Economic Policy Program

Financial Regulatory Reform Initiative

Analysis of the Nominations Process for Financial Regulators

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BIPARTISAN POLICY CENTER

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AUTHORSHIP

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To date, there has been surprisingly little hard data on the time taken for independent financial regulators to be nominated and confirmed. Through this paper, the Bipartisan Policy Center (BPC) seeks to provide a factual baseline for America's recent experience in this process.

For the purposes of this paper, a list of every Senate-confirmable independent financial regulator was compiled.[1] The data set begins with regulators who were in office on January 1, 2000, and went back in history to their prior confirmations. Positions created since 2000 were included, as were agencies that were eliminated during this period. For each presidential decision or indecision, two variables were examined: First, BPC measured the number of days it took the president to nominate someone, from the time his or her predecessor left office or from when the predecessor's confirmed term in office ended, whichever was earlier.[2] Second, BPC measured the number of days it took for the Senate to resolve the nomination—a process that includes confirmation, rejection, withdrawal, or allowing the nomination to lapse—from the time that it was received by the Senate.[3] Due to the possibility that extreme outliers might skew the data, both means and medians are presented.[4]

KEY FINDINGS:

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 have taken longer to make and confirm for President Barack Obama than for President George W. Bush.

Presidents take longer to nominate than it takes for the Senate to confirm nominees.

The data set contains additional variables. BPC distinguishes between independent regulators, who were nominated to serve on commissions or boards, and heads of single-director regulatory bodies. The presidential administration that nominated each candidate is also recorded. Finally, chairs of commissions or boards are separated from other members. In some instances, the chair is a separate confirmable position, while in others, the president can choose a chairman from among the confirmed commissioners. BPC did not count appointed, non-confirmable positions in our calculations.[5]

Four key findings emerged from analysis of the data:

1. It takes much longer for the president to nominate, and for the Senate to resolve, heads of single-director agencies than the time involved for commission members and for chairs of commissions.

2. Commission chairs take much less time to nominate than do commission members who are not chairs. The Senate takes a similar amount of time to consider both.

3. The nomination process has slowed down in the Obama administration compared with the George W. Bush administration. This delay is evident in the increase in both

the time it has taken for the Obama administration to nominate individuals and in the time it has taken the Senate to act on nominations.

4. Presidents take longer to nominate individuals to commissions and single-head agencies than the Senate takes to resolve those nominations. Interestingly, this is not the case for commission chairs. There is much greater variation in the amount of time it takes the president to decide on nominations than for the Senate to resolve them.

The data include 164 individual nominations and open (including newly created) positions.[6] Reflecting a variety of factors, including certain rules governing nominations and Senate processes, some cases required judgment calls on how best to determine exact dates. BPC believes that these findings withstand alternate assumptions. For example, an analysis of the data produces similar results when using vacancy dates only and not counting expired terms where an official remains in office. BPC's methodology, including further detail on this alternate analysis, can be found in the attached appendix. The data are being published—in the form of an interactive Web-based tool along with BPC's spreadsheet, assumptions, and methodology—to encourage others to use this data in consideration of the pros and cons of various regulatory structures.

Overview of Results

It has taken an average of 240 days and a median of 134 days for presidents to decide on a nominee for an independent financial regulatory position. The Senate has taken an average of 137 days and a median of 90 days to resolve a nomination.[7] Measured from vacancy or term expiration, the average independent financial regulatory position has taken just over a year to fill.

	NUMBER OF DAYS FOR PRESIDENT TO NOMINATE		NUMBER OF DAYS FOR SENATE TO RESOLVE	
Nominees of ...	Mean	Median	Mean	Median
All Agencies	240	134	137	90
Single-Director Agencies	439	402	229	189
All Commission Members	223	123	130	88
Commission Non-Chairs	239	134	129	88
Commission Chairs[8]	74	16	135	71
President Clinton (limited sample)	327	160	193	132
President Bush	181	123	98	51
President Obama	233	167	162	133

There is great variation in these numbers. The president decided one out of every four nominations (41 out of 164) before the nominee's predecessor had left office or seen his or her term expire (i.e., zero days, in BPC's calculations). In more than two in five cases (71 out of 164), the Senate received the president's nomination in 100 days or less. In about one out of every five cases (34 out of 164), the president waited more than a year to nominate someone, and in one out of every 25 cases (six out of 164) the nomination took more than 1,000 days before the Senate received it.

Single-Director Agency Heads

It is striking that on average it took almost two years for a vacancy at a single-director agency to be resolved. Somewhat surprisingly, the presidential delay in nominating candidates is significantly longer than the Senate delay. It has taken the president an average of 439 days and a median of 402 days to nominate a candidate. It has taken the Senate an average of 229 days and a median of 189 days to resolve a nomination. There are relatively few single-head financial regulatory agencies: the Consumer Financial Protection Bureau (CFPB), Federal Housing Finance Agency (FHFA), Comptroller of the Currency (OCC), Office of Federal Housing Enterprise Oversight (OFHEO), Office of Financial Research (OFR), and Office of Thrift Supervision (OTS). As a result, there is a small set of data points to draw from: 15 nominations and open positions. A sample this size should not be over-interpreted. However, it is interesting to note that it is rare for a single-director agency nomination to happen quickly. Three out of five of the nominations (nine out of 15) have taken almost a full year (325 days or more) for the president to decide. The same proportion has taken almost four months (114 days or more) to be resolved by the Senate.

Despite this track record, the two newest agencies with regulatory authority, the FHFA and CFPB, were created as single-director agencies, and neither has seen a director confirmed. The OFR, created under Dodd-Frank along with the CFPB, was also created with a single agency head. In the case of the OFR, it took 513 days to nominate Richard Berner as director, and the Senate took another 382 days to confirm his nomination. President Obama took 441 days to nominate Joseph Smith to replace James Lockhart III to head the FHFA.[9] Smith withdrew from consideration three months later, and no new nominee has been named since then. It took the administration one year to nominate a director for the new CFPB, Richard Cordray. The Senate has not acted on his nomination for 623 days (and counting) as a result of a threatened filibuster from Senate Republicans.

Commissions

The contrast between the paths of single-director agency heads and commission chairs is striking. Chair nominations have taken much less time to be named by presidents—an average of 74 days and a median of only 16 days. The Senate has also addressed these nominations with relative dispatch, resolving them in an average of 135 days and a median of 71 days. Thus, it takes an average of seven months to confirm a commission chair from the time the position becomes vacant or its term expires, while the typical, or median, vacancy is only three months.

Chairs have also been named much more quickly than their fellow commissioners and directors. Non-chairs have taken an average of just under one year to go through the process. Here the time is split more equally, with an average of 239 days for the president to decide. It takes an average of 129 days to resolve nominations for non-chair commission members, about the same as it takes for commission chairs. The typical experience is faster at just under seven months, with the president taking 134 days to nominate and the Senate 88 days to consider a nomination. On average, non-chair commission members are both nominated sooner by the president and considered more quickly by the Senate than single-head agency directors.

Differences Among Administrations

President Obama has taken somewhat longer to make nominations than his predecessors, with an average of 233 days and a median of 167 days. Once those nominations are made, the time for the Senate to resolve Obama administration nominees is higher than it was for his predecessors, at an average of 162 days and a median of 133 days.

Breaking out all nominations by administration shows more pronounced differences. President George W. Bush was faster than President Obama with his nominations, with an average of 181 days and a median of 123 days. The biggest gap shows up in the Senate, where nominations under Bush were resolved much faster than under Obama, with an average of 98 days and a median of 51 days for the Senate to resolve. Although the means and medians for President Bill Clinton were significantly higher than for either Bush or Obama, they are not as definitive since BPC data only includes a portion of the financial regulatory nominations that he made and not the complete set, as with the other two presidents.

Differences Between Presidential and Senate Delays

In every case except with commission chairs, it takes presidents longer to decide on nominations than it takes for the Senate to resolve them. Also, while there are 18 instances in our data in which a position went without a presidential nominee for over 600 days, in only two cases did the Senate take that long. The Senate is generally limited to how long it can delay by the fact that outstanding nominations are automatically returned when a session of Congress adjourns, although occasionally that clock is extended when a president re-nominates someone who the Senate had previously not confirmed.

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These results rely on assumptions that can be legitimately debated. However, it is the hope of BPC that this data helps to inform future debate about the nominations process for financial regulators.

Notes on Methodology

Calculating values for days without a presidential nomination or appointment and days without Senate resolution required some judgment calls, explanations for some of which are listed below. Explanations that apply to special cases of one or a handful of nominees are footnoted in the spreadsheet.

1. BPC chose to count days without a presidential nomination from when a nominee's predecessor's term expired or when the predecessor left office, whichever was sooner. Another approach would be to count the number of days for which a position was *vacant* (i.e., measuring only from when a predecessor left office). The clock would begin running on Senate delay from the point of vacancy or when a nomination was made, whichever was later, as opposed to running from the date of receipt of a nomination in the Senate. BPC ran numbers using this method as well, and it resulted in a few numbers changing significantly, while others stayed relatively constant (see chart below). Re-nominations to the same position were not counted. The time it took the Senate to resolve nominations changed the most, with the median time to resolve all nominations dropping from 90 days to 52 days. The median time for President Obama to decide on a nomination also was cut substantially, from 167 days to 120 days. The overall pattern held that commission chairs were fastest, followed by non-chair commission members, and then single-directors.

	NUMBER OF DAYS FOR PRESIDENT TO NOMINATE		NUMBER OF DAYS FOR SENATE TO RESOLVE	
Nominees of …	Mean	Median	Mean	Median
All Agencies	224	138	117	52
Single-Director Agencies	456	362	218	151
All Commission Members	195	117	106	48
Commission Non-Chairs	205	120	102	48
Commission Chairs	102	47	145	47
President Clinton (limited sample)	307	158	176	111
President Bush	177	123	79	44
President Obama	228	120	136	84

2. For pending nominations or open seats, April 1, 2013, was used as an "as of today" date

3. Cases where the Senate received a presidential nomination before that nominee’s predecessor had left office or term expired were counted as zero days from the time it took the president to nominate.

4. The process for naming chairs of the Federal Housing Finance Board (FHFB), National Credit Union Administration (NCUA), and Securities Exchange Commission (SEC) differs from other commissions in that the president can designate a chair from existing Senate-confirmed directors or commissioners without Senate approval. BPC decided that including appointed chairmanships, which are generally easier for presidents to decide, were not comparable to Senate-confirmed positions and did not count them in its averages and medians. They are, however, included in the BPC data tables for reference.

5. Time served as a recess appointee was not counted toward reducing a vacancy period.

6. In a some cases, an intention to nominate is announced by the president but the actual nomination is not received by the Senate for a few weeks or more afterward. BPC data always used the date of receipt of a nomination by the Senate in its calculations, since it is the only data that is consistent across nominations and consistently available, and because the Senate can only begin consideration of a nominee once the nomination has been formally received

7. In setting a cut-off date for this research, BPC could have examined only nominations made after January 1, 2000, but instead included any terms that overlapped with that date to get a fuller picture. The data does not extend back to the complete history of any individuals who overlapped with January 1, 2000, as this would have resulted in several anomalous data points (e.g., going back to Alan Greenspan’s initial nomination to the Federal Reserve in 1987)..

8. Several individuals had their nominations returned or otherwise not acted upon by the Senate before an adjournment or recess, and were then re-nominated shortly after the Senate ended its recess or reconvened. If the re-nomination occurred within 100 days of the previous Senate resolution, the time during the recess was counted as part of the Senate’s delay. A person receiving re-nomination in this way was also counted as just one of our 164 nominations or open positions.

9. Gaps in confirmable jobs were tracked by position rather than by individual. For example, Ben Bernanke resigned on May 21, 2005, as a Fed governor and was replaced on February 17, 2006, by Kevin Warsh. Bernanke was nominated on November 1, 2005, to replace Alan Greenspan to a different seat on the Fed Board of Governors, to which he was confirmed on January 31, 2006. The gaps between Bernanke and Warsh, and between Greenspan and Bernanke, were separately counted unlike the gap between Bernanke’s two confirmed nominations.

10. Some nominations fill regularly staggered terms, such as the 14-year terms of the Federal Reserve's Board of Governors, one of which expires on January 31 in every even-numbered year. Some chair and vice chair positions are for fixed terms that begin on the date of swearing in. In some cases, the date of Senate confirmation is earlier than the date of swearing in. In cases where a precise swearing-in date could not be identified, the starts of such terms are dated from confirmation dates.

11. Dates in bold face in our spreadsheet indicate a nomination that was not confirmed by the Senate.

12. There were a number of cases where a vacancy opened in one administration and a nominee was made by the successor administration. When breaking down our data by president, we divided these cases into two separate data points, provided that at least 90 days of a given gap were accounted for by the previous administration. For example, 606 days between Federal Reserve Board Governor Frederic Mishkin leaving his position on August 31, 2008, and President Obama nominating Peter Diamond to replace him. Of these, 142 days were during President Bush's term, while 464 were during Obama's. For nominations that had overlaps shorter than 90 days by the previous administration, BPC started the clock on presidential delay from the time of inauguration of the new administration. For example, the nomination of Walkter Lukken to be CFTC chairman was returned by the Senate after the 110th Congress recessed on January 2, 2009. President Obama nominated Gary Gensler for CFTC chairman on January 20, 2009, the same day he was inaugurated. For purposes of breaking down data by president only, this was counted as a delay of zero days.

13. Openings left on the FHFB by the departures of Geoffrey Bacino and Ronald Rosenfeld were not counted as presidential delays, because they occurred after the FHFB's successor agency, the FHFA, came into being on September 4, 2008. The FHFB was officially dissolved on July 30, 2009.

Endnotes

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

[2] Another method would be to measure the time it took for the president to nominate only from when a vacancy was created. See the attached Notes on Methodology No. 1 for detail on how this affects results.

[3] Dates on which nominations were received and passed come from the Library of Congress' Thomas archive. For dates that officeholders resigned or otherwise left their positions, BPC relied on a variety of online sources, with preference given to an agency's online records if available.

[4] The mean is the sum of values divided by the number of values in the sample. A median is the middle of the population—that is, the value that divides the higher half from the lower half. In this paper, BPC uses "mean" and "average" interchangeably, as with "median" and "typical."

[5] See Notes on Methodology No. 4.

[6] There were 18 additional cases where the president appointed an already-confirmed commissioner as chair of the FHFB, NCUA, or SEC. These were not included in the calculations of means and medians, but were included in the database. See Notes on Methodology No. 4 for further detail.

[7] For reference, the Senate was in session an average of 162 days between 2000 and 2012. See http://www.senate.gov/reference/resources/pdf/yearlycomparison.pdf for detail.

[8] If data for appointed commission chairs (i.e., those not subject to Senate confirmation) are included, the time it takes a president to nominate falls to an average of 60 days and a median of one day. See Notes on Methodology No. 4 for further detail.

[9] Lockhart was confirmed to head the FHFA's predecessor agency, the OFHEO.

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