

**Statement of the Honorable Clay Johnson III**  
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and  
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Office of Management and Budget  
and  
Co-Chair, Commission to Reform the Federal Appointments Process  
before the  
**U.S. Senate Committee on Homeland Security and Government Affairs**  
on  
**Eliminating the Bottlenecks: Streamlining the Nominations Process**  
**March 2, 2011**

Mr. Chairman, Ranking Member Collins, and members of the Committee, thank you for asking me to testify before you today. I congratulate you and Senate and Rules Committee leadership for committing to find ways to improve the process by which Presidents are able to put in place, in a timely fashion, a team to help carry out their policies.

My thoughts and recommendations here are informed by my personal experience as the Executive Director of the 2000-2001 Bush-Cheney transition, the head of Presidential Personnel during the first two years of the Bush-Cheney administration, and as a co-chair this past year of the Aspen Institute's/Rockefeller Foundation's Commission to Reform the Federal Appointments Process (Commission). Senators Bill Frist and Chuck Robb, the Honorable Mack McLarty, and I have lead the Commission to explore the obstacles and opportunities involving all the organizations involved in the Federal appointments process. We have had extensive discussions about possible appointments process reforms with relevant staff members in the White House, Senate, FBI, Diplomatic Security, and Office of Government Ethics (OGE).

Based on all that we have heard and experienced first-hand, I recommend you place a priority on identifying and enacting reforms that especially:

- Improve the process during the first six months of a new administration, when there are the greatest number of critical vacancies, and thus the greatest risk to our President's ability to effectively attend to the national

security, financial, economic, health and/or other challenges facing our nation.

The experience of the 5 most recent administrations is that by August 1 of the first year, only about 60% of an administration's most critical 400 cabinet and subcabinet positions are filled. By April 1 of the first year, only the Obama administration had filled as many as 50% of the 100 or so most critical, time-sensitive operational, national security, economic, and health positions.

- Reduce the unnecessary and unacceptable vetting burden on the candidates, which are at the level now where some highly qualified candidates are not interested in being considered for an appointment. Candidates for positions have to answer just about every question two or more times, and oftentimes different ways, and there are unacceptable and unnecessary delays in getting this information to the different vetting organizations, and thus in assessing the worthiness of the applicants.

You are already working to convert a number of PAS positions to PA status. This would increase the time the Senate has to spend on matters most worthy of Senate attention, reduce the vetting burden on a significant number of nominees, and make it possible for a new administration to put people more quickly into 50 or so of the 400 most time sensitive-positions in the first six months (legislative affairs, public affairs, etc.).

In addition to this, to focus on the two goals suggested above, I highly recommend you also:

- Cause an electronic application, a so-called "smart form," to be developed and used.

The FBI, Diplomatic Security, Office of Government Ethics and Senate each experience vetting delays of days to weeks because of the time it takes potential/actual nominees to prepare and transmit their background information to them. The time it takes to answer the questions is unnecessarily long, as most of the questions asked by vetting organizations are redundant; the FBI doesn't receive a likely nominee's background information until days and sometimes weeks after the person has been officially "put into clearance" by the White House; OGE is delayed vetting potential nominees for conflicts of interest because they don't receive nominees' financial information until the very end of the nominee selection

process; and the Senate receives no nominee information with the nomination, and can't begin their consideration of a nominee's merits for the days to weeks it currently takes for the nominee to respond to the Senate's requests for information.

For less than \$1 million (possibly from eGov funds currently available) and in 10 to 12 months, a "smart form" could be developed and put into use which allowed nominees to answer one way, one time each of the White House, FBI, Diplomatic Security, OGE, and Senate personal background questions relevant to the intended position, and then transmit the completed background questionnaires as soon as permissible. A likely nominee would download an application from a website, indicate the position for which he or she is being considered, and receive an unduplicated list of all the background questions to be asked by any of the relevant vetting organizations. The likely nominee would answer the questions, and as soon as permissible transmit to each of the vetting organizations the information they each expect, on the forms they are used to receiving: each vetting organization gets the information they desire to receive. The application would be easy to use, private and secure, provide a lot of "pop-up" assistance, and allow the applicant to stop and start answering the questions as desired. A likely nominee for one of the 400 most time-sensitive positions during the first 6 months of a new administration could be directed to answer all questions before being presented to the President for formal consideration; so the FBI and OGE could get their information as soon as the President decides to put an applicant into "clearance," and the Senate could receive its information with the nomination. Exhibit A (attached) contains the proposed specifications for such an application.

Such an application would reduce the unnecessary and unacceptable data gathering burden for all potential nominees, help ensure the same questions are answered consistently, and make it possible to reduce the time required to vet and confirm (or reject) a nominee.

- Help ensure a new administration has the capacity to select, vet and nominate persons to the 400 or so most time-sensitive positions in the first six months of the first year, in case the new administration is so inclined to do so.

The White House has never allocated enough funding for the Presidential Personnel Office (PPO) to employ enough staff to actually make this many

nominations this early. A new administration has never had the capacity in the first six months to nominate persons for more than 250 cabinet and subcabinet positions, let alone 400 positions, which government reform individuals and groups suggest a new administration should be able to do. All recent administrations have employed 7 or 8 PPO officers, not because that was the size staff they needed to do the work but because that was what had been done traditionally. To create the desired nominating capacity a new administration would need to employ eight to ten additional Special Assistant-level personnel during the transition and first six months of a new administration, along with commensurate support staff and White House Counsel clearance personnel, which would cost less than \$2 million.

New administrations can be “encouraged” to create such nominating capacity by good government groups and the press calling for such a commitment from all eligible presidential candidates, and measuring nomination and confirmation performance relative to the suggested April and August targets. Perhaps the Senate could request new administrations indicate the positions they intend to nominate persons for such that they might be filled by April or August; so the Senate (and FBI, Diplomatic Security, and OGE) can staff and organize accordingly. Our Commission is available to help you explore ways to “motivate” new administrations to prioritize the resources within the White House budget to create the selecting and vetting capacity to make it possible to fill all the time-sensitive PAS positions by the August recess of the first year.

Note: FBI, Diplomatic Security, OGE, and Senate staff leadership have indicated they can move resources around during the first 6 months of a new administration to support the nomination and potential confirmation of persons for the 400 or so most time-sensitive positions by the August recess, and the 100 most time-sensitive of these by April 1 or so. They do not need additional resources to create extra process capacity for a six-month period. However their ability does depend on the FBI, Diplomatic Security, and OGE receiving nominee candidate background information at the beginning of the investigation process, and the Senate receiving their nominee background information with the nomination, which a “smart form” helps make possible.

And finally, I suggest you also:

- Consider ways Senate committees could work together to reduce the wide range of questions, time periods, valuation ranges and the like, used to

gather similar background information from nominees. The examples included in Exhibit B (attached) suggest some of the questions asked may be redundant and unnecessary, and some questions may ask for more detailed information than is necessary to assess the nominees' qualifications.

- Consider reforms that the OGE will propose shortly regarding how their process can be reformed to more effectively and expeditiously identify potential conflicts of interest.

Most everyone agrees the current Federal appointments process does not serve our country well. Presidents, particularly new presidents, are without their key subcabinet members for too long. The risks to our country resulting from these vacancies are unacceptable and, I believe, unnecessary.

Again, thank you for asking me to testify before you today.

## Smart Form Specifications

One electronic form application which applicants use to answer one way, one time the White House, Senate, SF86 and SF 278 questions relevant to the intended position, and then transmit completed questionnaires if/when requested.

### Benefits

- Faster data availability for all users, especially the Senate
- Minimum errors of omission
- Less burden on the applicant + more targeted content assistance where important

### Basic requirements

- Free to the user and easy to use
  - Targeted content assistance
- **All output from the form is identical to the current forms**
- Private and secure
  - Minimum data storage
  - Authentication of true individual
  - Encryption
  - Registration
- Separable file structure
  - Portable: save input and begin again; allow for multiple submissions over time
  - Compliant
    - Export data to other databases
    - Import data from other databases
  - Mutable: update quickly; restructure submissions as needed
- Flexibility
  - Compatible across different computer platforms
  - Open architecture, non-proprietary
  - Easy to add/modify/subtract questions
- Elaborate error checking
- Smart scheduling: keep track of progress providing info; check for incompletes

Timing: 10 to 12 months for development and testing

Basic design/ownership/maintenance concept

- Mini-application is downloadable from a website
- Development is managed, and website/application is maintained by \_\_\_?\_\_\_
- Usage by each applicant is mandatory, to ensure data for all nominees is made available faster

Funding (cost \$400 -700 thousand?)

- Development funded by private \$ initially (or gifted)?
- Private \$ repaid (if not gifted) by USG \$ (Transition or eGov)?

Usage agreement

- How make form “official?”

## **Facts Regarding Different Versions of the Same Questions**

**Financial data and conflict-of-interest information.** Despite the fact that the Ethics in Government Act requires OGE to provide the committee of jurisdiction with an ethics packet that includes the SF-278 and an ethics agreement, most Senate committees still request additional and often redundant financial and conflict-of-interest information.

Financial data. Most committees require the disclosure of financial information beyond what is called for by the SF-278, but there is little consistency among committees, and often divergence between the questionnaires and the SF-278. A few examples:

- o The SF-278 requires the reporting of assets and liabilities in ranges, rather than precise figures; a number of committee questionnaires (e.g. Ag, Banking, Intel, Finance if the asset or liability exceeds \$1,000) require precise figures.
- o The SF-278 requires a nominee to report sources of income for the current and previous calendar years only. Committee ranges vary: the Banking Committee, for example, requires all sources of income for the preceding three years, while Intel requires five years.
- o The SF-278 does not require a nominee to report the value of a primary residence (or include as a liability any mortgage on that residence); some committee questionnaires (e.g., Banking) do require such information.
- o The SF-278 does not require a nominee to report financial transactions from the past year, but some committees (e.g., Finance) require a complete accounting of the previous 12 months' transactions involving securities, commodities, futures, real estate, or other investments that have a value of \$10,000 or more.

Conflicts of interest. A nominee's ethics agreement describes all potential conflicts of interest identified by the DAEO and the Office of Government Ethics and sets forth the steps that the nominee will take, if confirmed, to avoid any conflicts. Nevertheless, nearly every Senate committee asks the nominee to list potential conflicts. These questions are ordinarily answered with a boilerplate reference to the ethics agreement, so the answers add little value. In addition, some conflicts-related questions do



call for slightly different information than the SF-278:

- o Gifts. Although incoming nominees do not need to disclose gifts (schedule B on the SF-278), some questionnaires (e.g., Banking) call for their reporting.

## **Taxes.**

Tax returns. Six committees—Budget, Finance, HSGAC, Indian Affairs, Rules, Small Business—require the submission of tax returns, for varying periods of time. Foreign Relations instructs nominees to personally review returns for the previous five years, and asks for a commitment to provide returns for three years upon request. Other committees do not request tax returns.

Tax questions. Committee practice varies widely on the question of tax information. Finance (and several others) asks whether a nominee has always filed and paid all federal, state, local, and other taxes when due, and also whether all federal, state, local, and other tax returns and tax liabilities are current (filed and paid) as of the date of nomination. HELP just asks whether a nominee’s tax returns have ever been the subject of any audit or investigation. Other committees ask no substantive tax questions at all.

## **Misc.**

Litigation questions. Some questionnaires ask for a detailed account of all litigation in which the nominee has been a named party; some, like Armed Services and HSGAC, go still further, asking the nominee whether “any business of which [he or she was] an officer [has] ever been involved as a party in any administrative agency proceeding or civil litigation” (and if so to provide details). This can lead to incredibly lengthy responses, particularly when a nominee has had many employers often embroiled in litigation, or is a long-time government official with many official-capacity suits.

Political contributions. A number of committees ask nominees to list political contributions; Intel asks for a comprehensive report of contributions for the last ten years, while Foreign Relations asks for the current and preceding four calendar years; HSGAC asks for contributions of \$50 or more for the past five years, HELP asks for the past five years, and Banking for contributions of \$500 or more over the past eight years. Other committees, including Judiciary, ask no such questions.

Clients. The Intel committee asks nominees who are “attorneys, accountants, or other professionals” to list all clients and customers billed more than \$200 for the previous five years (an extremely burdensome request for many nominees).

Student loans. Some committees (e.g., Ag) ask whether the nominee has ever had a student loan. Since the SF-278 captures any current loans, it’s not clear what interest committees have in knowing whether a nominee once received a student loan that has been repaid in full.