



## **Wipe the Slate Clean: Biden Administration Must Remove Trump Holdovers**

The Trump administration has set out famously lax standards when it comes to [conventional job qualifications](#) for political appointees. However, on another metric -- loyalty to the President -- it has been far more exacting. After four years in power, the administration has successfully removed virtually every political appointee who doesn't show sufficient allegiance to Trump, and replaced them with someone who does.

The vast majority of these figures will step down on the day Joe Biden is inaugurated, but a powerful minority will, by default, continue in office. Some of these figures are beyond the next President's reach, protected by provisions that stipulate they can only be removed "for cause." (Of course, if "cause" for termination is ultimately ascertained, it ought to be acted upon.)

Many, however, can be removed on a president's first day in office, even if that is not routine. These figures are only protected by norms -- norms that the Trump administration has itself undermined.

There will be a strong temptation to leave these individuals in office to serve out the remainder of their terms, or until a new nominee is confirmed for the sake of unifying the country. This would be a grave mistake. Any official who has been party to the Trump administration's transgressions and maintained (at minimum) sufficient silence to avoid removal is not suited to be a part of the next administration's critical launch. Leaving them in place would risk a lethargic start at best, and one riddled with active sabotage at worst. To reorient the federal government towards the public interest as quickly as possible, Biden will need to act decisively. We call upon the 46th President to use all the legal tools available to put power in different hands, even when it means breaking norms.

### **Appointees Chosen for Loyalty to the President, Not the Public Interest**

Many presidents expect that their political appointees' beliefs will align with the administration's in the areas over which appointees will have jurisdiction. President Trump, however, has demanded total, personal loyalty in all matters.

Applicants for political positions across the executive branch were asked to fill out a form in which they "[describe\[d\]](#) their political evolution" and "[list\[ed\]](#) media appearances in which they've commented about Mr. Trump" as a part of the selection process. Furthermore, over the past several months, appointees who are already serving have been subjected to "[reinterviews](#)" where they face similar queries about their loyalty to the President.

This preference for loyalty above all else has resulted in the installation of unqualified figures, to the public's detriment. Even more dangerously, it has meant empowering individuals who are willing to disregard evidence and the public interest, on everything from public health to the law, in order to advance the President's agenda.



## **Appointees Who Spoke Up or Resisted were Fired**

Not only has the administration demanded loyalty, it has made clear that it is willing to remove any official that does not offer it. Trump has fired officials who dared [investigate](#) his administration's actions or [his friends](#), and who didn't [advance](#) his agenda [fast enough](#) or faithfully enough.

Those who have not only cleared the initial test, but withstood further examinations and close scrutiny of their record, all with an eye towards their fealty to the President, must be assumed to be loyalists undeserving of public trust.

## **“Building Back Better” Can’t Wait**

Biden is set to take control of a damaged governing infrastructure amid deep, overlapping crises. Regardless of the outlook for newly transformative legislation, powerful laws remain on the books from the 19th (e.g., Sherman Antitrust Act), 20th (e.g., 1964 Civil Rights Act), and 21st (e.g., Dodd-Frank) Centuries. Robust executive branch action is democratically legitimate and urgently required.

In this context, it is essential that political leaders not only halt the sabotage that has been underway for the last four years, but quickly begin the process of rebuilding. Even if holdovers from the Trump administration do not actively work to frustrate this project, it is clear that, having passed the Trump administration's many tests, they will not be the sort of enthusiastic participants we need.

It is, therefore, imperative that President Biden legally remove all of those Trump appointees he can as soon as possible, even where this might break with convention. His options for removal vary and can be broken out into two basic categories.

### **1. Remove**

Most political appointees presumptively step down when a new President takes office. However, a small number of officials in roles usually deemed nonpartisan often stay on beyond the transition of power. This usually includes Inspectors General, the Directors of the Federal Bureau of Investigation (FBI) and the Internal Revenue Service (IRS),<sup>1</sup> and, to some degree, United States Attorneys. As detailed above, no political appointee in the Trump administration can be reasonably assumed to put country over party. To ensure that these offices are working in the public interest from day one, Biden must start with a clean slate of appointees.

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<sup>1</sup> 26 U.S. Code § 7803(a)(1)(D).



Other officials that Biden can remove on day one include the Director of the Consumer Financial Protection Bureau (CFPB), the Comptroller of the Currency,<sup>2</sup> the General Counsel of the National Labor Relations Board (NLRB), and taking *Seila Law v. CFPB* as precedent, the Director of the Federal Housing Finance Agency (FHFA) and the Commissioner of the Social Security Administration (SSA).

## 2. Demote

Members of many bipartisan, independent regulatory commissions are only removable for cause, meaning that barring neglect or malfeasance Biden cannot fire them. In many cases, however, the commission's underlying statute gives the President the explicit power to demote the commission's Chairperson, returning them to the status of "member" or "commissioner" and choose a new official to serve as chair, either permanently or in an acting capacity, from among the board's members. In other cases, the statute is silent. Without explicit prohibition or case law to suggest otherwise, demotion is permissible in these circumstances as well. Commissions that fall under this category include the Federal Deposit Insurance Corporation (FDIC), Federal Energy Regulatory Commission (FERC), National Credit Union Administration (NCUA), Postal Regulatory Commission (PRC), and Commodity Futures Trading Commission (CFTC).

A commission's chairperson has tremendous power to set an agency's agenda and otherwise steer its course. Putting that position in a Democratic commissioner's hands, even when Democrats lack a majority on the commission, could allow the agency to begin to reorient right away.

At many agencies, the chairperson is also protected from removal, but traditionally steps down when the White House changes hands from one party to another. This includes the Federal Communications Commission (FCC), the National Transportation Safety Board (NTSB), the Securities and Exchange Commission (SEC), the Equal Employment Opportunity Commission (EEOC), the Federal Energy Regulatory Commission (FERC), the Federal Trade Commission (FTC), and the National Labor Relations Board (NLRB). At the FCC, NTSB, and SEC, the chairperson generally leaves the commission altogether while at the others, they traditionally continue on in their capacity as a commissioner. Joe Biden and other lawmakers can implore Chairpersons to honor this tradition while members of the public can increase the pressure on them to abide.

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<sup>2</sup> *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. 19 (2020)



Fire Immediately	Demote <sup>3</sup>	Chair traditionally steps down from the board	Chair traditionally steps down from chairmanship
CFPB FBI FHFA Inspectors General IRS Director IRS Chief Counsel <sup>4</sup> NLRB GC OCC SSA Commissioner and Deputy Commissioner US Attorneys	FDIC FERC NCUA PRC CFTC	CFTC FCC NTSB SEC <sup>5</sup>	EEOC FERC FTC NLRB
Fire chair, unclear if they stay on as member			
NRC			

<sup>3</sup> The chair is removed from the position as chair but remains a member of board.

<sup>4</sup> The IRS Chief Counsel cannot be removed immediately but shortly after the inauguration. The Secretary of the Treasury can decline to delegate the authority to remove the Chief Counsel to the IRS Director with 30 days notice. Following that period, the Secretary can remove the Chief Counsel.

<sup>5</sup> SEC Chair Jay Clayton has stated that he will step down from the board [by the end of 2020](#).