



# Presidential Transition Act: Provisions and Funding

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## Summary

The Presidential Transition Act of 1963 (PTA), as amended, authorizes funding for the General Services Administration (GSA) to provide suitable office space, staff compensation, and other services associated with the presidential transition process (3 U.S.C. § 102 note). Section 6 of the PTA directs the President to include in his budget request, for each fiscal year in which his regular term of office will expire, “a proposed appropriation for carrying out the purposes of this Act.” The President’s FY2013 budget proposal included \$8.95 million in funding for the 2012-2013 presidential transition. Of this sum, not more than \$1 million was to be used for training and orientation activities under specified provisions of the PTA. These recommendations were endorsed by Congress and included in the Continuing Appropriations Resolution of September 28, 2012 (P.L. 112-175).

In the event the President-elect is the incumbent President, or the Vice President-elect is the incumbent Vice President, no funds may be spent on the provision of services and facilities to this incumbent. Any funds appropriated for such purposes are to be returned to the Treasury.

From enactment of the PTA in 1964 (P.L. 88-277) through the presidential transition of 2008-2009, most PTA-authorized appropriations were provided after the election of the incoming President and Vice President. The Pre-Election Presidential Transition Act of 2010 (P.L. 111-283) amended the PTA and included several other provisions to provide additional support to eligible candidates for pre-election transition planning. These provisions had effect for the first time during the 2012 presidential election.

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## Introduction

The constitutional transfer of power and authority from an incumbent American President to a successor is a momentous occasion in American government. In the present day, this transfer of authority is a complex and multi-faceted undertaking, as the outgoing Administration concludes its affairs and the incoming Administration gets organized.

In recent decades, presidential transition activities have begun informally months before the general election; the major candidates usually have asked individuals or small groups to begin to formulate plans in the event of an electoral victory. Preparations generally have accelerated after the election, as the attention of the President-elect and his supporters has turned from campaigning to governing. The President-elect and his team have approximately 11 weeks between election day and inauguration day to organize the new Administration, and to make plans for pursuing its policy agenda. The incoming President must also prepare to assume national security and homeland security responsibilities from the incumbent—among a host of other duties and expectations.

While a formal transition process is essential to ensure continuity in the conduct of the affairs of the executive branch, the concept of a federally funded, institutionalized transition process is relatively new. Before enactment of the PTA in 1964,<sup>1</sup> the methods for transferring information and responsibility were developed in an ad hoc fashion with each presidential transition. In addition, the political party organization of the incoming President was the primary source of funding for transition expenses.<sup>2</sup> Many facets of presidential transitions continue to be developed anew, according to the preferences and priorities of each outgoing and, in particular, each incoming President. Now, however, the PTA provides a basic framework for funding and support of this process.

From enactment of the PTA in 1964 through the presidential transition of 2008-2009, most PTA-authorized support was provided after the election of the incoming President and Vice President. The Pre-Election Presidential Transition Act of 2010 amended the PTA and included several other provisions to provide additional support to eligible candidates for pre-election transition planning.<sup>3</sup> These provisions had effect for the first time during the 2012 presidential election.

## Funding Authorization

As enacted in 1964, the PTA authorized funding not to exceed \$900,000 for any one transition “for carrying out the purposes” of the act.<sup>4</sup> In 1976, this provision was amended to authorize “not more than \$2,000,000 ... for the purposes of providing services and facilities to the President-elect and Vice President-elect” and “not more than \$1,000,000 ... for the purposes of providing services

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<sup>1</sup> This statute was enacted March 7, 1964, but it retained the title “Presidential Transition Act of 1963.” For a detailed discussion of presidential transitions preceding this act, see Laurin L. Henry, *Presidential Transitions* (Washington: Brookings Institution, 1960).

<sup>2</sup> U.S. President’s Commission on Campaign Costs, *Financing Presidential Campaigns*, April 1962, pp. 23-24.

<sup>3</sup> P.L. 111-283; 124 Stat. 3045.

<sup>4</sup> P.L. 88-277, § 5; 78 Stat. 153, 156.

and facilities to the former President and former Vice President.”<sup>5</sup> In 1988, this provision was amended once again, and the authorized amounts were increased to \$3.5 million and \$1.5 million, respectively.<sup>6</sup> The 1988 amendments also directed that the “amounts authorized to be appropriated [by these provisions] be increased by an inflation adjusted amount, based on increases in the cost of transition services and expenses which have occurred in the years following the most recent Presidential transition.”<sup>7</sup>

The General Services Administration (GSA) Administrator (Administrator) is authorized to spend these funds for the provision of most of the PTA-specified “services and facilities ... in connection with ... obligations incurred by the President-elect or Vice-President-elect” between the day following the general election and 30 days after the inauguration.<sup>8</sup> For the purposes of the PTA, the “President-elect” and “Vice-President-elect” are defined as “the apparent successful candidates for the office of President and Vice President, respectively, as ascertained by the Administrator following the general elections.”<sup>9</sup>

In the immediate aftermath of the contested November 7, 2000, presidential election, neither candidate was provided with the resources that would be available for the President-elect and Vice President-elect. In testimony before the House Committee on Government Reform, Subcommittee on Government Management, Information, and Technology, Administrator David J. Barram testified: “In this unprecedented, incredibly close and intensely contested election, with legal action being pursued by both sides, it is not apparent to me who the winner is. That is why I have not ascertained a President-elect.”<sup>10</sup> In his testimony, the Administrator drew on a 1963 House floor debate concerning the PTA, during which a sponsor of the legislation stated that, “in a close contest, the Administrator simply would not make the decision.”<sup>11</sup> The GSA Deputy Administrator reportedly provided PTA facilities and funds to the Bush-Cheney transition team on December 14, 2000, the day following Vice President Al Gore’s concession speech.<sup>12</sup>

In the event the President-elect is the incumbent President, or the Vice President-elect is the incumbent Vice President, no funds are to be spent on the provision of services and facilities to this incumbent. Any funds appropriated for such purposes are to be returned to the Treasury.<sup>13</sup>

The President-elect, Vice President-elect, or eligible candidate (as defined below) may designate an assistant to act on their behalf in connection with the support provided by the Administrator under the PTA. Up to 10% of the expenditures under the PTA “may be made upon the basis of a certificate” by one of the two elected officials or the designated assistant “that such expenditures

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<sup>5</sup> P.L. 94-499, § a; 90 Stat. 2380.

<sup>6</sup> P.L. 100-398, § 2; 102 Stat. 985.

<sup>7</sup> *Ibid.*

<sup>8</sup> 3 U.S.C. § 102 note; Presidential Transition Act of 1963 [hereafter PTA], § 3(b).

<sup>9</sup> 3 U.S.C. § 102 note; PTA, § 3(c).

<sup>10</sup> U.S. Congress, House Committee on Government Reform, Subcommittee on Government Management, Information, and Technology, *Transitioning to a New Administration: Can the Next President Be Ready?* hearings, 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., December 4, 2000, (Washington: GPO, 2001), p. 69.

<sup>11</sup> Rep. Dante Fascell, “Presidential Transition Act of 1963,” remarks in the House, *Congressional Record*, vol. 109, July 25, 1963, p. 13348.

<sup>12</sup> Ben White, “White House Transition; Transition Officials Moving to D.C. Office; Team Gets \$5.3 Million To Ready Administration,” *Washington Post*, December 15, 2000, p. A39.

<sup>13</sup> 3 U.S.C. § 102 note; PTA, § 3(g).

are classified and are essential to the national security,” and that they are consistent with PTA provisions.<sup>14</sup>

The Administrator is also authorized, under the PTA, to provide services and facilities to each outgoing President and Vice President, “for use in connection with winding up the affairs of his office,” for a period “not to exceed seven months from 30 days before the date of the expiration of his term of office.”<sup>15</sup> In the event that the outgoing Vice President is becoming President, the PTA limits the authorized expenditures in this area.<sup>16</sup>

## **Funding for 2012-2013**

The President’s FY2013 budget requested \$8.95 million for PTA-authorized purposes during the 2012-2013 presidential transition. Of this total, \$1 million was requested for briefings and related transition services for incoming personnel associated with the new administration.<sup>17</sup> These recommendations were endorsed by Congress and included in the Continuing Appropriations Resolution of September 28, 2012.<sup>18</sup>

# **Transition Support: Services, Facilities, and Funds**

## **Pre-election Support**

As noted above, prior to 2010, most PTA-authorized support was provided after the “apparent successful” President-elect and Vice President-elect had been “ascertained by the Administrator.” At that time, the principal pre-election support provided by the PTA was “to develop a systems architecture plan for the computer and communications systems of the candidate to coordinate a transition to Federal systems if the candidate is elected.”<sup>19</sup>

The Pre-Election Presidential Transition Act of 2010 (PEPTA) amended the PTA and included several other sections authorizing the provision of additional support to eligible candidates for the purpose of pre-election transition planning. For purposes of the act, “eligible candidate” was defined as “a candidate of a major party [as defined in 26 U.S.C. § 9002(6)] for President or Vice-President of the United States; and ... any other candidate who has been determined by the Administrator to be among the principal contenders for the general election to such offices.”<sup>20</sup>

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<sup>14</sup> 3 U.S.C. § 102 note; PTA, § 3(e).

<sup>15</sup> 3 U.S.C. § 102 note; PTA, § 4. Other provisions of law provide each former President with an annual lifetime pension, Secret Service protection, and staff and office allowances after the transition period expires. See CRS Report RL34631, *Former Presidents: Pensions, Office Allowances, and Other Federal Benefits*, by Wendy Ginsberg. Other CRS reports related to departing Presidents include CRS Report R40238, *The Presidential Records Act: Background and Recent Issues for Congress*, by Wendy Ginsberg; and CRS Report R41513, *The Presidential Libraries Act and the Establishment of Presidential Libraries*, by Wendy Ginsberg and Erika K. Lunder.

<sup>16</sup> 3 U.S.C. § 102 note; PTA, § 6(a)(2).

<sup>17</sup> U.S. Office of Management and Budget, *Budget of the U.S. Government, Fiscal Year 2013—Appendix* (Washington: GPO, 2012), pp. 1227-1228.

<sup>18</sup> P.L. 112-175; 126 Stat. 1313. The text of the provision referenced, § 130, may be found at 126 Stat. 1319.

<sup>19</sup> 3 U.S.C. § 102 note; PTA, § 3(a)(10).

<sup>20</sup> P.L. 111-283, § 2(a); 124 Stat. 3047. The *U.S. Code* section cited, 26 U.S.C. § 9002(6), states: “The term ‘major (continued...)”

The aim of PEPTA was to extend the transition-planning period for potential presidential administrations to provide sufficient time to prepare for “governing in the post-September 11<sup>th</sup> world.”<sup>21</sup>

As amended by PEPTA, the PTA directs the Administrator to provide certain presidential transition services and facilities to major-party and certain third-party presidential and vice-presidential nominees before a presidential general election. These services and facilities include, with specified exceptions, many of the items authorized to be provided to the President-elect and Vice President-elect—such as office space, appropriate furnishings, and office equipment.<sup>22</sup> (See “Post-election Support,” below.) The Administrator is required to notify eligible candidates of the availability of these facilities and services. Candidates may use them only to prepare for a potential transition.

The Administrator is also directed to prepare a report at the beginning of each presidential election year summarizing presidential transition activities. This report, which is to be released by GSA to the public, is also to include a bibliography of transition-related resources.

PEPTA further amended the PTA to enable presidential candidates to fund pre-election transition activities through their campaigns. Under the amended act

an eligible candidate may ... establish a separate fund—qualifying for the purposes of section 501(c)(4) of the Internal Revenue Code of 1986—to pay for transition services and facilities. An eligible candidate may transfer into this fund contributions received for his or her general election campaign and may also solicit and accept donations directly into it.<sup>23</sup>

As amended by PEPTA, the PTA places limits on donations as a condition for receiving services and funds under the act. Under these limitations, the eligible candidate “shall not accept more than \$5,000 from any person, organization, or other entity for the purposes of carrying out activities authorized by” the PTA.<sup>24</sup>

With regard to the funding provision, the Senate report on the measure noted that, “[p]re-election transition efforts by both the Obama and McCain campaigns in 2008 relied on volunteers or campaign staff paid by private funds.”<sup>25</sup> The establishment of this mechanism appears to facilitate financing of some of the transition-related staffing and activities recommended and authorized by PEPTA.

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party’ means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.”

<sup>21</sup> U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Pre-Election Presidential Transition Act of 2010*, report to accompany S. 3196, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., August 2, 2010, S.Rept. 111-239 (Washington: GPO, 2010), p. 1. Hereafter cited as S.Rept. 111-239.

<sup>22</sup> 3 U.S.C. § 102 note; PTA, § 3(h).

<sup>23</sup> S.Rept. 111-239, p. 7. The entities identified in section 501(c)(4) of the Internal Revenue Code include those typically referred to as social welfare organizations. For more, see CRS Report 96-264, *Frequently Asked Questions About Tax-Exempt Organizations*, by Erika K. Lunder.

<sup>24</sup> 3 U.S.C. § 102 note; PTA, § 5(c). This provision is applied to funds collected during campaigns by section 3(h)(3)(B)(iii) of the amended PTA.

<sup>25</sup> S.Rept. 111-239, p. 5.

Separately (i.e., not by amendment to the PTA), PEPTA authorizes the President, or the President's delegate, to take necessary and appropriate actions to plan and coordinate executive branch activities for facilitating an efficient transfer of power to a successor President. Such activities might include

the establishment of a transition coordinating council comprised of high-level Executive Branch officials; the formation of an agency transition directors council that includes career employees designated to lead transition efforts within their agencies; the development of guidance to departments and agencies regarding briefing materials for an incoming administration and the development of such materials; and the development of computer software, contingency plans, memoranda, training and exercises, and other items for improving the effectiveness and efficiency of a Presidential transition.<sup>26</sup>

Such transition support is to be provided equally, without regard to political affiliation. The Administration of the incumbent President is required to report to Congress on these preparations twice: once at six and again at three months before election.

## **Post-election Support**

Once the "apparent successful" President-elect and Vice President-elect have been "ascertained by the Administrator," the PTA authorizes the Administrator to provide, to each President-elect and Vice President-elect, certain facilities, funds, and services, including the following:

- Suitable office space appropriately equipped with furniture, furnishings, office machines and equipment, and office supplies;
- Payment of the compensation of members of office staffs designated by the President-elect or Vice-President-elect;
- Payment of expenses for the procurement of services of experts or consultants or organizations thereof for the President-elect or Vice-President-elect;
- Payment of travel expenses and subsistence allowances, including rental of Government or hired motor vehicles;
- When requested by [one of the incoming officers or a designee], and approved by the President, Government aircraft ... for transition purposes on a reimbursable basis;
- [W]hen requested by [one of the incoming officers or a designee], aircraft ... chartered for transition purposes;
- Communications services; and
- Payment of expenses for printing and binding.<sup>27</sup>

In addition, the PTA authorizes funding for the use of the U.S. Postal Service by the President-elect and Vice President-elect "in connection with [their] preparations for the assumption of official duties."<sup>28</sup>

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<sup>26</sup> Ibid., p. 8.

<sup>27</sup> 3 U.S.C. § 102 note; PTA, § 3(a).

The PTA also authorizes the Administrator to fund, during the transition, orientation activities, primarily for “individuals the President-elect ... intends to nominate as department heads or appoint to key positions in the Executive Office of the President.” The purpose of these activities is to acquaint the incoming leadership “with the types of problems and challenges that most typically confront new political appointees when they make the transition from campaign and other prior activities to assuming the responsibility for governance after inauguration.” Personnel who may assist in the transition process include individuals who “(I) held similar leadership roles in prior administrations; (II) are department or agency experts from the Office of Management and Budget or an Office of Inspector General of a department or agency; or (III) are relevant staff from the” Government Accountability Office.<sup>29</sup> The orientation activities specified in the statute include “training or orientation in records management ... including training on the separation of Presidential records and personal records,” as well as “training or orientation in human resources management and performance-based management.”<sup>30</sup>

The statute also provides that these orientation activities “shall include the preparation of a detailed classified, compartmented summary ... of specific operational threats to national security; major military or covert operations; and pending decisions on possible uses of military force.” This summary is to be conveyed to the President-elect as soon as possible after the general election.<sup>31</sup>

The PTA directs the Administrator to work with the Archivist of the United States to create, in support of the orientation activities, a transition directory compiling “Federal publications and materials with supplementary materials developed by the Administrator.” The directory is to include “information on the officers, organization, and statutory and administrative authorities, functions, duties, responsibilities, and mission of each department and agency.”<sup>32</sup>

## **Transition-Related Security Clearances**

The PTA recommends that the President-elect submit the “names of candidates for high level national security positions through the level of undersecretary of cabinet departments” to the agency with national security clearance functions. It further recommends that this action be taken as soon as possible after the presidential election, and it requires the responsible agency or agencies to carry out background investigations of these candidates for high-level national security positions “as expeditiously as possible ... before the date of the inauguration.”<sup>33</sup>

A separate transition-related provision of law that is not included in the PTA is worth noting here. The Intelligence Reform and Terrorism Prevention Act of 2004<sup>34</sup> included a provision that facilitates pre-election security clearances for transition team members. Under the provision,

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<sup>28</sup> 3 U.S.C. § 102 note; PTA, §§ 3(a)(7) and 3(d).

<sup>29</sup> 3 U.S.C. § 102 note; PTA, § 3(a)(8).

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> 3 U.S.C. § 102 note; PTA, § 3(a)(9).

<sup>33</sup> 3 U.S.C. § 102 note; PTA, § 3(f).

<sup>34</sup> P.L. 108-458.

major party candidates “may submit, before the date of the general election, requests for security clearances for prospective transition team members who will have a need for access to classified information to carry out their responsibilities as members of the President-elect’s transition team.”<sup>35</sup> PEPTA, discussed above, amended this provision to allow third party candidates who meet certain criteria, as well, to submit these requests.<sup>36</sup> The provision also directs that “[n]ecessary background investigations and eligibility determinations to permit appropriate prospective transition team members to have access to classified information shall be completed, to the fullest extent practicable, by the day after the date of the general election.”<sup>37</sup>

## Disclosure Requirements

The PTA requires that the President-elect and Vice President-elect disclose certain financial and personnel information as a condition for receiving services and funds under the act. They must disclose, to the Administrator, “the date of contribution, source, amount, and expenditure thereof” of all non-federal funds (such as private contributions) received before or after the general election, “for use in the preparation of the President-elect or Vice-President-elect for the assumption of [their] official duties.”<sup>38</sup> They must submit a report with such disclosures to the Administrator not later than 30 days after inauguration; these disclosures are then to be released to the public by the Administrator. In addition, the PTA requires, as a condition for receiving services and funds, that the President-elect and Vice-President-elect “make available to the Administrator and the Comptroller General all information concerning such contributions” as may be required for “auditing both the public and private funding” used in PTA-authorized activities.

The PTA also sets limitations on transition-related donations as a condition for receiving services and funds under the act. Under these limitations, the President-elect and Vice President-elect “shall not accept more than \$5,000 from any person, organization, or other entity for the purposes of carrying out activities authorized by” the PTA.<sup>39</sup> The PTA also requires that the incoming team disclose to the public (1) “the names and most recent employment of all transition personnel ... who are members of the President-elect or Vice-President-elect’s Federal department or agency transition teams”; and (2) “information regarding the sources of funding which support the transition activities of each transition team member.” These disclosures, which must be kept up to date, are to be completed before the team contacts the department or agency.<sup>40</sup>

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<sup>35</sup> 50 U.S.C. § 435b note.

<sup>36</sup> Such a third party candidate would have “been determined by the Administrator to be among the principal contenders for the general election to such offices,” and in this way meet the definition of “eligible candidate” (P.L. 111-283, § 2(a); 124 Stat. 3047).

<sup>37</sup> 50 U.S.C. § 435b note.

<sup>38</sup> 3 U.S.C. § 102 note; PTA, § 5(a).

<sup>39</sup> 3 U.S.C. § 102 note; PTA, § 5(c).

<sup>40</sup> 3 U.S.C. § 102 note; PTA, § 5(b).

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