

BROOKINGS

Report

After one year in office, Trump's behind on staffing but making steady progress

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Editor's Note:

This report is part of the Series on Regulatory Process and Perspective and was produced by the Brookings Center on Regulation and Markets

At the one-year mark, critics continue to lament the Trump Administration's slow pace of filling top government slots. The appointments tracker run by the Partnership for Public Service and the Washington Post shows that President Trump is "months behind his predecessors in staffing up political leadership." At times, the President appears unfazed. In October, he told Forbes that these vacancies are intentional: "I'm generally not going to make a lot of the appointments that would normally be—because you don't need them. I mean, you look at some of these agencies, how massive they are, and it's totally unnecessary. They have hundreds of thousands of people." Other times, the President lashes out at Senate Democrats, including in July, when he tweeted: "Dems are taking forever to approve my people, including Ambassadors. They are nothing but OBSTRUCTIONISTS! Want approvals."

This picture of delay, nonchalance, and blame masks some important complexities. After having made an earlier assessment of President Trump's progress in filling top positions at the 100-day mark, I now offer four points to consider one year in.

1. The Trump Administration's staffing progress

Using data from congress.gov on all submitted non-routine civilian agency and judicial nominations to the Senate in the first year (from January 20 to January 19), I compare the progress of President Trump's administration against his four most recent predecessors.^[1] President George H.W. Bush is the only one of the five to follow a White House occupant

from his own party. He thus faced less pressure to find his own leaders quickly as he could rely on President Reagan’s appointees. Table 1 shows how many agency and court nominations each of these five presidents made in their first year, as well as how many they managed to get confirmed in that period.^[2] Court nominations include picks for both Article III and non-Article III courts (such as the Court of Appeals for Veterans Claims). These totals include some second nominations for the same person: 82 for President Trump and 153 for President George W. Bush.^[3] Table 2 divides these nomination and confirmation counts further by examining a subset of courts and agency positions.^[4]

Table 1: Nominations and confirmations between January 20 and January 19						
	Agency		Court		Total	
	Nominations	Confirmations	Nominations	Confirmations	Nominations	Confirmations
Trump	567	300	104	26	671	326
Obama	659	453	37	14	696	467
Bush 43	740	493	122	33	862	526
Clinton	632	472	51	30	683	502
Bush 41	477	402	29	19	506	421

Table 2: Nominations and confirmations for specific courts and agency positions in the first year										
	Trump		Obama		Bush 43		Clinton		Bush 41	
	Noms	Confs	Noms	Confs	Noms	Confs	Noms	Confs	Noms	Confs
U.S. District Courts	64	10	21	9	56	22	42	24	16	10
U.S. Courts of Appeals	25	12	12	3	49	6	5	3	8	5
Secretaries	23	19	17	16	17	17	18	17	15	14
Deputy Secretaries	17	11	16	16	15	14	14	13	10	10
Assistant Secretaries	113	52	123	96	128	98	115	97	111	100
Administrators	17	10	22	19	26	20	18	16	16	10

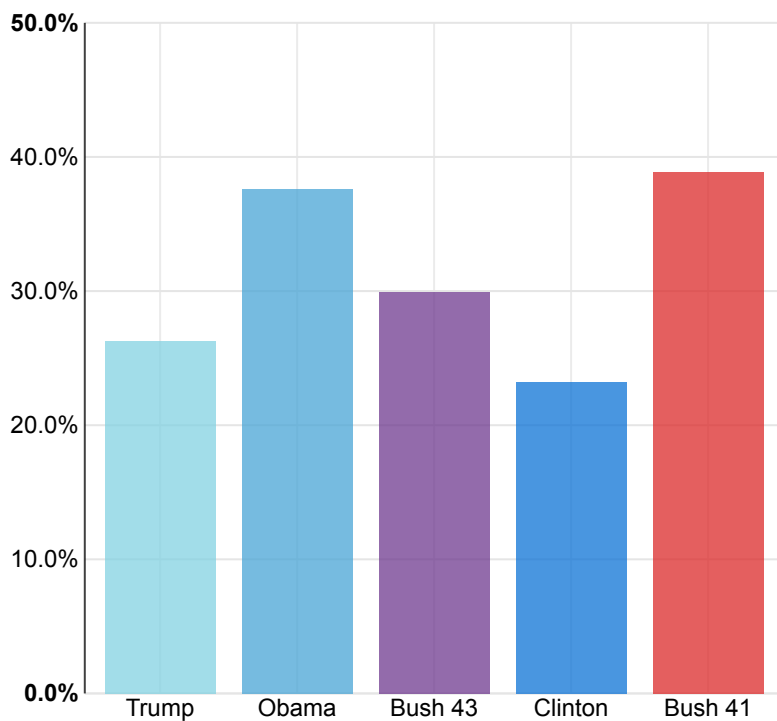
Table 2: Nominations and confirmations for specific courts and agency positions in the first year										
	Trump		Obama		Bush 43		Clinton		Bush 41	
	Noms	Confs	Noms	Confs	Noms	Confs	Noms	Confs	Noms	Confs
Commissioners/Board Members	66	33	91	44	74	37	58	33	57	39
Ambassadors	79	49	111	92	138	109	97	84	102	92
U.S. Attorneys	58	46	42	31	102	59	77	57	16	14

By considering both agency and court nominations, a more complicated picture emerges. To start, President Trump has submitted similar overall numbers of nominations to his predecessors. To be fair, however, 82 of those nominations are second nominations for particular individuals (and positions), which the Senate received in January 2018 after the first nominations had been returned. President George W. Bush also had a substantial batch of second nominations (153) in his first year (because of returned nominations after a summer recess). While President Trump may be slower on agency picks (particularly with respect to ambassadors), he is faster on judges.

But nominations are only part of the process. Where President Trump is lagging noticeably behind is in agency confirmations. There are a few exceptions. He does have more confirmed U.S. Attorneys than President Obama at the one-year mark. By firing almost all of President Obama’s appointees at the start, he did have more openings to fill. President Trump is holding his own on overall judicial confirmations. Indeed, compared to President Obama, he has filled nearly twice the total number of judgeships (and four times the number of slots on the powerful U.S. Courts of Appeals).

These counts capture only one perspective of presidential staffing. Ultimately, we care most about the issue and management expertise these appointees bring, and their willingness to serve the public rather than private ambitions. President Trump promised during the campaign to “drain the swamp.” One possible—though problematic—means to distinguish insiders and outsiders is the official state residence of nominees captured in congress.gov records. For instance, “Rex W. Tillerson, of Texas, to be Secretary of State.” By considering any agency nominee from Virginia, Maryland, or Washington, D.C., to be a D.C. insider, Figure 1 displays the percentage of insiders nominated in the first year.^[5]

Figure 1: Percentage of agency nominations in the first year from Washington, D.C. area



Author's calculations

About one-quarter (26.3 percent) of all of President Trump's submitted agency nominations came from the D.C. area, a little higher than President Clinton's rate (23.2 percent), slightly lower than President George W. Bush's record (29.9 percent), and meaningfully lower than Presidents George H.W. Bush (38.9 percent) and Obama (37.6 percent). Of course, the "swamp" is not just D.C. insiders, and D.C. area residents do not necessarily place private objectives over the public interest.

2. The importance of the Senate process

President Trump is operating under different Senate rules than his predecessors faced in their first years. In November 2013, Senate Democrats changed the chamber's rules so that only a simple majority of the Senate is needed to move an agency or lower court nomination to a vote, thereby excluding the possibility of filibusters. (Republicans similarly changed the rule for Supreme Court nominations in April 2017). On one hand, this change should make it easier for nominations to get confirmed. On the other hand,

while the minority now cannot stop a confirmation the majority desires, the minority can slow down the process, by submitting more written questions to nominees and requiring confirmation votes (either by voice or recorded tally), instead of agreeing to unanimous consent procedures. Without unanimous consent, Senate rules bring additional debate time.

Democrats used those devices in 2017, as Republicans did in 2014—the only other year the same party controlled the White House and the Senate under the new Senate rules. Compared to 2013, President Obama saw a decreased failure rate and decreased time to confirmation for judicial nominations in 2014. But his nominees to agencies actually fared worse after the rules change, with both failure rates to free standing executive agencies and confirmation delays across the board rising. In other words, although it would seem that the rules change significantly strengthens the majority party’s position, the minority party’s increased willingness to use dilatory tactics to the maximum extent possible seems capable of neutralizing that advantage. Given limited Senate calendar time, the minority may still succeed in killing some number of nominations.

Table 3 displays the mechanism for confirmation for successful nominations in the first year for this administration and its four predecessors; it also provides information for 2014.

Table 3: Mechanism for confirmation vote in the first year and in 2014						
	Recorded Votes		Voice Votes		Unanimous Consent	
	Court	Agency	Court	Agency	Court	Agency
Trump	23	77	3	223	0	0
Obama 2014, post-Senate rules change	69	52	23	229	0	7
Obama	9	23	5	430	0	0
Bush 43	21	22	12	471	0	0
Clinton	1	8	29	270	0	194
Bush 41	0	21	0	3	19	378

Although the shift from unanimous consent for confirmations occurred during the Clinton administration, before the rules change, the rise in recorded votes for agency picks does seem connected to the 2013 change.

Table 4 shows the length (in days) of the confirmation process for successful nominations in the first year for this administration and its predecessors; it also displays times for 2014 in parentheses for President Obama.

Table 4: Length (in days) of confirmation process in the first year					
	Trump	Obama	Bush 43	Clinton	Bush 41
Agency Confirmation Length	72.2	53.9 (150.4)	35.9	38.2	47.4
Court Confirmation Length	114.1	126.0 (139.1)	65.2	54.0	61.9

3. The Trump Administration's nomination failures

Not all nominations get confirmed, of course. (Over one in five agency nominations between 1981 and 2016 failed to yield a confirmation.) To start, the president can withdraw a nomination. While the Senate almost never votes down a nomination, it does often return nominations to the White House under the chamber's rules. (For instance, at the end of the calendar year, nominations are returned unless the Senate unanimously decides to hold over a nomination.) Some of those returned nominations result in new nominations after a Senate recess, many of which subsequently get confirmed. In such a case, the first nomination, in my terms, would have failed, but the second nomination would have succeeded.

Table 5 provides the number of withdrawn and returned nominations in the first year for President Trump and his four predecessors and in 2014.

Table 5: Number of withdrawn and returned nominations in the first year and in 2014				
	Withdrawn (Court)	Withdrawn (Agency)	Returned (Court)	Returned (Agency)
Trump	0	14	26	64
Obama 2014, post-Senate rules changes	1	13	24	142

Table 5: Number of withdrawn and returned nominations in the first year and in 2014				
	Withdrawn (Court)	Withdrawn (Agency)	Returned (Court)	Returned (Agency)
Obama	0	13	2	5
Bush 43	0	7	45	118
Clinton	0	6	0	3
Bush 41	0	3	1	10

In the first year, President Trump had a higher failure rate (number of failed nominations/number of submitted nominations) than all but one of his predecessors. (President George W. Bush’s failure rate resulted from the timing of a particular recess after dozens of submitted nominations; the Senate rules have been fixed to prevent that outcome from reoccurring.) Senate Democrats have succeeded in slowing the confirmation process, contributing to nominations being returned, in spite of the Republican majority’s ability to confirm nominees with 50 votes plus the Vice President. (Senate Republicans did the same thing in 2014.)

While many returned nominations may be followed by successful ones, the delay for the nominee and the White House has costs, sometimes significant ones. Returned nominees may have to update their “paperwork,” including financial disclosures, not to mention enduring a kind of professional limbo. In addition, the White House has to wait months for its pick to start working.

4. Consequences for the operation of the government

At the 100-day mark, I argued that the sky was not falling when it came to the administration’s appointments, citing the pipeline of nominees as well as skilled career employees serving as acting leaders. The first reason continues to hold up. Despite the President’s claims of intentional vacancies, the administration is submitting agency nominations at a decent though not remarkable clip. He is behind in overall agency staffing but making progress. The Senate is slowing down the process, despite changes in voting rules that should make it easier to confirm nominations. But while Democrats are the culprit now, Republicans engaged in similar behavior in 2014.

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The second reason can no longer provide much comfort. For vacancies that existed on Inauguration in cabinet departments and executive agencies (but typically not in independent regulatory commissions), the 1998 Federal Vacancies Reform Act allowed acting officials—many of whom were drawn from the senior career ranks of agencies—to serve, but only for 300 days (assuming no nomination). The 300-day mark has passed. The Act permits certain tasks of the vacant position (now with no acting official, assuming no specific statutory provision like that governing U.S. Attorneys) to be handed off to lower level officials within the constraints of the Appointments Clause, which allows only officers to exercise significant authority. But the Act bars distributing the nondelegable (by statute or regulation) functions and duties of the position. Thus, a year in, the delegation of some duties helps the government to continue to function but not as effectively as when there were acting officials. In addition, this delegation of duties is less transparent than the assignment of acting officials, making it harder to figure out who is doing what in the modern bureaucracy.

In short, the current administration is trying to fill top positions in courts and, despite claims to the contrary, in agencies as well. Agency announcements tend not to make the news but can be tracked on-line (official submitted nominations at [congress.gov](https://www.congress.gov) and intended nominations at [whitehouse.gov/presidential-actions](https://www.whitehouse.gov/presidential-actions)). In the meantime, agencies largely continue to operate, but with less transparency and not at full capacity.

Outside attention to nominations largely fades after the first year of an administration. Alarm bells will presumably continue to ring this week. But the focus may be misplaced. To start, as with White House positions, agency jobs often do not stay filled for an entire term. The next staffing challenge will be the second round of vacancies.

In addition, in examining the holes in the top level of the federal bureaucracy at particular time points, we should not forget to look underneath. While the United States has a high number of political appointments compared to other developed countries, the overwhelming majority of government workers are non-political. The Plum Book lists 1242 PAS jobs, while the Office of Personnel Management counts slightly under 2 million civilian employees in the Executive Branch as of September. There is currently an exodus of career staff. Given the aging of careerists, it is not fair to lay that entirely at the feet of the current administration. No matter the cause, as the National Academy of Public Administration (and others) have warned, government staffing on a much broader scale needs urgent attention.

O'Connell is a public member of the Administrative Conference of the United States, appointed by the Chairman, and an elected fellow of the National Academy of Public Administration. This report has been written independently of both affiliations. The author did not receive financial support from any firm or person for this article or from any firm or person with a financial or political interest in this article. Other than the aforementioned, she is currently not an officer, director, or board member of any organization with a financial or political interest in this article.

Report Produced by **Center on Regulation and Markets**

Footnotes

1. 1 With the amazing help of Michael Lindsey at the Berkeley Law Library, I pulled all civilian nominations received by the Senate between January 20 and January 19 from congress.gov. Due to Senate calendars, only President Trump had nominations received by the Senate in the second January. I eliminated any miscoded military nominations and added a few nominations before January 20 where it was clear they were the incoming president's picks and not the outgoing president's. I treat each nomination separately in the counts, even if the same person was simultaneously nominated for two positions (so long as those two positions are reflected in separate nominations). For example, while the Partnership for Public Service and the Washington Post's appointments tracker counts Nikki Haley only once, I count her twice as she had separate nominations for (1) Representative of the United States of America to the Sessions of the General Assembly of the United Nations and (2) Representative of the United States of America to the United Nations, with the rank and status of Ambassador Extraordinary and Plenipotentiary, and the Representative of the United States of America in the Security Council of the United Nations. Judicial nominations include selections for both Article III and non-Article III courts. Confirmed judges for the former have no term limits. Judges for the latter (which include agency and D.C. city courts) do. For more information on agency coding, see <https://www.brookings.edu/research/staffing-federal-agencies-lessons-from-1981-2016/>.
2. 2 These counts exclude a handful of nominations made by outgoing presidents that were confirmed in the first 100 days of the next president. They also exclude outcomes (i.e., confirmations, returns, withdrawals)

after the first-year mark for previous administrations.

3. 3 President Trump resubmitted nominations in early January that had been returned during the intersession recess. President George W. Bush's resubmissions were different. A large batch of his summer nominations were returned due to the chamber's rules and the timing of an intrasession recess. He too submitted second nominations.
4. 4 The "secretaries" category includes cabinet secretaries, the Attorney General (AG), and service (e.g. Navy) secretaries. The Deputy AG and Assistant AGs are counted as deputy secretary and assistant secretaries, respectively. Commissioners and board members are leaders of independent regulatory commissions and boards, like the Federal Communications Commission.
5. 5 The totals here do not always match the nomination totals as some nominations did not list a state.