



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

## Listing Agency Officials

### Committee on Administration and Management

Proposed Recommendation | December 12, 2019

#### Proposed Amendments

This document displays manager's amendments (with no marginal notes) and additional amendments from the Council and Conference members (with sources shown in the margin).

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, presidentially-  
4 appointed positions (PAS positions) and 472 other presidentially-appointed positions (PA  
5 positions).<sup>2</sup> The SES included 8,156 individuals in 2016 (7,321 career SES, 737 noncareer SES,  
6 and 96 limited-term/limited-emergency SES), ~~many of whom act as agency leaders~~.<sup>3</sup> This group  
7 of agency officials helps direct a federal workforce of more than two million employees.<sup>4</sup>

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

<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> Bobby Ochoa, Listing Agency Officials 1, 6–8, 48 (Nov. 13, 2019) (report to the Admin. Conf. of the U.S.), <https://www.acus.gov/report/final-report-listing-agency-officials>.



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8 PAS officials ~~make or advocate policy for a presidential administration and serve at the~~  
9 ~~pleasure of the President.~~<sup>5</sup> ~~These officials sit~~ at the top of federal agencies, ~~and they~~ are often the  
10 most visible political ~~appointments appointees.~~<sup>6</sup> ~~and require the occupant to be~~ These officials are  
11 nominated by the President and confirmed by the Senate. ~~PAS officials who do not have for-~~  
12 ~~cause removal protections are subject to removal by the President at any time and “customarily~~  
13 ~~resign at the request of the new incoming administration.”~~<sup>7</sup>

14 PAS positions are part of the Executive Schedule, which prescribes the basic pay  
15 schedule and salaries of most presidential appointees.<sup>8</sup> These officials are among the highest-  
16 paid civilian government officials,<sup>9</sup> and a number of statutes and regulations establish special  
17 rules, obligations, and restrictions on their activities.<sup>10</sup> ~~These officials may be asked to resign or~~  
18 ~~be dismissed at any time, “[t]hey are not covered by standard civil service removal~~

<sup>5</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 7-8.

<sup>6</sup> Ochoa, *supra* note 4, at 7-8.

<sup>7</sup> See OFF. OF PERSONNEL MGMT., PRESIDENTIAL TRANSITION GUIDE TO FEDERAL HUMAN RESOURCES MANAGEMENT MATTERS 7, 10 (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> 5 U.S.C. §§ 5311 *et seq.*; see also OPM, PRESIDENTIAL TRANSITION GUIDE, *supra* note 6, at 19; 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>9</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 Nov. 22, 2019) (Salary Table No. 2019-EX, listing salaries ranging from Level V at \$156,000 to Level I at \$213,600).

<sup>10</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); the Hatch Act, 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 (describing persons required to file public financial disclosure reports); 5 C.F.R. § 2636.303 (describing noncareer officials subject to fifteen-percent limitation on outside earned income); 5 C.F.R. § 2638.305 (describing additional ethics briefing required for PAS appointees within 15 days of appointment).



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19 procedures[;]” and they “customarily resign at the request of the new incoming administration”  
20 during a presidential transition.<sup>11</sup>

Commented [CMA4]: Proposed Amendment from Public Member Aaron L. Nielson

21 The President directly appoints PA officials, who also serve at his or her pleasure. These  
22 positions are typically located within the Executive Office of the President and multi-member  
23 boards, commissions, and committees.<sup>12</sup> PA positions are not part of the General Schedule pay  
24 system, and they may fall within the scope of several other pay systems, including the Executive  
25 Schedule.<sup>13</sup> Similar to Senate-confirmed officials, PA officials may also be subject to special  
26 rules, obligations, and restrictions on their activities, and they also typically resign during a  
27 presidential transition.<sup>14</sup>

28 The SES is a government-wide personnel system covering senior management,  
29 supervisory, and top-level policy positions in most federal agencies, and these positions are not  
30 part of the General Schedule pay system.<sup>15</sup> These SES officials often direct and monitor the  
31 activities of agencies; supervise the work of federal employees; exercise “important policy-  
32 making, policy-determining, or other executive functions[;]” and are held accountable for the  
33 success of programs and projects.<sup>16</sup> Approximately half of SES positions are reserved for career  
34 employees, and the other half are classified as general SES positions, which may be filled by a  
35 career appointee, a political appointee, a limited-emergency appointee, or a limited-term

<sup>11</sup> OPM, PRESIDENTIAL TRANSITION GUIDE, *supra* note 6, at 7, 10.

<sup>12</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.

<sup>13</sup> Ochoa, *supra* note 4, at 8, 11.

<sup>14</sup> OPM, PRESIDENTIAL TRANSITION GUIDE, *supra* note 6, at 7.

<sup>15</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 (2d ed. 2018), available at <https://www.acus.gov/publication/sourcebook-united-states-executive-agencies-second-edition>. There are other, also significant government officials that do not fall within the PAS, PA, or SES. *See* Ochoa, *supra* note 4, at 4–14. For purposes of this Recommendation, we have focused on PAS, PA, and SES officials because the PAS and PA are presidential appointments and the SES is the government-wide personnel system for leadership positions. This Recommendation does not address other executive personnel systems. *See, e.g.*, 5 U.S.C. § 3132 (listing exclusions).

<sup>16</sup> 5 U.S.C. § 3132(a)(2).



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36 appointee.<sup>17</sup> The Office of Personnel Management (OPM) allots and closely regulates the total  
37 number of SES positions for each agency.<sup>18</sup> By law, the number of political appointees may not  
38 exceed ten percent of government-wide SES positions and may not exceed twenty-five percent  
39 of a single agency's total SES positions.<sup>19</sup>

40 The public often learns the identities of cabinet secretaries, heads of other agencies, and a  
41 handful of other very high-ranking officials, if only through news coverage of the individuals.  
42 But the public knows far less about the next layers of the executive branch, in part because  
43 information can be difficult to locate in a centralized, updated, and comprehensive format.<sup>20</sup> A  
44 recent report by the U.S. Government Accountability Office concluded that “there is no single  
45 source of data on political appointees serving in the executive branch that is publicly available,  
46 comprehensive, and timely.”<sup>21</sup> Much of this information is available in private-sector  
47 publications, but they are expensive and not readily available to the public.

48 To be sure, various resources, including *United States Government Policy and*  
49 *Supporting Positions* (the so-called “Plum Book”),<sup>22</sup> the *Official Congressional Directory*,<sup>23</sup> and  
50 the *United States Government Manual*,<sup>24</sup> provide periodic snapshots of the occupants of certain  
51 high-level agency positions. But these publications serve distinct purposes and objectives and, in  
52 all events, given turnover, can quickly become out-of-date.<sup>25</sup> Likewise, although OPM maintains

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<sup>17</sup> THE PLUM BOOK, *supra* note 2, at 217; Ochoa, *supra* note 4, at 6–7.

<sup>18</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>19</sup> 5 U.S.C. § 3134.

<sup>20</sup> GAO, GOVERNMENT-WIDE POLITICAL APPOINTEE DATA, *supra* note 5, at 10–14; Ochoa, *supra* note 4, at 1, 40–42, 50–51.

<sup>21</sup> GAO, GOVERNMENT-WIDE POLITICAL APPOINTEE DATA, *supra* note 5 (summarizing “What GAO Found”).

<sup>22</sup> THE PLUM BOOK, *supra* note 2.

<sup>23</sup> UNITED STATES CONGRESS, JOINT COMMISSION ON PRINTING, OFFICIAL CONGRESSIONAL DIRECTORY: 115TH CONGRESS (2017).

<sup>24</sup> NAT'L ARCHIVES & REC. ADMIN., THE UNITED STATES GOVERNMENT MANUAL (2016).

<sup>25</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



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53 extensive lists of federal employees, those lists are not readily available to the public.<sup>26</sup> Finally,  
54 although some agencies provide current information about high-ranking officials on their  
55 websites, practices vary significantly.<sup>27</sup> Detailed information about appointment terms, vacant  
56 offices, acting officials, and delegated authority is often even more difficult to find.<sup>28</sup>

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

62 One of this Recommendation’s purposes is to advance the Conference’s recent efforts to  
63 promote greater access to relevant agency information.<sup>31</sup> This Recommendation is a companion

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least quarterly, it will be difficult for the public to access comprehensive and reliable information.”); Ochoa, *supra* note 4, at 19–39.

<sup>26</sup> See Ochoa, *supra* note 4, at 46–49. 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, and type of appointment (PAS, PA, career SES, noncareer SES, limited-term SES, and limited-emergency SES). ~~For these data-related reasons—and because agencies are best positioned to make determinations about which SES officials perform significant leadership responsibilities—the Recommendation to OPM includes all SES officials.~~ OPM’s workforce information-reporting function under Civil Service Rule 9 excludes certain agencies and positions. 5 C.F.R. §§ 9.1, 9.2 (2019).

<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 (Dec. 1, 2019) (report to the Admin. Conf. of the U.S.), <https://www.acus.gov/report/final-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. 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 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.,



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64 to Recommendation 2019-\_\_, *Acting Agency Officials and Delegations of Authority*, which  
65 promotes compliance with the Federal Vacancies Reform Act of 1998 and other agency-specific  
66 succession statutes and encourages federal agencies to improve transparency regarding the use of  
67 acting officials and agency delegations of authority in the face of staffing vacancies.<sup>32</sup>

RECOMMENDATION

Recommendations Applicable to Agencies Generally

68 1. Agencies should prominently display on their websites updated information about each  
69 PAS\_ and PA-position, and any-SES position-that is assigned significant leadership  
70 responsibilities, including the name and contact information of the current or acting  
71 official who holds the position, as well as whether it is a PAS, PA, or SES position (and,  
72 if SES, whether it is a career or noncareer position). Vacancies for such positions should  
73 also be prominently displayed.

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Recommendations Applicable to the Office of Personnel Management

74 2. The Office of Personnel Management (OPM) should regularly publish data about PAS,  
75 PA, and SES officials (preferably on a monthly basis) on a public website and ensure the  
76 information is easily accessible. This data should include the following fields, if  
77 applicable, for each listed PAS, PA, and SES official: Name (first and last); Agency; Job  
78 Title; Start Date; and Type of Appointment.  
79 3. OPM should create a separate list of former PAS officials to the extent feasible.

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