



# Presidential Appointments to Full-Time Positions on Regulatory and Other Collegial Boards and Commissions, 110<sup>th</sup> Congress

(name redacted)

Analyst in American National Government

**Maureen Bearden**

Information Research Specialist

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## Summary

The President makes appointments, with the advice and consent of the Senate, to some 152 full-time leadership positions on 34 federal regulatory and other collegial boards and commissions. This appointment process consists of three distinct stages: selection, clearance, and nomination by the President; consideration by the Senate; and appointment by the President. These advice and consent positions can also temporarily be filled by the President alone through a recess appointment. Membership positions on this set of collegial bodies often have fixed terms, and incumbents are often protected from arbitrary removal by the President. The enabling statutes for most of these boards and commissions require political party balance in their membership.

During the 110<sup>th</sup> Congress, President George W. Bush submitted nominations to the Senate for 74 of these 152 positions. (Most of the remaining positions on these boards and commissions were not vacant during that time.) A total of 88 nominations were submitted, of which 46 were confirmed, 15 were withdrawn, and 27 were returned to the President. The number of nominations exceeded the number of positions because the President submitted multiple nominations for some positions. In some cases the President submitted one nomination for the end of a term in progress and a second nomination of the same person to the same position for the succeeding term. In other cases, the President submitted a second nomination after his first choice failed to be confirmed. President Bush made one recess appointment to a board covered by this report during the 110<sup>th</sup> Congress, and he submitted an “extra” nomination of that individual in order to comply with a law affecting the payment of that appointee. At the end of the 110<sup>th</sup> Congress, 15 incumbents were serving past the expiration of their terms. In addition, there were 22 vacancies among the 152 positions.

This report specifies, for the 110<sup>th</sup> Congress, all nominations to full-time positions on 34 regulatory and other collegial boards and commissions. Profiles of each board and commission provide information on their organizational structures, membership as of the end of the 110<sup>th</sup> Congress, and appointment activity during that Congress. The organizational section discusses the statutory requirements for the appointed positions, including the number of members on each board or commission, their terms of office, whether or not they may continue in their positions after their terms expire, whether or not political balance is required, and the method for selection of the chair. Membership and appointment activity are provided in tabular form. The report also includes tables summarizing the collective appointment activity for all 34 bodies, and identifying Senate recesses during the 110<sup>th</sup> Congress.

The calculations of nomination-to-confirmation intervals provided in this report counted all the days within the interval, including those during summer recesses and between sessions of the Senate. The inclusion of all days differs from the methodology used in similar CRS reports for previous Congresses. The new methodology takes into consideration changes in Senate adjournment practices and is consistent with published research in this area. This change may reduce the comparability of statistics in this report with those of the earlier research.

Information for this report was compiled from data from the Senate nominations database of the Legislative Information System at <http://www.congress.gov/nomis/>, telephone discussions with agency officials, agency websites, the United States Code, and the 2008 edition of *United States Government Policy and Supporting Positions* (more commonly known as the “Plum Book”).

This report will not be updated.

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## Introduction

This report provides an overview of the process for filling positions to which the President makes appointments with the advice and consent of the Senate (PAS positions). It also specifies, for the 110<sup>th</sup> Congress (January 2007-January 2009), all nominations to full-time positions on 34 regulatory and other collegial boards and commissions that have such positions (e.g., the Consumer Product Safety Commission, the Federal Reserve Board, and the Election Assistance Commission). Profiles of each board and commission provide information on their organizational structures, membership as of the end of the 110<sup>th</sup> Congress, and appointment activity during that Congress.

## The Appointment Process for PAS Positions

The President and the Senate share the power to appoint the principal officers of the United States.<sup>1</sup> The Constitution (Article II, Section 2, clause 2) empowers the President to nominate and, by and with the advice and consent of the Senate, to appoint the principal officers of the United States.<sup>2</sup> Three distinct stages mark the appointment process: selection, clearance, and nomination by the President; consideration by the Senate; and appointment by the President.

### Selection, Clearance, and Nomination

In this stage, the White House selects and clears a nominee before sending the formal nomination to the Senate. There are a number of steps in this stage of the process for most Senate-confirmed positions. First, with the assistance of, and preliminary vetting by, the White House Office of Presidential Personnel, the President selects a candidate for the position. Interested parties, including Members of Congress, often have input during this process. Most boards and commissions are required, by statute, to have a political balance among their members (i.e., no more than a simple majority may be from the same political party), so the President normally negotiates over nominations with leaders of the opposition party in Congress. These negotiations involve questions not only of patronage but of policy, especially when the board or commission is involved in areas that, at the time, may be particularly sensitive. This often results in a packaging process in which the President submits several nominations together for positions in a particular agency and the Senate then confirms them as a group. Sometimes, however, only one or two nominations are submitted when three or four positions may be available. When this occurs, a nomination may remain before the Senate for many months, until one or two additional nominations are submitted. Generally, all are then quickly confirmed.

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<sup>1</sup> A succinct historical and contemporary overview of the appointment power is found in (name redacted), "Appointment Powers," in his *Constitutional Conflicts between Congress and the President*, 5<sup>th</sup> ed. (Lawrence, KS: University Press of Kansas, 2007), pp. 21-47.

<sup>2</sup> Article II, § 2, cl. 2, provides 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: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

During the clearance process, the candidate 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, which often includes background investigations conducted by the Federal Bureau of Investigation (FBI), the Internal Revenue Service (IRS), the Office of Government Ethics (OGE), and an 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 Office of the Counsel to the President has cleared the candidate, the nomination is ready to be submitted to the Senate.

The selection and clearance 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,<sup>3</sup> or if conflicts need to be resolved. Candidates for higher-level positions are often accorded priority in this process. In an effort to reduce the elapsed time between a new President’s inauguration and the appointment of his or her national security team, provisions added in 2004 to the Presidential Transition Act of 1963 encourage Presidents-elect to submit, for security clearance, potential nominees to high-level national security positions as soon as possible after the election.<sup>4</sup>

For positions located within a state (e.g., U.S. attorneys, U.S. marshals, and U.S. district judges), the President, by custom, normally nominates an individual recommended by the Senator or Senators (if they are from the same party as the President) from that state.<sup>5</sup> If neither Senator is from the President’s party, the President usually defers to the recommendations of party leaders from the state. Occasionally, the President solicits recommendations from Senators of the opposition party because of their positions in the Senate. Before making a nomination to a federal position at the state or national level, the President would consider how it will fare in the confirmation 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. A nominee who is hired by the agency 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 recess appointment to the position (see below). Recess appointments may have political consequences, however, particularly if Senators perceive that an appointment is an effort to circumvent their constitutional role. Some Senate-confirmed positions, such as many of those in

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<sup>3</sup> Since the ratification of the Twentieth Amendment to the Constitution, on January 23, 1933, the terms of the President and Vice President expire at noon on January 20 following a presidential election. Prior to this change, presidential transitions occurred on March 4 following a presidential election. Arguably, the growth in the number of presidentially appointed positions and the shorter period between election and inauguration of a new President has intensified the transition period appointment bottleneck and its impact. On the other hand, aspects of this process have probably been eased by improvements in transportation that have allowed elected officials and appointees to more quickly travel to the capital after an election, and by improvements in communication and information technology that have facilitated more rapid exchanges of appointment-related information.

<sup>4</sup> 3 U.S.C. 102 note.

<sup>5</sup> For more on the role of Senators in the appointment of U.S. district judges, see CRS Report RL34405, *Role of Home State Senators in the Selection of Lower Federal Court Judges*, by (name redacted).

the executive departments, may also be temporarily filled under the Federal Vacancies Reform Act of 1998.<sup>6</sup> Positions on most boards and commissions, however, are not covered by this act.<sup>7</sup>

## Senate Consideration

In the confirmation or second stage, the Senate alone determines whether or not to confirm a nomination.<sup>8</sup> 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.<sup>9</sup> Two other factors may also affect the scrutiny with which a nominee's personal and professional qualities are examined: whether or not the President's party controls the Senate and the degree to which the President becomes involved in supporting the nomination.

The Senate confirmation process is centered at the committee level. On the day the President submits a nomination to the Senate, the Senate's executive clerk refers it to the appropriate committee or committees. When making a referral, the executive clerk is guided by Senate Rule XXV, which establishes the subject matters under the purview of each committee and directs that "all proposed legislation, messages, petitions, memorials, and other matters relating primarily to [those] subjects" be referred to that committee. The executive clerk is also guided by precedents set by prior referrals and by standing orders and unanimous consent (UC) agreements pertaining to referral of nominations.<sup>10</sup> Most nominations are sent to a single committee. Occasionally, the Senate has agreed, by unanimous consent, by standing order, or by statute, to refer one or more nominations to more than one committee.

Committee nomination activity generally includes investigation, hearing, and reporting stages. As part of investigatory work, committees may draw on information provided by the White House as well as information they themselves collect. Hearings provide a public forum to discuss a nomination and any issues related to the program or agency for which the nominee would be responsible. Even if confirmation is thought to be a virtual certainty, hearings may provide Senators and the nominee with an opportunity to go on the record with particular views or commitments. Senators may use hearings to explore a nominee's qualifications, articulate a policy perspective, or raise related oversight issues. Some committees hold hearings on nearly all nominations that are referred to them; others hold hearings for only some.

The committee may discontinue acting on a nomination at any point—upon referral, after investigation, or after a hearing. If the committee votes to report the nomination back to the full Senate, it has three options: it may report the nomination to the Senate favorably, report it unfavorably, or report it without recommendation. If the committee elects not to report a

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<sup>6</sup> P.L. 105-277, Div. C, Title I, sec. 151; 5 U.S.C. § 3345-3349d. For more on the Federal Vacancies Reform Act of 1998, see CRS Report 98-892, *The New Vacancies Act: Congress Acts to Protect the Senate's Confirmation Prerogative*, by (name redacted).

<sup>7</sup> 5 U.S.C. § 3349c.

<sup>8</sup> For further information, see CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by (name redacted), and CRS Report RL31948, *Evolution of the Senate's Role in the Nomination and Confirmation Process: A Brief History*, by (name redacted).

<sup>9</sup> G. Calvin Mackenzie, *The Politics of Presidential Appointments* (New York: The Free Press, 1981), pp. 97-189.

<sup>10</sup> For more, see CRS Report RL30959, *Presidential Appointee Positions Requiring Senate Confirmation and Committees Handling Nominations*, by (name redacted), Maureen Bearden, and (name redacted).

nomination, the Senate may, under certain circumstances, discharge the committee from further consideration of the nomination in order to bring it to the floor.<sup>11</sup>

Although the Senate confirms most nominations, some nominations are not confirmed. Rarely, however, does the full Senate reject a nomination. Most nominations that are not confirmed fail in committee, either by committee vote or by committee inaction. Rejections in committee occur for a variety of reasons, including opposition to the nomination, inadequate amount of time for consideration of the nomination, or factors that may have nothing to do with the merits of the nomination. If a nomination is not acted upon by the Senate by the end of a Congress, it is returned to the President. Pending nominations also may be returned automatically to the President at the beginning of a recess of more than 30 days, but the Senate rule providing for this return is often waived.<sup>12</sup>

## 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. 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 Appointments

The Constitution also empowers the President to make limited-term appointments without Senate confirmation when the Senate is in recess.<sup>13</sup> Such recess appointments expire at the end of the next full session of the Senate. **Table B-1** provides the dates of the Senate recesses for the 110<sup>th</sup> Congress. One recess appointment was made to a position on a regulatory or other collegial board or commission during the 110<sup>th</sup> Congress for reasons discussed below. The recess during which this took place is shown in the table.<sup>14</sup>

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 a recess appointment. 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

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<sup>11</sup> For more information, see CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by (name redacted).

<sup>12</sup> The rule may be found in U.S. Congress, Senate Committee on Rules and Administration, *Senate Manual*, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., S. Doc. 110-1 (Washington: GPO, 2008), p. 58, Rule XXXI, paragraph 6 of the Standing Rules of the Senate. For an example of a waiver of the rule, see Sen. William H. Frist, "Nomination to Remain in Status Quo," *Congressional Record*, daily edition, vol. 152, September 29, 2006, p. S10762.

<sup>13</sup> Art. II, § 2, cl. 3.

<sup>14</sup> Information on other recess appointments during the Administration of President George W. Bush may be found in CRS Report RL33310, *Recess Appointments Made by President George W. Bush*, by (name redacted) and Maureen Bearden.



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. For this reason, when a recess appointment is made, the President generally submits a new nomination for the appointee even when an earlier nomination is still pending.<sup>15</sup> In addition, although a recess appointee whose nomination to a full term is subsequently rejected by the Senate may continue to serve until the end of his or her recess appointment, a provision of the FY2008 Financial Services and General Government Appropriations Act might prevent an appointee from being paid after his or her rejection.<sup>16</sup>

During the 110<sup>th</sup> Congress, the Senate employed, apparently for the first time, another method intended to restrict the President's recess appointment power. This method is predicated on the notion that the President could be restricted from making a recess appointment during a period of three days or less. The Constitution does not specify the length of time that the Senate must be in recess before the President may make a recess appointment. Over the last century, as shorter recesses have become more commonplace, the Department of Justice has offered differing views on this issue. In 1993, however, a Justice Department brief implied that the President may make a recess appointment during a recess of more than three days. The authors reasoned that because the "Constitution restricts the Senate's ability to adjourn its session for more than three days without obtaining the consent of the House ... [i]t might be argued that this means that the Framers did not consider one, two and three day recesses to be constitutionally significant."<sup>17</sup> As a practical matter, the shortest recess during which appointments have been made during the past 20 years was 10 days.

From November 2007 through the end of the Bush presidency, the Senate structured its recesses in a way that was intended, at least initially, to prevent the President from making recess appointments by preventing the occurrence of a recess of more than three days.<sup>18</sup> On November 16, 2007, the Senate majority leader announced that the Senate would "be coming in for pro forma sessions during the Thanksgiving holiday to prevent recess appointments."<sup>19</sup> The Senate recessed later that day, and pro forma meetings<sup>20</sup> were convened on November 20, 23, 27, and 29, with no business conducted. The Senate next conducted business after reconvening on December 3, 2007. Similar procedures were followed during other periods, during the remainder of

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<sup>15</sup> For a further information, see CRS Report RS21308, *Recess Appointments: Frequently Asked Questions*, by (name redacted).

<sup>16</sup> P.L. 110-161, Div. D, § 709; 121 Stat. 2021. The provision reads: "Hereafter, no part of any appropriation 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 funding bill since at least 1950.

<sup>17</sup> *Mackie v. Clinton*, Memorandum of Points and Authorities in Support of Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment, at 24-26, Civ. Action No. 93-0032-LFO, (D.D.C. 1993).

<sup>18</sup> Although, as described here, the Senate majority leader initially indicated that the use of pro forma sessions was intended to prevent the President from making recess appointments, on at least one other occasion, he provided another reason for using these sessions. On September 17, 2008, he announced, with regard to the Senate, "We are going to have to get some committee hearings underway, which is why we are not going to adjourn. We will be in pro forma session so committees can still meet, though we won't have any activities here on the floor as relates to these markets." (Sen. Harry Reid, "The Economy," remarks in the Senate, *Congressional Record*, daily edition, vol. 154 (September 17, 2008), p. S8907.)

<sup>19</sup> Sen. Harry Reid, "Recess Appointments," remarks in the Senate, *Congressional Record*, daily edition, vol. 153 (November 16, 2007), p. S14609.

<sup>20</sup> A pro forma session is a short meeting of the House or Senate during which it is understood that no business will be conducted.

President Bush's term, that would otherwise have been Senate recesses of a week or longer in duration.<sup>21</sup> The President made no recess appointments between the initial pro forma sessions in November 2007 and the end of his presidency.

## **Characterization of Regulatory and Other Collegial Bodies**

Federal executive branch boards and commissions discussed in this report share, among other characteristics, the following: (1) they are independent executive branch bodies located, with four exceptions, outside executive departments;<sup>22</sup> (2) several members head each entity; (3) the members are appointed by the President with the advice and consent of the Senate; and (4) the members serve fixed terms of office, and, except in a few bodies, the President's power to remove them is restricted.

For most of the boards included in this report, the fixed terms of office for the member positions have set beginning and end dates, irrespective of whether the posts are filled or when appointments are made.<sup>23</sup> The end dates of the fixed terms of a board's members are staggered, so that the terms do not expire all at once. The use of terms with fixed beginning and end dates is intended to minimize the occurrence of simultaneous board member departures and thereby increase leadership continuity.

Under such an arrangement, an individual is nominated to a particular position and a particular term of office. An individual may be nominated and confirmed for a position for the remainder of an unexpired term in order to replace an appointee who has resigned (or died). Alternatively, an individual might be nominated for an upcoming term with the expectation that the new term will be underway by the time of confirmation. Occasionally, where the unexpired term has been for a very short period, the President has submitted two nominations of the same person simultaneously—the first to complete the unexpired term and the second to complete the entire succeeding term of office.

On some commissions, the chair is subject to Senate confirmation and must be appointed from among the incumbent commissioners. If the President wishes to appoint, as chair, someone who is not on the commission, two nominations are submitted simultaneously for the nominee—one for member and the other for chair.

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<sup>21</sup> For specific instances, see CRS Report RL33310, *Recess Appointments Made by President George W. Bush*, by (name redacted) and Maureen Bearden.

<sup>22</sup> Exceptions are as follows: (1) the Federal Energy Regulatory Commission (FERC), located in the Department of Energy (DOE); (2) the Foreign Claims Settlement Commission (FCSC) and (3) the United States Parole Commission (USPC), both located in the Department of Justice (DOJ); and (4) the Surface Transportation Board (STB), located in the Department of Transportation (DOT). FERC's enabling statute designated it as an independent entity in DOE, and provided that its members and employees are not subject to the supervision or direction of department officials (42 U.S.C. § 7171(d)). The FCSC was designated as an independent entity within DOJ, with a specific provision that decisions of the commission with respect to claims shall not be subject to review by the Attorney General (22 U.S.C. § 1622g). The enabling statute of the STB provided that "members, employees, and other personnel of the Board shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent" of DOT (49 U.S.C. § 703(c)). The enabling statute of the USPC established it is an independent agency within the Department of Justice (18 U.S.C. § 4202).

<sup>23</sup> In contrast, for a few agencies, such as the Chemical Safety and Hazard Investigation Board, the full term begins to run when an appointee takes office, and it expires after the incumbent has held the post for the requisite period of time.

As independent entities with staggered membership, executive branch boards and commissions have more political independence from the President than do executive departments. Nonetheless, the President can sometimes exercise significant influence over the composition of the membership when he designates the chair or has the opportunity to fill a number of vacancies at once. For example, President George W. Bush had the opportunity to shape the Securities and Exchange Commission during the first two years of his presidency because of existing vacancies, resignations, and the death of a member. Likewise, during the same time period, President Bush was able to submit nominations for all of the positions on the National Labor Relations Board because of existing vacancies, expiring recess appointments, and resignations. Simultaneous turnover of board or commission membership may result from coincidence, but it may also be the result of a buildup of vacancies after extended periods during which the President fails to nominate, or the Senate fails to confirm, members.

Two other notable characteristics apply to appointments to some of the boards and commissions. First, for 26 of the boards and commissions in this report, the law limits the number of appointed members who may belong to the same political party, usually to no more than a simple majority of the appointed members (e.g., two of three, or three of five).<sup>24</sup> Second, advice and consent requirements also apply to inspector general appointments in four of these organizations and general counsel appointments in three.

## **Appointments During the 110<sup>th</sup> Congress**

During the 110<sup>th</sup> Congress, President George W. Bush submitted nominations to the Senate for 74 of the 152 full-time positions on 34 regulatory and other boards and commissions. (Most of the remaining positions were not vacant during that time.) A total of 88 nominations were submitted for these positions, of which 46 were confirmed, 15 were withdrawn, and 27 were returned to the President. The number of nominations exceeded the number of positions because the President submitted multiple nominations for some positions. In some cases, for example, the President submitted one nomination for the end of a term in progress and a second nomination of the same person to the same position for the succeeding term. In other cases, the President submitted a second nomination after his first choice failed to be confirmed. The President also submitted an “extra” nomination of the one individual to whom he had given a recess appointment in order to comply with a law affecting the payment of that appointee (see “Recess Appointments,” above). **Table 1** summarizes the appointment activity for the 110<sup>th</sup> Congress. At the end of the Congress, 15 incumbents were serving past the expiration of their terms.<sup>25</sup> In addition, there were 22 vacancies among the 152 positions.

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<sup>24</sup> For 3 of these 26 organizations, the Election Assistance Commission, the Federal Election Commission, and the United States International Trade Commission, the number of member positions is even, and no more than half may be of the same party.

<sup>25</sup> The enabling statutes for some boards and commissions provide for the continuation of a member’s service past the end of his or her term for an additional specified period of time, or until replaced by a successor. Such provisions are known as holdover provisions. A member of the Defense Nuclear Facilities Safety Board, for example, serves for a term of five years, but “may serve after the expiration of that member’s term until a successor has taken office” (42 U.S.C. § 2286(d)(3)).

## Length of Time to Confirm a Nomination

The length of time a given nomination may be pending in the Senate has varied widely. Some nominations have been confirmed within a few days; others have been confirmed within several months; and some have never been confirmed. In the board and commission profiles following this opening narrative, this report provides, for each board or commission nomination that was confirmed in the 110<sup>th</sup> Congress, the number of days between nomination and confirmation (“days to confirm”). For those nominations that were confirmed, an average of 148 days elapsed between nomination and confirmation. The median<sup>26</sup> number of days elapsed was 90. The difference between these two numbers suggests that the average was pulled upward by a small number of unusually high numbers.

**Table I. Appointment Action for Regulatory and Other Collegial Boards and Commissions**

110<sup>th</sup> Congress, 2007-2008

<b>Positions on boards and commissions (total)</b>	<b>152</b>
Positions to which nominations were made	74
Individual nominees	79
<b>Nominations submitted to the Senate during the 110<sup>th</sup> Congress (total)</b>	<b>88</b>
Disposition of nominations	
Confirmed by the Senate	46
Withdrawn	15
Returned	27
<b>Recess Appointments (total)</b>	<b>1</b>

**Source:** The information in this table summarizes data presented in **Table A-2**.

## A Change in Methodology From Previous Tracking Reports

The calculations of nomination-to-confirmation intervals provided in this report counted all the days within such intervals, including those during summer recesses and between sessions of the Senate. The inclusion of all days differs from the methodology used in similar CRS reports for previous Congresses.<sup>27</sup> In these earlier reports, days during August and intersession recesses were not included in calculations of nomination-to-confirmation intervals. These changes may reduce the comparability of statistics provided in this report with those provided in earlier reports. More information on this change in methodology is available in **Appendix D**.

<sup>26</sup> This median is the middle number when the “days to confirm” data for all the confirmed nominations are arranged in numerical order.

<sup>27</sup> See, for example, CRS Report RL34744, *Presidential Appointments to Full-Time Positions on Regulatory and Other Collegial Boards and Commissions, 109<sup>th</sup> Congress*, by (name redacted) et al.

## Organization of the Report

### Board and Commission Profiles

Each of the 34 board or commission profiles following the narrative portion of this report is organized into three parts: a paragraph discussing the body's organizational structure, a table identifying its membership as of the end of the 110<sup>th</sup> Congress, and a table listing nominations and appointments to its positions during the 110<sup>th</sup> Congress. The organizational sections discuss the statutory requirements for the appointed positions, including the number of members on each board or commission, their terms of office, whether or not they may continue in their positions after their terms expire, whether or not political balance is required, and the method for selection of the chair.

Data<sup>28</sup> on appointment actions during the 110<sup>th</sup> Congress appear under both the sections entitled "Membership as of the End of the 110<sup>th</sup> Congress" and those entitled "Appointment Action in the 110<sup>th</sup> Congress." The former identify the agencies' positions requiring Senate confirmation and the incumbents in those positions as of that time. Incumbents whose terms have expired are italicized. Most of the incumbents serve fixed terms of office and are removable only for specified causes. They generally remain in office when a new administration assumes office following a presidential election. For those agencies requiring political balance among their members, the party affiliation of an incumbent is listed as Democrat (D), Republican (R), or Independent (I). The section also includes the pay levels of the positions. For presidentially appointed positions requiring Senate confirmation, the pay levels fall under the Executive Schedule, which ranges from level I, for cabinet-level offices, to level V, for the lowest-ranked positions. Most of the chair positions are at level III, and most of the other positions are at level IV.<sup>29</sup>

The "Appointment Action" section provides information about each nomination, in chronological order, including the name of the nominee, the position to which he or she was nominated, the date of submission, the date of confirmation (if any), and the number of days that elapsed between submission and confirmation. Actions other than confirmation (i.e., nominations rejected by the Senate, nominations returned to or withdrawn by the President, and recess appointments) are also noted. Occasionally, where a position was vacant and the unexpired term of office was to end within a number of weeks or months, two nominations for the same nominee were submitted: the first to complete the unexpired term, and the second for a full term following completion of the expired term. Also, in the single instance during the 110<sup>th</sup> Congress where the President gave a recess appointment to a nominee for a position covered by this report while the nomination was awaiting Senate action, a second, follow-up nomination was submitted to comply with the requirements of 5 U.S.C. § 5503(b).

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<sup>28</sup> This report was compiled from data from the Senate nominations database of the Legislative Information System <http://www.congress.gov/nomis/>, telephone discussions with agency officials, agency websites, the United States Code, and the 2008 "Plum Book" (U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *United States Government Policy and Supporting Positions*, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., Committee Print, November 12, 2008 (Washington: GPO, 2008)).

<sup>29</sup> The pay rates for the Executive Schedule, as of the end of the 110<sup>th</sup> Congress (2008), were as follows: Level I, \$191,300; Level II, \$172,200; Level III, \$158,500; Level IV, \$149,000; and Level V, \$139,600. U.S. Office of Personnel Management "Salary Table 2008-EX," available at <http://www.opm.gov/oca/08tables/html/ex.asp>.

In tables that show more than one confirmed nomination, the mean number of days to confirm a nomination is provided. This figure was determined by calculating the number of days between the nomination and confirmation dates, adding these numbers for all confirmed nominations, and dividing the result by the number of nominations confirmed. For tables in which one individual was confirmed more than once (to be a chair and a member, for example), the mean was calculated by averaging all values in the “Days to confirm” column, including the values for both confirmations.

## **Additional Appointment Information**

**Appendix A** provides two tables. **Table A-1** includes information on each of the nominations and appointments to regulatory and other collegial boards and commissions during the 110<sup>th</sup> Congress, alphabetically organized, and following a similar format to that of the “Appointment Action” sections just discussed. It identifies the board or commission involved and the dates of nomination and confirmation. The appendix also indicates if a nomination was withdrawn, returned, or rejected, or if a recess appointment was made. The mean and median number of days taken to confirm a nomination are also provided.<sup>30</sup>

**Table A-2** provides summary information on appointments and nominations by organization. For each of the 34 independent boards and commissions discussed in this report, the appendix provides the number of positions, vacancies, incumbents whose term has expired, nominations, individual nominees, positions to which nominations were made, confirmations, nominations returned to the President, nominations withdrawn, and recess appointments.

**Appendix B** provides information concerning Senate recesses during the 110<sup>th</sup> Congress. A list of organization abbreviations can be found in **Appendix C**.

As noted above, this report employs certain methods that differ from those of previous similar reports. These methodological changes are discussed in detail in **Appendix D**.

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<sup>30</sup> This median is the middle number when the “days to confirm” data for all the confirmed nominations are arranged in numerical order.

## Chemical Safety and Hazard Investigation Board (CSB)

The CSB is an independent agency consisting of five members (no political balance is required), including a chair, who serve five-year terms. The President appoints the members, including the chair, with the advice and consent of the Senate. When a term expires, the incumbent must leave office. (42 U.S.C. § 7412(r)(6))

### CSB Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party <sup>a</sup>	Date first confirmed	Term expires	Pay level
John S. Bresland (Chair)	na	08/01/02	03/14/13	IV
Gary L. Visscher	na	11/21/04	11/29/09	IV
William B. Wark	na	09/15/06	09/22/11	IV
William E. Wright	na	09/15/06	09/22/11	IV
Vacant			<sup>b</sup>	IV

a. The abbreviation “na” means not applicable.

b. The term of an appointment to this vacant position would expire five years from the appointment date.

### CSB Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party <sup>a</sup>	Position	To replace	Date nominated	Date confirmed	Days to confirm
John S. Bresland	na	Member	Reappointment	07/11/07	03/13/08	246
John S. Bresland	na	Chair	Carolyn W. Merritt	07/11/07	03/13/08	246
Charles R. H. Shearer	na	Member	Carolyn W. Merritt	07/11/07	Returned 01/02/09 <sup>b</sup>	

a. The abbreviation “na” means not applicable.

b. Returned to the President at the end of the 110<sup>th</sup> Congress under the provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

## Commodity Futures Trading Commission (CFTC)

The CFTC consists of five members (no more than three may be from the same political party) who serve five-year terms. At the end of a term, a member may remain in office, unless replaced, until the end of the next session of Congress. The chair is also appointed by the President, with the advice and consent of the Senate. (7 U.S.C. § 2(a)(2))

### CFTC Membership as of the End of the 110th Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Walter Lukken (Acting Chair)	R	08/01/02	04/13/10	III
Michael V. Dunn	D	11/21/04	06/19/11	IV
Jill E. Sommers	R	08/01/07	04/13/09	IV
<i>Bartholomew H. Chilton<sup>a</sup></i>	D	08/01/07	04/13/08	IV
Vacant			04/13/12	IV

- a. The term of the incumbent shown in italics had expired. He continued to serve under the holdover provision noted above.

### CFTC Appointment Action During the 110th Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Jill E. Sommers	R	Commissioner	Sharon Brown-Hruska	05/03/07	08/01/07	90
Bartholomew H. Chilton	D	Commissioner	Frederick W. Hatfield	05/03/07	08/01/07	90
Walter Lukken	R	Chair	Reuben Jeffrey III	08/07/07	Returned 01/02/09 <sup>a</sup>	
Bartholomew H. Chilton	D	Commissioner	Reappointment	04/03/08	Returned 01/02/09 <sup>a</sup>	
Scott O'Malia	<sup>b</sup>	Commissioner	Reuben Jeffrey III	04/03/08	Returned 01/02/09 <sup>a</sup>	

- a. Returned to the President at the end of the 110th Congress under the provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.
- b. Party affiliation is unknown.



## Consumer Product Safety Commission (CPSC)

The statute establishing the CPSC calls for five members, who serve seven-year terms. During a period that included the 110<sup>th</sup> Congress, however, funding was authorized for only three of these positions. No more than three of the members may be from the same political party. A member may remain in office for one year at the end of a term, unless replaced. The chair is also appointed by the President, with the advice and consent of the Senate. (15 U.S.C. § 2053)

### CPSC Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Nancy A. Nord (Acting Chair)	R	04/28/05	10/26/12	III <sup>a</sup>
Thomas H. Moore	D	04/06/95	10/26/10	IV
Vacant			10/26/13	IV
Vacant			10/26/11	IV
Vacant			10/26/14	IV

**Note:** From FY1993 through the period covered by this report, funds were not available for the compensation and benefits of more than three members of the commission. (P.L. 102-389, Title 3, October 6, 1992; 105 Stat. 1596) P.L. 110-314, § 202(b) (122 Stat. 3040) repealed this provision, effective August 14, 2009.

- a. According to an agency official, Commissioner Nord was to be paid at level IV while she was acting chair.

### CPSC Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Michael E. Baroody	R	Commissioner	Harold D. Stratton	03/05/07	Withdrawn	05/23/07
Michael E. Baroody	R	Chair	Harold D. Stratton	03/05/07	Withdrawn	05/23/07

## Defense Nuclear Facilities Safety Board (DNFSB)

The DNFSB consists of five members (no more than three may be from the same political party), who serve five-year terms. After a term expires, a member may continue to serve until a successor takes office. The President designates the chair and vice chair. (42 U.S.C. § 2286)

### DNFSB Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
<i>Andrew J. Eggenberger<sup>a</sup> (Chair)</i>	R	10/18/89	10/18/08	III
John E. Mansfield (Vice Chair)	R	10/30/97	10/18/11	III
<i>Joseph F. Bader<sup>a</sup></i>	D	11/21/04	10/18/07	III
Larry W. Brown	R	09/29/06	10/18/10	III
Peter S. Winokur	D	09/29/06	10/18/09	III

- a. The terms of the incumbents shown in italics had expired. They continued to serve under the holdover provision noted above.

### DNFSB Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Joseph F. Bader	D	Member	Reappointment	06/26/08	Returned 01/02/09 <sup>a</sup>	
Ambrose L. Schwallie	<sup>b</sup>	Member	Andrew J. Eggenberger	07/23/08	Returned 01/02/09 <sup>a</sup>	

- a. Returned to the President at the end of the 110<sup>th</sup> Congress under the provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.
- b. Party affiliation is unknown.

## Election Assistance Commission (EAC)

The EAC consists of four members (no more than two may be from the same political party), who serve four-year terms. After a term expires, a member may continue to serve until a successor takes office. The chair and vice chair, from different political parties and designated by the commission, change each year. (42 U.S.C. § 15323)

### EAC Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Rosemary E. Rodriguez (Chair)	D	02/15/07	12/12/11	IV
Donetta Davidson (Vice Chair)	R	07/28/05	12/12/11	IV
Gracia M. Hillman	D	12/09/03	12/12/09	IV
Gineen B. Beach	a	10/02/08	12/12/09	IV

a. Party affiliation is unknown.

### EAC Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Rosemary E. Rodriguez	D	Member	Raymundo Martinez III	01/09/07	02/15/07	37
Caroline C. Hunter	R	Member	Paul S. DeGregorio	01/09/07	02/15/07	37
Gracia M. Hillman	D	Member	Reappointment	06/13/07	10/02/08	477
Donetta Davidson	R	Member	Reappointment	05/08/08	10/02/08	147
Rosemary E. Rodriguez	D	Member	Reappointment	05/08/08	10/02/08	147
Gineen B. Beach	a	Member	Caroline C. Hunter	07/31/08	10/02/08	63
<b>Mean number of days to confirm a nomination</b>						<b>151</b>

a. Party affiliation is unknown.

## Equal Employment Opportunity Commission (EEOC)

The EEOC consists of five members (no more than three may be from the same political party), who serve five-year terms. An incumbent whose term has expired may continue to serve until a successor is appointed, except that no such member may continue to serve (1) for more than 60 days when Congress is in session, unless a successor has been nominated; or (2) after the adjournment of the session of the Senate in which the successor's nomination was submitted. The President designates the chair and the vice chair. The President also appoints the general counsel, with the advice and consent of the Senate. (42 U.S.C. § 2000e-4)

### EEOC Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
<i>Commissioners</i>				
Naomi C. Earp (Chair)	R	10/31/03	07/01/10	III
Stuart Ishimaru	D	10/31/03	07/01/12	IV
Christine M. Griffin	D	10/21/05	07/01/09	IV
Constance S. Barker	R	03/27/08	07/01/11	IV
Vacant			07/01/13	IV
<i>General Counsel<sup>a</sup></i>				
Ronald S. Cooper	na	03/27/06	4 years from appointment	V

- a. The abbreviation "na" means not applicable. The provision establishing the general counsel position does not include requirements with regard to political affiliation.

### EEOC Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
David Palmer	R	Member	Cari M. Dominguez	01/09/07	Withdrawn	09/04/07
Stuart Ishimaru	D	Member	Reappointment	08/03/07	12/19/07	138
Constance S. Barker	R	Member	Cari M. Dominguez	03/31/08	06/27/08	88
<b>Mean number of days to confirm a nomination</b>						<b>113</b>

## Export-Import Bank Board of Directors (EXIMBANK)

The Export-Import Bank Board of Directors comprises the bank president, who serves as chair; the bank first vice president, who serves as vice chair; and three other members (no more than three of these five may be from the same political party). All five members are appointed by the President, with the advice and consent of the Senate, and serve four-year terms. An incumbent whose term has expired may continue to serve until a successor is qualified, or until six months after the term expires—whichever occurs earlier. (12 U.S.C. § 635a) The President also appoints an inspector general, with the advice and consent of the Senate. (5 U.S.C. App., Inspector General Act of 1978, § 3, 12)

### EXIMBANK Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
<i>Board of Directors</i>				
James H. Lambright (President/Chair)	R	07/26/06	01/20/09	III
Linda M. Conlin (Vice President/Vice Chair)	R	11/21/04	01/20/09	IV
J. Joseph Grandmaison	D	12/20/01	01/20/09	IV
Bijan Rafiekian <sup>a</sup>	R	09/29/06	01/20/11	IV
Diane G. Farrell	<sup>b</sup>	05/24/07	01/20/11	IV
<i>Inspector General</i>				
Michael W. Tankersley	na	06/28/07	indefinite	<sup>c</sup>

- Rafiekian was known as Bijan R. Kian on the EXIMBANK Website <http://www.exim.gov>.
- Party affiliation is unknown.
- The abbreviation “na” means not applicable. The provision establishing the inspector general position does not include requirements with regard to political affiliation. This position does not have a fixed term. As of the end of the 110<sup>th</sup> Congress, the Inspector General Act provided as follows: “An Inspector General may be removed from office by the President. If an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer. Nothing in [this provision] shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.” (5 U.S.C. App., § 3(b)). “The annual rate of basic pay for an Inspector General ... shall be the rate payable for level III of the Executive Schedule ... plus 3 percent.” (5 U.S.C. App., § 3 (e))

### EXIMBANK Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Michael W. Tankersley	na <sup>a</sup>	Inspector General	New position	01/09/07	06/28/07	170
Bijan Rafiekian	R	Member	Reappointment	02/16/07	08/01/07	166
Diane G. Farrell	<sup>b</sup>	Member	J. Max Cleland	05/24/07	08/01/07	69
<b>Mean number of days to confirm a nomination</b>						<b>135</b>

- The abbreviation “na” means not applicable.
- Party affiliation is unknown.

## Farm Credit Administration (FCA)

The FCA consists of three members (no more than two may be from the same political party), who serve six-year terms. A member may not succeed himself or herself unless he or she was first appointed to complete an unexpired term of three years or less. A member whose term expires may continue to serve until a successor takes office. The President designates the chair. (12 U.S.C. § 2242)

### FCA Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Leland A. Strom (Chair)	R	12/09/06	10/13/12	III
<i>Nancy C. Pellett<sup>a</sup></i>	R	11/14/02	05/21/08	IV
Dallas Tonsager	D	11/21/04	05/21/10	IV

- a. The term of the incumbent shown in italics had expired. She continued to serve under the holdover provision noted above.

### FCA Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Mark E. Keenum	R	Member	Nancy C. Pellett	06/26/08	Returned	01/02/09 <sup>a</sup>

- a. Returned to the President at the end of the 110<sup>th</sup> Congress under the provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

## Federal Communications Commission (FCC)

The FCC consists of five members (no more than three may be from the same political party), who serve five-year terms. When a term expires, a member may continue to serve until the end of the next session of Congress, unless a successor is appointed before that time. The President designates the chair. (47 U.S.C. § 154)

### FCC Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Kevin J. Martin (Chair)	R	05/25/01	06/30/11	III
Michael J. Copps	D	05/25/01	06/30/10	IV
<i>Jonathan S. Adelstein<sup>a</sup></i>	D	11/14/02	06/30/08	IV
<i>Deborah T. Tate<sup>a</sup></i>	R	12/21/05	06/30/07	IV
Robert M. McDowell	R	05/26/06	06/30/09	IV

- a. The term of the incumbents shown in italics had expired. They continued to serve under the holdover provision noted above.

### FCC Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Deborah T. Tate	R	Member	Reappointment	06/21/07	Returned	01/02/09 <sup>a</sup>
Jonathan S. Adelstein	D	Member	Reappointment	12/03/07	Returned	01/02/09 <sup>a</sup>

- a. Returned to the President at the end of the 110<sup>th</sup> Congress under the provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

## Federal Deposit Insurance Corporation Board of Directors (FDIC)

The FDIC board of directors consists of five members, of whom two—the comptroller of the currency and the director of the Office of Thrift Supervision (OTS)—are *ex officio*. The three appointed members serve six-year terms. An appointed member may continue to serve after the expiration of a term until a successor is appointed. Not more than three of the members of the board of directors may be from the same political party. The President appoints the chair and the vice chair, with the advice and consent of the Senate, from among the appointed members. The chair is appointed for a term of five years. (12 U.S.C. § 1812) The President also appoints the inspector general, with the advice and consent of the Senate. (5 U.S.C. App., Inspector General Act of 1978, § 3, 12)

### Full-Time FDIC Membership as of the End of the 110th Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
<i>Board of Directors</i>				
Sheila C. Bair (Chair)	R	06/15/06	07/15/13	III
Martin J. Gruenberg (Vice Chair)	D	07/29/05	12/27/12	IV
Thomas J. Curry	I	12/09/03	12/12/09	IV
<i>Inspector General</i>				
Jon T. Rymer	na	06/22/06	Indefinite	<sup>a</sup>

- a. The abbreviation “na” means not applicable. The provision establishing the inspector general position does not include requirements with regard to political affiliation. This position does not have a fixed term. As of the end of the 110th Congress, the Inspector General Act provided as follows: “An Inspector General may be removed from office by the President. If an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer. Nothing in [this provision] shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.” (5 U.S.C. App., § 3(b)) “The annual rate of basic pay for an Inspector General ... shall be the rate payable for level III of the Executive Schedule ... plus 3 percent.” (5 U.S.C. App., § 3(e))

### No FDIC Appointment Action to Full-Time Positions During the 110th Congress



## Federal Election Commission (FEC)

The FEC consists of six members (no more than three may be from the same political party), who may serve for a single term of six-years. When a term expires, a member may continue to serve until a successor takes office. The chair and vice chair, from different political parties and elected by the commission, change each year. Generally, the vice chair succeeds the chair. (2 U.S.C. § 437c)

### FEC Membership as of the End of the 110th Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Donald F. McGahn II (Chair)	R	06/24/08	04/30/09	IV
Steven T. Walther (Vice Chair)	I	01/09/07	04/30/09	IV
<i>Ellen L. Weintraub<sup>a</sup></i>	D	03/18/03	04/30/07	IV
Cynthia L. Bauerly	D	06/24/08	04/30/11	IV
Caroline C. Hunter	R	06/24/08	04/30/13	IV
Matthew S. Petersen	R	06/24/08	04/30/11	IV

- a. The term of the incumbent shown in italics had expired. She continued to serve under the holdover provision noted above.

### FEC Appointment Action During the 110th Congress

Nominee/recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Steven T. Walther	I	Member	Scott E. Thomas	01/09/07	06/24/08	532
Hans von Spakovsky	R	Member	Bradley A. Smith	01/09/07	Withdrawn 05/20/08	
David M. Mason	R	Member	Reappointment <sup>a</sup>	01/09/07	Withdrawn 05/06/08	
Robert D. Lenhard	D	Member	Danny L. McDonald	01/09/07	Withdrawn 05/06/08	
Cynthia L. Bauerly	D	Member	Robert D. Lenhard	05/06/08	06/24/08	49
Caroline C. Hunter	R	Member	Michael E. Toner	05/06/08	06/24/08	49
Donald F. McGahn II	R	Member	David M. Mason	05/06/08	06/24/08	49
Matthew S. Petersen	R	Member	Hans von Spakovsky	06/12/08	06/24/08	12
<b>Mean number of days to confirm a nomination</b>						<b>138</b>

- a. Since 1998, new FEC members have been authorized to serve for only one term. Mason was first selected for office before that time, and would therefore have been eligible for reappointment.

## Federal Energy Regulatory Commission (FERC)

The FERC, an independent agency within the Department of Energy, consists of five members (no more than three may be from the same political party), who serve five-year terms. When a term expires, a member may continue to serve until a successor takes office, except that such commissioner may not serve beyond the end of the session of the Congress in which his or her term expires. The President designates the chair. (42 U.S.C. § 7171)

### FERC Membership as of the End of the 110th Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Joseph T. Kelliher (Chair)	R	11/07/03	06/30/12	III
Suede G. Kelly	D	11/07/03	06/30/09	IV
Jon Wellinghoff	D	07/14/06	06/30/13	IV
Philip D. Moeller	R	07/14/06	06/30/10	IV
Marc Spitzer	R	07/14/06	06/30/11	IV

### FERC Appointment Action During the 110th Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Joseph T. Kelliher	R	Commissioner	Reappointment	03/07/07	12/19/07	287
Jon Wellinghoff	D	Commissioner	Reappointment	12/11/07	12/19/07	8
<b>Mean number of days to confirm a nomination</b>						<b>148</b>

## Federal Housing Finance Board (FHFB)

The FHFB consisted of five members, of whom one—the Secretary of Housing and Urban Development (HUD) or his or her designee—was *ex officio*. The Housing and Economic Recovery Act of 2008 (P.L. 110-289; 122 Stat. 2654) provided for the abolishment of this board, effective one year from the statute’s July 30, 2008, enactment (§ 1311; 122 Stat. 2797). Prior to the enactment of this statute, the law provided for four appointed members who served seven-year terms, with no more than three from the same political party. An appointed member whose term expires could continue to serve until a successor was appointed. The President designated the chair from among the appointed members. (12 U.S.C. § 1422a(1)) Section 1204 of the act (122 Stat. 2785) repealed this section, but it was in effect during part of the period covered by this report.

### Full-Time FHFB Membership as of the End of the 110th Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Ronald A. Rosenfeld (Chair)	R	03/16/05	02/27/09	III
Allan I. Mendelowitz	D	11/29/01	02/27/14	IV
Alicia K. Castaneda	R	12/09/03	02/27/11	IV
Geoffrey S. Bacino	D	07/26/06	02/27/13	IV

### FHFB Appointment Action to Full-Time Positions During the 110th Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Allan I. Mendelowitz	D	Director	Reappointment	10/18/07	12/19/07	62

## Federal Labor Relations Authority (FLRA)

The FLRA consists of three members (no more than two may be from the same political party), who serve five-year terms. After the date on which a five-year term would expire, a member may continue to serve until the end of the next Congress, unless a successor is appointed before that time. The President designates the chair. The general counsel is also appointed by the President, with the advice and consent of the Senate. (5 U.S.C. § 7104)

### FLRA Membership as of the End of the 110th Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
<i>Members</i>				
Thomas M. Beck (Chair)	R	10/02/08	07/01/10	IV
Carol W. Pope	D	10/26/00	07/01/09	V
Vacant			07/29/12	V
<i>General Counsel<sup>a</sup></i>				
Vacant	na		Five years	V

- a. The abbreviation “na” means not applicable. The provision establishing the general counsel position does not include requirements with regard to political affiliation. The general counsel is appointed for a five-year term.

### FLRA Appointment Action During the 110th Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Wayne C. Beyer	R	Member	Othoniell Armendariz	01/09/07	Withdrawn	12/14/07
Dale Cabaniss	R	Member	Reappointment	03/12/07	Withdrawn	06/28/07
Carol W. Pope	D	Member	Reappointment	03/12/07	Returned	01/02/09 <sup>a</sup>
Carol W. Pope	D	Member		Recess Appointment 04/04/07 <sup>b</sup>		
Carol W. Pope	D	Member	Reappointment	05/16/07	10/02/08 <sup>c</sup>	505
Thomas M. Beck	R	Member	Dale Cabaniss	06/28/07	Withdrawn	12/14/07
Thomas M. Beck	R	Member	Wayne C. Beyer	12/14/07	10/02/08	293
Brandon C. Bungard	R	General Counsel	Colleen D. Kiko	04/02/08	Returned	01/02/09 <sup>a</sup>
<b>Mean number of days to confirm a nomination</b>						<b>399</b>

- a. Returned to the President at the end of the 110th Congress under the provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.
- b. Pope was recess appointed to a seat with a term that was to expire July 1, 2009. Recess appointments are always limited in duration, however, regardless of the term of office of a particular position. In this case, Pope’s recess appointment would have expired at the end of second session of the 110th Congress by which time she had been confirmed.
- c. When a recess appointment is made, the President generally submits a new nomination for the nominee, even when an old nomination is pending, in compliance with 5 U.S.C. § 5503. In this case one nomination was returned and one nomination was confirmed.

## Federal Maritime Commission (FMC)

The FMC consists of five members (no more than three may be from the same political party), who serve five-year terms. When a term expires, a member may continue to serve until a successor takes office. The President designates the chair. (46 U.S.C. § 301)

### FMC Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
<i>Joseph E. Brennan<sup>a</sup></i>	D	11/10/99	06/30/08	IV
Harold J. Creel, Jr.	D	08/17/94	06/30/09	IV
Rebecca F. Dye	R	11/14/02	06/30/10	IV
Vacant			06/30/12	IV
Vacant			06/30/11	IV

**Note:** As of the end of the 110<sup>th</sup> Congress, the FMC had no presidentially designated chair. At that time, the most recent chair was Steven R. Blust, who had left the agency on June 30, 2006. A presidentially designated chair would be compensated at Level III of the Executive Schedule.

- a. The term of the incumbent shown in italics has expired. He continued to serve under the holdover provision noted above.

### FMC Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Carl B. Kress	R	Commissioner	Steven R. Blust	08/02/07	Returned 01/02/09 <sup>a</sup>	
A. Paul Anderson	R	Commissioner	Reappointment	08/02/07	Withdrawn 05/20/08	
Sean T. Connaughton	R	Commissioner	A. Paul Anderson	09/09/08	Returned 01/02/09 <sup>a</sup>	

- a. Returned to the President at the end of the 110<sup>th</sup> Congress under the provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

## Federal Mine Safety and Health Review Commission (FMSHRC)

The FMSHRC consists of five members (no political balance is required), who serve six-year terms. When a term expires, the member must leave office. The President designates the chair. (30 U.S.C. § 823)

### FMSHRC Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party <sup>a</sup>	Date first confirmed	Term expires	Pay level
Michael F. Duffy (Chair)	na	11/19/02	08/30/12	III
Mary L. Jordan	na	04/14/94	08/30/14	IV
Michael G. Young	na	07/31/03	08/30/14	IV
Robert F. Cohen Jr.	na	03/13/08	08/30/12	IV
Vacant	na		08/30/10	IV

a. The abbreviation “na” means not applicable.

### FMSHRC Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party <sup>a</sup>	Position	To replace	Date nominated	Date confirmed	Days to confirm
Arlene Holen	na	Commissioner	Robert H. Beatty Jr.	01/09/07	Withdrawn	05/20/08
Michael F. Duffy	na	Commissioner	Reappointment	01/09/07	03/13/08	429
Robert F. Cohen Jr.	na	Commissioner	Stanley C. Suboleski	12/12/07	03/13/08	92
Mary L. Jordan	na	Commissioner	Reappointment	06/26/08	10/02/08	98
Michael G. Young	na	Commissioner	Reappointment	09/08/08	10/02/08	24
<b>Mean number of days to confirm a nomination</b>						<b>161</b>

a. The abbreviation “na” means not applicable.

## Federal Reserve System Board of Governors (FRS)

The FRS consists of seven members (no political balance is required), who serve 14-year terms. When a term expires, a member may continue to serve until a successor takes office. The President appoints the chair and vice chair, who are separately appointed as members, for four-year terms, with the advice and consent of the Senate. (12 U.S.C. §§ 241, 242)

### FRS Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party <sup>a</sup>	Date first confirmed	Term expires	Pay level
Ben S. Bernanke (Chair)	na	07/31/02 <sup>b</sup>	01/31/20 <sup>c</sup>	I
Donald L. Kohn (Vice Chair)	na	07/31/02	01/31/16 <sup>c</sup>	II
<i>Randall S. Kroszner<sup>d</sup></i>	na	02/17/06	01/31/08	II
Kevin M. Warsh	na	02/17/06	01/31/18	II
Elizabeth A. Duke	na	06/27/08	01/31/12	II
Vacant	na		01/31/14	II
Vacant	na		01/31/10	II

- The abbreviation “na” means not applicable.
- Bernanke was initially confirmed July 31, 2002, to the unexpired term of Edward W. Kelly. That term would have expired January 31, 2004. He was then reappointed for a term that would have expired January 31, 2018, but he resigned to become a member of the Council of Economic Advisors. On November 1, 2005, Bernanke was nominated to succeed Alan Greenspan as a member and as chair. He was confirmed to both positions on January 31, 2006.
- Bernanke’s term as a member expires on January 31, 2020. His term as chair expired on January 31, 2010. Kohn’s term as a member expires on January 31, 2016. His term as vice chair expired on June 23, 2010.
- The term of the incumbent shown in italics had expired. He continued to serve under the holdover provision noted above.

### FRS Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party <sup>a</sup>	Position	To replace	Date nominated	Date confirmed	Days to confirm
Elizabeth A. Duke	na	Member	Susan S. Bies	05/16/07	06/27/08	408
Larry A. Klane	na	Member	Mark W. Olson	05/16/07	Returned 01/02/09 <sup>b</sup>	
Randall S. Kroszner	na	Member	Reappointment	05/16/07	Returned 01/02/09 <sup>b</sup>	

- The abbreviation “na” means not applicable.
- Returned to the President at the end of the 110<sup>th</sup> Congress under the provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

## Federal Trade Commission (FTC)

The FTC consists of five members (no more than three may be from the same political party), who serve seven-year terms. When a term expires, the member may continue to serve until a successor takes office. The President designates the chair. (15 U.S.C. § 41)

### **FTC Membership as of the End of the 110<sup>th</sup> Congress**

<b>Incumbent</b>	<b>Party</b>	<b>Date first confirmed</b>	<b>Term expires</b>	<b>Pay level</b>
William E. Kovacic (Chair)	R	12/17/05	09/25/11	III
Pamela J. Harbour	I	07/23/03	09/25/09	IV
Jonathan D. Leibowitz	D	11/21/04	09/25/10	IV
J. Thomas Rosch	R	12/17/05	09/25/12	IV
Vacant			09/25/15	IV

### **No FTC Appointment Action During the 110<sup>th</sup> Congress**



## Foreign Claims Settlement Commission (FCSC)

The FCSC, located in the Department of Justice, consists of three members (political balance is not required), who serve three-year terms. When a term expires, the member may continue to serve until a successor takes office. Only the chair, who also is appointed by the President with the advice and consent of the Senate, serves full-time. (22 U.S.C. §§ 1622, 1622c)

### Full-Time FCSC Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Mauricio J. Tamargo (Chair)	na	01/25/02	09/30/09	V

### No FCSC Appointment Action to Full-Time Positions During the 110<sup>th</sup> Congress

**Note:** A nomination for a part-time position at the Foreign Claims Settlement Commission also occurred during the 110<sup>th</sup> Congress. This report covers only full-time positions; the part-time nomination is not included in this table.

## Merit Systems Protection Board (MSPB)

The MSPB consists of three members (no more than two may be from the same political party), who serve seven-year terms. A member who has been appointed to a full seven-year term may not be reappointed to any following term. When a term expires, the member may continue to serve for one year, unless a successor is appointed before that time. The President appoints the chair, with the advice and consent of the Senate, and designates the vice chair. (5 U.S.C. §§ 1201-1203)

### **MSPB Membership as of the End of the 110<sup>th</sup> Congress**

<b>Incumbent</b>	<b>Party</b>	<b>Date first confirmed</b>	<b>Term expires</b>	<b>Pay level</b>
Neil A. G. McPhie (Chair)	R	11/21/04	03/01/09	III
Mary M. Rose (Vice Chair)	R	12/17/05	03/01/11	IV
Vacant			03/01/14	IV

### **No MSPB Appointment Action During the 110<sup>th</sup> Congress**

## National Credit Union Administration Board of Directors (NCUA)

The NCUA consists of three members (no more than two members may be from the same political party), who serve six-year terms. When a term expires, a member may continue to serve until a successor takes office. The President designates the chair. (12 U.S.C. § 1752a)

### NCUA Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Michael E. Fryzel (Chair)	R	06/27/08	08/02/13	III
Rodney E. Hood	R	11/07/05	04/10/09	IV
Gigi Hyland	D	11/07/05	08/02/11	IV

### NCUA Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Michael E. Fryzel	R	Member	JoAnn Johnson	12/03/07	06/27/08	207

## National Labor Relations Board (NLRB)

The NLRB consists of five members, who serve five-year terms. Political balance is not required, but, by tradition, no more than three members are from the same political party. When a term expires, the member must leave office. The President designates the chair. The President also appoints the general counsel, with the advice and consent of the Senate. (29 U.S.C. § 153)

### NLRB Membership as of the End of the 110th Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
<i>Board</i>				
Peter C. Schaumber (Chair)	R	11/14/02	08/27/10	III
Wilma B. Liebman	D	11/14/02	08/27/11	IV
Vacant			08/27/13	IV
Vacant			12/16/12	IV
Vacant			12/16/09	IV
<i>General Counsel<sup>a</sup></i>				
Ronald E. Meisburg	na	08/03/06	08/13/10	IV

- a. The abbreviation “na” means not applicable. The provision establishing the general counsel position does not include requirements with regard to political affiliation. The general counsel is appointed for a term of four years.

### NLRB Appointment Action During the 110th Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Dennis P. Walsh	D	Member	Reappointment	01/09/07	Withdrawn	01/25/08
Peter N. Kirsanow	R	Member	Ronald E. Meisburg	01/09/07	Withdrawn	01/25/08
Robert J. Battista	R	Member	Dennis P. Walsh	01/25/08	Withdrawn	05/06/08
Gerard Morales	R	Member	Robert J. Battista	01/25/08	Returned	01/02/09 <sup>a</sup>
Dennis P. Walsh	D	Member	Peter N. Kirsanow	01/25/08	Returned	01/02/09 <sup>a</sup>
Dennis P. Walsh	D	Member	Reappointment	01/25/08	Returned	01/02/09 <sup>a</sup>

- a. Returned to the President at the end of the 110th Congress under the provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

## National Mediation Board (NMB)

The board consists of three members (no more than two may be from the same political party), who serve three-year terms. When a term expires, the member may continue to serve until a successor takes office. The board annually designates a chair. (45 U.S.C. § 154)

### **NMB Membership as of the End of the 110<sup>th</sup> Congress**

<b>Incumbent</b>	<b>Party</b>	<b>Date first confirmed</b>	<b>Term expires</b>	<b>Pay level</b>
<i>Read Van de Water<sup>a</sup></i> (Chair)	R	12/03/03	07/01/06	III
Elizabeth Dougherty	R	12/09/06	07/01/10	IV
<i>Harry R. Hoglander<sup>a</sup></i>	D	08/01/02	07/01/08	IV

- a. The terms of the incumbents shown in italics had expired. The incumbents continued to serve under the holdover provision noted above.

### **No NMB Appointment Action During the 110<sup>th</sup> Congress**

## National Transportation Safety Board (NTSB)

The NTSB consists of five members (no more than three may be from the same political party), who serve five-year terms. When a term expires, a member may continue to serve until a successor takes office. The President appoints the chair, from among the members, for a two-year term, with the advice and consent of the Senate, and designates the vice chair. (49 U.S.C. § 1111)

### NTSB Membership as of the End of the 110th Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Mark V. Rosenker (Acting Chair)	R	03/19/03	12/31/10	III
Robert L. Sumwalt III	R	08/03/06	12/31/11	IV
<i>Deborah A. P. Hersman<sup>a</sup></i>	D	03/02/04	12/31/08	IV
Kathryn O. Higgins	D	12/17/05	12/31/09	IV
<i>Steven R. Chealander<sup>a</sup></i>	R	12/09/06	12/31/07	IV

- a. The terms of the incumbents shown in italics had expired. The incumbents continued to serve under the holdover provision noted above.

### NTSB Appointment Action During the 110th Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Steven R. Chealander	R	Member	Reappointment	10/26/07	Returned	01/02/09 <sup>a</sup>
Mark V. Rosenker	R	Chair	Reappointment	10/26/07	Returned	01/02/09 <sup>a</sup>
Deborah A. P. Hersman	D	Member	Reappointment	07/31/08	Returned	01/02/09 <sup>a</sup>

- a. Returned to the President at the end of the 110th Congress under the provisions of Senate Rule XXXI, paragraph 6 of the Senate.

## Nuclear Regulatory Commission (NRC)

The NRC consists of five members (no more than three may be from the same political party), who serve five-year terms. When a term expires, the member must leave office. The President designates the chair. The President also appoints the inspector general, with the advice and consent of the Senate. (42 U.S.C. § 5841 and 5 U.S.C. App., Inspector General Act of 1978, §§ 3, 12)

### NRC Membership as of the End of the 110th Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
<i>Commissioners</i>				
Dale E. Klein (Chair)	R	05/26/06	06/30/11	II
Gregory B. Jaczko	D	05/26/06	06/30/13	III
Peter B. Lyons	R	05/26/06	06/30/09	III
Kristine L. Svinicki	R	03/13/08	06/30/12	III
Vacant			06/30/10	III
<i>Inspector General</i>				
Hubert T. Bell	na	06/11/96	Indefinite	<sup>a</sup>

- a. The abbreviation “na” means not applicable. The provision establishing the inspector general position does not include requirements with regard to political affiliation. This position does not have a fixed term. As of the end of the 110th Congress, the Inspector General Act provided as follows: “An Inspector General may be removed from office by the President. If an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer. Nothing in [this provision] shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.” (5 U.S.C. App., § 3(b)). “The annual rate of basic pay for an Inspector General ... shall be the rate payable for level III of the Executive Schedule ... plus 3 percent.” (5 U.S.C. App., § 3 (e))

### NRC Appointment Action During the 110th Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Kristine L. Svinicki	R	Member	Jeffrey S. Merrifield	04/30/07	03/13/08	318
Gregory B. Jaczko	D	Member	Reappointment	12/04/07	03/13/08	100
<b>Mean number of days to confirm</b>						<b>209</b>

# Occupational Safety and Health Review Commission (OSHRC)

The OSHRC consists of three members (political balance is not required), who serve six-year terms. When a term expires, the member must leave office. The President designates the chair. (29 U.S.C. § 661)

## OSHRC Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party <sup>a</sup>	Date first confirmed	Term expires	Pay level
Horace A. Thompson III (Chair)	na	05/19/06	04/27/11	III
Thomasina Rogers	na	07/31/03	04/27/09	IV
Vacant	na		04/27/13	IV

a. The abbreviation “na” means not applicable.

## OSHRC Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party <sup>a</sup>	Position	To replace	Date nominated	Date confirmed	Days to confirm
M. Cynthia Douglass	na	Member	W. Scott Railton	09/27/07	Returned 01/02/09 <sup>b</sup>	

a. The abbreviation “na” means not applicable.

b. Returned to the President at the end of the 110<sup>th</sup> under the provisions of the Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.



## Postal Regulatory Commission (PRC)

The Postal Rate Commission became the Postal Regulatory Commission, as provided in Section 604 of P.L. 109-435, the Postal Accountability and Enhancement Act, enacted on December 20, 2006.

The commission consists of five members (no more than three may be from the same political party), who serve six-year terms. After a term expires, a member may continue to serve until his successor takes office, but the member may not continue to serve for more than one year after the date upon which his term otherwise would expire. The President designates the chair, and the members select the vice chair. (39 U.S.C. § 502)

### PRC Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Dan G. Blair (Chair)	R	12/09/06	10/14/12	III
Nanci E. Langley (Vice Chair)	D	06/04/08	11/22/12	IV
Mark D. Acton	R	08/03/06	10/14/10	IV
Tony Hammond	R	11/12/02	10/14/10	IV
Ruth Y. Goldway	D	11/12/02	11/22/14	IV

### PRC Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Nanci E. Langley	D	Commissioner	Dawn A. Tisdale	02/27/08	06/04/08	98
Ruth Y. Goldway	D	Commissioner	Reappointment	07/10/08	10/02/08	84
<b>Mean number of days to confirm</b>						<b>91</b>

## Privacy and Civil Liberties Oversight Board (PCLOB)

The board consists of five members (no more than three members of the board may be from the same political party), who serve six-year terms. When a term expires, the member may continue to serve until a successor takes office. Only the chair, who also is appointed by the President with the advice and consent of the Senate, serves full-time. (42 § 2000ee)

The Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, Title VIII, § 801 (121 Stat. 352) established the Privacy and Civil Liberties Oversight Board, and the first new nominations to the board were made in the 110<sup>th</sup> Congress. Previously the Privacy and Civil Liberties Oversight Board functioned as part of the White House Office in the Executive Office of the President. That board ceased functioning on January 30, 2008. As of the end of the 110<sup>th</sup> Congress, the new board had not been constituted. (See CRS Report RL34385, *Privacy and Civil Liberties Oversight Board: New Independent Agency Status*, by (name redacted).)

### Full-Time PCLOB Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Vacant (Chair)				III

### PCLOB Appointment Action to Full-Time Positions During the 110<sup>th</sup> Congress

Nominee/Recess appointee <sup>a</sup>	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Daniel W. Sutherland	<sup>b</sup>	Chair	New position	02/27/08	Returned 01/02/09 <sup>c</sup>	

- a. Nominations for a part-time positions at the Privacy and Civil Liberties Oversight Board also occurred during the 110<sup>th</sup> Congress. This report covers only full-time positions; the part-time nominations are not included in this table.
- b. Party affiliation is unknown.
- c. Returned to the President at the end of the 110<sup>th</sup> Congress under the provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

## Railroad Retirement Board (RRB)

The board consists of three members (political balance is not required), who serve five-year terms. When a term expires, the member may continue to serve until a successor takes office. The President appoints the chair, and an inspector general, with the advice and consent of the Senate. (45 U.S.C. § 231f and 5 U.S.C. App., Inspector General Act of 1978, §§ 3, 12)

### RRB Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party <sup>a</sup>	Date first confirmed	Term expires	Pay level
<i>Board</i>				
Michael S. Schwartz (Chair; Member-at-Large)	na	05/23/03	08/28/12	III
Virgil M. Speakman Jr. (Labor Member)	na	08/12/92	08/28/09	IV
Jerome F. Kever <sup>b</sup> (Management Member)	na	05/24/00	08/28/08	IV
<i>Inspector General</i>				
Martin J. Dickman	na	10/08/94	Indefinite	<sup>c</sup>

- The abbreviation “na” means not applicable.
- The term of the incumbent shown in italics had expired. He continued to serve under the holdover provision noted above.
- This position does not have a fixed term. As of the end of the 110<sup>th</sup> Congress, the Inspector General Act provided as follows: “An Inspector General may be removed from office by the President. If an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer. Nothing in [this provision] shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.” (5 U.S.C. App., § 3(b)). “The annual rate of basic pay for an Inspector General ... shall be the rate payable for level III of the Executive Schedule ... plus 3 percent.” (5 U.S.C. App., § 3 (e))

### RRB Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party <sup>a</sup>	Position	To replace	Date nominated	Date confirmed	Days to confirm
Jerome F. Kever	na	Member	Reappointment	05/22/07	06/22/07	31
Michael S. Schwartz	na	Member	Reappointment	05/22/07	06/22/07	31
Virgil M. Speakman Jr.	na	Member	Reappointment	05/22/07	06/22/07	31

- The abbreviation “na” means not applicable.

## Securities and Exchange Commission (SEC)

The commission consists of five members (no more than three may be from the same political party), who serve five-year terms. When a term expires, the member may continue to serve until the end of the next session of Congress, unless a successor is appointed before that time. The President designates the chair. (15 U.S.C. § 78d)

### SEC Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Christopher Cox (Chair)	R	07/29/05	06/05/09	III
Kathleen L. Casey	R	06/15/06	06/05/11	IV
Elisse Walter	D	07/25/02	06/05/12	IV
Luis A. Aguilar	D	07/29/05	06/05/10	IV
Troy A. Paredes	R	06/27/08	06/05/13	IV

### SEC Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Elisse Walter	D	Member	Annette L. Nazareth	03/31/08	06/27/08	88
Luis A. Aguilar	D	Member	Roel C. Campos	03/31/08	06/27/08	88
Troy A. Paredes	R	Member	Paul S. Atkins	05/06/08	06/27/08	52
Mean number of days to confirm						76

## Surface Transportation Board (STB)

The STB, located within the Department of Transportation, consists of three members (no more than two may be from the same political party), who serve five-year terms. When a term expires, the member may continue to serve until a successor takes office, but not for more than one year after expiration. The President designates the chair. (49 U.S.C. § 701)

### STB Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Charles D. Nottingham (Chair)	R	08/03/06	12/31/10	III
Francis P. Mulvey (Vice Chair)	D	05/21/04	12/31/12	IV
<i>W. Douglas Buttrey<sup>a</sup></i>	R	05/21/04	12/31/08	IV

- a. The term of the incumbent shown in italics had expired. He continued to serve under the holdover provision noted above.

### STB Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Francis P. Mulvey	D	Member	Reappointment	12/03/07	12/19/07	16
Husein A. Cumber	<sup>a</sup>	Member	W. Douglas Buttrey	05/20/08	Returned 01/02/09 <sup>b</sup>	

- a. Party affiliation is unknown.
- b. Returned to the President at the end of the 110<sup>th</sup> Congress under the provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

## United States International Trade Commission (USITC)

The USITC consists of six members (no more than three may be from the same political party), who serve nine-year terms. A member of the commission who has served for more than five years is ineligible for reappointment. When a term expires, a member may continue to serve until a successor takes office. The President designates the chair and vice chair for two-year terms of office, but they may not belong to the same political party. The President may not designate a chair with less than one year of continuous service as a member. This restriction does not apply to the vice chair. (19 U.S.C. § 1330)

### USITC Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Shara L. Aranoff (Chair)	D	07/29/05	12/16/12	III
Daniel R. Pearson (Vice Chair)	R	11/21/04	06/16/11	IV
<i>Deanna T. Okun<sup>a</sup></i>	R	11/19/99	06/16/08	IV
Charlotte R. Lane	R	11/21/04	12/16/09	IV
Irving A. Williamson	D	02/01/07	06/16/14	IV
Dean A. Pinkert	D	02/01/07	12/16/15	IV

- a. The term of the incumbent shown in italics had expired. She continued to serve under the holdover provision noted above.

### USITC Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
Irving A. Williamson	D	Member	Stephen Koplan	01/09/07	02/01/07	23
Dean A. Pinkert	D	Member	Jennifer A. Hillman	01/09/07	02/01/07	23
J. V. Schwan	R	Member	Deanna T. Okun	06/18/08	Returned 01/02/09 <sup>a</sup>	

- a. Returned to the President at the end of the 110<sup>th</sup> Congress under the provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

## United States Parole Commission (USPC)

The USPC is an independent agency in the Department of Justice. The commission consists of five commissioners (political balance is not required), who serve for six-year terms. When a term expires, a member may continue to serve until a successor takes office. In most cases, a commissioner may serve no more than 12 years. However, Section 11017(c) of P.L. 110-273, enacted on November 2, 2002, provides that this limitation does not “apply to a person serving as Commissioner” when the act took effect. The President designates the chair. (18 U.S.C. § 4202) The commission was previously scheduled to be phased out, but its life has been extended several times by Congress. Under P.L. 110-312, § 2 (122 Stat. 3013), it was extended until November 1, 2011. (18 U.S.C. § 3551)

### USPC Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party <sup>a</sup>	Date first confirmed	Term expires	Pay level
Edward F. Reilly, Jr. (Chair)	na	08/12/91	03/06/09	IV
Cranston J. Mitchell (Vice Chair)	na	03/06/03	03/06/09	V
Patricia Cushwa	na	11/21/04	12/11/10	V
Isaac Fulwood, Jr.	na	11/21/04	12/11/10	V
Vacant	na		na	V

a. The abbreviation “na” means not applicable.

### USPC Appointment Action During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party <sup>a</sup>	Position	To replace	Date nominated	Date confirmed	Days to confirm
Dorla M. Salling	na	Member	Deborah A. Spagnoli	01/22/08	Returned	01/02/09 <sup>b</sup>

a. The abbreviation “na” mean not applicable.

b. Returned to the President at the end of the 110<sup>th</sup> Congress under the provisions of Senate Rule XXXI paragraph 6 of the Standing Rules of the Senate.

## United States Sentencing Commission (USSC)

The USSC is a judicial branch agency that consists of seven voting members, who are appointed to six-year terms, and two non-voting members. The seven voting members are appointed by the President, with the advice and consent of the Senate. Only the chair and three vice chairs, selected from among the members, serve full-time. The President appoints the chair, with the advice and consent of the Senate, and designates the vice chairs. At least three members must be federal judges. Not more than four members may be of the same political party. No more than two vice chairs may be of the same political party. No voting member may serve more than two full terms. When a term expires, an incumbent may continue to serve until he or she is reappointed, a successor takes office, or Congress adjourns *sine die* at the end of the session that commences after the expiration of the term, whichever is earliest. The Attorney General (or designee) serves *ex officio* as a non-voting member. (28 U.S.C. § 991-992) The chair of the United State Parole Commission is also an *ex officio* non-voting member of the commission. (18 U.S.C. § 3551 note)

### Full-Time USSC Membership as of the End of the 110<sup>th</sup> Congress

Incumbent	Party	Date first confirmed	Term expires	Pay level
Ricardo H. Hinojosa (Chair)	R	11/21/04	10/31/13	Same as rate for federal appeals court judges
Ruben Castillo (Vice Chair)	a	11/10/99	10/31/09	
William K. Sessions III (Vice Chair)	D	11/10/99	10/31/09	
William B. Carr Jr. (Vice Chair)	a	11/20/08	10/31/11	

a. Party balance is statutorily required, as discussed above, but the commission staff does not collect this information. For this member, alternative sources of information could not be located.

### USSC Appointment Action to Full-Time Positions During the 110<sup>th</sup> Congress

Nominee/Recess appointee	Party	Position	To replace	Date nominated	Date confirmed	Days to confirm
John R. Steer	R	Member	Reappointment	01/09/07	Withdrawn	06/04/08
Ricardo H. Hinojosa	R	Chair	Reappointment	12/06/07	Returned	01/02/09
Ricardo H. Hinojosa	R	Member	Reappointment	12/06/07	11/20/08	350
William B. Carr Jr.	a	Member	John R. Steer	06/04/08	11/20/08	169
Mean number of days to confirm						260

a. Party affiliation is unknown.



## Appendix A. Summary of All Nominations and Appointments to Collegial Boards and Commissions

**Table A-1. Nominations and Appointments to Full-Time Positions on Regulatory and Other Boards and Commissions, 110th Congress**

Nominee/recess appointee	Board/ Commission <sup>a</sup>	Nomination date	Final disposition date	Days to confirm
Jonathan S. Adelstein	FCC	12/03/07	Returned 01/02/09	
Luis A. Aguilar	SEC	03/31/08	06/27/08	88
A. Paul Anderson	FMC	08/02/07	Withdrawn 05/20/08	
Joseph F. Bader	DNFSB	06/26/08	Returned 01/02/09	
Constance S. Barker	EEOC	03/31/08	06/27/08	88
Michael E. Barody (Commissioner)	CPSC	03/05/07	Withdrawn 05/23/07	
Michael E. Barody (Chair)	CPSC	03/05/07	Withdrawn 05/23/07	
Robert J. Battista	NLRB	01/25/08	Withdrawn 05/06/08	
Cynthia L. Bauerly	FEC	05/06/08	06/24/08	49
Gineen B. Beach	EAC	07/31/08	10/02/08	63
Thomas M. Beck	FLRA	06/28/07	Withdrawn 12/14/07	
Thomas M. Beck	FLRA	12/14/07	10/02/08	293
Wayne C. Beyer	FLRA	01/09/07	Withdrawn 12/14/07	
John S. Bresland (Member)	CSB	07/11/07	03/13/08	246
John S. Bresland (Chair)	CSB	07/11/07	03/13/08	246
Brandon C. Bungard	FLRA	04/02/08	Returned 01/02/09	
Dale Cabaniss	FLRA	03/12/07	Withdrawn 06/28/07	
William B. Carr Jr.	USSC	06/04/08	11/20/08	169
Steven R. Chealander	NTSB	10/26/07	Returned 01/02/09	
Bartholomew H. Chilton	CFTC	05/03/07	08/01/07	90
Bartholomew H. Chilton	CFTC	04/03/08	Returned 01/02/09	
Robert F. Cohen Jr.	FMSHRC	12/12/07	03/13/08	92
Sean T. Connaughton	FMC	09/09/08	Returned 01/02/09	
Husein A. Cumber	STB	05/20/08	Returned 01/02/09	
Donetta Davidson	EAC	05/08/08	10/02/08	147
M. Cynthia Douglass	OSHRC	09/27/07	Returned 01/02/09	
Michael F. Duffy	FMSHRC	01/09/07	03/13/08	429
Elizabeth A. Duke	FRS	05/16/07	06/27/08	408
Diane G. Farrell	EXIMBANK	05/24/07	08/01/07	69

<b>Nominee/recess appointee</b>	<b>Board/ Commission<sup>a</sup></b>	<b>Nomination date</b>	<b>Final disposition date</b>	<b>Days to confirm</b>
Michael E. Fryzel	NCUA	12/03/07	06/27/08	207
Ruth Y. Goldway	PRC	07/10/08	10/02/08	84
Deborah A. P. Hersman	NTSB	07/31/08	Returned 01/02/09	
Gracia M. Hillman	EAC	06/13/07	10/02/08	477
Ricardo H. Hinojosa (Member)	USSC	12/06/07	11/20/08	350
Ricardo H. Hinojosa (Chair)	USSC	12/06/07	Returned 01/02/09	
Arlene Holen	FMSHRC	01/09/07	Withdrawn 05/20/08	
Caroline C. Hunter	EAC	01/09/07	02/15/07	37
Caroline C. Hunter	FEC	05/06/08	06/24/08	49
Stuart Ishimaru	EEOC	08/03/07	12/19/07	138
Gregory B. Jaczko	NRC	12/04/07	03/13/08	100
Mary L. Jordan	FMSHRC	06/26/08	10/02/08	98
Mark E. Keenum	FCA	06/26/08	Returned 01/02/09	
Joseph T. Kelliher	FERC	03/07/07	12/19/07	287
Jerome F. Kever	RRB	05/22/07	06/22/07	31
Peter N. Kirsanow	NLRB	01/09/07	Withdrawn 01/25/08	
Larry A. Klane	FRS	05/16/07	Returned 01/02/09	
Carl B. Kress	FMC	08/02/07	Returned 01/02/09	
Randall S. Kroszner	FRS	05/16/07	Returned 01/02/09	
Nanci E. Langley	PRC	02/27/08	06/04/08	98
Robert D. Lenhard	FEC	01/09/07	Withdrawn 05/06/08	
Walter Lukken	CFTC	08/07/07	Returned 01/02/09	
David M. Mason	FEC	01/09/07	Withdrawn 05/06/08	
Donald F. McGahn II	FEC	05/06/08	06/24/08	49
Allan I. Mendelowitz	FHFB	10/18/07	12/19/07	62
Gerard Morales	NLRB	01/25/08	Returned 01/02/09	
Francis P. Mulvey	STB	12/03/07	12/19/07	16
Scott O'Malia	CFTC	04/03/08	Returned 01/02/09	
David Palmer	EEOC	01/09/07	Withdrawn 09/04/07	
Troy A. Paredes	SEC	05/06/08	06/27/08	52
Matthew S. Petersen	FEC	06/12/08	06/24/08	12
Dean A. Pinkert	USITC	01/09/07	02/01/07	23
Carol W. Pope	FLRA	03/12/07	Returned 01/02/09	
Carol W. Pope	FLRA		Recess Appointment 04/04/07	
Carol W. Pope	FLRA	05/16/07	10/02/08	505
Bijan Rafiekian	EXIMBANK	02/16/07	08/01/07	166

Nominee/recess appointee	Board/ Commission <sup>a</sup>	Nomination date	Final disposition date	Days to confirm
Rosemary E. Rodriguez	EAC	01/09/07	02/15/07	37
Rosemary E. Rodriguez	EAC	05/08/08	10/02/08	147
Mark V. Rosenker	NTSB	10/26/07	Returned 01/02/09	
Dorla M. Salling	USPC	01/22/08	Returned 01/02/09	
Ambrose L. Schwallie	DNFSB	07/23/08	Returned 01/02/09	
J. V. Schwan	USITC	06/18/08	Returned 01/02/09	
Michael S. Schwartz	RRB	05/22/07	06/22/07	31
Charles R. H. Shearer	CSB	07/11/07	Returned 01/02/09	
Jill E. Sommers	CFTC	05/03/07	08/01/07	90
Hans von Spakovsky	FEC	01/09/07	Withdrawn 05/20/08	
Virgil M. Speakman Jr.	RRB	05/22/07	06/22/07	31
John R. Steer	USSC	01/09/07	Withdrawn 06/04/08	
David W. Sutherland	PCLOB	02/27/08	Returned 01/02/09	
Kristine L. Svinicki	NRC	04/30/07	03/13/08	318
Michael W. Tankersley	EXIMBANK	01/09/07	06/28/07	170
Deborah T. Tate	FCC	06/21/07	Returned 01/02/09	
Dennis P. Walsh	NLRB	01/09/07	Withdrawn 01/25/08	
Dennis P. Walsh	NLRB	01/25/08	Returned 01/02/09	
Dennis P. Walsh	NLRB	01/25/08	Returned 01/02/09	
Elisse Walter	SEC	03/31/08	06/27/08	88
Steven T. Walther	FEC	01/09/07	06/24/08	532
Jon Wellenhoff	FERC	12/11/07	12/19/07	8
Irving A. Williamson	USITC	01/09/07	02/01/07	23
Michael G. Young	FMSHRC	09/08/08	10/02/08	24
<b>Mean number of days to confirm</b>				<b>148</b>
<b>Median number of days to confirm</b>				<b>90</b>

a. The key to the agency acronyms may be found in Appendix C.

**Table A-2.Appointment Action, Regulatory and Other Collegial Boards and Commissions, 110<sup>th</sup> Congress**

<b>Agency<sup>a</sup></b>	<b>Total Positions</b>	<b>Vacant positions<sup>b</sup></b>	<b>Incumbent serving; term expired</b>	<b>Nominations submitted</b>	<b>Individual nominees</b>	<b>Positions to which nominations were made<sup>c</sup></b>	<b>Nominations confirmed</b>	<b>Nominations returned</b>	<b>Nominations withdrawn</b>	<b>Recess appointments</b>
CSB	5	1	0	3	2	3	2	1	0	0
CFTC	5	1	1	5	4	4	2	3	0	0
CPSC	5	3	0	2	1	2	0	0	2	0
DNFSB	5	0	0	2	2	2	0	2	0	0
EAC	4	0	0	6	5	4	6	0	0	0
EEOC	6	1	0	3	3	2	2	0	1	0
EXIMBANK	6	0	0	3	3	3	3	0	0	0
FCA	3	0	1	1	1	1	0	1	0	0
FCC	5	0	2	2	2	2	0	2	0	0
FDIC	4	0	0	0	0	0	0	0	0	0
FEC	6	0	1	8	8	5	5	0	3	0
FERC	5	0	0	2	2	2	2	0	0	0
FHFB	4	0	0	1	1	1	1	0	0	0
FLRA	4	2	0	7	5	4	2	2	3	1
FMC	5	2	1	3	3	2	0	2	1	0
FMSHRC	5	1	0	5	5	5	4	0	1	0
FRS	7	2	1	3	3	3	1	2	0	0
FTC	5	1	0	0	0	0	0	0	0	0
FCSC	1	0	0	0	0	0	0	0	0	0
MSPB	3	1	0	0	0	0	0	0	0	0
NCUA	3	0	1	1	1	1	1	0	0	0
NLRB	6	3	0	6	4	3	0	3	3	0
NMB	3	0	2	0	0	0	0	0	0	0

Agency <sup>a</sup>	Total Positions	Vacant positions <sup>b</sup>	Incumbent serving; term expired	Nominations submitted	Individual nominees	Positions to which nominations were made <sup>c</sup>	Nominations confirmed	Nominations returned	Nominations withdrawn	Recess appointments
NTSB	5	0	2	3	3	3	0	3	0	0
NRC	6	1	0	2	2	2	2	0	0	0
OSHRC	3	1	0	1	1	1	0	1	0	0
PRC	5	0	0	2	2	2	2	0	0	0
PCLOB	1	1	0	1	1	1	0	1	0	0
RRB	4	0	1	3	3	3	3	0	0	0
SEC	5	0	0	3	3	3	3	0	0	0
STB	3	0	1	2	2	2	1	1	0	0
USITC	6	0	1	3	3	3	2	1	0	0
USPC	5	1	0	1	1	1	0	1	0	0
USSC	4	0	0	4	3	4	2	1	1	0
<b>Total</b>	<b>152</b>	<b>22</b>	<b>15</b>	<b>88</b>	<b>79</b>	<b>74</b>	<b>46</b>	<b>27</b>	<b>15</b>	<b>1</b>

a. A list of abbreviations may be found in **Appendix C**.

b. As of the end of the 110<sup>th</sup> Congress.

c. For some agencies, appointment of an individual to be chair requires two separate nominations: one to be a member and the other to be chair. This column counts such instances as **two** positions to which nominations were made. For those agencies in which members have fixed terms, a single individual may be nominated for successive terms in a single membership seat. This column counts such instances as **one** position to which a nomination was made.

## Appendix B. Senate Recesses and Presidential Recess Appointments

**Table B-1. Senate Interession Recesses, Intrasession Recesses of Four or More Days, and Numbers of Recess Appointments to Positions on Regulatory and Other Collegial Boards and Commissions, 110<sup>th</sup> Congress**

Date recessed	Date reconvened	Number of days adjourned <sup>a</sup>	Number of recess appointments to specified positions
(The first session of the 110 <sup>th</sup> Congress convened on January 4, 2007.)			
02/17/07	02/26/07	9	0
03/29/07	04/10/07	12	1
05/25/07	06/04/07	10	0
06/29/07	07/09/07	10	0
08/03/07	09/04/07	32	0
10/05/07	10/15/07	10	0

The Senate adjourned sine die on December 31, 2007. The second session of the 110<sup>th</sup> Congress convened on January 3, 2008. The interession (period between these two dates) was three days long.<sup>a</sup> There were no intrasession recesses of four or more days during the 110th Congress, 2nd session. The Senate adjourned its second session on January 2, 2009.

**Source:** Table created by the Congressional Research Service using data from the *Congressional Record*.

**Note:** For the purposes of determining the length of an intrasession recess for inclusion in this table, Sundays were not counted. Under congressional precedents, Sunday is considered a “dies non,” or a day on which Congress is not expected to meet, for purposes of determining whether Congress has adjourned for “not more than three days.”

- a. The number of days adjourned was counted starting on the first calendar day after an adjournment and ending on the day of reconvening, including in the count the day the Senate reconvened. This is consistent with the House practice for counting recess days for the purposes of meeting congressional adjournment requirements in the Constitution (“Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days ....” Art. I, § 5, cl. 4). Under House precedents, “The House of Representatives in adjourning for not more than three days must take into the count either the day of adjourning or the day of the meeting, and Sunday is not taken into account in making this computation” U.S. Congress, House, *Constitution, Jefferson’s Manual and Rules of the House of Representatives of the United States, One Hundred Tenth Congress, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Doc. 109-157* (Washington: GPO, 2007), p. 37. Senate practice appears to be consistent with this approach (Floyd M. Riddick and Alan S. Frumin, *Riddick’s Senate Procedure: Precedents and Practices, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., S.Doc. 101-28*, (Washington: GPO, 1992), pp. 15-16). Inasmuch as it has been argued that the periods during which the President could make recess appointments might be those in which the Senate is in recess pursuant to the constitutional provision just quoted, it appears that this method of calculating recess days would provide a relevant measure of recess length in the context of discussions of recess appointments. Other methods might be used in other contexts. For example, a method in which neither the day of adjournment nor the day of reconvening were counted has been used elsewhere. This method takes into account that the Senate could act on nominations on either of these days, obviating the need for a recess appointment.

## Appendix C. Board/Commission Abbreviations

CSB	Chemical Safety and Hazard Investigation Board
CFTC	Commodity Futures Trading Commission
CPSC	Consumer Product Safety Commission
DNFSB	Defense Nuclear Facilities Safety Board
EAC	Election Assistance Commission
EEOC	Equal Employment Opportunity Commission
EXIMBANK	Export-Import Bank
FCA	Farm Credit Administration
FCC	Federal Communications Commission
FDIC	Federal Deposit Insurance Corporation, Board of Directors
FEC	Federal Election Commission
FERC	Federal Energy Regulatory Commission
FHFB	Federal Housing Finance Board
FLRA	Federal Labor Relations Authority
FMC	Federal Maritime Commission
FMSHRC	Federal Mine Safety and Health Review Commission
FRS	Federal Reserve System, Board of Governors
FTC	Federal Trade Commission
FCSC	Foreign Claims Settlement Commission
MSPB	Merit Systems Protection Board
NCUA	National Credit Union Administration, Board of Directors
NLRB	National Labor Relations Board
NMB	National Mediation Board
NTSB	National Transportation Safety Board
NRC	Nuclear Regulatory Commission
OSHRC	Occupational Safety and Health Review Commission
PRC	Postal Regulatory Commission
PCLOB	Privacy and Civil Liberties Oversight Board
RRB	Railroad Retirement Board
SEC	Securities and Exchange Commission
STB	Surface Transportation Board
USITC	United States International Trade Commission
USPC	United States Parole Commission
USSC	United States Sentencing Commission

## Appendix D. Change in Methodology from Previous Tracking Reports

The calculations of nomination-to-confirmation intervals provided in this report counted all the days within the interval, including those during summer recesses and between sessions of the Senate. The inclusion of all days differs from the methodology used in similar CRS reports for previous Congresses.<sup>31</sup> In these earlier reports, days during August and intersession recesses were not included in calculations of nomination-to-confirmation intervals. The rationale for the earlier methodology was that the Senate was unlikely to continue consideration of nominations during these periods; committee hearings and votes, among other activities, typically do not occur during these times. The exclusion of days during only certain periods of adjournment—intersession recesses and August recesses, which are usually longer than 30 days—is suggested by Senate rules regarding when nominations are to be returned to the President. These provide:

Nominations neither confirmed nor rejected during the session at which they are made shall not be acted upon at any succeeding session without being again made to the Senate by the President; and if the Senate shall adjourn or take recess for more than thirty days, all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall be returned by the Secretary to the President.<sup>32</sup>

This earlier methodology was also consistent with the approach of some political scientists who study executive branch appointments.<sup>33</sup>

The methodology for this report is different from that which was used in previous similar reports for several reasons. First, as discussed above in the section on recess appointments, from the latter part of the first session through the end of the 110<sup>th</sup> Congress, the Senate chose to break up what would otherwise have been longer recesses into shorter recesses separated by pro forma sessions. This introduced two options for this report with regard to the calculation of nomination-to-confirmation intervals. The first option would have been to treat each series of short recesses created in this fashion as one long recess and to subtract these days from the nomination-to-confirmation interval.<sup>34</sup> The second option would have been to treat each recess in the series of short recesses created in this fashion as a short recess, and not to subtract these days from the nomination-to-confirmation interval. Arguably, the Senate and President actions were consistent with the latter construction—short recesses as short recesses. Otherwise, Senate rules would have required the return of pending nominations (or the waiver of that rule),<sup>35</sup> and the President could

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<sup>31</sup> See, for example, CRS Report RL34744, *Presidential Appointments to Full-Time Positions on Regulatory and Other Collegial Boards and Commissions, 109<sup>th</sup> Congress*, by (name redacted) et al.

<sup>32</sup> U.S. Congress, Senate Committee on Rules and Administration, *Senate Manual*, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Doc. 110-1 (Washington: GPO, 2008), p. 58, Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

<sup>33</sup> For example, see Nolan McCarty and Rose Razaghian, “Advice and Consent: Senate Responses to Executive Branch Nominations 1885-1996,” *American Journal of Political Science*, vol. 43, no. 4 (October 1999), pp. 1122-1143.

<sup>34</sup> This appears to be the construction adopted by the *Congressional Directory*. See U.S. Congress, Joint Committee on Printing, *Congressional Directory, 2009-2010*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., S. Pub. 111-14 (Washington: GPO, 2009), p. 541.

<sup>35</sup> As noted above, under Senate rules, if a nomination is not acted upon by the Senate by the end of a Congress, it is returned to the President. Pending nominations also may be returned automatically to the President at the beginning of a recess of more than 30 days, but the Senate rule providing for this return is often waived. The applicable Senate rule may be found in U.S. Congress, Senate Committee on Rules and Administration, *Senate Manual*, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., S. Doc. 110-1 (Washington: GPO, 2008), p. 58, Rule XXXI, paragraph 6 of the Standing Rules of the Senate.



have—and likely would have—made recess appointments. The Senate and the President did not take these actions. Because of this, short recesses created by pro forma sessions are treated as short recesses in this report. It should be noted, however, that this reduces the comparability of statistics provided in this report with statistics in previous similar tracking reports, since the intervals calculated in this report include days that, in previous reports, were part of longer recesses and therefore were subtracted from the length of the interval. Although the phenomenon underlying this methodological problem first arose during the 110<sup>th</sup> Congress, it could arise again in future Congresses.

Other reasons for the methodological change are not unique to the 110<sup>th</sup> Congress. First, in some cases, committee or floor action on a nomination that could have been completed before a recess has been, instead, deferred until after the recess. For such a nomination, the period of Senate consideration arguably has been intentionally extended. Counting all days, including those during a long recess, in calculations of elapsed time reflects that extension of Senate consideration. Second, it is unlikely that all work pertaining to nominations stops over a recess, and the inclusion of recess days is a reflection of the fact that the nominee is still under consideration, even during recess. Member and committee staffs may still be considering nominations at that time, even though they may not take direct action in the form of hearings or votes on the nominees. Ongoing activities may include investigatory work and interviews with nominees. Finally, although, as mentioned above, some political scientists who study nominations do subtract recess days during calculations of nomination-to-confirmation intervals, many others do not.<sup>36</sup> In addition, the calculation of nomination-to-confirmation intervals in CRS research concerning judicial nominations does not exclude days that fall during recesses. By using methodology that is more similar to the work of other political scientists and to CRS judicial nominations research, the research presented here could be more easily compared and combined with related work. For all of these reasons, in this report, we employ a new methodology for calculating nomination-to-confirmation intervals.

## Author Contact Information

(name redacted)  
Analyst in American National Government  
[redacted]@crs.loc.gov, 7-....

Maureen Bearden  
Information Research Specialist  
[redacted]@crs.loc.gov, 7-....

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<sup>36</sup> For example, see Lauren Cohen Bell, “Senatorial Discourtesy: The Senate’s Use of Delay to Shape the Federal Judiciary,” *Political Research Quarterly*, vol. 55, no. 3 (September 2002), pp. 589-607; Sarah A. Binder and Forrest Maltzman, “Senatorial Delay in Confirming Federal Judges, 1947-1998,” *American Journal of Political Science*, vol. 46, no. 1 (January 2002), pp. 190-199; and Karl DeRouen Jr., Jeffrey S. Peake, and Kenneth Ward, “Presidential Mandates and the Dynamics of Senate Advice and Consent, 1885-1996,” *American Politics Research*, vol. 33, no. 1 (January 2005), pp. 106-131.

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