



## Listing Agency Officials

### Committee on Administration and Management

Proposed Recommendation for Committee | ~~October 18~~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.<sup>1</sup> In  
3 December 2016, the federal government included 1,242 Senate-confirmed,  
4 ~~Presidentially~~presidentially-appointed positions (PAS positions) and 472 other  
5 ~~Presidentially~~presidentially-appointed positions (PA positions).<sup>2</sup> The SES included 8,156  
6 individuals in 2016 (7,321 career SES, 737 noncareer SES, and 96 limited term/emergency  
7 SES).<sup>3</sup> ~~These leaders help~~, many of whom act as agency leaders.<sup>4</sup> This group of agency officials  
8 helps direct a federal workforce of more than two million employees.<sup>5</sup>

<sup>1</sup> This Recommendation uses the Administrative Procedure Act's broad definition of "agency." 5 U.S.C. § 551(1). By "subcomponent," this Recommendation refers to bureaus and other subunits within a larger executive department or agency. See JENNIFER L. SELIN & DAVID E. LEWIS, ADMIN. CONF. OF THE U.S., SOURCEBOOK OF UNITED STATES EXECUTIVE AGENCIES 13–15, 125–32 (2ND ED. 2018), available at [https://www.acus.gov/publication/sourcebook-united-states-executive-agencies-second-edition-\(describing-definitional-difficulties-and-providing-an-extensive-list-of-agencies-and-subunits\)](https://www.acus.gov/publication/sourcebook-united-states-executive-agencies-second-edition-(describing-definitional-difficulties-and-providing-an-extensive-list-of-agencies-and-subunits)).

<sup>2</sup> 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>.

<sup>3</sup> 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>.

<sup>4</sup> 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>.

<sup>5</sup> Bobby Ochoa, Listing Agency Officials 1, 46–47 (~~October~~Oct. 10, 2019) (draft report to the Admin. Conf. of the U.S.), <https://www.acus.gov/report/draft-report-listing-agency-officials>.

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9 PAS officials make or advocate policy for a presidential administration and serve at the  
10 pleasure of the President.<sup>6</sup> These officials at the top of federal agencies are often the most visible  
11 political appointments and require the occupant to be nominated by the President and confirmed  
12 by the Senate. PAS positions are part of the Executive Schedule, which prescribes the basic pay  
13 schedule and salaries of most presidential appointees.<sup>7</sup> These officials are among the highest-  
14 paid civilian government officials,<sup>8</sup> and a number of statutes and regulations establish special  
15 rules, obligations, and restrictions on their activities.<sup>9</sup> These officials may be asked to resign or  
16 be dismissed at any time, “[t]hey are not covered by standard civil service removal  
17 procedures[.]” and they “customarily resign at the request of the new incoming administration”  
18 during a presidential transition.<sup>10</sup>

19 The President directly appoints PA officials, who also serve at his or her pleasure. These  
20 positions are typically located within the Executive Office of the President and multi-member  
21 boards, commissions, and committees.<sup>11</sup> PA positions are not part of the General Schedule pay

<sup>6</sup> 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.

<sup>7</sup> 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>.

<sup>8</sup> *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).

<sup>9</sup> *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).

<sup>10</sup> OPM, PRESIDENTIAL TRANSITION GUIDE, *supra* note 6, at 7, 10.

<sup>11</sup> 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



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22 system, and they may fall within the scope of several other pay systems, including the Executive  
23 Schedule.<sup>12</sup> Similar to Senate-confirmed officials, PA officials may also be subject to special  
24 rules, obligations, and restrictions on their activities, and they also typically resign during a  
25 presidential transition.<sup>13</sup>

26 The SES is a personnel system covering senior management, supervisory, and top-level  
27 policy positions in most federal agencies, and they are not part of the General Schedule pay  
28 system.<sup>14</sup> These SES officials often direct and monitor the activities of agencies; supervise the  
29 work of federal employees; exercise “important policy-making, policy-determining, or other  
30 executive functions[;]” and are held accountable for the success of programs and projects.<sup>15</sup>  
31 Approximately half of SES positions are reserved for career employees, and the other half are  
32 classified as general SES positions, which may be filled by a career appointee, a political  
33 appointee, a limited-emergency appointee, or a limited-term appointee.<sup>16</sup> The Office of Personnel  
34 Management (OPM) allots and closely regulates the total number of SES positions for each  
35 agency.<sup>17</sup> By law, the number of political appointees may not exceed ten percent of government-  
36 wide SES positions and may not exceed twenty-five percent of a single agency’s total SES  
37 positions.<sup>18</sup>

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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.”).

<sup>12</sup> Ochoa, *supra* note 4, at 7, 10.

<sup>13</sup> OPM, PRESIDENTIAL TRANSITION GUIDE, *supra* note 6, at 7.

<sup>14</sup> 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>.

<sup>15</sup> 5 U.S.C. § 3131(a)(2).

<sup>16</sup> THE PLUM BOOK, *supra* note 2, at 217; Ochoa, *supra* note 4, at 6.

<sup>17</sup> THE PLUM BOOK, *supra* note 2, at 217–18; 5 U.S.C. §§ 3132 *et seq.*; SELIN & LEWIS, *supra* note 13, at 67.

<sup>18</sup> 5 U.S.C. § 3134.



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38 The public often learns the identities of cabinet secretaries, heads of other agencies, and a  
39 handful of other very high-ranking officials, if only through news coverage of the individuals.  
40 But the public knows far less about the next layers of the executive branch, in part because  
41 information can be difficult to locate in a centralized, updated, and comprehensive format.<sup>19</sup>

42 A recent report by the U.S. Government Accountability Office concluded that “there is  
43 no single source of data on political appointees serving in the executive branch that is publicly  
44 available, comprehensive, and timely.”<sup>20</sup>

45 To be sure, various resources, including *United States Government Policy and*  
46 *Supporting Positions* (the so-called “Plum Book”),<sup>21</sup> the *Official Congressional Directory*,<sup>22</sup> and  
47 the *United States Government Manual*,<sup>23</sup> provide periodic snapshots of the occupants of certain  
48 high-level agency positions. But these publications do not cover PAS, PA, serve distinct purposes  
49 and SES officials objectives and, in all events, given turnover, can quickly become out-of-date.<sup>24</sup>  
50 Likewise, although the Office of Personnel Management (OPM) maintains extensive lists of  
51 federal employees, those lists are not readily available in any publicly accessible forum.<sup>25</sup> to the  
52 public.<sup>26</sup> Finally, while although some agencies provide current information about high-ranking

<sup>19</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-19-249, GOVERNMENT-WIDE POLITICAL APPOINTEE DATA AND SOME ETHICS OVERSIGHT PROCEDURES, *supra* note 5, at INTERIOR AND SBA COULD BE IMPROVED-10-14-(2019), available at <https://www.gao.gov/assets/700/697593.pdf>; Ochoa, *supra* note 4, at 1, 39–41, 49–50.

<sup>20</sup> GAO, GOVERNMENT-WIDE POLITICAL APPOINTEE DATA, *supra* note 5 (summarizing “What GAO Found”).

<sup>21</sup> THE PLUM BOOK, *supra* note 2.

<sup>22</sup> UNITED STATES CONGRESS, JOINT COMMISSION ON PRINTING, OFFICIAL CONGRESSIONAL DIRECTORY: 115TH CONGRESS (2017).

<sup>23</sup> NAT’L ARCHIVES & REC. ADMIN., THE UNITED STATES GOVERNMENT MANUAL (2016).

<sup>24</sup> 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.

<sup>25</sup> Ochoa, *supra* note 4, at 45–48.

<sup>26</sup> 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

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53 officials on their websites, practices vary significantly.<sup>27</sup> Detailed information about appointment  
54 terms, vacant offices, acting officials, and delegated authority is often even more difficult to  
55 find.<sup>28</sup>

56 Knowing the identities of those who help lead federal agencies is important for  
57 promoting transparency and facilitating public participation in the work of government.<sup>29</sup> For  
58 instance, members of the public (including reporters and academic researchers), congressional  
59 members and staff, White House officials, and officials at other federal and state agencies, ~~the~~  
60 ~~media, academic researchers, and members of the public more generally~~ all sometimes have  
61 reasons to know this information.<sup>30</sup>

62 ~~The Conference has previously addressed related issues. In 1968, the Conference~~  
63 ~~recommended changes to the U.S. Government Organization Manual, specifically pointing out~~  
64 ~~deficiencies with the “narrative text submitted” by agencies and encouraging agencies to~~  
65 ~~improve these entries.<sup>31</sup> This Recommendation goes much further, offering specific~~  
66 ~~recommendations for making agency information publicly available.~~

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.

<sup>27</sup> *Id.* at 36–37.

<sup>28</sup> See, e.g., Anne Joseph O’Connell, Acting Agency Officials and Delegations of Authority 16–18 (~~September~~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).

<sup>29</sup> See GAO, GOVERNMENT-WIDE POLITICAL APPOINTEE DATA, *supra* note 5, at 13; Ochoa, *supra* note 4, at 3.

<sup>30</sup> ~~See GAO, GOVERNMENT-WIDE POLITICAL APPOINTEE DATA, *supra* note 5, at 13. 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.~~

<sup>31</sup> See, e.g., Admin. Conf. of the U.S., Recommendation 68-2, U.S. Government Organization Manual (Dec. 11, 1968).

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67 One of this Recommendation’s purposes is to advance the Conference’s recent efforts to  
68 promote greater access to relevant agency information.<sup>32</sup> This is a companion to  
69 Recommendation 2019-\_\_, *Acting Agency Officials and Delegations of Authority*, which  
70 \_\_\_\_\_.<sup>33</sup>

RECOMMENDATION

Recommendations Applicable to Agencies Generally

71 1. Agencies should prominently display on their websites updated information about each  
72 PAS and PA, ~~position position, and any SES position that is assigned significant~~  
73 ~~leadership responsibilities~~, including the name and contact information of the current or  
74 acting official, as well as whether it is a PAS, ~~PA~~, or ~~PA~~SES position. Vacancies for such  
75 positions should also be prominently displayed.

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

<sup>32</sup> See, e.g., Admin. Conf. of the U.S., Recommendation 2019-\_\_, *Acting Agency Officials and Delegations of Authority*, \_\_ Fed. Reg. \_\_\_\_ (\_\_\_\_); Admin. 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).

<sup>33</sup> Admin. Conf. of the U.S., Recommendation 2019-\_\_, *Acting Agency Officials and Delegations of Authority*, \_\_ Fed. Reg. \_\_\_\_ (\_\_\_\_).



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### Recommendations Applicable to the Office of Personnel Management

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- 76 2. ~~OPM~~The Office of Personnel Management (OPM) should publish comprehensive data  
77 about PAS, PA, and SES officials on a monthly basis on a public website and ensure the  
78 information is easily accessible.
- 79 3. OPM should include the following fields, if applicable, for each listed PAS, PA, and SES  
80 official: ~~Agency~~; Name (first and last); ~~Agency~~; Job Title; Start Date; End Date (if known  
81 ~~or reasonably foreseeable~~); and Type of Appointment.
- 82 4. OPM should create separate lists of current and former officials.