user experience and the way work would flow through the different parts of the electronic system.

55. Presidential Appointment Efficiency and Streamlining Act of 2011, Pub. L. No. 112-166, § 4(c)(3)(B)(ii), 126 Stat. 1283, 1293 (2012).

56. Consistent with current practice, the Senate will send updated questions or questionnaires to the White House to ensure that candidates complete the most up-to-date versions of the forms.

57. Presidential Appointment Efficiency and Streamlining Act of 2011 § 4(c)(3)(B)(ii)(II).

58. S. REP. NO. 112-24, at 10 (2012).



When coupled with the adoption of a common set of core questions to be asked by both the Senate Committees and the executive branch, the *Smart Form* would have the ability to transform the candidate experience and dramatically expedite the paperwork process by ensuring that questions are asked one way, one time. The candidate's experience, depicted in the top portion of the graphic above, would be as follows:

Step 1: The PAS candidate would receive an email from the Office of Presidential Personnel or Transition with a link to the system's website portal and an initial log in and password.

Step 2: After choosing a personal log in and password and entering the home page for the *Smart Form*, the candidate would find an overview of the process setting out the forms that the candidate would need to complete and the type of information that would need to be gathered (e.g., past addresses, employers, publications, etc.). A help menu and a list of frequently asked questions would also be available.

Step 3: The *Smart Form* would direct the candidate first to complete the SF86 (or SF85 or SF85P, if appropriate). After clicking on a link, the candidate would leave the *Smart Form* and enter e-QIP, OPM's automated system that PAS candidates currently use to complete the SF86 (as well as the SF85 and SF85P). The candidate would then complete the SF86 in e-QIP.⁵⁹

Step 4: After the candidate completes the SF86, e-QIP would export to the *Smart Form* a secure data file containing the candidate's answers to questions on the SF86 that appear in some fashion on one or more of the other forms. The SF86 answers would automatically pre-populate the answers to questions on the remaining forms where those forms ask for the same or similar information.

Step 5: The candidate would return to the *Smart Form* to answer questions from the remaining forms, including the 86 Supplement, OGE278,⁶⁰ and Senate Committee questionnaire. Certain questions would be identical to those on the SF86 and would not have to be answered again. Others would be completely different from those on the SF86, and would have to be answered from scratch. For those questions that overlap with the SF86, the system would prompt the candidate to supplement or edit answers pre-populated with information from the SF86 (or information from answers already given to questions on the other forms).⁶¹ In this way, the candidate would be spared having to needlessly repeat information. Further, the *Smart Form* would keep the process easy to understand by guiding the candidate with prompts, wizards, help menus, and graphics that measure progress.

Step 6: Many candidates elect to have other individuals such as lawyers, accountants, or other advisors assist them in completing their forms. The system would include a *Data Access Manager* that would enable a candidate to invite others in and give them proxy rights to review or edit all or a certain subset of questions specified by the candidate. To protect privacy, the candidate would control what information a particular advisor could view.

Step 7: The candidate would use the *Final Review* module to review responses as they would appear on the completed forms. The final review module would also include an error check feature to flag potential errors or omissions. If the candidate made any changes during the review, the changes would be reflected on all of the relevant forms. In some cases, the candidate would send a draft out for review.

59. The *Smart Form* would not require e-QIP to be reprogrammed with the exception of creating a new mechanism to configure output from e-QIP.

60. The *Smart Form* would also interface with the electronic system that OGE is building (per the STOCK Act) for OGE278 filers.

61. For example, if a question in the core is the same as on the SF86 but requires the candidate to go back further in time, the system would pre-populate the answer to the core question with the information that the candidate provided on the SF86 and then prompt the candidate to supplement the answer with information detailing earlier events.

For example, as mentioned above, the review of the OGE278 is an iterative process often requiring the candidate to make changes to the form in response to input from OGE, the designated agency ethics official, or the White House. The system would allow the candidate to enter changes in accordance with a review prior to finalizing the form.

Step 8: Finally, once the forms are complete, the candidate would use the *Forms Output Manager* to print or create electronic (PDF) files of the various forms to physically or electronically submit them to the appropriate recipients.

B. Development of the Electronic System

Until completion of a technical design of the system, it is difficult to accurately estimate its costs. The system would be considerably faster and cheaper to develop if the executive branch and the Senate Committees have agreed upon a core set of questions, as one of the most expensive and time-consuming elements will be configuring all of the non-SF86 questions to be answered and designing the pre-population routes. Other complex elements include design of the security features, development of the *Data Access Manager* and its capabilities, bifurcation of the system for the White House and a Presidential Transition Team, linking to OGE's government-wide system for OGE278 filers, and designing flexibility into the system to allow for changes in questions or procedures. Iterative improvements through user testing and feedback will also need to be employed to ensure a continuously improving product even after deployment.

Based on what we know now and assuming adoption of a set of core questions, we estimate that the design and development of the electronic system would take 8-12 months, and would cost \$5 million to build with annual operating expenses of \$1 million. This investment of time and money would be eminently worthwhile if both the executive branch and a critical mass of Senate Committees have committed to adopt a common set of core questions, as there is no question that the combined impact of a *Smart Form* and a common set of core questions would significantly streamline the completion and delivery of the paperwork required for executive nominees.

Time Frame for Implementing Recommendations

The Working Group recognizes that streamlining the paperwork process and reducing the burden for PAS nominees will require significant continued effort and coordination by all the parties involved. But time is of the essence, given the inevitable number of nominations surrounding the start of the President's term in 2013, regardless of who is elected. We therefore recommend focusing first on the recommendations that both the executive branch and the Senate Committees individually or together can move on quickly, and subsequently turning to those that will require more extensive analysis and work along a longer time horizon.

In the near term, the Working Group recommends that:

- the Administration and the Senate Committees move quickly to reduce duplication through the adoption of a common set of core questions (Recommendation 1A);

STREAMLINING PAPERWORK FOR EXECUTIVE NOMINATIONS

- the Administration and the Senate Committees each begin immediately to tier the scrutiny applied to part-time positions on boards and commissions based on the nature of the position (Recommendation 3); and
- the White House and the Senate Committees each adopt changes to their own questions to reduce unnecessary burden (Recommendations 2C and D) (though we recognize that much of the work in these areas will be affected by the adoption of a set of core questions).

The Working Group recommends that, as soon as possible and no later than the seating of the 113th Congress in January, the Administration, Senate Leadership, and the Chairs of the 17 Committees reviewing PAS nominations review and take appropriate steps to adopt these recommendations.

While the Working Group recommends that work begin expeditiously to narrowly tailor unnecessarily burdensome questions in the SF86 and OGE278 (Recommendations 2A and B), we recognize that changing the SF86 through the paperwork reduction process and the OGE278 through a Congressional amendment to the Ethics in Government Act will require further analysis, process, and stakeholder input, which will not be accomplished within a short period of time. That stated, these changes are achievable, and we recommend that both efforts commence immediately.

Finally, the maximum potential for streamlining and expediting the paperwork process lies in both adopting a common set of core questions and developing a *Smart Form* to automate the process (Recommendation 4). Building an electronic system with a *Smart Form* will entail extensive work over close to a year at considerable expense. This effort will be eminently worthwhile if the executive branch and a critical mass of the Senate Committees have agreed to adopt a common set of core questions, as there is no question that, combined, a *Smart Form* with a common set of core questions would greatly improve and expedite the nominations paperwork process. When implemented, these combined elements would satisfy the mandate of the Presidential Appointment Efficiency and Streamlining Act of 2011 to streamline the paperwork required for executive nominations, resulting in a far better experience for nominees and more timely delivery of critical information to both the executive branch and the Senate Committees.



Conclusion

In rising to support the Presidential Appointment Efficiency and Streamlining Act of 2011, Senator Lieberman invoked the confirmation of President George Washington’s first slate of Presidential nominees:

On August 5, 1789, the Senate took up and confirmed 102 executive nominations that had been sent up by President Washington just 2 days earlier—rejecting only one nominee.

Our first President, in a letter to the Senate, complained about the one he didn’t get. If the Senate ever doubted the fitness of one of his nominees it should—and I quote “communicate that circumstance to me, and thereby avail yourselves of the information which led me to make them and which I would with pleasure lay before you.”⁶²

Times have changed.

We are, however, at an important moment in the history of the Presidential nominations process. For decades, observers of and participants in the process have exposed the significant costs of bottlenecks in the system. Until recently, their advocacy has been largely for naught, but there is now considerable reason for optimism. Congress passed the Presidential Appointment Efficiency and Streamlining Act of 2011, and the White House eliminated the Personal Data Statement. These were actions that each branch took individually without partisan *quid pro quo*, with the simple goal of filling leadership positions in the Federal Government more effectively and expeditiously.

More can be done with that goal in mind. In this report, the Working Group has made recommendations that will streamline the process for nominees, whatever their party. As the Bipartisan Policy Center wrote in a letter supporting the Presidential Appointment Efficiency and Streamlining Act of 2011, “The problem and the solution are truly bipartisan.”⁶³ The Working Group’s coordination with the Senate has reflected the bipartisan nature of the problem and its solution. By the time this report is released we will have met with staff for nearly every Chair and Ranking Member of the 17 Committees that confirm PAS nominees, and both sides of the aisle have offered valuable input and support.

Our effort has not only bridged partisan divides; it has bridged the gap that often exists between the legislature and the executive. Our members hail from both branches of government and our outreach has been similarly bipartite. We are indebted not only to our partners in the Senate but also to representatives from the White House, OGE, the FBI, OPM, OMB, ODNI, and many others whose thoughtful feedback and analysis helped to shape this report.

We do not regard this report as the conclusion of our inquiry. Rather, it is a step in an ongoing process of reform. The Working Group remains committed to refining and implementing the recommendations made in this report—to working with the White House and Senate Committees to finalize a set of core

62. 157 CONG. REC. S1978, 1988 (daily ed. March 30, 2011) (statement of Sen. Joseph Lieberman).

63. 157 CONG. REC. S3991, S4000 (daily ed. June 22, 2011) (letter from the Bipartisan Policy Committee).

STREAMLINING PAPERWORK FOR EXECUTIVE NOMINATIONS

questions, to advising on the development of an electronic system, to assisting all parties in eliminating unnecessarily burdensome questions for PAS candidates, and appropriately tiering the scrutiny of candidates for part-time positions based on the nature of the position and its need for a security clearance. As we turn to reviewing the background investigation process—our next mandated inquiry—we will keep all parties informed of progress on streamlining the paperwork required for executive nominations.



Appendix A

Summary of Recommendations Regarding Each Form⁶⁴

	SF86	86 Supplement	OGE278 ⁶⁵	Senate Committee Questionnaires
Purpose	Executive branch determination of a candidate's suitability and fitness for access to classified information	Executive branch evaluation of a candidate's suitability	Executive branch and Senate evaluation of a candidate's potential conflicts of interest	Senate evaluation of a nominee's suitability
Reviewing Entity	FBI	White House and FBI	Agency Ethics Official, OGE, White House Counsel, and Senate Committees	Senate Committees
Use Outside of Nominations Process	Used for security clearances for federal employees and contractors	None	Used for conflict of interest determination for relevant federal employees	None
Current Process for Completion	e-QIP automated system	Word processing software	Fillable PDF or spreadsheet (OGE developing new electronic system for government-wide use)	Word processing software
Entity with Authority to Change	Suitability and Security Clearance Performance and Accountability Council (through the DNI and the Director of OPM)	White House	Congress (by amending the Ethics in Government Act)	Senate Committees
Recommended Changes to the Form	PAC should evaluate and revise questions to reduce unnecessary burden	White House should modify 86 Supplement to incorporate the core and narrowly tailor remaining questions	Congress should amend Ethics in Government Act to eliminate requests for information unnecessary to conflict of interest analysis	Committees should amend their questionnaires to incorporate the core (Part A) and narrowly tailor questions outside the core (Part B)
Recommendations for Part-Time Nominees	Complete SF86, SF85P or SF85 depending on their position and need for a security clearance	Complete a pared down 86 Supplement if appropriate to the nature of the position	Continue current practice of completing OGE-450 in most instances; Senate Committees requiring otherwise review practice	Complete a pared down questionnaire if appropriate to the nature of the position
Electronic Process that Nominees Should Use to Complete Form	e-QIP (no change to current system), which would export to <i>Smart Form</i>	<i>Smart Form</i>	New government-wide system that would be interoperable with <i>Smart Form</i>	<i>Smart Form</i>

64. Some administrations have used a White House Personal Data Statement (WHPDS). The Working Group recommends that future administrations follow the Obama Administration practice of not using a WHPDS.

65. Candidates to PAS positions that require 60 days of service or less may fill out the OGE450 instead of the OGE278.



Appendix B

Proposed Core Questions For Presidential Nominees Requiring Senate Confirmation⁶⁶

1. Basic Biographical Information

- 1) Last Name
- 2) First Name
- 3) Middle Name
- 4) Suffix
- 5) Other Names Used
- 6) Position to Which Nominated
- 7) Date of Nomination
- 8) Date of Birth
- 9) Place of Birth
- 10) Office Address
- 11) Residential Address
- 12) Marital Status
- 13) Spouse's Name (if married or separated)
- 14) Spouse's Former Name(s)
- 15) Children's Names (if over 18)

2. Education

List all post-secondary schools attended.

Provide:

- Name of School
- Select the most appropriate code to describe your school (high school, vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)
- From date (month/year, check box if estimate)
- To date (month/year, check box if estimate, check box if present)

66. Although not done here, a nominee's answers to the core questions should be divided according to current practice between those that will be made available to the public and those that will be kept confidential.

3. Employment

1) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

Provide:

- Select your employment activity (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment, Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other
- Name of your employer/assigned duty station
- Most recent position title/rank
- From date (check box if estimate)
- To date (check box if estimate, check box if present)

2) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

Provide:

- Name of government entity
- Name of position
- From date (check box if estimate)
- From date (check box if estimate)
- From date (check box if estimate)

4. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, honorary society memberships and any other special recognition for outstanding service or achievement.

5. Publications

List the titles, publishers, and dates of books, articles, reports or other published materials that you have written.

6. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years not listed elsewhere. Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to

the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), or discounts clubs (such as Groupon or Sam's Club).

Provide:

- Name of the organization
- Dates of your membership
- Any position held in the organization

7. Political Activity

1) Have you ever been a candidate for or been elected to a political office not listed elsewhere?

If yes, provide:

- Name of office
- Year(s) election held
- Elected (yes/no)
- Term of service (if applicable)

2) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

Provide:

- Name of party/election committee
- Office/services rendered
- Responsibilities
- Dates of service

3) Itemize all political contributions of \$200 or more that you made in the past ten years to any individual, campaign organization, political party, political action committee, or similar entity. Do NOT include contributions to federal campaigns that you have reason to believe are listed and available to the public on the Federal Election Commission website.

Provide:

- Name of recipient
- Amount
- Year of contribution

8. Criminal Convictions

Since (and including) your 18th birthday, have you been convicted of or sentenced for a crime in any court?

For each crime:

- Provide the date of offense. (check box if estimate)
- Provide a description of the specific nature of the offense.
- Did the offense involve any of the following (check yes/no):
 - Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common?
 - Firearms or explosives?
 - Alcohol or drugs?
- Provide the location where the offense occurred. (city, county, state, zip code, country)
- Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official? (check yes/no)
 - Provide the name of the law enforcement agency that arrested/cited/summoned you.
 - Provide the location of the law enforcement agency. (city, county, state, zip code, country)
- As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you? (check yes/no)
 - If yes, provide the name of the court and the location of the court (city, county, state, zip code, country).
 - If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or “nolle pros,” etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense.
 - If no, provide explanation.
- Were you sentenced as a result of this offense? (yes/no)
- Provide a description of the sentence.
- Were you sentenced to imprisonment for a term exceeding one year? (yes/no)
- Were you incarcerated as a result of that sentence for not less than one year? (yes/no)
- If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated.
- If conviction resulted in probation or parole, provide the dates of probation or parole.
- Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense? (yes/no)
- Provide explanation.

9. Criminal Investigations, Citations, Charges, and Arrests

Since (and including) your 18th birthday:

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you (exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs).
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?
- Have you been charged of a crime in any court?
- Have you been or are you currently on probation or parole?
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?

Exclude offenses already listed.

If yes, provide the same information required for criminal convictions

10. Civil Litigation and Administrative or Legislative Proceedings

Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceedings of any kind that resulted in (1) a finding of wrongdoing against you or (2) a settlement payment by you or by another person or entity to settle allegations against you. Do NOT include small claims proceedings.

Provide:

- Date of the action or proceeding
- Court name
- Details of the nature of the action or proceeding
- Description of the results of the action
- Name(s) of the principal parties involved in the action or proceeding

11. Breach of Professional Ethics

Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

If yes, provide:

- Entity/court/administrative agency/professional association/disciplinary committee/other professional group
- Citation/disciplinary action/complaint
- Disposition

12. Tax Compliance

1) Have your tax returns been the subject of an audit in the past 10 years by federal, state or local authorities, which resulted in a tax lien, levy or other collection enforcement action?

If yes, provide:

- Name of agency to which debt is/was owed
- Identify/describe the type of property that was the subject of the lien (if any)
- Amount of the tax debt
- Current status of the tax debt
- Date of the lien, levy, or other collection procedure
- Date the tax debt was paid in full
- Description of any actions taken to satisfy the debt
- Explanation if no actions taken to satisfy the debt

2) Are you currently the subject of any audit by a federal, state or local government?

If yes, provide:

- Name of agency performing the audit
- Type of taxes involved and the tax period audited
- Date you were notified of the audit

3) Have you filed all federal, state, local, and other tax returns required by law for each of the past 10 years?

If not, provide:

- Type of tax and tax year of the unfiled return
- Explanation for the failure to file

13. Outside Positions

For the preceding two calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

Provide:

- Name of organization
- Address of organization
- Type of organization
- Position held
- Dates position held

14. Agreements or Arrangements

As of the date of filing, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

Provide:

- Status and terms of any agreement or arrangement
- Parties
- Date

15. Assets

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding \$1,000 on a date you choose within 31 days of filing your OGE278, or which generated more than \$200 in income in the preceding calendar year and the calendar year up to the date of filing, together with such income.

Assets include, but are not limited to, stocks, bonds, pension interests and annuities, futures contracts, mutual funds, IRA assets, tax shelters, beneficial interests in trusts, personal savings or other bank accounts, real estate, commercial crops, livestock, accounts or other funds receivable, and collectible items held for resale or investment.

Exceptions: Exclude your personal residence (unless rented out) and any personal liability owed to you, your spouse or dependent child by a spouse or dependent child, or by a parent, brother, sister or child of you, your spouse, or dependent child. Exclude any retirement benefits (including the Thrift Savings Plan) from Federal Government employment and any social security benefits. Exclude also any deposits aggregating \$5,000 or less in personal savings accounts in a single financial institution.

Provide:

- Category for the value of the asset set by the Ethics in Government Act (\$1,001-\$15,000, \$15,001-\$50,000, \$50,001-\$100,000, \$100,001-\$250,000, \$250,001-\$1,000,000, \$1,000,000-\$5,000,000, \$5,000,001-\$25,000,000, \$25,000,001-\$50,000,000, or over \$50,000,000.) If the asset/income is solely that of the filer's spouse or dependent children, the highest category is \$1,000,000 or above. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.
- Whether the asset is in an excepted investment fund, excepted trust, or qualified trust
- Type of income (dividend, rent and royalties, interest, capital gains)

16. Liabilities

For the preceding calendar year and the current calendar year up to a date you choose that is within 31 days of the date of filing, report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period.

Exclude:

- 1) a personal liability owed to a spouse or dependent child, or to a parent, brother, sister, or child of you, your spouse or dependent child;
- 2) a mortgage or home equity loan secured by real property which is the personal residence (or a second residence not used for producing income) of you or your spouse;
- 3) a loan secured by a personal motor vehicle, household furniture, or appliances, where the loan does not exceed the purchase price of the item;
- 4) a revolving charge account where the outstanding liability did not exceed \$10,000 as of the close of the reporting period; and
- 5) any liability of your spouse or dependent child which represents the sole financial interest or responsibility of the spouse or child, and about which you have no knowledge, and which is not derived from your income, assets, or activities, and concerning which you neither derive nor expect to derive any financial or economic benefit.

You are required to report any liability of any nonpublic company, investment pool, or other entity, in which you, your spouse or dependent child have an interest, unless (1) the liability is incidental to the primary trade or business of the entity as indicated by you on Schedule A, or (2) the entity is an excepted investment fund. An excepted investment fund is a mutual fund, common trust fund of a bank, pension or deferred compensation plan, or any other investment fund, which is widely held; publicly traded (or available) or widely diversified; and under circumstances where you neither exercise control over nor have the ability to exercise control over the financial interests held by the fund. A fund is widely diversified when it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the U.S. Government) and no more than 20% in any particular economic or geographic sector.

Provide:

- Creditor's name
- Creditor's address
- Type of liability
- Date incurred
- Interest rate
- Term (if applicable)

- Category for the value of the asset set by the Ethics in Government Act (\$1,001-\$15,000, \$15,001-\$50,000, \$50,001-\$100,000, \$100,001-\$250,000, \$250,001-\$1,000,000, \$1,000,000-\$5,000,000, \$5,000,001-\$25,000,000, \$25,000,001-\$50,000,000, or over \$50,000,000.) If the liability is solely that of the filer's spouse or dependent children, the highest category is \$1,000,000 or above. If the liability is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate

17. Income

For the preceding calendar year and the current calendar year up to a date you choose that is within 31 days of the date of filing, for yourself, report the source and actual amount of earned income exceeding \$200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than \$1,000 (except report the actual amount of any honoraria over \$200 of your spouse).

Provide:

- Source of income
- Actual amount of income
- Date (only if honoraria)

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.

Provide:

- Source
- Brief description of duties

18. Gifts and Travel Reimbursements

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than \$260, and (2) travel-related cash reimbursements received from one source totaling more than \$260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. Exclude anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth \$104 or less.



Appendix C

Major Points Raised in Interviews and Literature

The Working Group's analysis included reviewing past reports and papers on the nominations process, and interviewing outside experts as well as former and current government officials familiar with the nominations process for PAS positions. Both the literature and the interviewees offered wide-ranging reasons for delay in the nominations process and ways to streamline it. Some of their statements put the spotlight squarely on the paperwork process, while others highlighted problems and solutions further afield or outside of the Working Group's mandate. The major points are summarized below, with an emphasis on those directly related to the paperwork process.

General Comments

- Any effort to streamline or reduce the paperwork burden on nominees must recognize the legitimate interests in obtaining information about them:
 - The President and the Senate need to evaluate the nominee's qualifications and suitability for the job and whether they have something in their backgrounds that might hinder their ability to do their jobs objectively and effectively or prove embarrassing to the Administration;
 - National security requires that candidates not have attitudes, circumstances or clandestine affiliations that could put our country at risk; and
 - The public demands that appointees insulate themselves from affiliations or financial arrangements that could lead to a conflict of interest.
- The current system of inquiry seeks to eliminate risk wherever possible, resulting in a tendency to add ever more questions and rarely to remove a question. These additions are often reactions to unique events or political "scandals."
- It is vital to streamline forms and the confirmation process so that the government has the leadership it needs to address the complex challenges of our time; this is especially true during periods of economic and foreign crisis when we cannot afford to have vacancies in key senior positions. New administrations must be able to "staff up" quickly, and incumbent ones to fill vacancies efficiently.
- There is general consensus on the need to improve the process to allow for speedier confirmations with less burdensome paperwork; individuals and commissions have made similar recommendations for decades. But achieving change in this area is difficult, given the number of players with independent authority and institutional resistance to changing forms.

- Congress, in passing the Presidential Appointment Efficiency and Streamlining Act of 2011, which converted 169 PAS positions to presidential appointments not requiring Senate confirmation, has taken a major step toward streamlining the appointments process, and the Senate and executive branch should build on that momentum with further improvements.

Wide Ranging Causes of Delay in the Process

General Problems with the Confirmation Process

- The potential for a loss of privacy and unfair delay or embarrassment, coupled with a typically lower salary not pegged to inflation, tedious paperwork, and the requirement to relocate to Washington D.C. sometimes deter our Nation's leading corporate and civic leaders from pursuing PAS positions.
- Senate procedures such as indefinite holds placed on nominees (sometimes over a dispute a Senator has with the administration on another issue) can cause delay and make well-qualified nominees feel like hostages.
- The dramatic growth over the past 50 years of the number of political appointees and the amount of paperwork required strains the system for appointing and confirming PAS nominees. High turnover amongst all political appointees also contributes to the strain on the overall capacity of the appointments process.
- The Office of Presidential Personnel is not always staffed at the level necessary to handle the high volume of appointments, particularly at the beginning of an administration, and can have considerable turnover of staff.
- Uniform, full-field FBI background checks require extensive time and seem unnecessary for certain PAS positions, especially those that are part-time. These checks impose an additional burden on the agency, forcing it to prioritize resources, leaving some nominees with longer waits.
- Senate Committees sometimes find they have insufficient information on a nominee to begin their review promptly upon receipt of a nomination, and would like to get basic information about a nominee as soon as possible.

Problems with Nominations Paperwork

- The paperwork required of PAS candidates includes excessive duplication and overlap as numerous questions are similar but not identical across forms. This overlap and lack of uniformity increases the probability that someone will answer questions incorrectly or in a seemingly inconsistent way from form to form, creating a potential "gotcha" scenario where the nominee is forced to defend innocent and immaterial mistakes.
- The financial disclosure questions are particularly onerous and duplicative. Most Senate Committee questionnaires require nominees to submit financial information that duplicates their financial disclosures on OGE Form 278 or OGE Form 450. (This is in part due to the fact that some Committees find the OGE278 unwieldy to interpret.) In addition, while nominees for part-time positions are only legally required to complete the less burdensome OGE450 (rather

than the OGE278), they are nevertheless generally required to complete the full set of financial questions on the Senate questionnaire.

- The appointments process lacks a comprehensive electronic system to provide process automation, reduce errors, and enable candidates for PAS positions to answer questions in one way and at one time. While OPM has built its e-QIP solution for the security and suitability determination process, the other nomination forms still rely on suboptimal technology such as fillable PDFs, spreadsheets, or word processing software.
- Wealthy nominees often hire financial advisors, accountants, and lawyers to complete the forms and advise them through the process, all at considerable expense. Those less affluent oftentimes struggle through the complexities of the process themselves.
- Specific questions such as those on foreign travel in the SF86 and the request for a statement of net worth on many Senate questionnaires prove extremely burdensome for some nominees to complete.
- The public financial disclosure requirements of the Ethics in Government Act of 1978 impose a significant burden on filers that is unnecessary in a number of instances given the executive branch's lack of need for or use of the information in its conflict of interest analysis. To address this problem, Congress charged OGE on two occasions with recommending changes. OGE responded to these requests by submitting recommendations in two separate reports in 2001 and 2005 respectively, none of which have been adopted to date. OGE has not implemented the recommendations itself because the Ethics in Government Act affords OGE little discretion to change the public financial disclosure system administratively and the changes would require Congressional action.
- Nominees, particularly those who are applying for part-time and unpaid positions, can be slow in completing forms and returning them to the White House and Senate.

Recommendations for Improving the Paperwork Process

Suggested Improvements to All Forms

- The Administration and the Senate should work together to standardize the basic information asked for on the various forms and arrive at a common set of core questions that get each of the players the basic information they need to assess the candidate. The set of core questions would be supplemented with additional questions specific to the needs of the requester and should not act as a comprehensive, "lowest common denominator" form that would actually increase burden on nominees.
- The Senate and executive branch should agree on a common set of financial questions.
- Achieving a shared understanding of the intent behind questions is crucial. If all parties could agree on what information is relevant to the nomination and confirmation process, then they should be able to agree on how to tailor questions to elicit that information.

STREAMLINING PAPERWORK FOR EXECUTIVE NOMINATIONS

- The SF86, OGE278, and Senate questionnaires seem dated, with areas that are unnecessarily burdensome. OGE, OPM/ODNI and the Senate Committees should each go through their forms question by question and evaluate whether they really need all the information requested, and whether the information they do need could be obtained in a less burdensome way.
- The paperwork and inquiry required for conflicts analysis, background investigation, and Senate confirmation should be tiered based on the job responsibilities of the candidate and whether they are full- or part-time.
- There should be minimum disclosure values for questions regarding matters such as tax penalties, political contributions, and financial holdings.
- Technology can make immediate improvements to the process; an electronic system that utilizes a “Smart Form” would allow prospective nominees to enter basic information only once and to answer similar questions at the same time to reduce burden as well as the chance of inconsistent answers. But its benefits are limited: a nominee would still have to answer each discrete question asked if the questions are not rationalized.
- The Senate and executive branch should agree upon clear goals and objectives for the nominations process. These goals should include timelines and milestones for announcing and confirming a specific number and/or level of appointees to guide action and serve as a yardstick for success for filling PAS positions more quickly and with a clearer focus on critical positions.

Suggested Improvements to Specific Forms

- The Administration should modify SF86 questions that are unnecessarily broad in order to reduce the burden on nominees. For example, there are uniform complaints about the nature and breadth of the questions regarding foreign travel as well as about the requirement to list your previous addresses and contact information for neighbors who knew you at these addresses.
- Several suggestions for improving Senate questionnaires cited potentially onerous requests for a statement of net worth, a list and copy of every speech a nominee has given and every paper published, and a list of lawsuits against or investigations into any organization with which a nominee has ever been associated.
- Committees should reduce the burden on nominees by accepting the conflict of interest disclosures and remedies provided in the OGE278 or OGE450 along with the accompanying ethics agreement rather than asking a nominee separate questions aimed at eliciting that same information.
- The White House should scale back or eliminate use of a Personal Data Statement, as it tends to replicate many of the questions candidates are required to answer in other forms.

Interviews

Current Government Officials

- *Lamar Alexander, U.S. Senator*
- *Senior White House staff working on nominations (Office of the Chief of Staff, Office of Cabinet Affairs, Office of Presidential Personnel, White House Counsel's Office, Office of Legislative Affairs)*
- *U.S. Senate Committee staff from Committees that handle nominations (Agriculture, Nutrition, & Forestry; Armed Services; Banking, Housing & Urban Affairs; Budget; Commerce, Science & Transportation; Energy & Natural Resources; Environment & Public Works; Finance; Foreign Affairs; Health, Education, Labor & Pensions; Homeland Security & Government Affairs; Indian Affairs; Intelligence; Judiciary; Rules & Administration; Small Business & Entrepreneurship; Veterans' Affairs)*
- *Suitability and Security Clearance Performance Accountability Council (representatives from ODNI, OPM, OMB, DOD)*
- *Senior Office of Government Ethics staff working on nominations*
- *Senior General Services Administration staff who work on presidential transitions*

Former Government Officials

- *Arthur B. Culvahouse, former White House Counsel (Reagan); Partner at O'Melveny & Myers*
- *Tom Davis, former U.S. Congressman*
- *Tom Korologos, former U.S. Ambassador to Belgium; Deputy Assistant to President for Congressional Affairs (Nixon and Ford)*
- *Arnie Miller, former Director, Office of Presidential Personnel (Carter)*
- *Robert Nash, former Director, Office of Presidential Personnel (Clinton)*
- *Beth Nolan, former White House Counsel (Clinton)*
- *Bernard Nussbaum, former White House Counsel (Clinton)*
- *John Podesta, former White House Chief of Staff (Clinton)*
- *Jack Quinn, former White House Counsel (Clinton)*
- *Chuck Robb, former U.S. Senator*
- *Chase Utermeyer, former Director, Office of Presidential Personnel (H.W. Bush); Ambassador to Qatar '04-'07*

Outside Experts

- *David Abshire*, President and CEO, Center for the Study of the Presidency and Congress
- *Dan Blair*, President and CEO, National Academy of Public Administration
- *Len Downie*, former Executive Editor, The Washington Post
- *Douglas Dziak*, Counsel, Nixon Peabody
- *Bob Edgar*, President and CEO, Common Cause; former Member of Congress
- *William Galston*, Senior Fellow, Brookings Institution
- *Martha Kumar*, Professor of Political Science, Towson University
- *David Lewis*, Professor of Political Science, Vanderbilt University
- *Paul Light*, Paulette Goddard Professor of Public Service, New York University
- *Calvin Mackenzie*, Distinguished Professor of Government at Colby College
- *Thomas Mann*, Senior Fellow, Brookings Institution
- *Anne O'Connell*, Professor of Law, University of California at Berkeley
- *Norman Ornstein*, Resident Scholar, American Enterprise Institute
- *Robert Rizzi*, Partner, O'Melveny & Myers
- *Melanie Sloan*, Executive Director, Citizens for Responsibility and Ethics
- *Max Stier*, President and CEO, Partnership for Public Service
- *Terry Sullivan*, Associate Professor of Political Science, University of North Carolina
- *Robert L. Walker*, Of Counsel, Wiley Rein

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