

# Presidential Transitions: Executive Branch Political Appointment Status

November 24, 2020

In Section 2 of the Presidential Transition Act of 1963 (as amended; 3 U.S.C. 102 note), Congress declared that “[t]he national interest requires that [presidential] transitions ... be accomplished so as to assure continuity in the faithful execution of the laws and in the conduct of the affairs of the Federal Government, both foreign and domestic.” The crux of such a transition is the transfer of executive power from the incumbent to the President-elect. The executive’s power manifests in a variety of processes with application to a broad range of policy areas and issues. CRS has produced a set of products examining selected processes and policies that may be of particular interest during a presidential transition. This Insight discusses the status of executive branch political appointments at that time. Other related products examine clemency, executive orders, rulemaking, government records, and presidential transitions generally.

The status of political appointees during transitions has often been of interest to Congress. In some instances, some appointees of an outgoing President have continued to serve into a new Administration. These appointees might not share the new President’s policy preferences or readily implement the new Administration’s policy agenda. This dynamic usually has arisen where the tenure of a confirmed political appointee extends into a new Administration as a result of fixed-term provisions intended to insulate the appointee from the policy preferences of the President. In other cases, appointees have been installed in such positions in the waning days of a presidency through a recess appointment, although this practice has not been used since 2000.

## Who Must Go?

In recent years, the leadership of the federal bureaucracy has numbered [more than 8,000 appointees](#). Approximately 3,500 of these are political appointees, and the balance are career members of the Senior Executive Service (SES). Political appointments generally fall into one of four categories: presidential appointments with the advice and consent of the Senate (PAS), presidential appointments not requiring confirmation (PA positions), noncareer SES appointments, and Schedule C appointments.

Unless otherwise specified in law, political appointees to executive branch positions usually serve at the pleasure of the President. That is, they serve for an indeterminate period of time and can be removed by

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IN11541

the President at any time for any reason (or no stated reason). Most noncareer SES, Schedule C, and appointees of the President alone fall into this category. Appointees to these positions usually step down when the appointing President leaves office, unless asked to stay by the incoming President.

## Who May Stay?

Congress has sometimes set a specific term of office for a particular position, restricted the President's power of removal for a particular position, or both. [Some removal restrictions](#) require only that the President inform Congress of reasons for removing an official, whereas others require that a specified process be used or a specified threshold be met, [such as](#) "upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause." The use of fixed terms and removal restrictions has been more common for positions on regulatory boards, where Congress has tried to establish a greater independence from the President, than for positions in departments and single-headed agencies. Notably, in a [2020 decision](#), the U.S. Supreme Court held that a removal restriction provision pertaining to the director of the Consumer Financial Protection Bureau was unconstitutional. The [impact of this decision](#) on similar provisions is not clear.

An appointee to a position with a fixed term and protection from removal may serve during more than one presidency and is not required to step down when the appointing President leaves office; statutory removal protections might prohibit a President from attempting to remove the appointee simply for policy disagreements. Even where an appointee to such a position is not protected from removal, it could be argued that the fixed term establishes the expectation that the incumbent will be able to serve for a certain period. Removal of such an appointee by the incoming President might entail an expenditure of political capital.

## Recess Appointments

The Constitution empowers the President to unilaterally make a [temporary appointment to a PAS position](#) if the position is vacant and the Senate is in recess. Such an appointment, termed a *recess appointment*, expires at the end of the following session of the Senate. At the longest, a recess appointment made in early January, after the beginning of a new session of the Senate, would last until the [Senate adjourns sine die](#) at the end of the following year, a period that could be nearly two years in duration.

Outgoing Presidents sometimes have made recess appointments during their final months in office. The potential tenure for recess appointees to positions without removal protections is the same as it would be if the appointee had been confirmed by the Senate; the appointee typically leaves office with the appointing President but may stay on at the request of the incoming President. A recess appointee to a position with a fixed term and removal protection, however, might be able to continue to serve into a new Administration if the term of the position permits it. This would enable a President, at the end of his presidency, to use a recess appointment to bypass the Senate and fill a fixed-term position for a period that would outlast his time in office by a year or more.

Developments over the last decade have decreased the likelihood that a departing President could install a Senate-opposed appointee using the recess appointment power, particularly where one or both chambers are led by the party in opposition to the President. From the 110<sup>th</sup> Congress onward, it has become common for the Senate and House to use [certain scheduling practices](#) as a means of precluding the President from making recess appointments. The practices do this by preventing the occurrence of a Senate recess of sufficient length for the President to be able to use his recess appointment authority. In a 2014 opinion, the U.S. Supreme Court held that the President's recess appointment power may be used only during a recess of 10 days or longer except under "some very unusual circumstance."

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