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Filling Presidentially Appointed, Senate-Confirmed Positions in the Department of Homeland Security

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Summary

During consideration of the legislation creating the new Department of Homeland Security (DHS), many observers stressed the need to mobilize a new department quickly to respond to threats to homeland security. Yet new government agencies often encounter substantial difficulties that lead to start-up delays. In one study of reorganized agencies, the General Accounting Office identified delays in obtaining key officials as one common start-up problem. Nearly all the top policymaking positions in the new homeland security department are to be filled through appointments by the President, with the advice and consent of the Senate. In general, delays in filling such positions have not been uncommon, particularly at the outset of a new Administration. Although appointment delays may raise problems for any agency, delays for new agencies can cause major difficulties; leadership is critical during the transition, when many decisions regarding policies, procedures, and organizational issues must be made.

The Homeland Security Act of 2002 (P.L. 107-296) created DHS, which came into existence on January 24, 2003. The act creates or transfers to the new department some 26 full-time, civilian, presidentially appointed positions subject to Senate confirmation. As of January 15, 2004, the President had submitted 14 nominations to these positions, and the Senate had confirmed 13 of these. In addition, the President had used authority provided in the act to appoint six individuals to DHS positions on a temporary basis. Five of these had been nominated and confirmed to the positions after their temporary appointments. The nomination of the remaining individual was pending in the Senate as of that date, and he was given a recess appointment on December 26, 2003. The President had also used authority provided in the act to appoint, without Senate confirmation, one individual who had previously been confirmed for a similar position in another agency. The previously appointed Commandant of the Coast Guard, Commissioner of Customs, and Administrator of the United States Fire Administration continued to serve after their organizations were transferred to the new department. The first Deputy Secretary had left the position, and a replacement had been confirmed. The appointment status of the head of the Transportation Security Administration could not be determined. A DHS confirmation information table and organizational chart are provided.

Studies indicate that the appointment process is, on average, taking longer, and that the selection and vetting process often takes much longer than the confirmation process. Given the stated urgency of the new department's business, Congress could choose to facilitate the appointment process for DHS positions. Options for enabling rapid appointment would include making statutory changes to streamline the vetting process and simplifying the Senate confirmation process, particularly at the committee level. Some possible changes, however, could prove controversial.

Related information may be found in CRS Report RL31751, *Homeland Security: Department Organization and Management — Implementation Phase*, by Harold C. Relyea. The appointment information in this report will be updated as events warrant.

Contents

Presidentially Appointed, Senate-Confirmed Positions in the New Department	2
The Appointment Process	12
Selection and Nomination	12
Confirmation	13
Appointment	13
Recess Appointments	13
Temporary Appointments	15
Departments Created Since 1965	16
Proposals for Appointment Process Improvement	18
Appointment Progress at the New Department and Congressional Options for Facilitating the Appointment Process	20
Conclusion	22
Appendix: Departments Created Since 1965	23
Housing and Urban Development	23
Transportation	24
Energy	24
Education	25
Veterans Affairs	25

List of Figures

Figure 1. Department of Homeland Security Organizational Chart	10
Figure 2. Department of Homeland Security: Working Organizational Chart Draft Provided by DHS	11

List of Tables

Table 1. Initial Appointments to Presidentialy Appointed, Senate-Confirmed Positions in the Department of Homeland Security	7
Table 2. Average Number of Days from Enactment of Organic Legislation to Nomination and Confirmation of Top Officials in the Five Most Recent New Departments	17
Table 3. Appointments at the Department of Homeland Security, as of January 15, 2004	21
Table 4. Initial Appointments to the New Department of Housing and Urban Development, 1966-1967	27
Table 5. Initial Appointments to the New Department of Transportation, 1966-1968	28
Table 6. Initial Appointments to the New Department of Energy, 1977-1978	30
Table 7. Initial Appointments to the New Department of Education, 1979-1980	32
Table 8. Initial Appointments to the New Department of Veterans Affairs, 1989-1990	34

Filling Presidentially Appointed, Senate-Confirmed Positions in the Department of Homeland Security

During consideration of the legislation creating the new Department of Homeland Security, many observers stressed the need to mobilize any new department quickly to respond to threats to homeland security. Yet new government agencies often encounter substantial difficulties that lead to start-up delays. In one study of reorganized agencies, the General Accounting Office identified delays in obtaining key officials as one common start-up problem.¹ Nearly all the top policymaking positions in the new homeland security department will be filled through appointments by the President, with the advice and consent of the Senate. In general, delays in filling such positions are not uncommon, particularly at the outset of a new Administration.² Although appointment delays may raise problems for any agency, delays for new agencies can cause major difficulties; leadership is critical during the transition, when many decisions regarding policies, procedures, and organizational issues must be made.

What are the Senate-confirmed positions in the new department? How long is it likely to take to fill these positions? What progress has been made on filling these positions? This report addresses these questions by identifying the positions, describing the appointment process, discussing the time required for the initial appointments to the last five new departments, describing proposals for improving the process, discussing the prospects for, and status of, the appointments to the new department, and discussing some options available should Congress wish to facilitate the process.

¹ U.S. General Accounting Office, *Implementation: The Missing Link in Planning Reorganizations*, GAO/GGD-81-57, Mar. 20, 1981. The other main start-up problems the report identified were delays in obtaining needed staff, insufficient funding that necessitated additional budget requests, inadequate office space, and delays in establishing support functions.

² See, for example, CRS Report RL31054, *Nominations and Confirmations to Policy Positions in the First 100 Days of the George W. Bush, William J. Clinton, and Ronald W. Reagan Administrations*, by Rogelio Garcia.

Presidentially Appointed, Senate-Confirmed Positions in the New Department

The principal officers in a department are established in the department's organic legislation or reorganization plan.³ Currently, more than 1,200 presidentially appointed civilian executive or legislative branch positions require Senate confirmation (PAS positions).⁴ More than 330 of these are in the 14 previously existing executive departments. Within federal departments, the first four levels — secretary, deputy secretary, under secretary, and assistant secretary — are nearly always PAS positions. Some other officers, including the chief financial officer, the inspector general, and the general counsel, are also routinely subject to confirmation. The persons filling these positions are generally considered to be the top policy decision makers in the federal government, having the responsibility to implement statutes.

The Homeland Security Act of 2002 (P.L. 107-296) created the Department of Homeland Security (DHS), which came into existence on January 24, 2003.⁵ The act creates positions within, and transfers existing statutory positions to, the new department. Some of these positions, including most of the principal policymaking positions, are PAS positions. Other appointments are to be made without Senate confirmation, either by the President or the new secretary. In other cases, the appointment authority is not specified in the law. The appointments of concern in this report are the full-time civilian PAS positions within the new department.⁶

The act also called for the submission, by the President, of a reorganization plan not later than 60 days after enactment of the new law. The President released such a plan the day he signed the act, and transmitted a modification of the plan to Congress two months later. The plan and modification provide more specific details concerning the proposed implementation of the act.⁷ Among other things, the plan

³ For information on the appointment status of presidentially appointed, Senate-confirmed positions within the other executive departments, see CRS Report RL31346, *Presidential Appointments to Full-Time Positions in Executive Departments During the 107th Congress, 2001-2002*, by Henry B. Hogue.

⁴ U.S. Congress, Senate Committee on Governmental Affairs, *Policy and Supporting Positions*, committee print, 106th Cong., 2nd sess., Nov. 8, 2000, S. Prt. 106-54, (Washington: GPO, 2000). Hereafter referred to as Plum Book 2000.

⁵ P.L. 107-296, Nov. 25, 2002; 116 Stat. 2135. H.R. 5005, the Homeland Security Act of 2002, as amended, was passed by the Senate on Nov. 19. The Senate amendments were agreed to by the House on Nov. 22, 2002. The bill was signed into law by President George W. Bush on Nov. 25, 2002.

⁶ The full range of statutory positions is identified and discussed in CRS Report RL31492, *Homeland Security: Components and Management Positions for the New Department* (archived), by Henry B. Hogue.

⁷ U.S. President (George W. Bush), "Department of Homeland Security Reorganization Plan," Nov. 25, 2002. The plan may be found at [http://www.whitehouse.gov/news/releases/2002/11/reorganization_plan.pdf], visited Oct. 28, 2003; U.S. President (George

provides a timetable for the transfer of entities and functions into the new department. All transfers were to be completed by September 30, 2003. This timetable may have affected the timing of appointments to some of the department's PAS positions.

Table 1 identifies PAS positions the act creates in, or transfers to, the new department. They are secretary, deputy secretary, five under secretaries, Director of the Bureau of Citizenship and Immigration Services, Commissioner of Customs, 12 assistant secretaries, general counsel, inspector general, Commandant of the Coast Guard, and Director of the Office for Domestic Preparedness. The table provides the section of the act in which each position is established, the pay level of the position, and nomination and confirmation information as of January 15, 2004.

Under the Homeland Security Act, most of the functions of four agencies that had PAS positions have been transferred into the new department. The four organizations are the Transportation Security Administration (TSA) and the U.S. Coast Guard from the Department of Transportation (DOT), the U.S. Customs Service from the Department of the Treasury, and the Federal Emergency Management Agency (FEMA).⁸

The appointment of the Commandant of the Coast Guard was provided for by law⁹ prior to the Homeland Security Act, and the act specifically provides that the appointment process will continue to follow prior law. The Commissioner of Customs, which has been a PAS position at Level III of the Executive Schedule in the Department of the Treasury, is to maintain that status in the new department. The previously appointed commandant and commissioner have continued to serve after the transfer of their respective organizations to the new department.

The act does not provide for the transfer or continuation of any of the FEMA PAS positions. It does, however, have a provision that might apply to these positions:

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred pursuant to this Act, each position and office the incumbent of which was authorized to receive compensation at the

⁷ (...continued)

W. Bush), "Letter to Congressional Leaders Transmitting the Reorganization Plan Modification for the Department of Homeland Security," *Weekly Compilation of Presidential Documents*, vol. 39, Jan. 30, 2003, p. 136.

⁸ According to the President's "Department of Homeland Security Reorganization Plan," released on Nov. 25, 2002, these four organizations were to be transferred from their present location to the new department on Mar. 1, 2003. The plan may be found at [http://www.whitehouse.gov/news/releases/2002/11/reorganization_plan.pdf], visited Oct. 29, 2003. This list does not include the Immigration and Naturalization Service (INS), which was to be abolished once its functions were transferred, as provided for in the act. (P.L. 107-296, Sec. 471(a).)

⁹ 14 U.S.C. 44.

rates prescribed for an office or position at level II, III, IV, or V, of the Executive Schedule, shall terminate.¹⁰

Consequently, the United States Fire Administration Reauthorization Act of 2003 included a section that provided that

Section 1513 of the Homeland Security Act of 2002 (6 U.S.C. 553) does not apply to the position or office of Administrator of the United States Fire Administration, who shall continue to be appointed and compensated as provided by section 5(b) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2204(b)).¹¹

Because this provision maintains the U.S. Fire Administrator as a PAS position, the position is included in **Table 1**. The incumbent at the time of the transfer of FEMA into DHS continued to serve in the office as of January 15, 2004.

As of January 15, 2004, definitive information concerning the current appointment status of the head of the Transportation Security Administration (TSA) was not available from DHS. The Aviation and Transportation Security Act,¹² which created TSA, provided for a PAS position, Under Secretary of Transportation for Security, at the head of the new agency. James M. Loy was confirmed for that position on November 18, 2002, just days prior to the enactment of the Homeland Security Act. The act transferred TSA to the new department as a “distinct entity.”¹³ However, the under secretary position was not explicitly transferred by the act. It was unclear whether the statutory position was terminated by the provision discussed above. Loy left the position to become Deputy Secretary of DHS in fall 2003, and David M. Stone was designated Acting Administrator by DHS Secretary Tom Ridge. As of January 15, 2004, it was not clear whether Senate confirmation was required for a permanent appointment to the position.

The Homeland Security Act of 2002 provides that reconfirmation by the Senate is not required for “any officer whose agency is transferred to the Department pursuant to this act and whose duties following such transfer are germane to those performed before such transfer.”¹⁴ Michael D. Brown was appointed as Under Secretary of Emergency Preparedness and Response under this provision.¹⁵ He had previously been confirmed as deputy director of FEMA.

Under the Homeland Security Act, the President is authorized, during the transition period, to designate an officer already serving in a PAS position to serve,

¹⁰ P.L. 107-296, Sec. 1513.

¹¹ P.L. 108-169, Sec. 102.

¹² P.L. 107-71; 115 Stat. 597

¹³ P.L. 107-296, Secs. 403(2), 423, and 424; 116 Stat. 2178, 2185.

¹⁴ P.L. 107-296, Sec. 1511(c)(2).

¹⁵ Information received from Department of Homeland Security, Office of Legislative Affairs, via telephone conversation, Mar. 12, 2003.

in an acting capacity, in a position within the department. The applicable provision states that

[d]uring the transition period, pending the advice and consent of the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this Act (and who continues in office) or immediately before such designation, to act in such office until the same is filled as provided in this Act.¹⁶

The intention of the statutory language may be further clarified by report language concerning an identical provision in an earlier version of the homeland security legislation:

This section ... allows the President to designate incumbents in organizations being transferred who are currently in advice and consent positions, to act in the same capacity during the transition period, until the position is filled as provided for in this legislation.¹⁷

As of January 15, 2004, President Bush had appointed six individuals (England, Hutchinson, Hale, Ervin, Aguirre, and Garcia) to departmental positions under this authority.¹⁸ Five of the six (England, Hutchinson, Hale, Aguirre, and Garcia) had subsequently been nominated and confirmed. The one remaining (Ervin) had been nominated but not confirmed, and he had received a recess appointment from the President on December 26, 2003.¹⁹ One of the five who were confirmed (England) subsequently left the department.²⁰

Figure 1 and **Figure 2** show two different unofficial organizational diagrams for DHS. The chart in **Figure 1** was created based on information from the Homeland Security Act of 2002, the President's reorganization plan, a preliminary

¹⁶ P.L. 107-296, Sec. 1511(c)(1); 116 Stat. 2309.

¹⁷ U.S. Congress, House Select Committee on Homeland Security, *Homeland Security Act of 2002*, report to accompany H.R. 5005, 107th Cong., 2nd sess., H.Rept. 107-609, (Washington: GPO, 2002), p. 127.

¹⁸ U.S. President (George W. Bush), "Digest of Other White House Announcements," *Weekly Compilation of Presidential Documents*, vol. 39, Jan. 27, 2003, p. 145; U.S. President (George W. Bush), "Digest of Other White House Announcements," *Weekly Compilation of Presidential Documents*, vol. 39, Feb. 6, 2003, p. 171; additional information received from Department of Homeland Security, Office of the Deputy Secretary, via telephone conversation, Jan. 28, 2003.

¹⁹ Ervin's recess appointment expires at the end of the second session of the 108th Congress.

²⁰ England's departure from the deputy secretary position was announced on Aug. 22, 2003. He was subsequently nominated and confirmed to be Secretary of the Navy, and he was sworn in on Oct. 1, 2003. On Nov. 5, 2003, President Bush nominated James M. Loy to be the new deputy secretary at DHS.

organizational chart released by DHS,²¹ a DHS news release discussing the President's modification to the reorganization plan,²² other DHS news releases, discussions with DHS officials, the Senate nominations database of the Legislative Information System,²³ the *Weekly Compilation of Presidential Documents*, and news releases from the White House Web site. Among other things, it shows the organizational location of entities that have been transferred to, or created in, DHS and the new department's PAS positions.

Figure 2 shows an unofficial organizational chart provided by DHS. This chart shows some of the developing organizational units in the new department. In addition, the officials heading each office are identified.

²¹ See [http://www.dhs.gov/interweb/assetlibrary/DHS_Org_Chart.ppt], visited Oct. 28, 2003.

²² "Border Reorganization Fact Sheet," at [http://www.dhs.gov/dhspublic/interapp/press_release/press_release_0073.xml], visited Oct. 28, 2003. The modification was transmitted to Congress on Jan. 30, 2003. U.S. President (George W. Bush), "Letter to Congressional Leaders Transmitting the Reorganization Plan Modification for the Department of Homeland Security," *Weekly Compilation of Presidential Documents*, vol. 39, Jan. 30, 2003, p. 136.

²³ See [<http://www.congress.gov/nomis/>], visited Oct. 28, 2003.

**Table 1. Initial Appointments to Presidentially Appointed,
Senate-Confirmed Positions in the Department of Homeland Security**

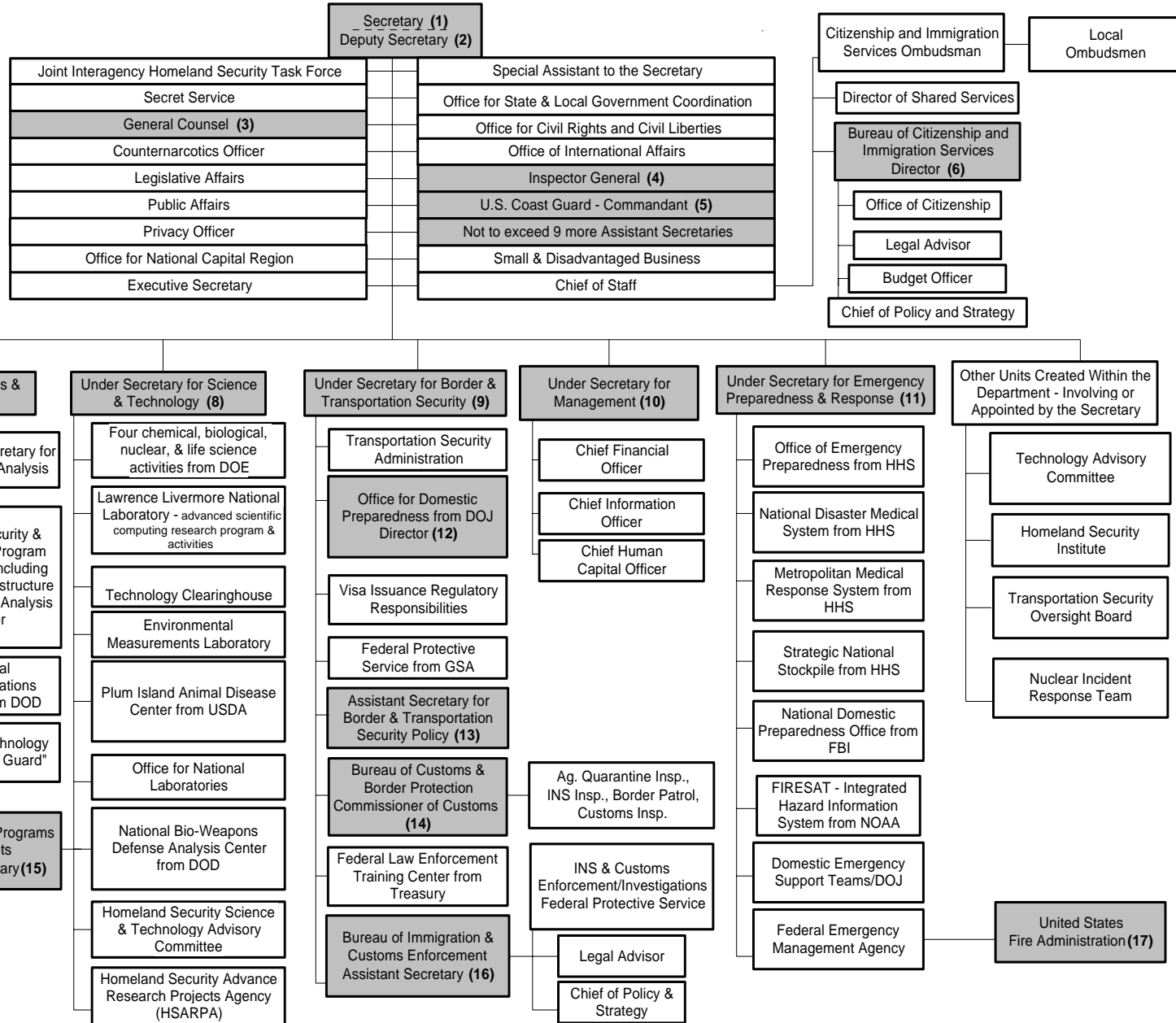
Position [Section of P.L. 107-296]	Nominee or Intended Nominee Announced by the White House	Executive Schedule Level ^a	Date Nomination Received in the Senate	Date Confirmed by the Senate	Days Elapsed from Enactment ^b to Nomination	Days Elapsed from Nomination to Confirmation ^c	Days Elapsed from Enactment ^b to Confirmation ^c
Secretary [102(a)]	Thomas J. Ridge	I	01/07/03	01/22/03	43	15	58
Deputy Secretary [103(a)(1)]	Gordon England ^{d,e}	II	01/07/03	01/30/03	43	23	66
Under Secretary for Information Analysis and Infrastructure Protection [103(a)(2)]	Frank Libutti	III	04/28/03	06/23/03	154	56	210
Under Secretary for Science and Technology [103(a)(3)]	Charles E. McQueary	III	02/14/03	03/19/03	81	33	114
Under Secretary for Border and Transportation Security [103(a)(4)]	Asa Hutchinson ^d	III	01/10/03	01/23/03	46	13	59
Under Secretary for Emergency Preparedness and Response [103(a)(5)]	Michael D. Brown ^f	III	—	—	—	—	—
Under Secretary for Management [103(a)(7)]	Janet Hale ^d	III	01/21/03	03/06/03	57	44	101
Director, Bureau of Citizenship and Immigration Services [103(a)(6) and 451(a)(2)]	Eduardo Aguirre Jr. ^g	III or IV ^h	03/11/03	06/19/03	106	100	206
Commissioner of Customs [411(b)]	Robert Bonner ⁱ	III	—	—	—	—	—
Assistant Secretary [103(a)(8)] (for the Bureau of Immigration and Customs Enforcement) ^j	Michael J. Garcia ^j	IV	03/26/03	11/25/03	121	213	334
Assistant Secretary [103(a)(8)] (for Border and Transportation Security Policy)	C. Stewart Verdery Jr.	IV	04/10/03	06/19/03	136	70	206
Assistant Secretary [103(a)(8)] (Plans, Programs and Budgets)	Penrose C. Albright	IV	06/26/03	10/03/03	213	68	281

Position [Section of P.L. 107-296]	Nominee or Intended Nominee Announced by the White House	Executive Schedule Level ^a	Date Nomination Received in the Senate	Date Confirmed by the Senate	Days Elapsed from Enactment ^b to Nomination	Days Elapsed from Nomination to Confirmation ^c	Days Elapsed from Enactment ^b to Confirmation ^c
Assistant Secretary [103(a)(8)]		IV					
Assistant Secretary [103(a)(8)]		IV					
Assistant Secretary [103(a)(8)]		IV					
Assistant Secretary [103(a)(8)]		IV					
Assistant Secretary [103(a)(8)]		IV					
Assistant Secretary [103(a)(8)]		IV					
Assistant Secretary [103(a)(8)]		IV					
Assistant Secretary [103(a)(8)]		IV					
Assistant Secretary [103(a)(8)]		IV					
General Counsel [103(a)(9)]	Joe D. Whitley	IV	04/28/03	07/31/03	154	94	248
Inspector General [103(b)]	Clark Kent Ervin ^d (recess appointment 12/26/03) ^k	IV	01/10/03		46		
Commandant of the Coast Guard [103(c)]	Thomas H. Collins ⁱ	Grade of admiral while serving (14 U.S.C. 44)	—	—	—	—	—
Director, Office for Domestic Preparedness [430(b)]	C. Suzanne Mencer	not specified	06/16/03	10/03/03	203	78	281
United States Fire Administrator [P.L. 108-169, Sec. 102]	R. David Paulison ^j	IV	—	—	—	—	—

- a. Compensation, where specified, is stipulated either in the section creating the position or in Sec. 1702.
- b. The Homeland Security Act of 2002 (P.L. 107-296), which created the Department of Homeland Security, was signed into law on Nov. 25, 2002.
- c. The 31 days falling within the August 2003 recess are not included in these numbers.
- d. On Jan. 27, 2003, President Bush announced his intention to designate England, Hutchinson, Hale, and Ervin as acting officials in their intended positions. (U.S. President (George W. Bush), “Digest of Other White House Announcements,” *Weekly Compilation of Presidential Documents*, vol. 39, Jan. 27, 2003, p. 145.) These actions were taken under Sec. 1511(c)(1) of the act. (Information received from Department of Homeland Security, Office of the Deputy Secretary, via telephone conversation, Jan. 28, 2003.) England, Hutchinson, and Hale were later confirmed as shown.
- e. England’s departure from this position was announced on Aug. 22, 2003. He was subsequently nominated and confirmed to be Secretary of the Navy, and he was sworn in on Oct. 1, 2003. On Oct. 23, 2003, President Bush designated James M. Loy to hold the deputy secretary position at DHS on an acting basis. Subsequently, on Nov. 5, 2003, the President nominated Loy to hold the position on a permanent basis, and the Senate confirmed him on Nov. 25, 2003. This nomination is not shown on this table because it is not an initial appointment to the position.
- f. According to DHS sources, Brown was appointed under Sec. 1511(c)(2) of the act, which provides that reconfirmation by the Senate is not required by the law for “any officer whose agency is transferred to the Department pursuant to this act and whose duties following such transfer are germane to those performed before such transfer.” He was previously confirmed as deputy director of the Federal Emergency Management Agency (FEMA). (Information received from Department of Homeland Security, Office of Legislative Affairs, via telephone conversation, Mar. 12, 2003.) Nonetheless, as late as Mar. 3, 2003, Brown was referred to as an acting under secretary in a FEMA press release. See [http://www.fema.gov/nwz03/nwz03_054.shtm], visited Oct. 28, 2003.
- g. On Feb. 6, 2003, the President announced his intention to designate Aguirre as Acting Director of the Bureau of Citizenship and Immigration Service. (U.S. President (George W. Bush), “Digest of Other White House Announcements,” *Weekly Compilation of Presidential Documents*, vol. 39, Feb. 6, 2003, p. 171.) This action was taken under Sec. 1511(c)(1) of the act. (Information received from Department of Homeland Security, Office of Legislative Affairs, via telephone conversation, Mar. 12, 2003.) Aguirre has since been nominated and confirmed for that position.
- h. The compensation for the Director of the Bureau of Citizenship and Immigration Services is not clear in the act and could not be determined from contacts with DHS officials. Although it is set at Level III by Sec. 1702, it is also linked, by Sec. 451, with the pay for the Assistant Secretary of the Bureau of Border Security. The compensation for Assistant Secretaries is set at Level IV by Sec. 1702.
- i. The previously appointed Commissioner of Customs (Bonner), Commandant of the Coast Guard (Collins), and U.S. Fire Administrator (Paulison) continued to serve after the transfer of their respective organizations to the new department. The Commissioner of Customs now heads the Bureau of Customs and Border Protection in the Directorate for Border and Transportation Security. “Border Reorganization Fact Sheet,” at [http://www.dhs.gov/dhspublic/interapp/press_release/press_release_0073.xml], visited Oct. 28, 2003.
- j. The Bureau of Border Security was reorganized under the modification of the President’s reorganization plan and renamed the Bureau of Immigration and Customs Enforcement. The statutory position of Assistant Secretary of the Bureau of Border Security was renamed the Assistant Secretary of the Bureau of Immigration and Customs Enforcement. “Border Reorganization Fact Sheet,” at [http://www.dhs.gov/dhspublic/interapp/press_release/press_release_0073.xml], visited Oct. 28, 2003. On Mar. 11, 2003, the President announced his intention to designate Garcia as Acting Assistant Secretary of the Bureau of Immigration and Customs Enforcement. “Personnel Announcement,” at [<http://www.whitehouse.gov/news/releases/2003/03/20030311-22.html>], visited Oct. 28, 2003.
- k. Ervin’s recess appointment expires at the end of the second session of the 108th Congress.

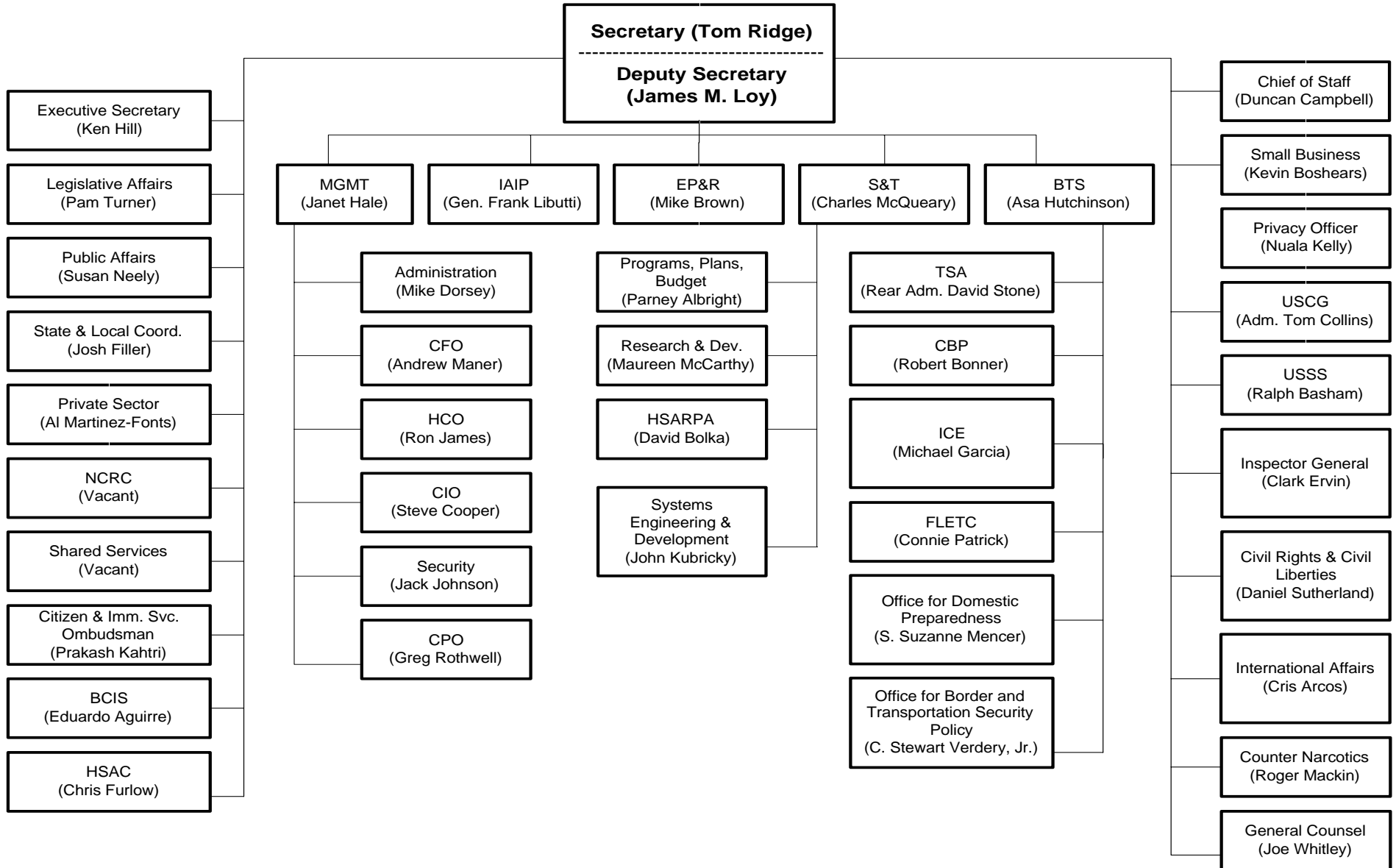
Figure 1. Department of Homeland Security Organizational Chart
 (positions requiring confirmation are shaded)

- (1) Thomas J. Ridge
- (2) James M. Loy
- (3) Joe D. Whitley
- (4) Clark Kent Ervin
- (5) Thomas H. Collins
- (6) Eduardo Aguirre, Jr.
- (7) Frank Libutti
- (8) Charles E. McQueary
- (9) Asa Hutchinson
- (10) Janet Hale
- (11) Michael D. Brown
- (12) C. Suzanne Mencer
- (13) C. Stewart Verdery, Jr.
- (14) Robert Bonner
- (15) Penrose C. Albright
- (16) Michael J. Garcia
- (17) R. David Paulison



Revised 01/15/04

Figure 2. Department of Homeland Security: Working Organizational Chart Draft Provided by DHS



Source: Received electronically from DHS on 10/27/03 and updated via telephone calls with DHS on 10/30/03, 12/9/03, 1/7/04, and 1/16/04.

The Appointment Process

The power to appoint the principal officers of the United States is shared by the President and the Senate.²⁴ The Constitution (Article II, Section 2, clause 2) creates this arrangement, directing that the President

... shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law

The Constitution further empowers Congress to “by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone,” the courts, or department heads. The distinction between principal and lower offices has been statutorily defined with the creation of each new office, and Congress has the ability to refine this definition further when shaping legislation.

The appointment process consists of three stages — selection and nomination, confirmation, and appointment. The President has the authority to make a nomination for a position requiring confirmation (PAS position), but, when making his selection, he must consider how it will fare in the confirmation process. The Senate confirms most nominations, but no President can safely assume that his nominees will be approved routinely.

Selection and Nomination. First, the President selects a nominee and sends the nomination to the Senate. There are a number of steps in the President’s selection for most Senate-confirmed positions. First, with the assistance of the White House Office of Presidential Personnel, the President selects a candidate for the position. The candidate then prepares and submits several forms: the “Public Financial Disclosure Report” (Standard Form (SF) 278), the “Questionnaire for National Security Positions” (SF 86), and the White House “Personal Data Statement Questionnaire.” The Office of the Counsel to the President oversees the clearance process, with background investigations conducted by the Federal Bureau of Investigation (FBI), Internal Revenue Service (IRS), Office of Government Ethics (OGE), and ethics official for the agency to which the candidate is to be appointed. If conflicts are found during the background check, OGE and the agency ethics officer may work with the candidate to mitigate the conflicts. Once the Counsel has cleared the candidate, the nomination is ready to be submitted to the Senate. The selection and vetting stage is often the longest part of the appointment process. There can be lengthy delays, particularly if many candidates are being processed, as they are at the beginning of an Administration, or if conflicts need to be resolved. Candidates for higher level positions are often accorded priority in this process.

A nominee has no legal authority to assume the duties and responsibilities of the position; the authority comes with Senate confirmation and presidential appointment.

²⁴ A succinct historical and contemporary overview of the appointment power is found in Louis Fisher, “Appointment Powers,” in his *Constitutional Conflicts between Congress and the President*, 4th ed. (Lawrence, KS: University Press of Kansas, 1997), pp. 22-48.

A nominee who is hired as a consultant while awaiting confirmation may serve only in an advisory capacity. If circumstances permit and conditions are met, the President may give the nominee a temporary appointment under the Vacancies Act or a recess appointment to the position (see below).²⁵ Both types of appointment confer upon the appointee the legal authority to carry out the duties of the office. Recess appointments may have political consequences, however, particularly if Senators perceive that an appointment is an effort to circumvent their constitutional role.

Confirmation. In the confirmation stage, the Senate determines whether or not to approve a nomination. The way the Senate acts on a nomination depends largely on the importance of the position involved, existing political circumstances, and policy implications. Generally, the Senate shows particular interest in the nominee's views and how they are likely to affect public policy.²⁶ Nominations are referred to the appropriate committee, where they generally receive a hearing. They are then usually reported back to the Senate, where they are taken up and voted upon. Most uncontroversial nominations proceed through the process in a routine, timely fashion. Nominations can, however, stall or, in effect, die at any point. This is more likely to happen to controversial nominations. Sometimes, however, Senators may block uncontroversial nominations to gain leverage as part of a strategy to move unrelated legislation or nominations.

The median length of time a departmental nomination spends in the Senate has grown in recent years from 38 days during the 101st Congress (1989-1990) to 87 days during the 106th Congress (1999-2000). Even with this lengthening confirmation process, the nomination's time in the Senate is typically much shorter than the time taken by the President to select and vet a candidate for the position.

Appointment. In the final stage, the confirmed nominee is given a commission signed by the President, with the seal of the United States affixed thereto, and is sworn into office. The President may sign the commission at any time after confirmation. Under unusual circumstances, he may not sign it at all, thus preventing the appointment. Once the appointee is given the commission and sworn in, he or she has full authority to carry out the responsibilities of the office.

Recess Appointments²⁷

Ordinarily, there are two ways, under specific circumstances, that the President may make a limited-term appointment without Senate confirmation: by temporary

²⁵ See also CRS Report RS21412, *Limited-Term Appointments to Presidentially Appointed, Senate-Confirmed Positions*, by Henry B. Hogue.

²⁶ G. Calvin Mackenzie, *The Politics of Presidential Appointments* (New York: The Free Press, 1981), pp. 97-189.

²⁷ For a further discussion of recess appointments, see CRS Report RS21308, *Recess Appointments: Frequently Asked Questions*, by Henry B. Hogue. For a list of recess appointments during the Clinton presidency, see CRS Report RL30821, *Recess Appointments Made by President Clinton*, by Rogelio Garcia.

appointment under the Vacancies Act or by recess appointment. The President's authority to make recess appointments is conferred by the Constitution, which states that "[t]he President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session."²⁸ The President may make such an appointment either during a within-session recess (intrasession recess appointment) or between sessions (intersession recess appointment). Intrasession recess appointments have sometimes provoked controversy in the Senate, and there is also an academic literature that has drawn their legitimacy into question.²⁹ Recess appointments expire at the end of the next session of Congress. As a result, a recess appointment may last for less than a year, or nearly 2 years, depending on when the appointment is made.

Presidents have occasionally used the recess appointment power to circumvent the confirmation process. In response, Congress has placed restrictions on the President's authority to make recess appointments. Under 5 U.S.C. 5503(a), if the position to which the President makes a recess appointment falls vacant while the Senate is in session, the recess appointee may not be paid from the Treasury until he or she is confirmed by the Senate. The salary prohibition does not apply: (1) if the vacancy arose within 30 days before the end of the session; (2) if a nomination for the office (other than the nomination of someone given a recess appointment during the preceding recess) was pending when the Senate recessed; or (3) if a nomination was rejected within 30 days before the end of the session and another individual was given the recess appointment. A recess appointment falling under any one of these three exceptions must be followed by a nomination to the position not later than 40 days after the beginning of the next session of the Senate.³⁰ For this reason, when a recess appointment is made, the President generally submits a new nomination for the nominee even when an old nomination is pending. In addition, although recess appointees whose nominations to a full term are subsequently rejected by the Senate may continue to serve until the end of their recess appointments, a provision of the Treasury and General Government Appropriations Act may prevent them from being paid after their rejection.³¹

²⁸ Art. 2, Sec. 2, cl. 3 of the Constitution.

²⁹ Regarding Senate controversy, see Sen. George Mitchell, "The Senate's Constitutional Authority to Advise and Consent to the Appointment of Federal Officers," *Congressional Record*, vol. 139, July 1, 1993, p. 15266; and Senate Legal Counsel, "Memorandum of United States Senate as Amicus Curiae in Support of Plaintiffs' Motion, and in Opposition to Defendants' Motions, for Summary Judgment on Count Two," U.S. District Court for the District of Columbia, *Mackie v. Clinton*, C.A. No. 93-0032-LFO, *Congressional Record*, vol. 139, July 1, 1993, pp. 15267-15274. For academic literature, see, for example, Michael A. Carrier, "When Is the Senate in Recess for Purposes of the Recess Appointments Clause?" *Michigan Law Review*, vol. 92, June 1994.

³⁰ Congress placed limits on payments to recess appointees as far back as 1863. The current provisions date from 1940 (ch. 580, 54 Stat. 751; 5 U.S.C. 56, revised, and recodified at 5 U.S.C. 5503, by P.L. 89-554, 80 Stat. 475). For a legal history and overview of recess appointments, see CRS Report 87-832 A, *Recess Appointments: Legal Overview* (Archived), by Richard C. Ehlke.

³¹ P.L. 107-67, Sec. 609. The provision reads, "No part of any appropriation for the current
(continued...)"

Temporary Appointments

The second way a President may, under some circumstances, make a limited-term appointment without Senate confirmation is by temporary appointment under the Vacancies Act. Congress has provided limited statutory authority for the temporary filling of vacant positions requiring Senate confirmation under the Federal Vacancies Reform Act of 1998.³² When an executive agency position requiring confirmation becomes vacant, it may be filled temporarily in one of three ways: (1) the first assistant to such a position may automatically assume the functions and duties of the office; (2) the President may direct an officer in any agency who is occupying a position requiring Senate confirmation to perform these tasks; or (3) the President may select any officer or employee of the subject agency who is occupying a position, for which the rate of pay is equal to or greater than the minimum rate of pay at the GS-15 level, and who has been with the agency for at least 90 of the preceding 365 days. The temporary appointment is for 210 days, but the time restriction is suspended if a first or second nomination for the position is pending. In addition, during a presidential transition, the 210-day restriction period does not begin to run until either 90 days after the President assumes office, or 90 days after the vacancy occurs, if it is within the 90-day inauguration period. Appointees under the Vacancies Act are authorized to “perform the functions and duties of the office temporarily in an acting capacity subject to [these] time limitations.”³³ The act does not apply to positions on multi-headed regulatory boards and commissions, to certain other specific positions that may be filled temporarily under other statutory provisions, or to new positions that have never been filled.³⁴

Because temporary appointments under the Vacancies Act cannot be made to new positions that have never been filled, this type of appointment is likely to be of little use to the President for initial appointments to the new department. As noted above, however, the Homeland Security Act gives the President specific authority for making temporary appointments. The President is authorized, during the transition period, to designate an officer already serving in a PAS position to serve, in an acting capacity, in a position within the department. As discussed above and shown in **Table 1**, six individuals had been designated under this authority as of January 15, 2004.³⁵ All of the designees had also been nominated for their positions, and five of these had been confirmed. The sixth was given a recess appointment by the President

³¹ (...continued)

fiscal year contained in this or any other Act shall be paid to any person for the filling of any position for which he or she has been nominated after the Senate has voted not to approve the nomination of said person.” This provision has been part of this annual funding activity since at least 1950.

³² P.L. 105-277, Div. C, Title I, Sec. 151; 5 U.S.C. 3345-3349d.

³³ 5 U.S.C. 3345(a)(1).

³⁴ This law superceded previous, similar statutory provisions. For more on the Vacancies Act, see CRS Report 98-892, *The New Vacancies Act: Congress Acts to Protect the Senate’s Confirmation Prerogative*, by Morton Rosenberg.

³⁵ Table 1, notes d, g, and j.

on December 26, 2003. The recess appointment will expire at the end of the second session of the 108th Congress.

The Homeland Security Act includes another unique provision concerning the filling of PAS positions. Namely, reconfirmation by the Senate is not required by the law for “any officer whose agency is transferred to the Department pursuant to this Act and whose duties following such transfer are germane to those performed before such transfer.”³⁶ As noted above, one individual had been appointed under this authority as of January 15, 2004.

Departments Created Since 1965

Recent experience with the creation of new departments may provide an indication of how the nomination and confirmation process may go for the new homeland security department. The new department faces institutional constraints and procedures similar to those faced by other recently created departments, although specific circumstances are also likely to shape the process.

In addition to the Department of Homeland Security, five departments have been created since 1965: Housing and Urban Development (1965); Transportation (1966); Energy (1977); Education (1979); and Veterans Affairs (1988).³⁷ **Table 2** provides a summary of the average length of time taken, in each of these departments, to nominate and confirm individuals to PAS positions. A brief description of the creation of, and initial appointments to, each of these departments is provided in an appendix to this report. The initial appointments to PAS positions in each of these departments are shown in **Tables 4-8**, which are located at the end of the appendix.

The last column in **Table 2** shows the median time elapsed from enactment of the organic legislation to Senate confirmation. The figures range from a low of 77 days (about 2 ½ months) to 352 days (nearly a year). With the exception of the Department of Energy, the median times grew longer from 1965 to 1988. This is consistent with studies indicating that, in general, the appointment process has grown longer and more complex over the last 40 years. In addition to this trend, the length of the process has been affected by idiosyncratic circumstances. In the case of the Department of Veterans Affairs, for example, the organic legislation was signed into law in the last months of the Reagan presidency, and implemented at the beginning of the presidency of George H. W. Bush. The incoming President had no authority to submit a nomination until his inauguration, which was 87 days after the bill-signing. In addition, many tasks, including a multitude of other appointments, confronted the new administration, and this may have contributed to the relatively lengthy appointment process for the new department.

³⁶ P.L. 107-296, Sec. 1511(c)(2).

³⁷ In addition, at the time the Department of Education was created, the remainder of the Department of Health, Education, and Welfare became the Department of Health and Human Services.

Table 2. Average Number of Days from Enactment of Organic Legislation to Nomination and Confirmation of Top Officials in the Five Most Recent New Departments³⁸

Department	Days Elapsed from Enactment to Nomination		Days Elapsed from Nomination to Confirmation		Days Elapsed from Enactment to Confirmation	
	Mean	Median	Mean	Median	Mean	Median
Housing and Urban Development (1965)	216	132	7	6	223	140
Transportation (1966)	176	130	25	20	201	163
Energy (1977)	105	45	57	37	162	77
Education (1979)	155	169	34	34	190	203
Veterans Affairs (1988)	337	295	63	72	400	352

The table also shows that the time between enactment and nomination generally accounts for a far greater part of the appointment process than the time between nomination and Senate confirmation; the President generally takes much longer to submit a nomination than does the Senate to deliberate on the nomination. This generalization is further supported by a study of departmental appointments in 1981 and 1993. The report looked at the time required to fill PAS positions in the first year of the Reagan and Clinton Administrations. It showed that, on average, the time the Presidents took to submit a nomination accounted for more than 75% of the total time from inauguration to confirmation.³⁹

³⁸ The table shows both the mean and median number of days. The mean is the average as it is commonly calculated. In order to calculate the mean days elapsed from enactment to nomination, for example, for each department, the entries for all the positions in the department were added together and then divided by the number of positions. The median is the middle number when the “days elapsed” entries for all the positions are arranged in numerical order. Although the mean is the more familiar kind of average, the median is included because it diminishes the influence of a few extreme entries. For example, if the President submits 10 of 12 nominations within 90 days (3 months) and the remaining two within 540 days (18 months), the mean elapsed time would be 165 days, even though most nominations were submitted far sooner than that. The median in this case would be 90 days, which more clearly shows the time, in general, the President took to forward his nominations.

³⁹ CRS Report 98-641 GOV, *Filling Policy Positions in Executive Departments: Average Time Required Through Confirmation, 1981 and 1993* (Archived), by Rogelio Garcia.

Proposals for Appointment Process Improvement

Over the past 20 years, a number of commissions and task forces have examined the presidential appointment process and criticized, among other things, its length and complexity.⁴⁰ These groups have issued reports with a number of varied recommendations, including identification of nominees early in the presidential transition process; reduction of the overall number of presidential appointees or Senate-confirmed appointees; greater control by cabinet heads of nominee selection for subordinates; full-time White House guidance of nominees during the nomination and confirmation process; easing of financial disclosure, conflict-of-interest disclosure, and post-employment restrictions; and streamlining and standardization among the White House, FBI, and Senate committees of requirements and forms for background and financial disclosure.

During the 107th Congress, the Senate Committee on Governmental Affairs conducted hearings into the presidential appointment process.⁴¹ Coinciding with these hearings, the Office of Government Ethics (OGE) transmitted to the Senate Committee on Governmental Affairs and the House Committee on Government Reform, on April 4, 2001, a report on completed and proposed improvements to the financial disclosure process for presidential nominees.⁴² This report was developed pursuant to the Presidential Transition Act of 2000, and was to include

... recommendations and legislative proposals on ... streamlining, standardizing, and coordinating the financial disclosure process and the requirements of financial disclosure reports under the Ethics in Government Act of 1978 ... for Presidential nominees [and] avoiding duplication of effort and reducing the burden of filing with respect to financial disclosure of information to the White House Office, the Office of Government Ethics, and the Senate⁴³

According to the report, OGE found that the “public financial disclosure system ... requires more information than is useful or necessary to achieve its fundamental goals,” at a level of detail that is “more intrusive and burdensome than it need be.”⁴⁴ OGE issued five related recommendations:

⁴⁰ For an annotated list of these reports, see U.S. Congress, Senate Committee on Governmental Affairs, *Presidential Appointment Process: Reports of Commissions That Studied the Staffing of Presidential Administrations: A Summary of Their Conclusions and Recommendations for Reform*, committee print, 107th Cong., 1st sess. (Washington: Apr. 2001).

⁴¹ Testimony from these hearings may be found at the following Web sites: [http://www.senate.gov/~gov_affairs/040401_witness.htm] and [http://www.senate.gov/~gov_affairs/040501_witness.htm], visited Oct. 28, 2003.

⁴² U.S. Office of Government Ethics, *Report on Improvements to the Financial Disclosure Process for Presidential Nominees* (Washington: Apr. 2001). Hereafter referred to as *OGE Report*.

⁴³ P.L. 106-293, Sec. 3(b)(1).

⁴⁴ *OGE Report*, p. 2.

- (1) reduce the number of valuation categories;
- (2) shorten certain reporting time-periods;
- (3) limit the scope of reporting by raising certain dollar-thresholds;
- (4) reduce details that are unnecessary for conflicts analysis; and
- (5) eliminated redundant reporting.⁴⁵

In addition, the office reported that it had been in contact with the Department of Justice (DOJ) regarding revision of criminal conflict of interest statutes.

On December 12, 2001, Senator Fred Thompson introduced the Presidential Appointments Improvement Act of 2001 (S. 1811).⁴⁶ The bill was referred to the Committee on Governmental Affairs, and was reported, with amendments, on May 16, 2002. It was not acted upon by the full Senate during the 107th Congress. The bill would have amended the Ethics in Government Act of 1978 to revise the financial disclosure process for executive branch personnel covered by the act. The bill would also have stipulated that specified information regarding presidentially appointed positions be provided to presidential candidates from major parties. This information would have been provided at the time of the candidates' nominations. Further, the bill would have required each agency to recommend PAS positions for elimination. Finally, it called on OGE and the Attorney General to review federal employment conflict of interest laws. The bill incorporated a substantial part of legislation that was drafted by OGE, also pursuant to the Presidential Transition Act of 2000.

Congressional interest in changes to the executive branch presidential appointment process has continued in the 108th Congress. On April 2, 2003, Senator George Voinovich introduced legislation very similar to Senator Thompson's bill from the previous Congress, and Rep. Jo Ann Davis introduced a companion bill in the House on April 3, 2003.⁴⁷

Similar legislation, if enacted, might shorten the length of time between the creation of a new department and the submission of nominations to the Senate. It would do so to the degree that it streamlined financial disclosure processes.

⁴⁵ *OGE Report*, p. 2

⁴⁶ See also U.S. Congress, Senate Committee on Governmental Affairs, *Presidential Appointments Act of 2002*, report to accompany S. 1811, 107th Cong., 2nd sess., S.Rept. 107-152 (Washington: GPO, 2002).

⁴⁷ S. 765, introduced by Sen. Voinovich, and H.R. 1603, introduced by Rep. Davis, were both entitled the Presidential Appointments Improvement Act of 2003.

Appointment Progress at the New Department and Congressional Options for Facilitating the Appointment Process

If recent trends in the length of the appointment process continue in the current context, appointments to PAS positions in the new homeland security department could take, on average, nearly a year from the enactment of the organic legislation. Based on past experience, three-quarters of this time is likely to be spent on the selection and vetting process.

Several factors could have helped to speed this process. First, the Bush Administration created a transition team that prepared for the creation of the new department. Presumably, part of this preparation process involved consideration of the probable leadership. Within four months of enactment, individuals had been identified for more than half of the PAS positions. By April 28, 2003, just over five months past the bill signing, eleven nominations to DHS positions had been sent to the Senate and five of these had been confirmed. This suggests that candidates were already being selected and vetted before the bill signing, which should have diminished the time necessary before remaining nominations were submitted to the Senate. In addition, the Bush Administration had filled most of the other PAS positions that were vacant at the beginning 2001, allowing the White House appointments process to be more focused on the DHS positions. The prior two years had also given the Administration the time and experience to fine-tune its selection and vetting process.

Two features of the Homeland Security Act could also have sped up the process of establishing transitional leadership for the new department. Both of these provisions have been discussed above. First, existing PAS appointees who would be performing the same function in the new department do not need to be reconfirmed. Second, the President is authorized, during the transition period, to designate an officer already serving in a PAS position to serve, in an acting capacity, in a position within the department. As noted above, the President has used both of these authorities.

As of January 15, 2004, 17 (65%) of the 26 PAS positions at DHS had been filled (see **Figure 1**); nine of the possible 12 assistant secretaries remained unnamed. Fourteen nominations to DHS positions had been sent to the Senate, and 13 of these had been confirmed by that date. The one nominee who was not confirmed received a recess appointment from the President, and this appointment will expire at the end of the second session of the 108th Congress. Of the 13 nominations that had been confirmed, one appointee had resigned, and the position had been filled through a second confirmed nomination. Consequently, 12 positions had been filled through the advice and consent process. In addition to the 12 positions filled in this manner, three positions, Commissioner of Customs, Commandant of the Coast Guard, and U.S. Fire Administrator, continued to be held by pre-transition incumbents. One additional position, Under Secretary for Emergency Preparedness and Response, had been filled, without Senate confirmation, by an existing PAS appointee, as provided in the act. In total, the initial appointment process had been completed for 16 of the

26 positions — more than one-half. Including the recess-appointed individual, a total of 17 officials were in place in PAS positions at the new department by January 15, 2004.

Table 3. Appointments at the Department of Homeland Security, as of January 15, 2004

	As of 01/15/04
Nominations	14
Confirmations	13
Incumbent continuing as provided for in the Homeland Security Act	2
Incumbent continuing as provided for elsewhere	1
Appointed through germane duties provision	1
Appointment process completed	16
Designated in acting capacity as provided in the act and not yet confirmed	1
Serving under a recess appointment (same individual as the line above)	1
Confirmed officials who subsequently left the department (replaced)	1
Total PAS positions filled	17

Options for facilitating faster appointment of DHS officials would include the following:

- There is a consensus that the vetting process can be improved. Some recommended improvements would require congressional action, such as streamlining the vetting process. Depending on the substance, however, proposed changes to financial disclosure or conflict of interest requirements could prove controversial. It is not clear if such changes would take effect in time to shorten the vetting time for the remaining candidates for DHS positions.
- Although the Senate confirmation process is, on average, a smaller portion of the appointment process than the selection and vetting process, it too has been taking longer over time. The Senate might wish to review some of the recommendations made by the commissions and task forces cited above for possible implementation.
- The Senate might choose to work closely with the Administration prior to the nominations in order to promote the vetting and nomination of candidates who will be acceptable to the Senate.

Congress may also wish to amend the Homeland Security Act with appointment, title, and compensation specifications for the head of TSA.

Conclusion

The Homeland Security Act of 2002 created the new Department of Homeland Security (DHS), which came into existence on January 24, 2003. The act creates in, or transfers to, DHS some 26 full-time civilian PAS positions. Studies indicate that the appointment process is, on average, taking longer, and that the selection and vetting process often takes much longer than the confirmation process. Current circumstances favored a shorter than average time between enactment of the Homeland Security Act and the filling of the leadership positions for the new department. Nonetheless, Congress can play a role in facilitating the appointment process for these, as well as other, positions.

Appendix: Departments Created Since 1965

Housing and Urban Development. Presidents John F. Kennedy and Lyndon B. Johnson had sought the creation of a housing department each year since 1961. In 1965, Congress passed legislation, despite strong opposition, establishing the Department of Housing and Urban Development (HUD).⁴⁸ The act essentially elevated the Housing and Home Finance Agency (HHFA) and its components to cabinet level. HHFA included an administrative component and five operating units: the Federal Housing Administration, the Public Housing Administration, the Federal National Mortgage Association, the Community Facilities Administration, and the Urban Renewal Administration.

The HUD legislation was signed into law on September 9, 1965, and went into effect 60 days later. President Johnson delayed the formation of HUD pending the completion of a report on the government’s role in solving urban problems.⁴⁹ The new department began with about 14,000 employees and a budget of \$3.1 billion (FY 1967).⁵⁰

Seven PAS positions were created in the new department: a secretary, an under secretary, four assistant secretaries, and a general counsel. Information concerning the initial appointments to these positions is shown in **Table 4**. Nominations to four of these positions were sent to the Senate and confirmed within five months of the bill-signing, and nominations to all but one position had cleared the Senate within nine months. The Administration took more than a year to forward a nominee for general counsel, but that individual was confirmed within three weeks of nomination. The mean time from the bill-signing to confirmation was 223 days, or nearly eight months. The lengthy nomination process for the general counsel skews this average, however. The median time, 140 days, or almost five months, may more accurately reflect the average time taken to get top positions filled at the new department.⁵¹ Two of the appointments, secretary and Assistant Secretary for Mortgage Credit/Federal Housing Commissioner, went to individuals who had served in similar capacities in HHFA. Their experience in the positions and with the appointment process may have aided in their relatively quick confirmations. However, the other two nominees who were nominated and confirmed relatively quickly had not held similar PAS positions. Notably, no nomination was in the Senate more than three weeks. In addition, the percentage of the total time from enactment to confirmation that the nominations were in the Senate was relatively small — 3% on average; the time

⁴⁸ P.L. 89-174, 79 Stat. 667.

⁴⁹ “Department of Housing Approved,” in *Congressional Quarterly Almanac* (Washington: Congressional Quarterly Inc., 1965), p. 382.

⁵⁰ For a description, in table form, of departments established from 1947 to 2001, see CRS Report RL31472, *Departmental Organization, 1947-2001*, by Sharon Gressle.

⁵¹ The means were calculated by dividing the column sums by the number of entries in the column. This type of average may be strongly influenced by one or two particularly high or low values. The median is the middle value in a group of numbers; half of the remaining values fall above it and half below. If there are an even number of values, the median is the mean of the two most central numbers.

taken to get the nomination to the Senate after enactment was far greater, even for the earliest nominations.

Transportation. In 1966, legislation was enacted creating the Department of Transportation (DOT).⁵² Functions were transferred to the new department from a variety of other parts of the federal government, including the Departments of Commerce, the Treasury, the Interior, and the Army, the Interstate Commerce Commission, and the Civil Aeronautics Board. The Federal Aviation Agency was transferred in its entirety.

President Johnson signed the bill into law on October 15, 1966. A section of the act provided for the establishment of the department 90 days after the new secretary took office. In 1967, the new department had nearly 59,000 employees. Its budget for FY1968 was \$6.1 billion.

At the outset, DOT had 19 PAS positions. The initial appointments to these positions are shown in **Table 5**. The secretary was confirmed within three months of the bill-signing, and nominations to 14 of the remaining positions cleared the Senate within about six months. The Administrator of the St. Lawrence Seaway Development Corporation, who had been appointed by President Kennedy in 1961, continued to serve in that position. Only three appointments took longer than six months: the Administrator of the Urban Mass Transportation Administration (698 days), the Assistant Secretary of Research and Technology (394 days), and the Director of the National Highway Safety Bureau (300 days). Despite these longer appointment processes, for the department, the mean length of time from enactment to confirmation was 201 days, while the median was 163.

Energy. Congress created the Department of Energy (DOE) in 1977.⁵³ The new department absorbed, as a whole, the authorities of the Federal Power Commission, the Federal Energy Administration, and the Energy Research and Development Administration. It also drew functions from other government entities, including the Departments of the Interior, Housing and Urban Development, Defense, and Transportation, and the Interstate Commerce Commission.

The legislation creating the new department had strong support in both houses of Congress, and President Jimmy Carter signed it into law on August 4, 1977. The new department was established at the start of the new fiscal year, on October 1, 1977. It had approximately 19,600 employees and a budget (FY1978) of about \$10.5 billion.

The law provided for 22 new PAS positions in the department. The initial appointments to these positions are shown in **Table 6**. The secretary was nominated and confirmed the day the President signed the bill. Nominations to 13 other positions were confirmed by the end of the year (within about 4 months). The remainder were nominated and confirmed in the following congressional session,

⁵² P.L. 89-670, 80 Stat. 931.

⁵³ P.L. 95-91, 91 Stat. 565.

with total elapsed times of 155 to 432 days (5 to 14 months). As **Table 6** shows, many of these nominations that were confirmed relatively more quickly were confirmed on the same day, October 20, 1977. Most of the appointments that remained took substantially longer. The mean length of time from enactment to confirmation was 162 days (5-6 months), and the median was 77 days (2-3 months). These represent the shortest average appointment periods among the departments studied. It is worth noting, however, that the average confirmation period as a proportion of the total appointment time was relatively large for the Department of Energy. On average, confirmation took longer for the Department of Energy than for any other new department studied; the mean length of time from nomination to confirmation was nearly two months. Conflict between organized energy interests may have contributed to longer confirmation times for this department.⁵⁴

Education. In 1979, Congress created, despite considerable opposition in the House, the Department of Education.⁵⁵ The new department consisted of programs that had previously been part of the Education Division of the Department of Health, Education, and Welfare (HEW). The remaining parts of HEW were then renamed the Department of Health and Human Services.

President Carter signed the bill into law on October 17, 1979, and the Department of Education began official operations in May 1980. The new department initially had around 7,400 employees and a budget (FY 1981) of approximately \$14.7 billion.

The new department had a total of 18 PAS positions. The initial appointments to these positions are shown in **Table 7**. Two positions were transferred directly from HEW; the incumbents were appointed prior to the creation of the new department. The secretary was confirmed about a month and a half after the bill-signing, and four other officers were confirmed within 5 months. The remaining 10 took longer than 5 months, and both the mean and median times to confirmation were more than 6 months. All officers were confirmed within a year after the law was passed. The nominees who had previously been nominated and confirmed to other PAS positions seemed not to have been confirmed any more quickly than those who had not. This was true even of those who had served in education positions in HEW. Although the average time a nomination awaited confirmation in the Senate was just a little more than a month, one nomination remained there for 12 weeks. Still, the elapsed time a nomination spent in the Senate was, on average, less than 20% of the total time from signing of the law to confirmation.

Veterans Affairs. In 1988, legislation was enacted to reorganize the Veterans' Administration and elevate it to cabinet level to create the Department of Veterans Affairs.⁵⁶ Similar legislation had been introduced in every Congress since the early 1960s, and it had widespread, although not universal, support in the House

⁵⁴ J.P. Smith, "Old Hands Grip a New Department," *Washington Post*, Oct. 31, 1977, p. A1.

⁵⁵ P.L. 96-88, 93 Stat. 668.

⁵⁶ P.L. 100-527, 102 Stat. 2635.

and Senate. President Ronald W. Reagan endorsed the idea in November 1987, and legislation moved forward during the next session of Congress.

President Reagan signed the bill into law on October 25, 1988, in the last months of his presidency. The act took effect on March 15, 1989, after the beginning of the Administration of President George H. W. Bush. The law also provided, however, that the President could appoint the secretary at any time after January 21.

Whereas the Veterans' Administration had three PAS positions in 1988, there were 13 in the new department.⁵⁷ The initial appointments to these positions are shown in **Table 8**. The secretary was nominated and confirmed by the time the act took effect, and the deputy secretary was confirmed shortly thereafter.

The mean length of time from enactment of the organic legislation for the Department of Veterans Affairs to the confirmation of appointees was well over a year (400 days). This is nearly twice as long as any of the other four new departments. Although the Senate confirmation process took longer, on average, than it did in the other four cases studied here, the President's selection and vetting process still accounts for more than 80% of the total elapsed time between enactment and confirmation. This may be due, in part, to the transition between the Reagan and Bush presidencies that took place soon after the law was signed. The new Bush Administration faced many tasks in its first year, including numerous other PAS appointments.

⁵⁷ Twelve of the positions were created by the department's organic legislation. The Chair of the Board of Veterans' Appeals was converted into a PAS position by a provision of a separate act, P.L. 100-687, which was signed into law at about the same time (Nov. 11, 1988).

Table 4. Initial Appointments to the New Department of Housing and Urban Development, 1966-1967

Appointee	Position (PAS position held immediately prior to this position, if any)	Executive Schedule Level	Date nomination received in the Senate	Date confirmed by the Senate	Days elapsed from enactment^a to nomination	Days elapsed from nomination to confirmation	Days elapsed from enactment^a to confirmation
Robert C. Weaver	Secretary (Administrator, Housing and Home Finance Agency)	I	01/14/66	01/17/66	127	3	130
Robert C. Wood	Under Secretary	III	01/14/66	01/17/66	127	3	130
H. Ralph Taylor	Asst. Secy. - Demonstrations/Intergovernmental Relations	IV	05/10/66	05/16/66	243	6	249
Charles M. Haar	Asst. Secy. - Metropolitan Development	IV	01/19/66	01/27/66	132	8	140
Philip N. Brownstein	Asst. Secy. - Mortgage Credit/Federal Housing Commissioner (Commissioner, Federal Housing Administration, Housing and Home Finance Agency)	IV	01/19/66	01/27/66	132	8	140
Don Hummel	Asst. Secy. - Renewal/Housing Assistance	IV	05/10/66	05/16/66	243	6	249
Thomas C. McGrath, Jr.	General Counsel	IV	02/01/67	02/17/67	510	16	526
Mean					216	7	223
Median					132	6	140

Source: U.S. Congress, Senate, *Journal of the Executive Proceedings of the Senate of the United States of America (EJ)*, vol. 108, pp. 1, 41-42, 48-49, 505, 559, 572; vol. 109 *EJ*, pp. 37, 135, 138.

a. The Department of Housing and Urban Development was created by the Housing and Urban Development Act (P.L. 89-174, 79 Stat. 667), signed into law on Sept. 9, 1965.

Table 5. Initial Appointments to the New Department of Transportation, 1966-1968

Appointee	Position (PAS position held immediately prior to this position, if any)	Executive Schedule Level	Date nomination received in the Senate	Date confirmed by the Senate	Days elapsed from enactment^a to nomination	Days elapsed from nomination to confirmation	Days elapsed from enactment^a to confirmation
Alan S. Boyd	Secretary (Under Secretary of Commerce for Transportation)	I	01/10/67	01/12/67	87	2	89
Everett Hutchinson	Under Secretary	II	01/12/67	01/31/67	89	19	108
Gen. William F. McKee (Ret.)	Administrator, Federal Aviation Administration (Administrator, Federal Aviation Agency)	II	01/17/67	03/02/67	94	44	138
Paul L. Sitton	Administrator, Urban Mass Transportation Administration (Director, Office of Transportation Programs, Commerce)	III	09/04/68	09/12/68	690	8	698
Lowell K. Bridwell	Federal Highway Administrator (Deputy Under Secretary for Transportation, Commerce)	III	01/18/67	02/09/67	95	22	117
A. Scheffer Lang	Federal Railroad Administrator (Deputy Under Secretary for Transportation Research, Commerce)	III	03/08/67	04/20/67	144	43	187
Joseph J. O'Connell, Jr.	Chair, National Transportation Safety Board	III	04/05/67	04/20/67	172	15	187
Oscar M. Laurel	Member, National Transportation Safety Board	IV	04/05/67	04/20/67	172	15	187
Francis H. McAdams	Member, National Transportation Safety Board	IV	04/05/67	04/20/67	172	15	187
John H. Reed	Member, National Transportation Safety Board	IV	04/05/67	04/20/67	172	15	187
Rear Adm. Louis M. Thayer, USCG (Ret.)	Member, National Transportation Safety Board	IV	04/05/67	04/20/67	172	15	187

CRS-29

Appointee	Position (PAS position held immediately prior to this position, if any)	Executive Schedule Level	Date nomination received in the Senate	Date confirmed by the Senate	Days elapsed from enactment ^a to nomination	Days elapsed from nomination to confirmation	Days elapsed from enactment ^a to confirmation
Joseph H. McCann ^b	Administrator, St. Lawrence Seaway Development Corporation	IV	—	—	—	—	—
Donald G. Agger	Asst. Secy. - International Affairs	IV	02/07/67	03/02/67	115	23	138
M. Cecil Mackey, Jr.	Asst. Secy. - Policy Development (Director, Office of Transportation Policy Development, Commerce)	IV	01/24/67	03/02/67	101	37	138
John L. Sweeney	Asst. Secy. - Public Affairs (Federal Cochairman, Appalachian Regional Commission)	IV	01/26/67	03/02/67	103	35	138
Frank W. Lehan	Asst. Secy. - Research and Technology	IV	10/24/67	11/13/67	374	20	394
David D. Thomas	Deputy Administrator, Federal Aviation Administration (Deputy Administrator, Federal Aviation Agency)	IV	01/17/67	03/02/67	94	44	138
John E. Robson	General Counsel	IV	01/12/67	01/31/67	89	19	108
William Haddon, Jr.	Director, National Highway Safety Bureau	V	06/06/67	08/11/67	234	66	300
Mean					176	25	201
Median					130	20	163

Source: U.S. Congress, Senate, *Journal of the Executive Proceedings of the Senate of the United States of America (EJ)*, vol. 109, pp. 1-2, 6, 26, 30, 32, 35, 97, 101, 205-206, 411, 437, 442, 569, 741-742, 982, 1032, 1034; vol. 110 *EJ*, pp. 454, 502-503.

a. The Department of Transportation was created by the Department of Transportation Act (P.L. 89-670, 80 Stat. 931), signed into law on Oct. 15, 1966.

b. McCann had served in this capacity when the St. Lawrence Seaway Development Corporation was under the supervision of the Secretary of Commerce, and continued to serve in this capacity as the organization moved to the new Department of Transportation. He was nominated by President John F. Kennedy on March 14, 1961, and confirmed by the Senate on March 28, 1961 (vol. 103 *EJ*, pp. 424, 476).

Table 6. Initial Appointments to the New Department of Energy, 1977-1978

Appointee	Position (PAS position held immediately prior to this position, if any)	Executive Schedule Level	Date nomination received in the Senate	Date confirmed by the Senate	Days elapsed from enactment^a to nomination	Days elapsed from nomination to confirmation	Days elapsed from enactment^a to confirmation
James R. Schlesinger	Secretary	I	08/04/77	08/04/77	1	1	1
John F. O'Leary	Deputy Secretary (Administrator, Federal Energy Administration)	II	09/13/77	10/20/77	40	37	77
Dale D. Myers	Under Secretary	III	09/13/77	10/20/77	40	37	77
Charles B. Curtis	Chair, Federal Energy Regulatory Commission	III	09/13/77	10/20/77	40	37	77
George R. Hall	Member, Federal Energy Regulatory Commission	IV	09/13/77	10/20/77	40	37	77
Don S. Smith	Member, Federal Energy Regulatory Commission (Commissioner, Federal Power Commission)	IV	09/28/77	10/20/77	55	22	77
Matthew Holden, Jr.	Member, Federal Energy Regulatory Commission	IV	09/23/77	10/20/77	50	27	77
Georgiana H. Sheldon	Member, Federal Energy Regulatory Commission (Chair, U.S. Civil Service Commission)	IV	09/13/77	10/20/77	40	37	77
David J. Bardin	Administrator, Economic Regulatory Admin. (Deputy Administrator, Federal Energy Admin.)	IV	09/13/77	10/20/77	40	37	77
Lincoln E. Moses	Administrator, Energy Information Admin.	IV	11/29/77	12/15/77	117	16	133
Omi Gail Walden	Asst. Secy. - Conservation and Solar Applications	IV	01/25/78	07/26/78	174	182	356

Appointee	Position (PAS position held immediately prior to this position, if any)	Executive Schedule Level	Date nomination received in the Senate	Date confirmed by the Senate	Days elapsed from enactment ^a to nomination	Days elapsed from nomination to confirmation	Days elapsed from enactment ^a to confirmation
Duane C. Sewell	Asst. Secy. - Defense Programs	IV	05/09/78	08/07/78	278	90	368
Robert D. Thorne ^b	Asst. Secy. - Energy Technology (Acting Assistant Administrator for Nuclear Energy, Energy Research and Development Administration)	IV	09/13/77	05/04/78	40	198	238
Ruth Clusen	Asst. Secy. - Environment	IV	07/13/78	08/25/78	343	43	386
Philip S. Hughes	Asst. Secy. - Intergovernmental and Institutional Relations	IV	09/23/77	10/20/77	50	27	77
Harry E. Bergold, Jr.	Asst. Secy. - International Affairs	IV	09/13/77	10/20/77	40	37	77
Alvin L. Alm	Asst. Secy. - Policy and Evaluation	IV	09/13/77	10/20/77	40	37	77
George S. McIsaac ^b	Asst. Secy. - Resource Applications	IV	12/01/77	02/10/78	119	36	155
John M. Deutch	Director, Office of Energy Research	IV	09/13/77	12/06/77	40	84	124
Lynn R. Coleman ^b	General Counsel	IV	09/23/77	05/09/78	50	193	243
John K. Mansfield	Inspector General	IV	04/20/78	05/03/78	259	13	272
Thomas S. Williamson, Jr.	Deputy Inspector General	V	09/21/78	10/10/78	413	19	432
Mean					105	57	162
Median					45	37	77

Source: U.S. Congress, Senate, *Journal of the Executive Proceedings of the Senate of the United States of America (EJ)*, vol. 119, pp. 658, 676, 717- 718, 741, 779, 833, 838-839, 914, 932, 939-940, 957, 959; vol. 120 *EJ*, pp. 27, 31-32, 96, 106, 205, 371, 433-440, 564, 586-587, 628, 631, 683, 761, 769.

a. The Department of Energy was created by the Energy Organization Act (P.L. 95-91, 91 Stat. 565), signed into law on Aug. 4, 1977.

b. At the end of the 95th Cong., 1st sess., the nominations of Thorne, Coleman, and McIsaac were returned to the President at the time of sine die adjournment on Dec. 15, 1977, under the provisions of paragraph 6 of rule XXXVIII of the Standing Rules of the Senate (vol. 119 *EJ*, pp. 975-976). Each of the three was renominated to the same position on Jan. 26, 1978 and confirmed as noted. Although this activity technically represents two nominations for each nominee, the two are treated as one continuous nomination for the purposes of this table. The elapsed times between nomination and confirmation and enactment and confirmation do not include the 35 days of the intersession recess (Dec. 15, 1977 to Jan. 19, 1978), during which the Senate would have been unable to act on these nominations.

Table 7. Initial Appointments to the New Department of Education, 1979-1980

Appointee	Position (PAS position held immediately prior to this position, if any)	Executive Schedule Level	Date nomination received in the Senate	Date confirmed by the Senate	Days elapsed from enactment^a to nomination	Days elapsed from nomination to confirmation	Days elapsed from enactment^a to confirmation
Shirley M. Hufstedler	Secretary (<i>Circuit Judge, Ninth Circuit</i>)	I	11/14/79	11/30/79	28	16	44
Steven A. Minter	Under Secretary	III	03/21/80	05/07/80	156	47	203
Cynthia G. Brown	Asst. Secy. - Civil Rights (<i>Principal Deputy, Office for Civil Rights, HEW</i>)	IV	06/06/80	06/18/80	233	12	245
Thomas K. Minter	Asst. Secy. - Elementary and Secondary Education (<i>Deputy Commissioner for Secondary Education, HEW</i>)	IV	04/03/80	05/07/80	169	34	203
Albert W. Bowker	Asst. Secy. - Postsecondary Education	IV	04/21/80	05/07/80	187	16	203
F. James Rutherford	Asst. Secy. - Research and Improvement (<i>Assistant Director for Science Education, National Science Foundation</i>)	IV	04/03/80	05/07/80	169	34	203
Edwin W. Martin, Jr.	Asst. Secy. - Special Education and Rehabilitative Services (<i>Deputy Commissioner for Education of the Handicapped, HEW</i>)	IV	06/06/80	06/18/80	233	12	245
Daniel B. Taylor	Asst. Secy. - Vocational and Adult Education	IV	05/28/80	06/18/80	224	21	245
Betsy Levin	General Counsel	IV	02/13/80	04/02/80	119	49	168
James B. Thomas, Jr.	Inspector General (<i>Director, Bureau of Accounts, ICC</i>)	IV	06/13/80	08/19/80	240	67	307
C. William Fischer	Asst. Secy. - Budget and Planning (<i>Special Assistant, Department of Energy</i>)	V ^b	01/25/80	02/28/80	100	34	134

Appointee	Position (PAS position held immediately prior to this position, if any)	Executive Schedule Level	Date nomination received in the Senate	Date confirmed by the Senate	Days elapsed from enactment ^a to nomination	Days elapsed from nomination to confirmation	Days elapsed from enactment ^a to confirmation
Martha E. Keys	Asst. Secy. - Legislation	V ^b	05/19/80	06/18/80	215	30	245
John Gabusi	Asst. Secy. - Management (Assistant Director for Management, Community Services Administration)	V ^b	01/25/80	02/28/80	100	34	134
Elizabeth S. Carpenter	Asst. Secy. - Public Affairs	V ^b	01/25/80	02/28/80	100	34	134
^c	Commissioner, Rehabilitation Services Admin.	V	—	—	—	—	—
Lelia Kimche ^d	Director, Institute for Museum Services	V	—	—	—	—	—
Michael P. Timpane	Director, National Institute for Education (Deputy Director, National Institute of Education, HEW)	V	04/28/80	05/21/80	194	23	217
Margaret J. Giannini	Director, National Institute of Handicapped Research	V	11/06/79	01/29/80	20	84	104
Mean					155	34	190
Median					169	34	203

Source: U.S. Congress, Senate, *Journal of the Executive Proceedings of the Senate of the United States of America (EJ)*, vol. 121, pp. 851, 856, 904, 911; vol. 122 *EJ*, pp. 42, 44, 45, 81, 122, 127, 154, 214, 223, 227, 257, 272, 278, 283, 318-319, 325, 331, 345, 361, 365, 374-375, 470, 528.

- a. The Department of Education was created by the Department of Education Organization Act (P.L. 96-88, 93 Stat. 668), signed into law on Oct. 17, 1979.
- b. More recently, all assistant secretaries in the Department of Education have been compensated at Level IV of the Executive Schedule (U.S. Congress, Senate Committee on Governmental Affairs, *Policy and Supporting Positions*, committee print, 106th Cong., 2nd sess., S.Prt. 106-54, Nov. 8, 2000 (Washington: GPO, 2000), pp. 75-83).
- c. Robert R. Humphreys was nominated by President Jimmy Carter on Sept. 23, 1977 and confirmed by the Senate on Sept. 28, 1977 for this position, which was part of the Department of Health, Education, and Welfare at the time. He was succeeded by George A. Conn, who was nominated by Ronald Reagan on July 1, 1981 and confirmed on July 28, 1981. It is unclear when Humphreys' tenure ended and whether or not he continued to serve at the beginning of the new Department of Education (vol.119 *EJ*, pp. 740, 778; vol.123 *EJ*, pp. 441, 569).
- d. Kimche was nominated (Dec. 6, 1977) and confirmed (Dec. 15, 1977) prior to the transfer of this position from the Department of Health, Education, and Welfare to the new Department of Education (vol. 119 *EJ*, pp. 935, 959). It appears that she continued to hold the position at the beginning of the new department (U.S. Congress, House Committee on Post Office and Civil Service, *Policy and Supporting Positions*, committee print, 96th Cong., 2nd sess., Nov. 19, 1980 (Washington: GPO, 1980), p. 42).

Table 8. Initial Appointments to the New Department of Veterans Affairs, 1989-1990

Appointee	Position (PAS position held immediately prior to this position, if any)	Executive Schedule Level	Date nomination received in the Senate	Date confirmed by the Senate	Days elapsed from enactment^a to nomination	Days elapsed from nomination to confirmation^b	Days elapsed from enactment^a to confirmation^b
Edward J. Derwinski ^c	Secretary (Under Secretary for Security Assistance, Science and Technology, State)	I	01/20/89	03/02/89	87	41	128
Anthony J. Principi	Deputy Secretary	II	03/06/89	03/17/89	132	11	143
D'Wayne Gray	Chief Benefits Director, Veterans Benefits Administration	III	01/25/90	04/05/90	457	70	527
James W. Holsinger, Jr.	Chief Medical Director, Veterans Health Administration	III	05/15/90	08/04/90	567	81	648
David E. Lewis	Asst. Secy. - Acquisition and Facilities	IV	10/12/89	11/19/89	352	38	390
Edward T. Timperlake	Asst. Secy. - Congressional and Public Affairs	IV	06/15/89	10/06/89	233	80	313
S. Anthony McCann	Asst. Secy. - Finance and Planning	IV	06/21/89	10/06/89	239	74	313
Edward G. Lewis	Asst. Secy. - Information Resources Management	IV	09/18/89	11/19/89	328	62	390
Ronald E. Ray	Asst. Secy. - Human Resources and Administration	IV	09/06/89	11/19/89	316	74	390
Allen B. Clark, Jr.	Asst. Secy. - Veterans Liaison and Program Coordination	IV	07/17/89	10/06/89	265	48	313
Charles L. Cragin ^d	Chair, Board of Veterans' Appeals	IV	09/24/90	02/28/91	682	90	772
Jo Ann K. Webb	Director, National Cemetery System	IV	07/26/89	10/06/89	274	39	313
Raoul L. Carroll	General Counsel	IV	06/15/89	10/06/89	233	80	313
Stephen A. Trodden	Inspector General (Assistant Inspector General for Audit, DOD)	IV	05/07/90	08/04/90	559	89	648
Mean					337	63	400
Median					295	72	352

Source: Senate nominations database of the Legislative Information System, available at [<http://www.congress.gov/nomis/>].

a. The Department of Veterans Affairs was created by the Veterans Affairs Act (P.L. 100-527, 102 Stat. 2635), signed into law on Oct. 25, 1988.

b. The 33 days the Senate was in recess during the summer of 1989 (Aug. 4 to Sept. 6, 1989) and the 67 days between the 101st and 102nd Congresses (Oct. 28, 1990 to Jan. 3, 1991), during which the Senate could not have acted on nominations, are not included in the calculations of elapsed time between nomination and confirmation.

c. President George H. W. Bush nominated, and the Senate confirmed, Derwinski as both secretary of the new department and Administrator of Veterans Affairs.

d. The Chair of the Board of Veterans' Appeals was converted into a PAS position by a provision of a separate act, P.L. 100-687 (Nov. 11, 1988), near the same time that the Veterans Affairs Act was signed into law. Cragin was first nominated on Sept. 24, 1990 and, after his nomination was returned to the President at the end of the 101st Congress, nominated again on Jan. 4, 1991. For the purposes of this report, these two nominations are treated as one continuous nomination.