Financial Regulators Struggling with Longer Vacancies at the Top

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Introduction

The process for nominating and confirming presidential appointments is breaking down. Long-running vacancies have become more common at independent financial regulatory agencies charged with overseeing the financial system. In some cases, the comparison to earlier eras is stark and has implications for the effectiveness of the financial regulatory system. **BPC's new research through 2016 has found that the length of the nominations process has more than tripled since the late 1980s, and that has led to agencies routinely being understaffed at the leadership level.** For example, at the Federal Reserve Board, it has become as common to have a vacancy in recent years as it once was to have a full complement of seven governors.

The effectiveness of the financial regulatory system is predicated on having high-quality financial regulators in place. The recent financial crisis and ensuing recession demonstrate the ramifications when that financial regulatory system fails. Fixing the nominations process is easier than developing perfect financial regulation. The president and the Senate should commit to ensuring that vacancies are filled in a timely manner. History shows that they can.

Methodology and Prior Work

This report builds on the Bipartisan Policy Center's 2013 report, Analysis of the Nominations Process for Financial Regulators,[1] with additional research to quantify how much the process has changed over time. This new paper significantly expands our pool of historical data and incorporates recent history. It includes a number of important new findings, and also reaffirms four of the main findings from BPC's earlier work:

- Heads of single-director agencies take much longer than other nominees to nominate and confirm;
- The process for commission chairs is significantly shorter than for commissioners who are not chairs;
- Nominations took longer to make and confirm for President Barack Obama than for President George W. Bush; and
- Presidents take longer to nominate than it takes for the Senate to confirm nominees.

BPC's Nominations Tracker,[2] an online resource, tracks two primary metrics for this paper:

- **Presidential delay**, which measures the number of days from when a vacancy is created to when the Senate receives a nomination from the president to fill that position at an independent agency; and
- **Senate delay**, which measures the number of days after receiving the nomination that the Senate takes action—either by confirming, rejecting, or allowing the nomination to lapse—or until the president withdraws the nomination.

BPC builds on our earlier paper with a data-set that now includes President Obama's full term in office and most nominations to independent financial regulatory agencies since the 1930s, the era in which many such agencies were first founded in the wake of the Great Depression. This means we can now analyze how the nominations process has changed over the lifetime of many of the major financial regulatory agencies. This paper also expands BPC's data to include the actual periods of vacancies for the majority of nominees, using the swearing-in dates and the dates each confirmed nominee left office.

To create the data-set, BPC gathered information on nominations to 13 independent financial regulatory agencies,[a] including three agencies that no longer exist, from multiple sources. See Appendix B for more details on methodology. The full data-set is available on BPC's website and we encourage other scholars to use this data as the debate over fixing the nominations process grows in prominence.

Finally, this paper assesses the impact of chronic vacancies at independent financial regulatory agencies.

[a] The agencies reviewed were the Commodity Futures Trading Commission (CFTC), the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation (FDIC), the Federal Housing Finance Agency (FHFA), the Federal Housing Finance Board (FHFB), the Federal Reserve Board of Governors (Fed Board), the Financial Stability Oversight Council (FSOC), the National Credit Union Administration (NCUA), the Office of Housing Enterprise Oversight (OFHEO), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Securities and Exchange Commission (SEC), and the Department of the Treasury's Office of Financial Research (OFR).

Findings

BPC's new research found that:

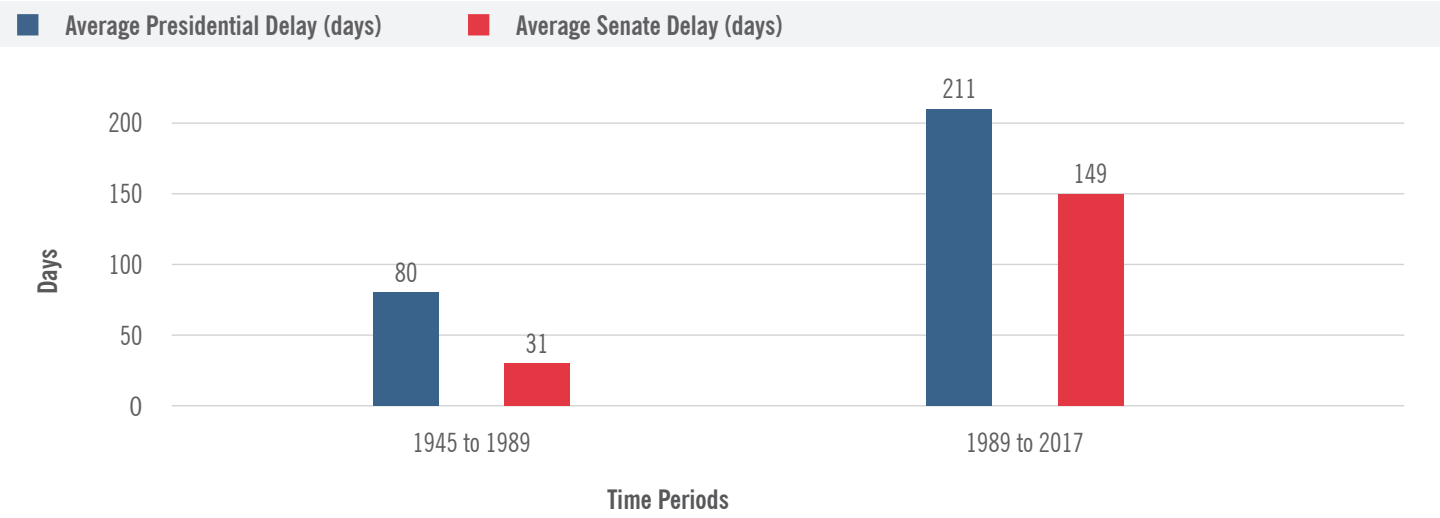
- The length of the nominations process increased substantially, beginning in the late 1980s. We do not speculate as to the reasons why the shift happened during that period, but the shift is visible at multiple agencies and led us to compare the periods before and after President George H.W. Bush took office in 1989. Since 1989, the process has taken more than three times longer than it did between 1945 (the start of the Harry S. Truman administration) and 1989 (the end of the Ronald Reagan administration).
- Greater Senate delay makes up the majority of the increase in the average length of the process. It has always taken longer for the president to decide on nominees than for the Senate to resolve nominations, but the gap has closed since the 1980s.
- The more time-consuming process has resulted in longer vacancies at financial regulatory agencies, and these vacancies have consequences on how well those agencies function.

Vacancies Have Lasted Longer Since the 1980s

Prior to the late 1980s, vacancies at independent financial regulatory agencies were generally filled quickly. From the Truman through the Reagan administrations (1945–1989), it took an average of 80 days and a median of 41 days for the president to send a nomination to the Senate following a vacancy. In that same period, it took the Senate an average of 31 days and a median of 20 days to resolve those nominations.

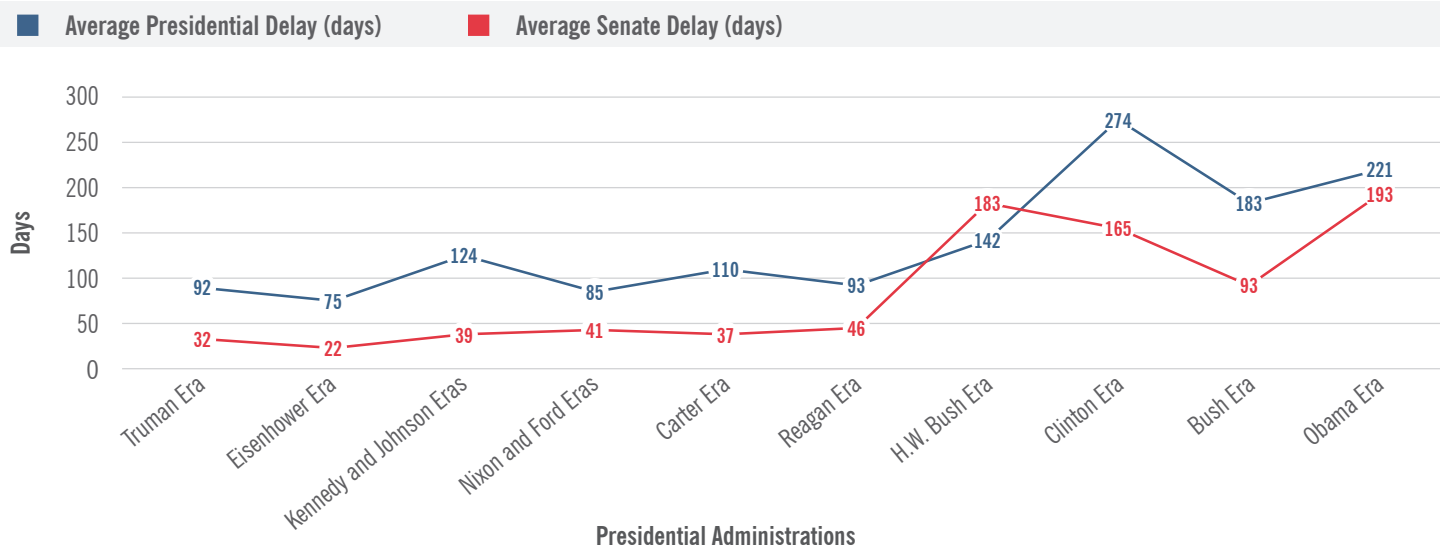
Since then, however, the typical length of vacancies has increased significantly. Over the last seven presidential terms starting in 1989, it has taken an average of 211 days and a median of 128 days for the president to make a nomination following a vacancy, and the Senate an average of 149 days and a median of 91 days to resolve those nominations.

Figure 1: The Nominations Process Has Bogged Down



Source: BPC data and calculations.

Figure 2: Average Number Of Days For President To Nominate And Senate To Act



Source: BPC data and calculations.

In other words, **the average presidential delay in the 1989-2017 period was almost three times as long as in the 1945-1989 period, and the average Senate delay from 1989-2017 was almost five times as long as it was during the earlier period**. The combined presidential and Senate delays in the earlier period were an average of 111 days and a median of 61 days. In the later period, the combined delays were an average of 360 days and a median of 219 days. So, **the average delay is now up to a full year when there is vacancy, and the majority of these terms are only five years**.

The rise in vacancies started occurring at somewhat different times for different agencies, but generally in the second half of the 1980s. By the 1990s, it became normal to have long periods with vacancies at financial regulatory agencies.

The Federal Reserve Board

This dynamic is most visible on the Federal Reserve Board (Fed Board). In the 40 years from 1947-1986,[b] there were only four times when there was at least one vacancy on the Fed Board for more than 200 days. During that time, the periods in which the Fed Board had fewer than its full complement of seven governors lasted an average of only about three months (93 days).[c]

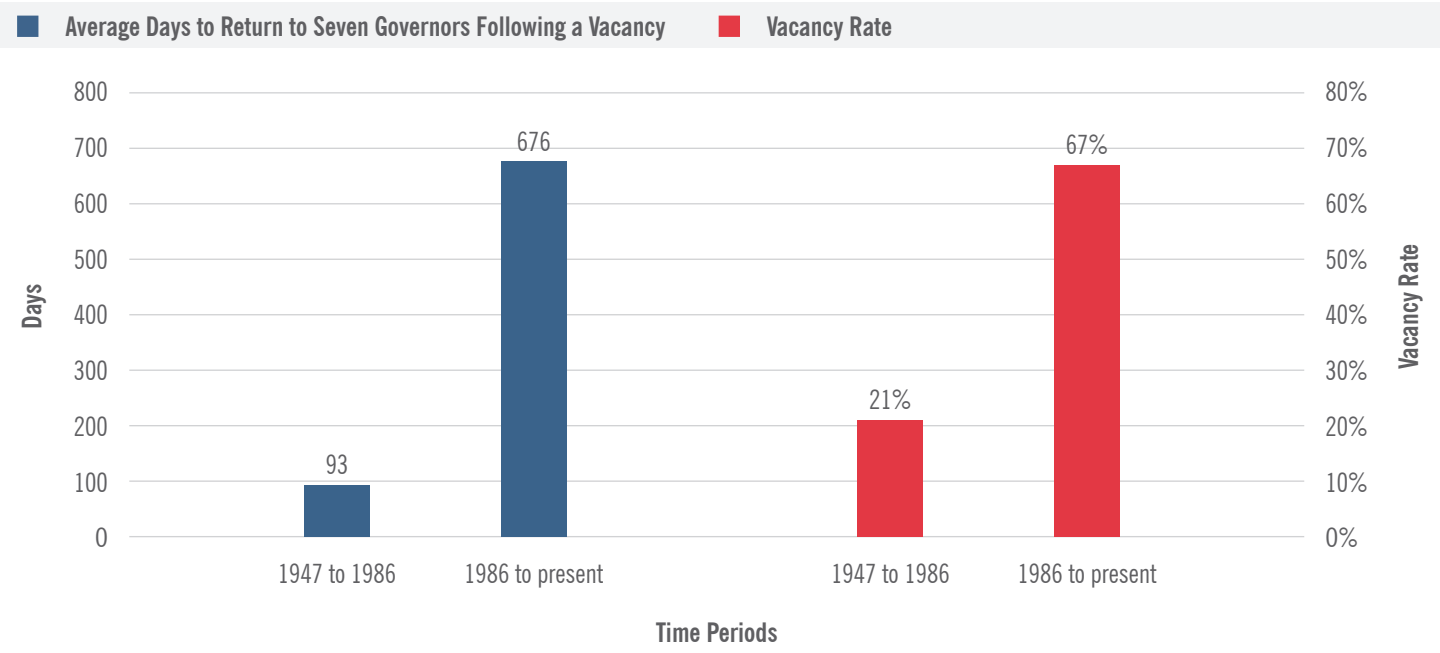
More recently, having vacancies is the norm. Since 1986, nine of the ten times there has been at least one vacancy on the Fed Board, it has lasted for more than 200 days. **During that time, the periods in which the Fed Board had fewer than seven governors have lasted an average of 676 days, almost two full years, and more than seven times longer than between 1947-1986.**

[b] Specifically, until Henry C. Wallich left the Board on December 15, 1986.

[c] Here we mean the average number of days to return the Fed Board to full strength following any vacancy, not the average number of days to fill any specific vacancy.

Another way to look at the numbers is by vacancy rate, the percentage of total days that there was at least one vacancy for a Senate-confirmed position. For example, in the 1947-1986 period, the Fed Board had at least one governor's seat vacant 21 percent of the time. In the period since, the vacancy rate has more than tripled, to 67 percent of the time. And things are getting worse. **Since January 1, 2000, there has been at least one vacancy more than four-fifths of the time. Today, a full Fed Board is as rare as a vacancy used to be.**

Figure 3: Federal Reserve

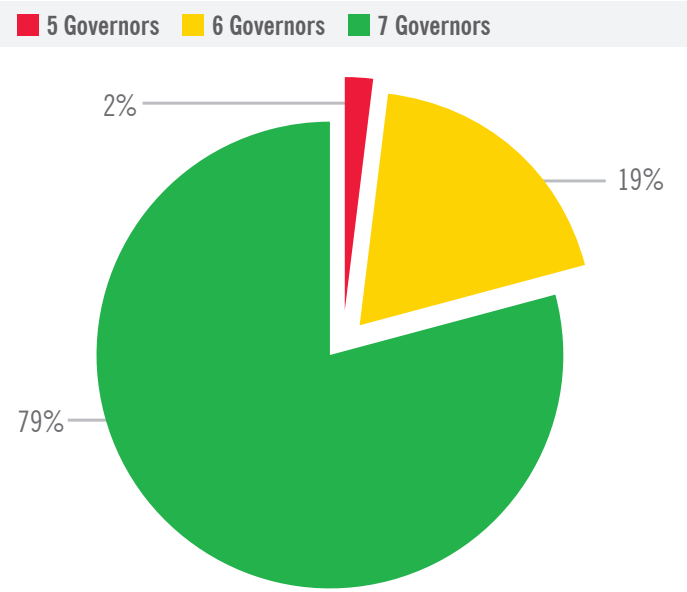


Source: BPC data and calculations.

Compare these numbers to another powerful public institution, the Supreme Court. Nominations to the Court have spurred highly partisan battles for many years. However, from January 1, 2000, until Justice Antonin Scalia died in February 2016, there was a vacancy on the Supreme Court for only two percent of the time.

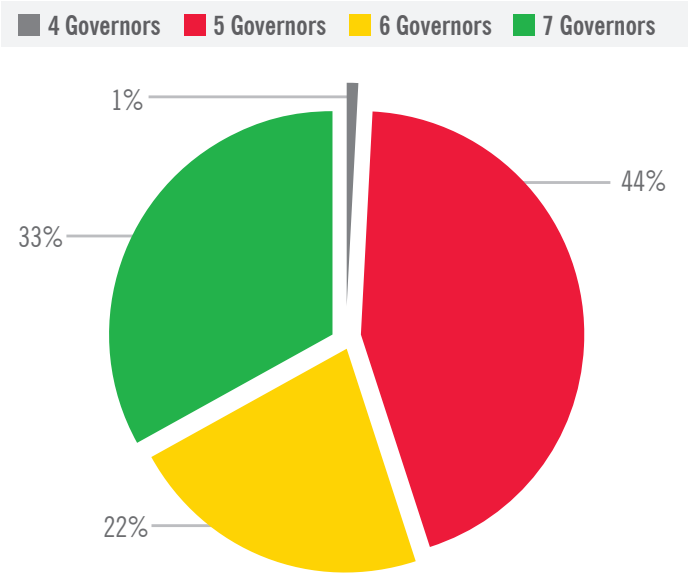
It has not only become more common to have a vacancy on the Fed Board since the 1980s, it has become more common to have more than one vacancy. Figure 4 shows that from 1947-1986, the Fed Board had a full complement of seven confirmed governors four-fifths of the time and was almost never at fewer than six governors. In contrast, since then, the Fed Board has had seven governors one-third of the time, while it has been most common for the Fed Board to have only five governors.

Figure 4: Frequency of Number of Fed Governors, 1947-1986



Source: BPC data and calculations.

Figure 5: Frequency of Number of Fed Governors, 1986-2017



Source: BPC data and calculations.

The trend of more and longer vacancies does not apply to the Federal Reserve Board chair. Since 1936, there have been only three times—for a total of only 220 days—when there was a gap in service for Fed Board chairmen. In one of those cases, Alan Greenspan was named chair *pro tempore* for 109 days while awaiting reconfirmation in 1996.

Vacancies for vice chair of the Fed Board are somewhat more common. Since the position became subject to Senate confirmation in the early 1980s, the average combined presidential and Senate delay for a vice chair nomination has been 129 days, well under the average delay for the full set of nominees.

The vice chairman for supervision, a position Congress created in Dodd-Frank in 2010 to elevate the role of supervision at the Fed Board, has never had a nomination from the president to fill it.

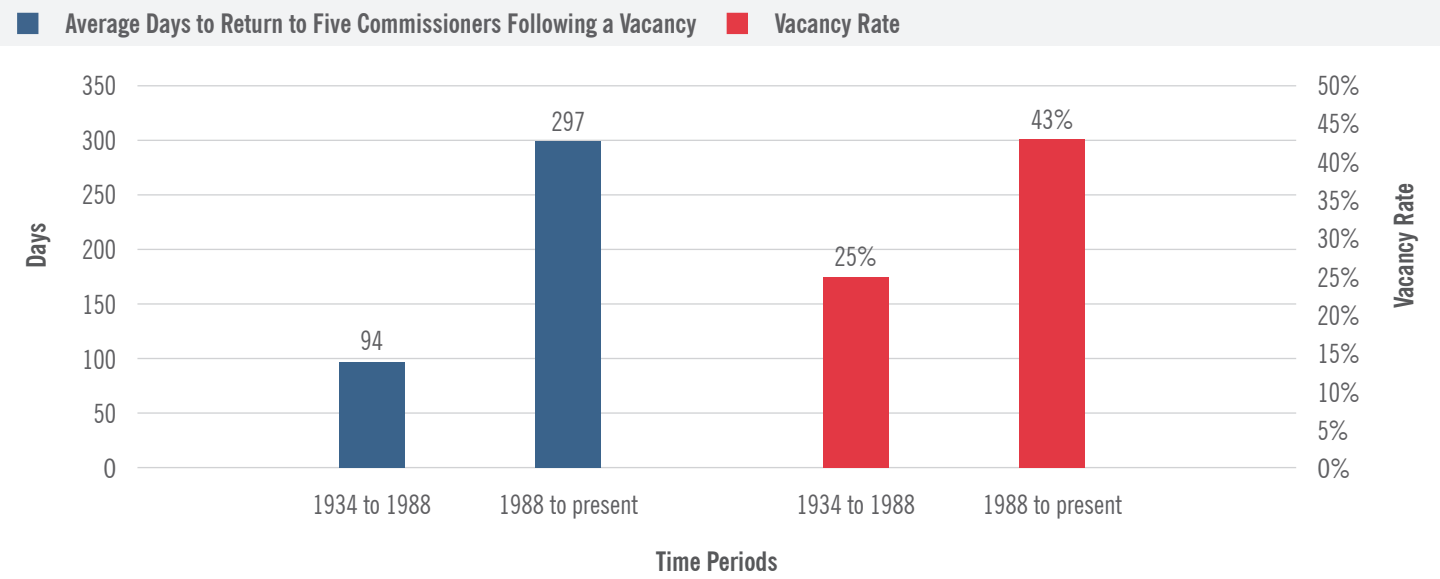
Trends at Other Agencies

The trend toward a longer nominations process is most pronounced at the Federal Reserve Board, but is visible at other agencies as well.

From the time the Securities and Exchange Commission (SEC) was first fully constituted in 1934 until 1988,[d] it took an average of 94 days to bring the SEC back up to full strength once a vacancy occurred, and there was a vacancy rate of 25 percent. **Since 1988, it has taken an average of 297 days, or more than three times longer, to get the SEC back to five members following a vacancy, and it has had a vacancy rate of 43 percent.**

[d] We use the departure of Aulana L. Peters on July 8, 1988 as a reference point for the SEC.

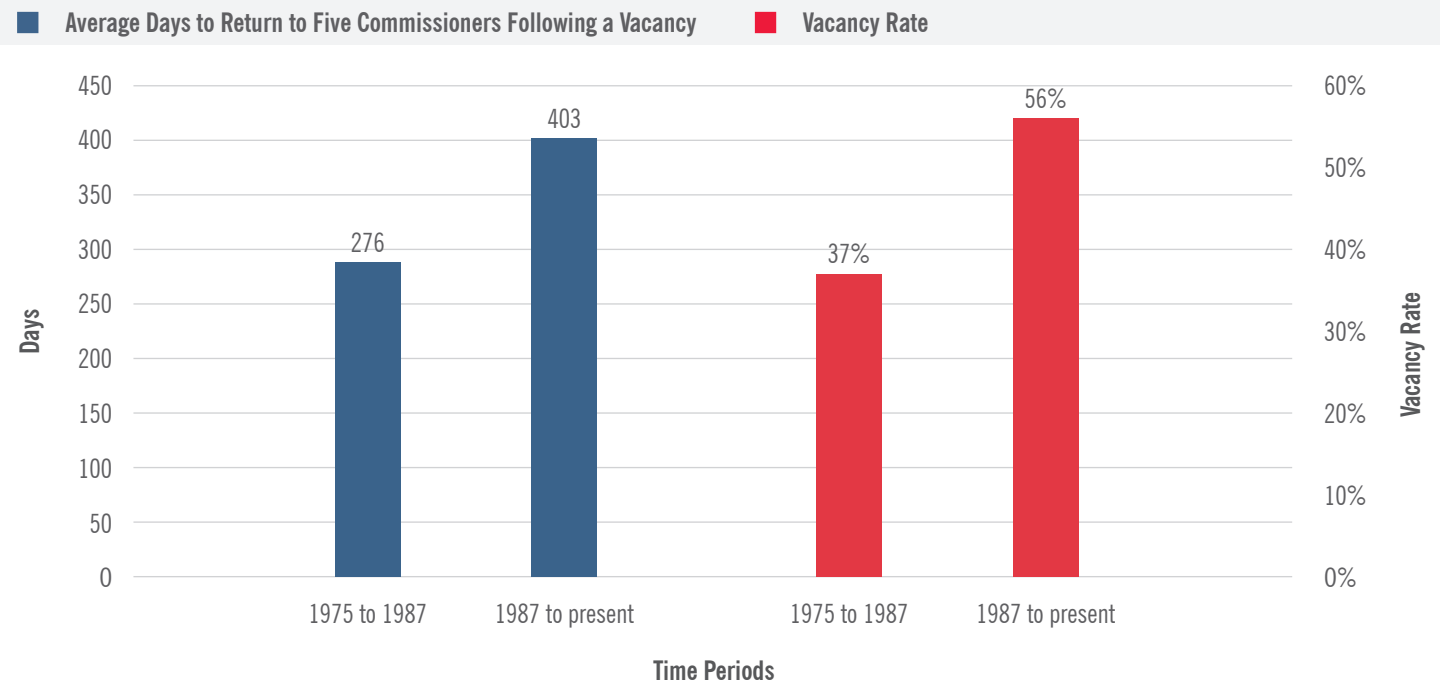
Figure 6: Securities and Exchange Commission



Source: BPC data and calculations.

The Commodity Futures Trading Commission (CFTC), an agency that began operation in 1975, shows a significant but milder trend. From when the CFTC first become fully constituted in 1975 until 1987,[e] periods when the Commission fell below its full five members lasted an average of 276 days, and the CFTC had a vacancy rate of 37 percent. **Since 1987, the average length of a period with fewer than five commissioners was 403 days, and the CFTC had a vacancy rate of 56 percent.**

Figure 7: Commodity Futures Trading Commission

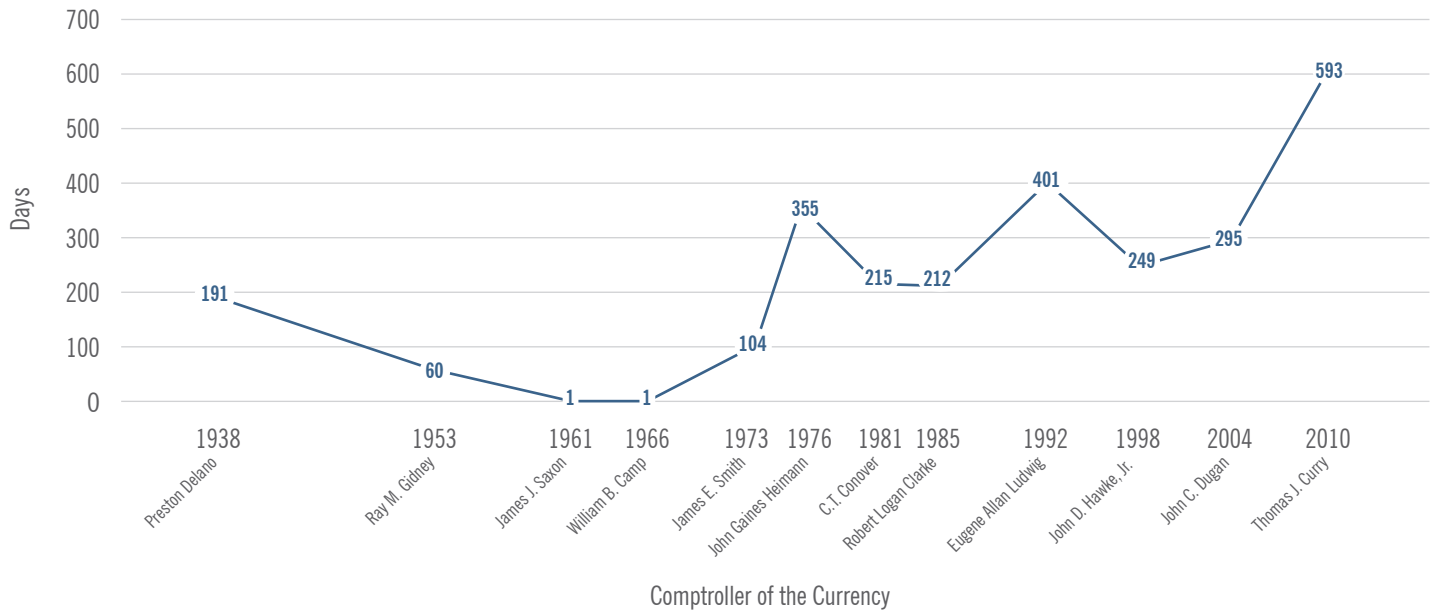


Source: BPC data and calculations.

[e] We use the departure of Susan M. Philips on July 24, 1987 as a reference point for the CFTC.

The length of the process to replace comptrollers of the currency has also increased substantially, although there are fewer data points available to show it. Since 1938, there have been 11 comptrollers who have left their positions and needed to be replaced. From 1938 until the replacement of C.T. Conover with Robert Logan Clarke in 1985, vacancies lasted an average of 132 days. Since 1985, the four vacancies have lasted an average of 350 days, almost three times as long.

Figure 8: Number of Days to Fill Comptroller of the Currency Vacancies Since 1938



Source: BPC data and calculations.

The Nominations Process is Longest for Heads of Single-Director Agencies, Shortest for Board and Commission Chairs

BPC's new data-set and methodology confirms prior conclusions made in our 2013 paper that the nominations process is the shortest for chairs of boards and commissions, somewhat longer for members of boards and commissions who are not chairs, and longest for heads of single-director agencies.

Updated data shows that for chairs of boards and commissions, the average presidential delay has been 72 days, with a median of 27 days, while the average Senate delay has been 69 days, with a median of 30 days. Members of boards and commissions who are not chairs have faced an average presidential delay of 175 days and a median of 67 days, and a Senate delay of 98 days and a median of 44 days. The combined delay for chairs has been an average of 141 days, compared with 273 days for non-chairs.

By comparison, the average presidential delay for heads of single-director agencies has been 321 days (median of 183 days), with an average Senate delay of 139 days (median of 43 days). The average combined delay, then, has been 460 days.

TABLE A: Presidential Delay and Senate Delay					
	Number of Days for President to Nominate		Number of Days for Senate to Resolve Nomination		Combined Delay
Nominees of:	Mean	Median	Mean	Median	Mean
All Agencies	171	62	97	43	268
By Position					
Single-Director Agencies	321	183	139	43	460
All Commission Members	160	55	94	43	254
Commission Chairs	72	27	69	30	141
Commission Non-Chairs	175	67	98	44	273
By Era					
Truman–Reagan	80	41	31	20	111
H. W. Bush–Obama	211	128	149	91	360

Source: BPC data and calculations.

Presidential Delay is Greater than Senate Delay, but the Gap Has Closed

It has always taken significantly longer on average for presidents to send nominations to the Senate following a vacancy than it has for the Senate to resolve those nominations. As shown in Figure 1, in the Truman-Reagan period, the average presidential delay was 80 days, more than twice the average of 31 days for the Senate, while the median presidential delay was 41 days, vs. 20 days for the Senate.

Since 1989, that gap has narrowed. The average presidential delay has been 211 days, vs. 149 days for the Senate, while the median presidential delay has been 128 days, compared to 91 days for the Senate. Under President Obama, while the average presidential delay remained higher than the average Senate delay at 221 days, vs. 193 days, it was only the second time that the *median* presidential delay was lower than the median Senate delay, at 40 days, vs. 150 days.[f]

Too Early to Tell the Impact of Filibuster Rule Changes

In November 2013, Senate Democrats eliminated the filibuster on executive branch nominations. This allowed the Senate to "clear the decks" of independent financial regulatory nominees in the following months, confirming eight people to ten positions by June 2014. Three of those confirmations were made with fewer than 60 affirmative votes.[3] None of the financial regulatory nominations made after June 2014 were confirmed by the Senate.

[f] The median presidential delay for President Ford was 0 days, vs. a median of 27 days.

TABLE B: Senate Delays Post 2013 Filibuster Rule Changes					
Nominee	**Agency & Position**	**Date Nominated**	**Date Confirmed by Senate**	**Senate Delay (Days)**	**Senate Vote**
Melvin L. Watt	FHFA director	May 7, 2013	Dec. 10, 2013	217	57-41
G. Christopher Giancarlo	CFTC commissioner	Aug. 1, 2013	June 3, 2014	306	Voice vote
Janet Yellen	FRB chair	Oct. 9, 2013	Jan. 6, 2014	89	56-26
Timothy G. Massad	CFTC chairman and commissioner	Nov. 13, 2013	June 3, 2014	202	Voice vote
Sharon Y. Bowen	CFTC commisioner	Jan. 7, 2014	June 3, 2014	147	48-46
Stanley Fischer	FRB vice chairman	Jan. 13, 2014	June 12, 2014	150	63-24
Stanley Fischer	FRB governor	Jan. 13, 2014	May 21, 2014	128	68-27
Lael Brainerd	FRB governor	Jan. 13, 2014	June 12, 2014	150	61-31
Jerome Powell	FRB governor	Jan. 16, 2014	June 12, 2014	147	67-24
G. Christopher Giancarlo	CFTC commissioner	May 5, 2014	June 3, 2014	29	Voice vote

Source: Justin Schardin, "Data Shows 'Nuclear Option' Had an Impact on Financial Regulatory Appointments," Bipartisan Policy Center, 2014. Available at: http://bipartisanpolicy.org/blog/data-shows-nuclear-option-had-an-impact-on-financial-regulatory-appointments.

The restriction of the filibuster could have a significant impact on the length of the nominations process, but there is not enough data available to make conclusions about that impact with confidence.

The Consequences of Vacancies

We have shown that it has become much more common to see prolonged vacancies at independent financial regulatory agencies during the past 30 years. But does it matter?

Quorum Issues

Multi-member agencies have quorum rules that establish the number of board of commission members necessary to conduct business on behalf of the agency.

For the SEC, three members constitute a quorum, unless there are fewer than three confirmed commissioners serving, in which case a quorum is the number of serving commissioners. So, when the SEC is at three or fewer members, all of its commissioners must be present for a quorum.[4] In such cases, one commissioner can effectively stop the SEC from acting by simply not attending a meeting.

The Fed Board requires a majority of governors for a quorum to conduct business, except that four governors are required for a quorum when there are exactly five governors.[5]

The quorum requirement for each multi-member agency is listed in Table C below.

TABLE C: Quorum Requirements for Multi-Member Agencies

Agency	Quorum Requirement
CFTC	A majority of commissioners, except when there are two commissioners, in which case a quorum is both commissioners. It is not clear how quorum would be handled if there were only one commissioner serving.
FDIC	A majority of the board of directors, except when there are fewer than three directors, in which case a quorum is all current directors.
Fed Board	A majority of sitting governors, except when there are five governors, in which case a quorum is four governors.
NCUA	A majority of the board.
SEC	At least three commissioners, except when there are fewer than three commissioners able to participate in a matter, in which case a quorum is all current commissioners able to participate.

Sources: Security and Exchange Commission Quorum Requirement, Federal Reserve System Rules of Organization, Federal Deposit Insurance Corporation Bylaws, National Credit Union Administration, Commodity Futures Trading Commission.

Quorum requirements affect more than just the ability of agencies to act. The Government in the Sunshine Act requires that, any time a quorum is present, it constitutes a formal meeting that must be open to the public and noticed in the Federal Register several days in advance. This works fine when, for example, the SEC has at least three members, which leaves room for two commissioners to meet informally to discuss pending business. But if the SEC has only two members—something that has happened four times since 1995, for a total of 300 days—those two commissioners are not able to meet to discuss SEC business without it being a public meeting. In addition to making agencies less efficient, the inability to interact off the record can make for awkward elevator rides with two commissioners.

When agencies are functioning with a full complement of leadership, much of the business done by agencies is hashed out behind the scenes. Ideas and policies should be developed and refined before being submitted to the public, which has input into such proposals through formal rulemaking processes and oversight through Congress, inspectors general, and others. Further, informal interaction between members of commissions and boards helps to establish working relationships and better understanding of others' points of view.

A Rebalanced Monetary Policy Body

The Federal Open Market Committee (FOMC), the part of the Federal Reserve that makes monetary policy decisions, was designed with a particular balance in mind. The FOMC has 12 members: the seven Fed Board governors, the president of the Federal Reserve Bank of New York, and the presidents of four of the other 11 Federal Reserve regional banks, on a rotating basis.[8] The idea behind this structure was to include a diversity of voices from different parts of the country through the five regional bank presidents—who are selected by the boards of directors of those banks, which are organized similarly to private corporations—while giving a voting majority to the seven governors. The governors are nominated by the president and confirmed by the Senate and are subject to reporting and other requirements, so they are more publicly accountable than regional bank presidents. Since the most common state for the Fed Board in recent years has been five governors instead of seven, the FOMC's voting membership has been equally weighted between the Fed Board and the regional banks in those periods. That may or may not be a good thing, but it is not what Congress intended.

Bandwidth

Fewer confirmed members of boards and commissions means less agency capacity to complete work. Some independent financial regulatory agencies set their own budgets and can devote more resources to compensate for vacancies. However, vacancies force fewer people to handle more leadership responsibility. This may result in lower-priority work not getting done, higher-priority work not receiving as much attention as is warranted, or work generally taking longer to complete.

Perspectives

Independent financial regulatory agencies deal with a range of issues, some of which are unanticipated. It is valuable for agencies to have multiple perspectives and areas of expertise to help to address them. For example, regardless of whether one approves of the job Ben Bernanke did as chair of the Fed Board during the last crisis, it was fortuitous to have someone leading the Fed Board who had studied the Great Depression in depth. Congress has long recognized the value of diverse perspectives, having included requirements for a director with state bank supervisory experience on the FDIC,[6] and more recently, for a member with primary experience in community banking on the Fed Board.[7] Congress has mandated diversity on the Fed Board in other ways, such as that appointments shall "have due regard to the fair representation of the financial, agricultural, industrial, and commercial interests, and geographical divisions of the country," the latter including that no more than one governor may be selected from one of the 12 Federal Reserve System districts. Chronic vacancies reduce access to these valuable perspectives.

Conclusion

The average length of the nominations process for independent financial regulators has more than tripled since the latter half of the 1980s, resulting in frequent and long-lasting vacancies at these agencies. At some agencies, most notably the Fed Board, it is now unusual to have a full complement of Senate-confirmed regulators.

If this trend continues, it threatens to paralyze the ability of these agencies to perform their functions. We have already seen some effects of more common vacancies, including difficulties related to quorum rules and bottlenecks in leadership.

Decades of history have shown that the nominations process can work well in a much shorter time frame than it has since the 1980s. Although there have been changes to the vetting process for nominees over the years, BPC believes that the president and Senate can and should shorten the process.

We make the following recommendations:

1. The president should always be prepared for a potential vacancy so that the nominating process can move more quickly when vacancies occur. To the extent practical the president should identify a list of candidates ahead of time for positions at independent financial regulatory agencies that are subject to Senate confirmation. The president should make formal nominations with appropriate background paperwork within 90 days of any vacancy coming open. One exception to this standard is the beginning of a new president's term, at which time many nominations need to be made at once.
2. Subject to the ability of committee members to thoroughly vet nominees, Senate committees that receive nominations to these agencies should hold hearings and vote on whether to report or reject those nominations within 60 days of their being received from the president. If a nomination is reported favorably out of committee, the full Senate should vote on it within 30 days of its being reported.

History shows that the nominations process can work well in a shorter time frame. Given the importance of having well-qualified regulators in place that was underscored by the 2007-2008 financial crisis, the president and Senate should make it a priority to streamline the process.

Appendix A:

Terms and Ability to Serve Beyond Term Expiration for Financial Regulators					
Agency	**Position**	**# Positions**	**Term in Office**	**Fixed or Relative Term[g]**	**May serve beyond expired term until successor confirmed?**
CFPB	Director	1	5 years	Relative	Yes
CFTC	Commissioner	5	5 years	Fixed	Yes, but not beyond the end of the subsequent session of Congress
CFTC	Chair	1	N/A	N/A	Term does not expire[h]
FDIC	Chair	1	5 years	Relative	Yes
FDIC	Vice Chair	1	N/A	N/A	Term does not expire[h]
FDIC	Director	3	6 years	Relative	Yes
Fed Board	Chair	1	4 years	Relative	Not specified in statute
Fed Board	Vice Chair	1	4 years	Relative	Not specified in statute
Fed Board	Vice Chair for Supervision	1	4 years	Relative	Not specified in statute
Fed Board	Governor	7	14 years	Fixed	Yes
FHFA	Director	1	5 years	Relative	Yes
FSOC	Independent Member	1	6 years	Relative	No
NCUA	Director	3	6 years	Fixed	Yes
OCC	Comptroller of the Currency	1	5 years	Relative	Yes
OFR	Director	1	6 years	Relative	Yes
SEC	Commissioner	5	5 years	Fixed	Yes, but not beyond the end of the subsequent session of Congress

Source: BPC research.

[g] A fixed term is one for a position that runs at a regular interval without regard to when a person is nominated or confirmed to fill it. For example, one of the five terms for SEC commissioner expires each year on June 5. Relative terms are those that are based on a specific person's start date. For example, the heads of the CFPB, the FHFA, and the OCC serve five-year terms that begin when they are sworn into office.

[h] The terms for CFTC chair and FDIC vice chair are not fixed. The people who hold those positions are separately confirmed as a CFTC commissioner and an FDIC director, respectively. As long as they remain confirmed in those positions, and they are not fired by the president in order to install a replacement, they may continue to serve as CFTC chair or FDIC vice chair, respectively.

Appendix B:

Term Expiration Dates for Current Financial Regulators				
Name	**Agency**	**Title**	**Political Affiliation**	**Term Expiration Date**[i]
Thomas Curry	OCC	Comptroller of the Currency	Independent	4/9/2017
Kara Stein	SEC	Commissioner	Democrat	6/5/2017
Richard Metsger	NCUA	Director	Democrat	8/2/2017
S. Roy Woodall	FSOC	Independent Member	N/A	9/28/2017
Martin Gruenberg	FDIC	Chairmen	Democrat	11/16/2017[j]
Janet Yellen	Fed Board	Chair	N/A	2/3/2018
Thomas Hoenig	FDIC	Director	Republican	4/16/2018
Sharon Bowen	CFTC	Commissioner	Democrat	4/13/2018
Michael Piwowar	SEC	Commissioner	Republican	6/5/2018
Stanley Fischer	Fed Board	Vice Chair	N/A	6/12/2018
Richard Cordray	CFPB	Director	N/A	7/17/2018
Martin Gruenberg	FDIC	Director	Democrat	12/27/2018
Melvin Watt	FHFA	Director	N/A	12/10/2018
Richard Berner	OFR	Director	N/A	1/2/2019
J. Christopher Giancarlo	CFTC	Commissioner	Republican	4/13/2019
J. Mark McWatters	NCUA	Director	Republican	8/2/2019
Stanley Fischer	Fed Board	Governor	N/A	1/31/2020
Daniel Tarullo	Fed Board	Governor	N/A	1/31/2022
Janet Yellen	Fed Board	Governor	N/A	1/31/2024
Lael Brainard	Fed Board	Governor	N/A	1/31/2026
Jerome Powell	Fed Board	Governor	N/A	1/31/2028

Source: BPC research.

[i] Note that while we know the length of each term and the date each person was confirmed to a given position; some term expiration dates are not easily found. For that reason, a few of the dates in the table are approximate.

[j] In addition to their terms as FDIC directors, Martin Gruenberg and Thomas Hoenig were confirmed by the Senate to be chair and vice chair, respectively, of the FDIC on November 15, 2012. The term of the chair is set at five years, while the vice chair position does not have a set term.

Appendix C: Methodology

Quantifying the nominations process involves deciding how to treat numerous idiosyncratic, individual nominations. In most cases, BPC's decisions did not significantly impact the overall numbers, but some of those decisions are explained below.

To create its data-set, BPC relied on multiple sources. Data on nominations and confirmations since 1981 were available on congress.gov, while earlier dates were found through the Senate Executive Calendars at the Library of Congress Law Library, the CQ Press Library, historical press releases, and a variety of other online sources. Information on the terms in office—from swearing-in to leaving office—were found using agencies' websites and requests for information made to agencies. We have included the spreadsheet with our full data-set as part of the release of this paper for others to review. In many cases, we have included links to the data.

With older nominations, official records were not always available. In a few of these cases, we have relied on contemporary news clippings and other references that may not be exact. However, if there are any discrepancies with these dates, they should be off by a few days at most, and not by enough to materially alter our conclusions. In a few other cases, we were not confident that our estimates would be so close, and those cases are listed in the spreadsheet as "Missing Data."

BPC's previous paper measured presidential delay from the time the predecessor in that position left office or their confirmed term in office expired, whichever came first. Here, BPC made a judgment call to use only actual vacancy dates instead of term expiration dates. We believe this change makes our data more useful to policymakers because many regulators continue to serve beyond their expiration dates. We also find that this change in methodology does not substantially change the conclusions that were made in BPC's 2013 paper.

In cases where a presidential nomination was made on or prior to the date that the nominee's predecessor left office, we counted the presidential delay as zero days. When the president re-nominated someone for a position to which they were already confirmed, we did not count that as a data point for presidential delay. This is because our intent was to measure how long it took the president to nominate following a vacancy and, in the case of concurrent re-nominations, vacancies did not exist, since confirmed appointees could continue to serve after their terms in office expired. We did, however, count Senate delay for re-nominations, since in such cases, our intent was to measure how long it took for the Senate to resolve nominations.

Data on presidential and Senate delays only includes cases where Senate confirmation was required. For example, we do not include data on the terms of SEC chairs because that position is selected by the president without consulting with the Senate. Similarly, the positions of Fed Board chair and vice chair were selected without Senate approval prior to 1981, as was the FDIC chair prior to 1989.

For most of our calculations, we count presidential delay the same way, from vacancy to nomination. The one exception is when we calculate presidential delay by presidential administration. In cases where a vacancy is created in one president's term, but the nomination is made in his successor's term, we divide the presidential delay into two. The former president is credited with delay from when the vacancy was created until the date Congress adjourned in his last year in office. The successor is credited with delay from his inauguration until he makes a nomination.

BPC's data-set runs up to January 17, 2017, which is the date on which President Obama re-nominated two candidates for the CFTC that had been returned by the Senate on January 3, 2017.

Endnotes

1 Bipartisan Policy Center, *Analysis of the Nominations Process for Financial Regulators*, April 4, 2013. Available at: http://cdn.bipartisanpolicy.org/wp-content/uploads/sites/default/files/FRRI%20Nominations%20Paper_0.pdf.

2 Bipartisan Policy Center, *Nominations Tracker*, February 6, 2017, Available at: http://bipartisanpolicy.org/nominations/.

3 Justin Schardin, *Data Shows 'Nuclear Option' Had an Impact on Financial Regulatory Appointments*, Bipartisan Policy Center, December 10, 2014. Available at: http://bipartisanpolicy.org/blog/data-shows-nuclear-option-had-an-impact-on-financial-regulatory-appointments/.

4 See Security and Exchange Commission, *Establishment of Commission Quorum Requirement*, 17 CSR Section 200. Available at: https://www.sec.gov/rules/final/quorum.txt.

5 See "Federal Reserve System: Rules of Organization," Federal Register Vol. 68 Number 89, May 8, 2003. Available at: https://www.gpo.gov/fdsys/pkg/FR-2003-05-08/html/03-11427.htm.

6 U.S. Code, "Federal Reserve System – Management," 12 U.S.C. Section 1812 (a)(1)(C). Available at: https://www.law.cornell.edu/uscode/text/12/1812.

7 U.S. Code, "Federal Reserve System – Creation; management; compensation and expenses," 12 U.S.C. 241. Available at: https://www.law.cornell.edu/uscode/text/12/241.

8 Board of Governors of the Federal Reserve System, "Federal Open Market Committee." Available at: https://www.federalreserve.gov/monetarypolicy/fomc.htm.

Notes

Notes

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