



**THE WHITE HOUSE
TRANSITION PROJECT**

RICE UNIVERSITY'S
BAKER INSTITUTE
FOR PUBLIC POLICY

Smoothing the Peaceful Transfer of Democratic Power

Report 2017-05

**RULES GOVERNING PRESIDENTIAL
TRANSITIONS**

LAWS, EXECUTIVE ORDERS, AND FUNDING PROVISIONS

Martha Joynt Kumar,
Director, White House Transition Project

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WHO WE ARE, WHAT WE DO

The White House Transition Project. Begun in 1998, the White House Transition Project provides information about individual offices for staff coming into the White House to help streamline the process of transition from one administration to the next. Its directors are Professor Martha Joynt Kumar and Professor Terry Sullivan. We coordinate with government agencies and outside groups, such as the National Archives and the Partnership for Public Service. Below are the components of the Project:

* **WHITE HOUSE OFFICE ESSAYS:** The studies are based on interviews with key personnel, including those who work or have worked in the offices of Chief of Staff; Staff Secretary; Personnel; Counsel; Press; Communications; Management and Administration; Public Liaison; National Security Council; First Lady; Legislative Affairs; and additionally the Office of Management and Budget. Organization charts accompany the individual office studies. With the permission of the interviewees, interviews are available on the National Archives website page dedicated to this project:

***WHITE HOUSE ORGANIZATION CHARTS.** The charts cover administrations from Jimmy Carter to Barack Obama and help new White House staff understand what to expect when they arrive and how their offices changed over time or stayed the same. Charts are available at whitehousetransitionproject.org.

***TRANSITION ESSAYS.** These include original analyses of the patterns of presidential appointments and the Senate confirmation process, and a study of the first hundred days of an administration based on the President's Daily Diary. It also reports on crisis management routines, interactions with reporters and the press in general, and presidential travel.

***INTERNATIONAL COMPONENT.** The WHTP consults with international governments and groups interested in transitions in their governments. In 2017 in conjunction with the Baker Institute, the WHTP will host a conference with emerging Latin American leaders.

Rice University's James A. Baker, III Institute for Public Policy was founded in 1993 on the campus of Rice University. The Baker Institute has twenty programs that focus on a broad range of issues including energy, health, conflict resolution, science and technology, tax and expenditure policy and Latin America and China studies. With an eye toward educating and engaging the next generation of leaders, the Baker Institute collaborates with experts from academia, government, the media, business, and nongovernmental and private organizations.

The Moody Foundation was chartered in 1942 by William Lewis Moody, Jr., a successful businessman from Galveston, Texas. Seeking to make a difference for the people of Texas, the foundation makes grants for projects focusing on the arts, humanities, religion, education, social services, community development and health. In addition, the Moody Foundation has contributed to the building of many universities, hospitals, museums and libraries across Texas.

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Basic Elements of the Rules Governing Transitions

Martha Joynt Kumar, *White House Transition Project*

Government rules regulating presidential transitions have a short history. During those fifty years plus years, mandated government transition practices have gone through five periods of development. Below are highlights of the elements that have been important in the course of transition development from modest staff and supply operations in 1964 to the full government pre-election operation of 2016. A full discussion of the laws and executive orders is in the table that follows:

- Transition funding moves from political parties to a combination of government and then private funding as well;
- Contribution limits and reporting restrictions are placed on private funding. As funding and services increase over the time period, reporting demands do as well.
- Increasing number of government institutions have a role in transition planning;
- Development of role of the President organizing the transition out of office;
- Pre-election transition planning becomes a significant part of the current transition process;
- Subjects of transition planning develop from government resources –office space, staffing - to include national security clearances, presidential appointments confirmation issues, plus studies on financial disclosures.
- Government transition legislation builds on candidate experiences and needs as well as well informal actions by government officials, such as the 2008 informal White House meetings with candidate representatives to work together on approaching several transition issues.

STAGES IN THE DEVELOPMENT OF THE RULES GOVERNING TRANSITIONS

1. 1963- 1987. The Basic Framework Establishes Government Funding and Services. Prior to 1963 political parties supported the transition work of presidents-elect. The **Presidential Transition Act of 1963** marks the beginning of the federal government taking responsibility for some aspects of presidential transitions and it forms the basic transition law with all succeeding acts as amendments to the original act. The act sets up for future transitions:

- **It sets the role of government in providing services and facilities for the incoming and outgoing President and Vice President.** They include: office space, staff, transportation, government detailees
- **It provides that funds can only be used if there is a change of presidents;** no funds for a President and Vice President if reelected. Sets funds at \$900,000 for incoming and outgoing with Presidents and Vice Presidents.
- **Accepting government transition funds is voluntary.** Candidates do not have to accept government funds, nor, in the latest legislation do they have to attend transition meetings.

- **It also establishes the role of the Administrator of the General Services Administration** releasing funds to the candidates that the Administrator declares are the “apparent successful candidates for the office.”
- **Importance of Private Money.** Building on the 1963 act, candidates have consistently found that public money is not sufficient to cover transition costs leading them to set up private fund raising operations to cover expenses. The Federal Election Commission allowed Ronald Reagan to use campaign funds for transition by separating them into campaign and transition funds.

2. 1988-1999. Government Funding and Private Money Increase with Limitations and Reporting Called For. The Presidential Transitions Effectiveness Act of 1988 requires:

- **Public reporting of private contributions**, including in-kind contributions and limits the maximum contribution to \$5,000.00.
- **By 1988, public funds increase to \$5 million** with \$3.5 million going to incoming President and Vice President and \$1.5 million to the outgoing President and Vice President.

3. 2000-2009. Transition Preparations Broaden in Scope and in the Number of Participating Institutions.

- **The President and the White House Take a Central Role.** In November 2000, President Clinton issued **Executive Order 13176 Facilitation of a Presidential Transition** creating the institutional framework for the transition out of office and information provided by departments and agencies into office. He created the first Transition Coordinating Council that brought together government departments and agencies central to transition. The order provides for the creation of a memorandum of understanding that establishes the terms under which the President-elect’s review teams come into the bureaucracy seeking information. It goes beyond the 2000 transition bill in specifying what information GSA, Office of Personnel Management, the National Archives create a transition directory. The White House Office of Presidential Personnel coordinates with all departments to create a catalogue of positions requiring Senate confirmation with specific information to be gathered.
- **More Information Provided, Including Prior to the Election.** The **Presidential Transition Act of 2000**. For the first time, the act provides for GSA to provide computer and communications information to candidates prior to the election. GSA and the National Archives were called on to provide information on departments and agencies. Government funds increased to \$7.1 million with \$4.27 million to the incoming President and Vice President and \$1.83 million to the outgoing team. Additionally, the act calls for training and orientation of Cabinet and senior executives.
- **2000 Transition Breakdown.** With no winner declared until December 13th, Governor George W. Bush had to raise his own funds and set up his transition operation for half of the time period between the election and the inauguration. As incumbent Vice President, Al Gore did not have a similar problem. That experience will not be repeated as legislation in 2012 provides for candidates to receive funds following the convention.
- **National Security Community Joins the Transition Process.** The **Intelligence Reform and Terrorism Prevention Act of 2004**. The national security community comes into the transition process based on recommendations by the 9/11 Commission. Congress provided for a process for national security clearance that called for candidates, if they wished, to submit names prior to the election for clearance for positions with a national security element.
- **President Bush Creates a Formal and Informal White House Role Coordinating the Executive Branch Transition.** Prior to **Executive Order 13476 Facilitation of a Presidential Transition** issued President Bush, Chief of Staff Joshua Bolten informally met

with the representatives of the major party candidates to work through issues related to security clearances, a memorandum of understanding and a software package to handle an anticipated large number requests of people interested in working in the administration. In June 2008, President Bush issued Executive Order 13467 creating the Suitability and Security Clearance Performance Accountability Council that later coordinated with the Transition Coordinating Council on security issues.

4. 2010-2015. Transition Start Date Moves to Post-Party Nominating Conventions. The 2010 Pre-Election Presidential Campaign Act provided for support following the party conventions for what it called “eligible candidates.” While still voluntary, funds now are available to a broader range of candidates though the bar is quite high for candidates to establish they are eligible.

- **The act provides that the President or his delegate “may take such actions as the President determines necessary and appropriate to plan and coordinate”** federal government activities, such as creating a Transition Coordinating Council and Agency Transition Directors Council. In 2012 President Obama chose not to create either council.
- **Administration Reports on Actions Taken.** The law required the sitting administration to report on what transition preparations they have undertaken. **The reports are required at the six and three month marks prior to the election.** Prior to this act, candidates were required to report their transition contributions. Other than oversight hearings, there was no mention until 2012 about the need for the incumbent administration to report. With this act, those candidates who take public and private funds are required to provide information for auditing both types of funds.
- **Presidential appointments legislation passed in 2012 reduced the number of presidential appointments requiring Senate confirmation** and called for streamlining the appointment process. Such an action took some pressure off of the early appointment process.

5. 2016. A Framework for Transition for What a President and an Administration Is Required to Provide. The Edward “Ted” Kaufman and Mike Leavitt Presidential Transitions Improvement Act of 2015 requires that a President “shall take” actions whereas in the 2010 law the President’s actions were on a “may” basis.

- **The President is required to create a White House Transition Coordinating Council and an Agency Transition Directors Council** both with specified duties and membership. The act makes a transition structure a permanent one as the Agency Transition Directors Council must meet at least once a year in non-presidential election years and regularly in presidential ones. Both councils must be created six months prior to the presidential election.
- **By November 1st, there should be a memorandum of understanding** governing how the President-elect’s team gathers information from government agencies.

Executive Order 13727 Facilitation of a Presidential Transition. President Obama’s May 6, 2016, order carries out the terms of the Presidential Transitions Improvement Act by creating the White House Transition Coordinating Council and the Agency Transition Directors Council specifying their membership and their duties as stated in the law.

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The Rules Governing Presidential Transitions: Laws, Executive Orders, and Funding Provisions¹
 Martha Joynt Kumar, *White House Transition Project*²

Election Year with New Transition Laws Governing Funding and Resources	Allocated Government Funds	Incoming President and Vice President Funds Allocated and Spent	Outgoing President and Vice President Funds Allocated and Spent	Private Funds Raised for the Incoming Presidential Transition / Provisions of Recent Laws Governing the Transition
<p>Transition Law Applying to 1964 Election: Presidential Transition Act of 1963 [PTA] Public Law [PL] 88-277 signed by President Johnson on March 7, 1964</p>	<p>\$900,000 allotted in 1964 law but not spent because incumbent President won election.</p>			<p>The original act is the basic law with all succeeding acts as amendments to the original 1963 PTA. It provides funds can only be used if there is a change of President; no funds for a President and Vice President if reelected.</p> <p>Services and Facilities Provided: office space equipped; payment of office staff and detailees allowed to work on transition; payment of expert consultants; travel expenses; communications services; printing and binding.</p> <p>The President-elect and Vice-President-elect “shall mean such persons as are the apparent successful candidates for the office...as ascertained by the Administrator following the general elections....”</p> <p>Former Presidents and Vice Presidents: Upon request, for a period of six months, the outgoing President or Vice President “for use in connection with winding up the affairs of his office, necessary services and facilities of the same general character as authorized by this act to be provided to Presidents-elect and Vice Presidents-elect...”</p>

<p>Transition Law Applying to 1968 Election: PTA PL 88-277</p>	<p>\$900,000 President Johnson decided division between incoming and outgoing presidents. Legislative history of PTA said funds to be equally divided] ³</p>	<p>\$450,000 allocated to President-elect Nixon and Vice President Agnew. Spent \$1.5 million, including private funds.⁴</p>	<p>President Johnson and VP Humphrey spent \$442,276 – Johnson \$370,276; Humphrey \$75,000 ⁵</p>	<p>President- elect Nixon raised 1 million of private money. ⁶</p>
<p>1974 Resignation PTA does not come into play as there was not a presidential election. President Nixon’s resignation brought Vice President Ford into the presidency.</p>	<p>As per the 1963 PTA because there was no election, President Ford did not receive transition funds</p>			<p>Supplemental Appropriations Act of 1975 appropriated \$100,000 to former President Nixon under PTA for six months ending February 9, 1975.⁷</p>
<p>Transition Law Applying to 1976 Election amendments to PTA: PL 94-499 Signed by President Ford on October 14, 1976</p>	<p>\$3.0 million [1976 bill establishes how much incoming and outgoing presidents receive with \$2.0 million for the incoming President and Vice President and \$1.0 million for the outgoing team]⁸</p>	<p>Carter and Mondale spent \$1.7 of \$2.0 million allocated ⁹</p>	<p>Ford and Rockefeller were allotted \$905,000 and \$95,000 respectively. Ford spent \$686,292 out of \$1 million allocated. President Ford spent \$635,000 and Vice President Rockefeller \$51,292.00. Ford was later assessed for additional funds spent on use of military aircraft. ¹⁰</p>	<p>Raised Transition Spending. No private funds spent though Carter had requested permission from the Federal Election Commission to do so. Request was denied based on FEC decision that campaign funds cannot be used for transition planning. ¹¹</p>
<p>Transition Law Applying to 1980 Election PTA PL 94-499</p>	<p>\$3.0 million</p>	<p>Spent \$1.75 out of \$2.0 million allocated. Vice President Bush spent \$63,378 of those funds.¹²</p>	<p>Spent \$861,526 out of 1 million allocated. President Carter spent \$672,659; Vice President Mondale \$188,867¹³</p>	<p>Ronald Reagan’s Presidential Transition Foundation raised and spent \$1.25 million. No public reporting of funds raised or spent. Federal Election Commission allowed creation of separate campaign and transition accounts.¹⁴</p>
<p>Transition Law Applying to 1988 Election Presidential Transitions Effectiveness Act of 1988 as amended PL 100-398</p>	<p>\$5.0 million. Amendments called for authorized allocations to be adjusted to inflation¹⁵</p>	<p>Spent \$2.3 million out of the \$3.5 million allocated; and transferred \$1 million to Washington DC government for inaugural expenses¹⁶</p>	<p>Reagan spent \$697,034 out of \$1.5 million allocated [\$250,000 of which was authorized to Vice President Bush for his VP transition out if he was not</p>	<p>No private funds spent PTEA requires public reporting for private contributions, their source, amount, and expenditures, including in-kind contributions, and staff information; maximum contribution limit set at \$5,000 for any person or</p>

<p>Signed by President Reagan on August 17, 1988</p>			<p>elected to the presidency. If elected President, the Vice President would receive none. The unspent \$250,00 was transferred to Federal Election. Commission.]¹⁷</p>	<p>organization. Identifies what constitutes in kind contributions, such as transportation, hotel and other accommodations, office space and furniture, furnishings, office machines and equipment. Contribution disclosures must be made within 30 days following the inauguration.¹⁸</p>
<p>Transition Law Applying to 1992 Election: PTEA of 1988 PL 100-398</p>	<p>\$5.0 million</p>	<p>Together President Clinton and Vice President Gore spent \$3,485,000 out of \$3.5 million allocated.¹⁹</p>	<p>Spent \$1,152,131 out of \$1.5 million allocated. President Bush spent \$907,939; Vice President Quayle \$244,192.²⁰</p>	<p>Private funds raised about \$5.3 million ²¹</p>
<p>Transition Law Applying to 2000 Election: Presidential Transition Act of 2000 PL 106-293 Signed by President Clinton on October 13, 2000</p>	<p>\$7.1 million ²²</p>	<p>Spent \$4,000,836 out of \$4.27 million allocated. ²³</p>	<p>\$1.83 million was allocated to Clinton and Gore, \$305,000 of which was to go to Gore. Spent \$1,788,623 out of \$1.83 million allocated; \$282,935 went to outgoing Vice President Gore. ²⁴</p>	<p>Nov. 28 David Barram, the Administrator of the General Services Administration, refused to release any funds until there was a candidate declared as the winner, which occurred December 13. He explained: "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."²⁵ Governor Bush's team rented space in McLean, VA and worked from there until he was declared the winner.</p> <p>December 14, 2000 the Deputy Administrator provided facilities and funds under the PTA</p> <p>Private funds raised about \$5.3 million. Governor Bush establishes \$5,000 contribution limit according to law with an added requirement that no funds come from lobbyists ²⁶</p> <p>Letter by Mark S. Shelton, counsel to Bush-Cheney Presidential Transition Foundation, Inc.</p>

			<p>date February 19, 2001, addressed to Thurman M. Davis, Sr., Acting Administrator GSA, reported total contributions of \$4,718,538.76 and Total Expenditures of Contributed Funds of \$4,385,605.84²⁷</p> <ul style="list-style-type: none"> - Disclosure of in-kind contributions - 1 million provided for orientation of cabinet, senior executive branch personnel: \$983,507 spent for briefings. ²⁸ - NARA and GSA required to create directory of information on federal departments and agencies - GSA required to talk prior to the election to candidates about communications and computer systems - OGE to give report on improvements for financial disclosure process
<p>Executive Order for 2000 Transition: Executive Order 13176 Facilitation of a Presidential Transition, signed by President Clinton November 27, 2000</p>			<p>The executive order did the following:</p> <ul style="list-style-type: none"> - created a Presidential Transition Coordinating Council with 12 specified members chaired by the White House Chief of Staff or his designee and then with “such others as the President may select.” - Administrator of General Services along with directors of Office of Government Ethics, Office of Personnel Management, and the Archivist of the United States creates a transition directory. With specified information on each department and agency. The White House Office of Presidential Personnel coordinates with all departments and agencies to develop a catalogue of all positions requiring Senate confirmation and provide specified information about those positions. The order also provides for the creation of a memorandum of understanding

				establishing transition procedures between the representatives of the outgoing and incoming administrations. ²⁹
<p>Transition Law Applying to 2004 Election: Presidential Transition Act of 2000 PL 106-293 Signed by President Clinton on October 13, 2000</p>	<p>The President’s FY2005 budget called for \$7.7 million provided for transition spending with \$1 million provided for briefings and transition services for incoming administration personnel.</p>	<p>No funds were provided because President George W. Bush won reelection.</p>		<p>Congress turned down a request in the appropriations bill that funds be used for second term training.³⁰</p>
<p>Additional Law Applying to 2008 Election: PL 108-458 Intelligence Reform and Terrorism Prevention Act, [amended in part by PL 111-283 October 15, 2010, Sections 7601 and 8403(b)], signed by President Bush December 17, 2004</p>				<p>Title VII provides in Subtitle F – Presidential Transition - for the following relating to presidential transitions:</p> <ul style="list-style-type: none"> - Section 7601 (a)(1)“Activities under this paragraph shall include the preparation of a detailed classified, compartmented summary by the relevant outgoing executive branch officials of specific operational threats to national security; major military or covert operations; and pending decisions on possible uses of military force. This summary shall be provided to the President-elect as soon as possible after the date of the general elections held to determine the electors of President and Vice President under section 1 or 2 of title 3, United States Code.” - Section 7601 (a)(3) following the election, the Office of the Director of National Intelligence coordinates the investigation and national security clearances for members of the transition team of major party candidates who require access to classified material. This section states the President-election submit: “ the names of candidates for high level national security

			<p>positions through the level of undersecretary of cabinet departments as soon as possible after the date of the general elections.” Also included in this subtitle and section is a: “Sense of the Senate Resolution Regarding Expedited Consideration of National Security Nominees.</p> <p>(1) the President-elect should submit the nominations of candidates for high-level national security positions, through the level of undersecretary of cabinet departments, to the Senate by the date of the inauguration of the President-elect as President; and</p> <p>(2) for all such national security nominees received by the date of inauguration, the Senate committees to which these nominations are referred should, to the fullest extent possible, complete their consideration of these nominations, and, if such nominations are reported by the committees, the full Senate should vote to confirm or reject these nominations, within 30 days of their submission.” This section of the act has not come into play in the transitions following the adoption of the act.</p> <p>- Subtitle 8403 (b)(2) provides that: “Not later than 15 days after the date on which a major party nominates a candidate for President, the Office of Personnel Management shall transmit an electronic record to that candidate on Presidentially appointed positions.”</p> <p>- Subtitle 8403 (b)(3) The information to be provided to the “major party candidates” includes: all positions appointed by the President, their titles and duties; the name of each person holding the positions; vacancies in</p>
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				positions and date when they became vacant appointments; as well as “the date on which an appointment made after the applicable Presidential election for any position ... is necessary to ensure effective operation of the Government”; ³¹
Transition Law Applying to 2008 Election: Presidential Transition Act of 2000 PL 106-293 Signed by President Clinton on October 13, 2000	President Bush FY2009 budget request: \$8.520 million with \$1million of those funds dedicated to briefings and other personnel activities designed for those chosen to serve in the new administration	Spent the allocated \$5.2 million in public funds as well as private funds raised. ³²	\$2.2 million allocated for the transition out of office. ³³	Contributions for Obama- Biden Transition Project, Inc. were \$4,489,965.76 with expenditures of \$3,568,549.62. They returned donations of \$5,350.00. ³⁴ \$1 million provided for training incoming staff
Executive Order for 2008 Transition: Executive Order 13476 Facilitation of a Presidential Transition, signed by President George W. Bush October 9, 2008				The executive order provided for the following basic actions: Section 1: Presidential Transition Coordination. - created a Presidential Transition Coordinating Council with 15 specified members chaired by the White House Chief of Staff and then with “such others as the President or the Chair of the Council may select.” Section 2: Transition Activities and Materials. - “at the direction of the Council ... the White House Office of Presidential Personnel shall supplement as appropriate and necessary the electronic record of all title 5 presidentially appointed positions provided by the Office of Personnel Management to the major party candidates pursuant to section 8403(b)of the IRTPA [Intelligence Reform and Terrorism Prevention Act]” ; the administrator of GSA

				<p>develops a transition directory with specified information on each government department and agency. Suitability and Security Clearance Performance Accountability Council created by Executive Order 13467 by President Bush June 30 2008 coordinates with the Transition Coordinating Council on some security clearance issues.</p> <p>Section 3: Transition Agreements. - Also provides for the creation of a memorandum of understanding about transition procedures between the representatives of the outgoing and incoming administrations.</p>
<p>Transition Law Applying to 2012 Election: Pre-Election Presidential Transition Act of 2010 [PEPTA] PL 111-283</p> <p>Signed by President Obama on October 15, 2010</p>	<p>Beginning following the Republican convention when he was chosen the Republican presidential nominee, GSA provided the Romney transition team with office space, furniture, supplies, travel support and administrative support, as well as communications and information security.³⁵</p>	<p>\$5.6 million allocated for a President-elect if there was a change in administrations. \$2,347,000 allocated in FY2013 budget for former President and Vice-President if there was a change in administrations.³⁶</p> <p>Section 4 provides for “such sums as may be necessary to carry out the provisions” of the PTA for the President-elect and the Vice President-elect.³⁷</p> <p>Up to 10% of the monies can be on “expenditures that are classified and are essential to the national</p>	<p>\$8.9 million in public funds was spent on Republican presidential candidate Governor Mitt Romney’s pre-election transition effort between August 30 – November 9, 2012. The costs were: information technology and computer and other IT equipment cost \$5.6 million, office construction and planning \$2.5 million, furniture \$740,000, office supplies \$30,000.⁴⁰</p>	<p>Acceptance of funds calls for restrictions on private funding with no more than \$5,000 from any person or organization with the requirement that the information be publicly released.</p> <p>Section 2 provides that those who can receive support are no longer defined as “major party candidates” as was true in legislation and in the Clinton and George W. Bush executive orders. They are now referred to as “eligible candidates.” An eligible candidate is defined as: - meets the requirements of Article II, Section 1 of the Constitution; is on the ballots of states that add up to more than 50 percent of presidential electors; has “demonstrated a significant level of public support in national public opinion polls, so as to be realistically considered among the principal contenders” for the presidency; whether “national organizations have recognized the candidate as being among</p>

		<p>security” as certified the President-elect, Vice President-elect or “designated assistant” and consistent with the PTA.³⁸ This is a provision in the original 1964 legislation worked out in conference committee. “Not more than 10 per centum of the total expenditures under this Act for any President-elect or Vice-President-elect may be made upon the basis of a certificate by him or the assistant designated by him pursuant to this section that such expenditures are classified and are essential to the national security...”³⁹</p>	<p>the principal contenders for the general election to such offices, including whether the Commission on Presidential Debates has determined that the candidate is eligible to participate in the candidate debates for the general election...”⁴¹</p> <p>Section 3 states: “The President of the United States, or the President’s delegate, may take such actions as the President determines necessary and appropriate to plan and coordinate activities by the Executive branch of the Federal Government to facilitate an efficient transfer of power to a successor President...”⁴²The President can create a transition coordinating council; create an agency transition directors council composed of career service designees; guidance to executive agencies; development of information from past transition for eligible candidates.</p> <ul style="list-style-type: none"> - GSA makes sure computers are secure; gives report on modern presidential transition activities; computer software - the law calls for GSA to report to Senate and House on administration preparations at the six and three month marks. Law calls for the administration to provide reports in June and September on what preparations they have done for an incoming team.⁴³ An undated and unsigned letter to Senator Lieberman, chair of the Senate Committee on Homeland Security and Governmental Affairs on behalf of the administration detailed some of the actions taken by GSA by June 2012 including: - appointed a Federal Transition Coordinator; set up ready for IT and computer security as
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			<p>well as readying computers; transition staff plan ready; with the National Archives and Records Administration developed Federal publications and materials on responsibilities on each department and agency. Selected transition building.⁴⁴</p> <p>A second unsigned report from the General Services Administration sent on September 28th 2012 reported the following: identified career officials to lead an internal transition in each agency; offered Republican candidate Governor Romney pre-election services with offer accepted. Pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004 and its amended Sections 7601 and 8403(b): ODNI began system to for investigating and adjudicating security clearances for identified national security positions; ODNI planned system to deliver national security briefings for eligible candidates; OPM is preparing an electronic record of all positions appointed by a President.⁴⁵</p> <p>Sections 4 authorizes GSA for seven months to provide services and facilities for the outgoing President and Vice President.</p> <p>Section 5 details the conditions for candidates of their acceptance of public funds. The President-elect and the Vice President-elect “shall make available to the Administrator and the Comptroller General all information concerning such contributions as the Administrator and Comptroller General may require for purposes</p>
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			<p>of auditing both the public and private funding used in the activities authorized by this Act.”⁴⁶</p>
<p>2012: Presidential Appointment Efficiency and Streamlining Act of 2011 PL 112-166, signed by President Obama, August 10, 2012</p>			<p>Section 2. 169 Presidential Appointees Senate confirmed (PAS) positions converted to Presidential Appointee (PA) without Senate confirmation.⁴⁷</p> <p>Section 3. Provides for a five-year appointment for the Director of the Census with no director serving more than two terms. The President can remove the director but must report to Congress in writing the reasons for the removal.</p> <p>Section 4. Created a Working Group on Streamlining Paperwork for Executive Nominations was tasked with conducting a study and making a report on streamlining the paperwork involved in presidential nominations with an interest in creating a Smart Form. The group was also tasked with reviewing the effect of background investigation process and rules on the presidential appointment process.</p> <p>The Working Group chaired by Lisa Brown, Acting Federal Chief Performance Officer, OMB, recommended in its November 5, 2012 report that different questions be posed to nominees for different positions, especially for part-time ones such as boards and commissions; trim duplicative questions; reduce burdensome questions, such as the requirement on the SF 86 national security form that nominees for positions list all of their travel outside of the United States for the past 15 years.⁴⁸ Even those nominated for part-time boards and commissions are required to fill them out even</p>

			<p>though 60% of those positions have no national security dimensions to them.⁴⁹ The Working Group called for the development of a Smart Form, but Congress did not fund it.⁵⁰</p> <p>Section 5. Tasks the Government Accountability Office with conducting a study and submitting a report identifying presidentially-appointed positions not requiring Senate confirmation and reporting back to Congress and the President. The effort here is to see if further streamlining can be done with the appointment process, such as converting presidentially-appointed positions to career ones.⁵¹</p>
<p>Transition Law Applying to 2016 Election: The Edward “Ted” Kaufman and Michael Leavitt Presidential Transitions Improvement Act of 2015 PL 114-136, signed by President Obama March 28, 2016</p>	<p>President Obama’s FY 2016 budget requested \$13.278 million to carry out the requirements of the Pre-Election Presidential Transition Act of 2010 and Congress included the funds in the Consolidated Appropriations Act enacted December 18, 2015.⁵² The FY 2017 budget for GSA has a request for \$9.5 million for transition activities with the proviso that no more than \$1 million be spent on training activities.⁵³ In addition to the GSA presidential transition request, the National Archives and Records</p>		<p>Creates a framework for what a sitting administration must provide to presidential candidates and to the President-elect.</p> <p>Section 2. Presidential Transition Improvements. The 2010 transition legislation said a President “may” take the actions found in Section 2, but in this act a President “shall” do so. The act provides that the President “shall take such actions as the President determines necessary and appropriate to plan and coordinate activities by the Executive branch... to facilitate an efficient transfer of power to a successor President, including by ...</p> <ul style="list-style-type: none"> - establishing and operating a White House transition coordinating council... - establishing and operating an agency transition directors council... - designate an employee of the General Services Administration as the Federal Transition Coordinator [FTC]...⁵⁹ [Tim Horne has been designated to fill that position as he did in 2012.]

	<p>Administration FY 2017 request includes an increase of \$4.9 million in addition to a request for 15 FTE employees. “Funds requested would provide for the transportation of electronic records to NARA’s data center in Keyser, WV, transportation of analog records and artifacts to a temporary storage facility in Chicago, I, and new employee to staff the temporary facility.”⁵⁴ The NARA request includes a description of the magnitude of the records challenge: “On January 20, 2017, NARA will assume legal custody of over 200 Terabytes of electronic Presidential records, an estimated 60 million pages of Presidential records in analog formats, and approximately 50,000 presidential artifacts.”⁵⁵ The House Appropriations Committee has a one-time expense for the Executive Office of the President for \$7.6 million.⁵⁶ The President’s budget described the need as for</p>			<p>The FTC coordinates transition planning across agencies and serves as co-chair along with the Deputy Director for Management of OMB of the Agency Directors Transition Council; members include:</p> <ul style="list-style-type: none"> - senior representatives of any agency that “has significant responsibilities include leading Presidential transition efforts with the agency,” and senior employees of the Executive Office of the President.⁶⁰ Also in a presidential election year, the Council will include: “transition representatives for each eligible candidates, who shall serve in an advisory capacity.”⁶¹ The Council must meet at least once a year and during a presidential election year “on a regular basis” beginning six months before the election and until after the inauguration.⁶² <p>In a section on interim agency leadership for transitions, the act calls for creating interim agency leadership: at least six months before a presidential election, the heads of agencies designate senior career employees to oversee and implement the activities of the agency’s transition activities; by September 15 of the presidential election year, agency heads of critical agencies designate a “qualified career employee” to serve in “an acting capacity if the position becomes vacant.”⁶³</p> <p>The act provides for the creation a Memorandum of Understanding that will govern the conditions under which the President-elect’s representatives can gather information from government agencies and staff. By November 1st of a presidential election year, the President through the Federal Transition</p>
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	<p>“\$7,582,000 for administrative support for the Office of Administration is for data migration services for processing of records of the departing President and Vice President under the Presidential Records Act for transfer to the National Archives and Records Administration and for other transition-related administrative expenses.”⁵⁷ The funds are separate from funds requested for the Archives or for GSA. The House Appropriations Committee also included in its budget for presidential transition, a sum of \$25.00 million for “Federal Payment for Emergency Planning and Security in the District of Columbia.”⁵⁸</p>			<p>Coordinator, shall “to the maximum extent practicable, negotiate a memorandum of understanding with the transition representative of each eligible candidate... the conditions of access to employees, facilities, and documents of agencies by transition staff.”⁶⁴ The act insures that all of the following information is offered to eligible candidates on “an equal basis and without regard to political affiliation.”⁶⁵ The FTC must file reports with the House Committee on oversight and Government Reform and the Senate Committee on Homeland Security and Government Affairs and the six and 3 months prior to the election “describing the activities undertaken by the President and agencies to prepare for the transfer of power to a new President.”⁶⁶ Section 3. National Archives Presidential Transition. When the President “considers it practicable and in the public interest, the President shall include in the President’s budget transmitted to Congress ... such funds as may be necessary for carrying out the authorities in this subsection.”⁶⁷ [see budget request in the companion budget column] Section 4. Reports on Political Appointees Appointed to Nonpolitical Permanent Positions. In order to keep track of possible end of administration actions by the incumbent administration in the areas of presidential appointments and regulations, the law requires the Office of Personnel Management to report annually on political positions converted to nonpolitical permanent civil service positions. In a presidential election year, reports will be</p>
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			<p>submitted quarterly and provided to the above House and Senate committees.⁶⁸</p> <p>Section 5. Report on Regulations Promulgated Near the End of Presidential Terms. In order to understand the patterns of regulations, the law requires the Comptroller General to study regulations promulgated since 1996 to “compare the number, scope, and impact of, and type of rulemaking procedure” for those made at the end of each year and “determine the statistical significance of any differences”⁶⁹</p> <p>Section 6. Analysis of Threats and Vulnerabilities. The Secretary of Homeland Security is tasked with submitting a report to the Senate Homeland Security and Governmental Affairs Committee and the House Committee on Oversight and Government Reform that analyzes “threats and vulnerabilities facing the United States during a presidential transition.” The report shall “identify and discuss vulnerabilities related to border security and threats related to terrorism, including from weapons of mass destruction.” The report should also “identify steps being taken to address the threats and vulnerabilities” during the time of a transition.⁷⁰</p>
<p>Executive Order for 2016 Transition: Executive Order 13727 Facilitation of a Presidential Transition, signed by President Barack Obama May 6, 2016</p>			<p>The executive order carries out the terms of the Presidential Transition Improvement Act: enacted March 28, 2016, by calling for the creation of the White House Transition Coordinating Council and the Advisory Transition Directors Council:</p> <p>Section 2. Establishment of the White House Transition Coordinating Council. “To facilitate</p>

			<p>the Presidential transition, including assisting and supporting the transition efforts of the transition teams of eligible candidates, there is established a White House Transition Coordinating Council.”⁷¹ It is composed of 12 specified members led by the White House Chief of Staff and then with “the transition representative for each eligible candidate, who shall serve in an advisory capacity.”⁷² The duties specified are similar to ones called for in the Presidential Transitions Improvement Act.⁷³</p> <p>Section 3. Establishes a Agency Transition Directors Council co-chaired by the Federal Transition Coordinator and the Deputy Director for management of the Office of Management and Budget with a senior career executive representing each agency as well as a representatives of each eligible candidate. The Council’s purpose: “To implement the guidance provided by the White House Transition Coordinating Council and to coordinate transition activities across agencies, there is established an Agency Transition Directors Council.”⁷⁴ Among its responsibilities, the Agency Transition Directors Council shall “ensure the Federal government has an integrated strategy for addressing interagency challenges and responsibilities around Presidential transition and turnover of non-career appointees.”⁷⁵ The list of Council responsibilities tracks word-for-word with few exceptions with a similar list found in the Presidential Transitions Improvements Act.⁷⁶</p>
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				The order also mandates that the Agency Transition Directors Council meet at least once per year and on a regular basis six months prior to a presidential election until a President-elect is inaugurated. ⁷⁷
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Endnotes

¹ This table builds on an earlier version found in Martha Joynt Kumar, *Before the Oath: How George W. Bush and Barack Obama Managed a Transfer of Power* (Baltimore: Johns Hopkins University Press, 2015) 40-43.

² Martha Joynt Kumar is director of the White House Transition Project [whitehoustransitionproject.org], which is a nonpartisan program funded by The Moody Foundation of Galveston Texas. We are working on the project with Rice University's Baker Institute for Public Policy. This report is part of the White House Transition Project's initiative, "Smoothing the Peaceful Transfer of Democratic Power." The project is composed of presidency scholars who together are providing information on presidential transitions and White House offices and operations to those who coming into the White House in 2017. The group provided information to the candidates and White House staff for the 2000 and 2008 presidential transitions.

³ Smith, 3, and John Burke, *Presidential Transitions: From Politics to Practice* (Boulder CO: Lynne Reinner Publishers, 2000), 9.

⁴ Smith, 4.

⁵ Smith, 4.

⁶ Smith, 4.

⁷ Smith, 5.

⁸ Smith, 5.

⁹ Smith, 5.

¹⁰ Smith, 5.

¹¹ John Burke, *Presidential Transitions: From Politics to Practice* (Boulder CO: Lynne Reinner Publishers, 2000), note 4, 132 and 134-5.

¹² Smith, 6.

¹³ Smith, 6.

¹⁴ Smith, 6, and Burke, 132, note 4.

¹⁵ Smith, 7.

¹⁶ Smith, 8.

¹⁷ Smith, 8.

¹⁸ Presidential Transition Effectiveness Act of 1988, SEC. 5. (a) (1) "3 USC 102 note" and SEC. 5.3 USC 102 note.

¹⁹ Smith, 9.

²⁰ Smith, 9.

²¹ John Broder, "Raising Millions More for Separate Transitions," *New York Times*, November 11, 2000.

²² Smith, 10.

²³ Smith, 10.

²⁴ Smith, 10.

²⁵ Henry B. Hogue, "Presidential Transition Act: Provisions and Funding," Congressional Research Service, April 12, 2016, 23.

²⁶ Clay Johnson, "The 2000-2001 Presidential Transition: Planning, Goals, and Reality," in *White House World: Transitions, Organization, and Office Operations* (College Station, TX: Texas A & M University Press, 2003), 314.

²⁷ Letter by Mark S. Shelton, counsel to Bush-Cheney Presidential Transition Foundation, Inc. date February 19, 2001, addressed to Thurman M. Davis, Sr., Acting Administrator GSA, reported total contributions of \$4,718,538.76 and Total Expenditures of Contributed Funds of 4,385,605.84.

²⁸ Smith, 10.

²⁹ President Clinton, Executive Order 13176, November 27, 2000.

³⁰ Smith, 11.

³¹ This section of the Intelligence Reform and Terrorism Prevention Act of 2004 was amended in part by PL 111-283 signed October 15, 2010

³² Center for Presidential Transition, "Presidential Transition Guide," April 2016, 18.

³³ Center for Presidential Transition, "Presidential Transition Guide," April 2016, 18.

³⁴ Letter from John Podesta, co-chairman of Obama-Biden Transition Project, Inc., to Paul F. Prouty, Acting Administrator of the General Services Administration, September 14, 2009.

³⁵ Darren Blue, senior career executive in charge of GSA, to Senator Joseph I. Lieberman, Chairman, Committee on Homeland Security and Governmental Affairs, General Service Administration Report (redacted) June 2012, "Enclosure 2012 GSA Presidential Transition Activities: Detailed Overview and Progress Report as of June, 2012," 2.

³⁶ Darren Blue, senior career executive in charge of GSA, to Senator Joseph I. Lieberman, Chairman, Committee on Homeland Security and Governmental Affairs, General Service Administration Report (redacted) June 2012, "Enclosure 2012 GSA Presidential Transition Activities: Detailed Overview and Progress Report as of June, 2012," 5.

³⁷ Henry B. Hogue, "Presidential Transition Act: Provisions and Funding," Congressional Research Service, April 12, 2016, 2.

³⁸ Hogue, 2016, 2.

³⁹ Presidential Transition Act of 1963, Public Law 88-277, SERVICES AND FACILITIES AUTHORIZED TO BEW PROVIDED TO PRESIDENTS-ELECT AND VICE PRESIDENTS-ELECT Section 3 (e).

⁴⁰ Katy Steinmetz, “The Cost of Romney’s Government-Assisted Transition: \$8.9 Million, *Time*, December 19, 2012, online at: <http://swampland.time.com/2012/12/19/the-cost-of-romneys-government-assisted-transition-8-9-million/>

⁴¹ Pre-Election Presidential Transition Act of 2010, Public Law 111-283, Section 2 CERTAIN PRESIDENTIAL TRANSITION SERVICES MAY BE PROVIDED TO ELIGIBLE CANDIDATES BEFORE GENERAL ELECTION, (4) (B) (i).

⁴² Pre-Election Presidential Transition Act of 2010, Public Law 111-283, Section 3. AUTHORIZATION OF TRANSITION ACTIVITY BY THE INCUMBENT ADMINISTRATION, (a)

⁴³ *Ibid.*, Section 3. (b) (1) (2).

⁴⁴ Darren Blue, Senior Career Executive in charge of GSA, to Senator Joseph I. Lieberman, Chairman, Committee on Homeland Security and Governmental Affairs, General Service Administration Report (redacted) June 2012, “Enclosure 2012 GSA Presidential Transition Activities: Detailed Overview and Progress Report as of June, 2012,” 1-5.

⁴⁵ Darren Blue, Senior Career Executive in charge of GSA, to Senator Joseph I. Lieberman, Chairman, Committee on Homeland Security and Governmental Affairs, September 28, 2012

⁴⁶ Pre-Election Presidential Transition Act of 2010, Public Law 111-283, Section 5 DISCLOSURES OF FINANCING AND PERSONNEL ON ACCEPTANCE OF DONATIONS, (a)(2).

⁴⁷ Presidential Appointment Efficiency and Streamlining Act of 2011, Public Law 112-166, Section 2 APPOINTMENT OF THE DIRECTOR OF THE CENSUS, 21 (a).

⁴⁸ Working Group on Streamlining Paperwork for Executive Nominations, *Streamlining Paperwork for Executive Nominations: Report to the President and the Chairs and Ranking Members of the Senate Committee on Homeland Security & Governmental Affairs and the Senate Committee on Rules & Administration*, November 2012, 23.

⁴⁹ *Ibid.*, 28.

⁵⁰ *Ibid.*, 29-33.

⁵¹ Presidential Appointment Efficiency and Streamlining Act of 2011, Public Law 112-166, Section 5. REPORT ON PRESIDENTIALLY APPOINTED POSITIONS, (b) (c).

⁵² Hogue, 2016, 3-4.

⁵³ Hogue, 2016, 4.

⁵⁴ National Archives and Records Administration, *FY 2017 Congressional Justification*, February 9, 2016, NARA-2.

⁵⁵ *Ibid.*, NARA Operating Expenses, “Presidential Transition,” OE-6.

⁵⁶ House Committee on Appropriations, “Press Release: Appropriations Committee Releases Fiscal Year 2017 Financial Services Bill,” May 24, 2016, <http://appropriations.house.gov/news/documentsingle.aspx?DocumentID=394563>.

⁵⁷ Executive Office of the President, Fiscal Year 2017, “Congressional Budget Submission,” Administrative Support, AS-3.

⁵⁸ House Committee on Appropriations, “Press Release: Appropriations Committee Releases Fiscal Year 2017 Financial Services Bill,” May 24, 2016, <http://appropriations.house.gov/news/documentsingle.aspx?DocumentID=394563>.

⁵⁹ The Edward “Ted” Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015, Section 2. (b) (1) and (2) and (c).

⁶⁰ *Ibid.*, Section 2 (e) (3) (D).

⁶¹ *Ibid.*, Section 2 (e) (3) (E).

⁶² *Ibid.*, Section 2 (e) (4) (A) and (B).

⁶³ *Ibid.*, Section 2 (f) (1) and (2).

⁶⁴ *Ibid.*, Section 2 (g) (1).

⁶⁵ *Ibid.*, Section 2 (h).

⁶⁶ *Ibid.*, Section 2 (i) (1) and (2).

⁶⁷ The Edward “Ted” Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015, Section 3. NATIONAL ARCHIVES PRESIDENTIAL TRANSITION. (3).

⁶⁸ The Edward “Ted” Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015, Section 4. REPORTS ON POLITICAL APPOINTEES APPOINTED TO NONPOLITICAL PERMANENT POSITIONS. (b) Reporting on Current or Recent Political Appointees Appointed to Covered Civil Service Positions. (1) and (2).

⁶⁹ The Edward “Ted” Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015, Section 5. REPORT ON REGULATIONS PROMULGATED NEAR THE END OF PRESIDENTIAL TERMS. (b) (2) (A) and (B).

⁷⁰ *Ibid.*, Section 6. ANALYSIS OF THREATS AND VULNERABILITIES. (a) (1) and (2).

⁷¹ Executive Order 13727 Facilitation of a Presidential Transition, Section 2 Establishment of the White House Transition Coordinating Council.

⁷² Executive Order 13727 Facilitation of a Presidential Transition, Section 2 Establishment of the White House Transition Coordinating Council, (b) (xiii).

⁷³ The Edward “Ted” Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015, Section 4. TRANSITION SERVICES AND ACTIVITIES BEFORE ELECTION, (d) Duties. -- White House transition coordinating council, (2), (A), (B), and (C).

⁷⁴ Executive Order 13727 Facilitation of a Presidential Transition, Section 3 Establishment of the Agency Transition Directors Council, (a).

⁷⁵ *Ibid.*, (c) The Agency Transition Directors Council shall: (i)

⁷⁶ Executive Order 13727 Facilitation of a Presidential Transition, Section 3 Establishment of the Agency Transition Directors Council, (c) The Agency Transition Directors Council shall: (i) - (viii). The executive order responsibilities list is similar to one found in the Presidential Transitions Improvements Act of 2015, Section 4. TRANSITION SERVICES AND ACTIVITIES BEFORE ELECTION, (e) Agency Transition Directors Council. (1) In general. (A), (B), (C) and (2) Duties. (A) – (E).

⁷⁷ Executive Order 13727 Facilitation of a Presidential Transition, Section 3 Establishment of the Agency Transition Directors Council, (d).