



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Listing Agency Officials

Committee on Administration and Management

Proposed Recommendation for Committee | November 4, 2019

1 Presidential appointees and the members of the Senior Executive Service (SES) who
2 perform significant leadership responsibilities sit at the highest levels of federal agencies.¹ In
3 December 2016, the federal government included 1,242 Senate-confirmed, presidentially-
4 appointed positions (PAS positions) and 472 other presidentially-appointed positions (PA
5 positions).² The SES included 8,156 individuals in 2016 (7,321 career SES, 737 noncareer SES,
6 and 96 limited term/emergency SES), many of whom act as agency leaders.³ This group of
7 agency officials helps direct a federal workforce of more than two million employees.⁴

8 PAS officials make or advocate policy for a presidential administration and serve at the
9 pleasure of the President.⁵ These officials at the top of federal agencies are often the most visible
10 political appointments and require the occupant to be nominated by the President and confirmed
11 by the Senate. PAS positions are part of the Executive Schedule, which prescribes the basic pay

¹ This Recommendation uses the Administrative Procedure Act's broad definition of "agency." 5 U.S.C. § 551(1).

² SEN. COMM. ON HOMELAND SEC. & GOV'T AFFAIRS, 114TH CONG., UNITED STATES GOVERNMENT POLICY AND SUPPORTING POSITIONS 216 (THE PLUM BOOK) (Comm. Print 2016), *available at* <https://www.govinfo.gov/content/pkg/GPO-PLUMBOOK-2016/pdf/GPO-PLUMBOOK-2016.pdf>.

³ OFF. OF PERSONNEL MGMT., 2016 SENIOR EXECUTIVE SERVICE REPORT 3 (2017), *available at* <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/ses-summary-2016.pdf>.

⁴ Bobby Ochoa, Listing Agency Officials 1, 46–47 (Oct. 10, 2019) (draft report to the Admin. Conf. of the U.S.), <https://www.acus.gov/report/draft-report-listing-agency-officials>.

⁵ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-19-249, GOVERNMENT-WIDE POLITICAL APPOINTEE DATA AND SOME ETHICS OVERSIGHT PROCEDURES AT INTERIOR AND SBA COULD BE IMPROVED 8 (2019), *available at* <https://www.gao.gov/assets/700/697593.pdf>; Ochoa, *supra* note 4, at 6–7.



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12 schedule and salaries of most presidential appointees.⁶ These officials are among the highest-
13 paid civilian government officials,⁷ and a number of statutes and regulations establish special
14 rules, obligations, and restrictions on their activities.⁸ These officials may be asked to resign or
15 be dismissed at any time, “[t]hey are not covered by standard civil service removal
16 procedures[.]” and they “customarily resign at the request of the new incoming administration”
17 during a presidential transition.⁹

18 The President directly appoints PA officials, who also serve at his or her pleasure. These
19 positions are typically located within the Executive Office of the President and multi-member
20 boards, commissions, and committees.¹⁰ PA positions are not part of the General Schedule pay
21 system, and they may fall within the scope of several other pay systems, including the Executive
22 Schedule.¹¹ Similar to Senate-confirmed officials, PA officials may also be subject to special

⁶ 5 U.S.C. §§ 5311 *et seq.*; *see also* OFF. OF PERSONNEL MGMT., PRESIDENTIAL TRANSITION GUIDE TO FEDERAL HUMAN RESOURCES MANAGEMENT MATTERS 19 (2016), *available at* <https://www.opm.gov/about-us/our-people-organization/office-of-the-director/executive-secretariat/presidential-transition-guide-2016.pdf>.

⁷ *See* 2019 Executive & Senior Level Employee Pay Tables, OFF. OF PERSONNEL MGMT., <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2019/executive-senior-level/> (last visited Oct. 22, 2019) (Salary Table No. 2019-EX, listing salaries ranging from Level V at \$156,000 to Level I at \$213,600).

⁸ *See, e.g.*, 18 U.S.C. § 207 (establishing various communications restrictions on former government officials, including additional restrictions on certain “very senior personnel” and certain restrictions relating to foreign entities); 5 U.S.C. §§ 7321 *et seq.* (The Hatch Act, prescribing rules regulating political activities of federal employees and establishing special provisions and exemptions applicable to PAS officials); 5 C.F.R. § 2634.202 (2019) (describing persons required to file public financial disclosure reports); 5 C.F.R. § 2636.303 (2019) (describing noncareer officials subject to fifteen-percent limitation on outside earned income); 5 C.F.R. § 2638.305 (2019) (describing additional ethics briefing required for PAS appointees within 15 days of appointment).

⁹ OPM, PRESIDENTIAL TRANSITION GUIDE, *supra* note 6, at 7, 10.

¹⁰ THE PLUM BOOK, *supra* note 2, at 213–16. Those PA officials within the Executive Office of the President are outside the scope of this Recommendation because the Executive Office of the President is not an agency under the APA. *See, e.g.*, *Detroit Int’l Bridge Co. v. Gov’t of Can.*, 883 F.3d 895, 903 (D.C. Cir. 2018) (“Presidential action is not subject to judicial review under the [APA]” because the President is not an agency within the meaning of that statute); *Mt. States Legal Found. v. Bush*, 306 F.3d 1132, 1135 (D.C. Cir. 2002) (“Judicial review was unavailable under the [APA] because the President is not an ‘agency’ within the meaning of that statute.”).

¹¹ Ochoa, *supra* note 4, at 7, 10.



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23 rules, obligations, and restrictions on their activities, and they also typically resign during a
24 presidential transition.¹²

25 The SES is a personnel system covering senior management, supervisory, and top-level
26 policy positions in most federal agencies, and they are not part of the General Schedule pay
27 system.¹³ These SES officials often direct and monitor the activities of agencies; supervise the
28 work of federal employees; exercise “important policy-making, policy-determining, or other
29 executive functions[;]” and are held accountable for the success of programs and projects.¹⁴
30 Approximately half of SES positions are reserved for career employees, and the other half are
31 classified as general SES positions, which may be filled by a career appointee, a political
32 appointee, a limited-emergency appointee, or a limited-term appointee.¹⁵ The Office of Personnel
33 Management (OPM) allots and closely regulates the total number of SES positions for each
34 agency.¹⁶ By law, the number of political appointees may not exceed ten percent of government-
35 wide SES positions and may not exceed twenty-five percent of a single agency’s total SES
36 positions.¹⁷

37 The public often learns the identities of cabinet secretaries, heads of other agencies, and a
38 handful of other very high-ranking officials, if only through news coverage of the individuals.
39 But the public knows far less about the next layers of the executive branch, in part because
40 information can be difficult to locate in a centralized, updated, and comprehensive format.¹⁸ A
41 recent report by the U.S. Government Accountability Office concluded that “there is no single

¹² OPM, PRESIDENTIAL TRANSITION GUIDE, *supra* note 6, at 7.

¹³ THE PLUM BOOK, *supra* note 2, at 217–18; 5 U.S.C. §§ 3131 *et seq.*; JENNIFER L. SELIN & DAVID E. LEWIS, ADMIN. CONF. OF THE U.S., SOURCEBOOK OF UNITED STATES EXECUTIVE AGENCIES 64, 67–68 (2ND ED. 2018), available at <https://www.acus.gov/publication/sourcebook-united-states-executive-agencies-second-edition>.

¹⁴ 5 U.S.C. § 3131(a)(2).

¹⁵ THE PLUM BOOK, *supra* note 2, at 217; Ochoa, *supra* note 4, at 6.

¹⁶ THE PLUM BOOK, *supra* note 2, at 217–18; 5 U.S.C. §§ 3132 *et seq.*; SELIN & LEWIS, *supra* note 13, at 67.

¹⁷ 5 U.S.C. § 3134.

¹⁸ GAO, GOVERNMENT-WIDE POLITICAL APPOINTEE DATA, *supra* note 5, at 10–14; Ochoa, *supra* note 4, at 1, 39–41, 49–50.



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42 source of data on political appointees serving in the executive branch that is publicly available,
43 comprehensive, and timely.”¹⁹

44 To be sure, various resources, including *United States Government Policy and*
45 *Supporting Positions* (the so-called “Plum Book”),²⁰ the *Official Congressional Directory*,²¹ and
46 the *United States Government Manual*,²² provide periodic snapshots of the occupants of certain
47 high-level agency positions. But these publications serve distinct purposes and objectives and, in
48 all events, given turnover, can quickly become out-of-date.²³ Likewise, although the Office of
49 Personnel Management (OPM) maintains extensive lists of federal employees, those lists are not
50 readily available to the public.²⁴ Finally, although some agencies provide current information
51 about high-ranking officials on their websites, practices vary significantly.²⁵ Detailed
52 information about appointment terms, vacant offices, acting officials, and delegated authority is
53 often even more difficult to find.²⁶

¹⁹ GAO, GOVERNMENT-WIDE POLITICAL APPOINTEE DATA, *supra* note 5 (summarizing “What GAO Found”).

²⁰ THE PLUM BOOK, *supra* note 2.

²¹ UNITED STATES CONGRESS, JOINT COMMISSION ON PRINTING, OFFICIAL CONGRESSIONAL DIRECTORY: 115TH CONGRESS (2017).

²² NAT’L ARCHIVES & REC. ADMIN., THE UNITED STATES GOVERNMENT MANUAL (2016).

²³ See GAO, GOVERNMENT-WIDE POLITICAL APPOINTEE DATA, *supra* note 5, at 13 (“Until the names of political appointees and their position, position type, agency or department name, start and end dates are publicly available at least quarterly, it will be difficult for the public to access comprehensive and reliable information.”); Ochoa, *supra* note 4, at 18–38.

²⁴ See Ochoa, *supra* note 4, at 45–48. OPM’s data from agencies is based on the person, rather than based on the specific position or job. As a result, the agency stops sending information about a person and their position when they separate from an agency. With respect to PAS, PA, and SES officials, OPM’s data includes information about the name, agency, job title, start date, end date, type of appointment, and pay system. For these data-related reasons—and because agencies are best positioned to make determinations about which SES officials perform significant leadership responsibilities—these Recommendations to OPM include all SES officials.

²⁵ *Id.* at 36–37.

²⁶ See, e.g., Anne Joseph O’Connell, Acting Agency Officials and Delegations of Authority 16–18 (Sept. 16, 2019) (draft report to the Admin. Conf. of the U.S.), <https://www.acus.gov/report/draft-report-acting-agency-officials> (describing significant data-quality issues).



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54 Knowing the identities of those who help lead federal agencies is important for
55 promoting transparency and facilitating public participation in the work of government.²⁷ For
56 instance, members of the public (including reporters and academic researchers), congressional
57 members and staff, White House officials, and officials at other federal and state agencies all
58 sometimes have reasons to know this information.²⁸

59 One of this Recommendation’s purposes is to advance the Conference’s recent efforts to
60 promote greater access to relevant agency information.²⁹ This is a companion to
61 Recommendation 2019-___, *Acting Agency Officials and Delegations of Authority*, which
62 _____.³⁰

RECOMMENDATION

Recommendations Applicable to Agencies Generally

63 1. Agencies should prominently display on their websites updated information about each
64 PAS and PA position, and any **SES** position that is assigned significant leadership
65 responsibilities, including the name and contact information of the current or acting

Commented [ACUS1]: Committee to discuss and decide on scope and approach re: SES.

²⁷ See GAO, GOVERNMENT-WIDE POLITICAL APPOINTEE DATA, *supra* note 5, at 13; Ochoa, *supra* note 4, at 3.

²⁸ See GAO, GOVERNMENT-WIDE POLITICAL APPOINTEE DATA, *supra* note 5, at 13. The Conference has previously addressed related issues. In 1968, the Conference recommended changes to the *U.S. Government Organization Manual*, specifically pointing out deficiencies with the “narrative text submitted” by agencies and encouraging agencies to improve these entries. Admin. Conf. of the U.S., Recommendation 68-2, *U.S. Government Organization Manual* (Dec. 11, 1968). This Recommendation goes much further, offering specific recommendations for making agency information publicly available.

²⁹ See, e.g., Admin. Conf. of the U.S., Recommendation 2019-3, *Public Availability of Agency Guidance Documents*, 84 Fed. Reg. 38,931 (Aug. 8, 2019); Admin. Conf. of the U.S., Recommendation 2018-6, *Improving Access to Regulations.gov’s Rulemaking Dockets*, 84 Fed. Reg. 2139 (Feb. 6, 2019); Admin. Conf. of the U.S., Recommendation 2018-5, *Public Availability of Adjudication Rules*, 84 Fed. Reg. 2142 (Feb. 6, 2019); Admin. Conf. of the U.S., Recommendation 2017-1, *Adjudication Materials on Agency Websites*, 82 Fed. Reg. 31,039 (July 5, 2017). Earlier Conference recommendations in accord include Admin. Conf. of the U.S., Recommendation 89-8, *Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions*, 54 Fed. Reg. 53,495 (Dec. 29, 1989).

³⁰ Admin. Conf. of the U.S., Recommendation 2019-___, *Acting Agency Officials and Delegations of Authority*, ___ Fed. Reg. ____ (____).



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66 official, as well as whether it is a PAS, PA, or SES position. Vacancies for such positions
67 should also be prominently displayed.

Recommendations Applicable to the Office of Personnel Management

- 68 2. The Office of Personnel Management (OPM) should publish comprehensive data about
69 PAS, PA, and SES officials on a monthly basis on a public website and ensure the
70 information is easily accessible.
- 71 3. OPM should include the following fields, if applicable, for each listed PAS, PA, and SES
72 official: Name (first and last); Agency; Job Title; Start Date; End Date (if known); and
73 Type of Appointment.
- 74 4. OPM should create separate lists of current and former officials.