



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 27, 2020

M-20-24

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Russell T. Vought
Acting Director

A handwritten signature in blue ink, appearing to read "R. Vought", written over the printed name of the Acting Director.

SUBJECT: Implementing the Presidential Transition Act

This Memorandum provides guidance to all Executive departments and agencies (“agencies”) on assisting the Presidential transition activities required by the Presidential Transition Act of 1963, as amended (3 U.S.C. § 102 note).

Background

The Presidential Transition Act promotes the orderly transfer of Executive powers in connection with the expiration of the term of office of a President and the inauguration of a new President. The activities required by the Act are also helpful to prepare for leadership transitions that occur between the first and second terms of Administrations.

The Act requires the establishment of a White House Transition Coordinating Council, an Agency Transition Directors Council, and designation of a General Services Administration (GSA) Federal Transition Coordinator. The Act sets up a timetable for agencies to name points of contact to assist with transition efforts and develop succession plans and establishes responsibilities for the Agency Transition Directors Council.

Timetable of Required Agency Actions

1. By May 1, 2020, each agency identified in Enclosure 1 shall name its Agency Transition Director. The Agency Transition Director should be a senior career representative whose responsibilities include leading Presidential transition efforts within the agency. Agencies shall provide the name, title, email address, and telephone number for their Agency Transition Directors to GSA’s Federal Transition Coordinator at PresidentialTransition2020@gsa.gov. These individuals will serve on the Agency Transition Directors Council, co-chaired by the Federal Transition Coordinator and the Deputy Director for Management of the Office of Management and Budget (OMB).

2. By May 1, 2020, each agency identified in Enclosure 2 shall identify a point of contact for communication purposes related to Presidential transition efforts. Agencies shall provide the name, title, email address, and telephone number for their communication coordination to GSA's Federal Transition Coordinator at PresidentialTransition2020@gsa.gov.
3. Not later than September 15, 2020, and in accordance with subchapter III of chapter 33 of title 5, United States Code, the head of each agency¹ shall ensure that a succession plan² is in place for each senior non-career position in the agency.

Responsibilities

The Agency Transition Directors Council shall:

- i. Ensure the Federal Government has an integrated strategy for addressing interagency challenges and responsibilities around Presidential transitions and turnover of non-career appointees;
- ii. Coordinate transition activities among the Executive Office of the President, agencies, and the transition team of eligible candidates and the President-elect and vice-President-elect;
- iii. Draw on guidance provided by the White House Transition Coordinating Council and lessons learned from previous Presidential transitions in carrying out its duties;
- iv. Assist the Federal Transition Coordinator in identifying and carrying out the responsibilities of the Federal Transition Coordinator relating to a Presidential transition;
- v. Provide guidance to agencies in gathering briefing materials and information relating to the Presidential transition that may be requested by eligible candidates;
- vi. Ensure materials and information described in subparagraph (v) above are prepared not later than November 1 of the year during which a Presidential election is held;
- vii. Ensure agencies adequately prepare career employees who are designated to fill non-career positions during a Presidential transition; and
- viii. Consult with the President's Management Council, or any successor thereto, in carrying out its duties.

OMB and GSA intend to hold an Agency Transition Directors Council meeting on May 27, 2020. Calendar invitations will be distributed to the Agency Transition Directors in advance of the meeting.

¹ As used in this memorandum, the term 'agency' means an Executive agency, as defined in section 105 of title 5, United States Code.

² Required pursuant to the Presidential Transition Enhancements Act of 2019 (Pub. L. 116-121).

If you have any questions regarding this Memorandum, please contact Mary Gibert, Federal Transition Coordinator at GSA (mary.gibert@gsa.gov).

Enclosures:

1. List of Agencies to Provide Agency Transition Director
2. List of Agencies to Provide Presidential Transition Communication Point of Contact Information
3. Text of Presidential Transition Act of 1963, as amended (3 U.S.C. 102 note)

Enclosure 1

List of Agencies to Provide Agency Transition Director

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
Department of Veterans Affairs
Environmental Protection Agency
National Aeronautics and Space Administration
Office of Personnel Management
Office of Government Ethics
National Archives and Records Administration

List of Agencies to Provide Presidential Transition
Communication Point of Contact Information

Ability One
Access Board
Administrative Conference of the U.S.
Advisory Council on Historic Preservation
African Development Foundation
Alaska Natural Gas
American Battle Monuments Commission
American National Red Cross
Amtrak (National Railroad Passenger Corporation)
Appalachian Regional Commission
Barry Goldwater Scholarship and Excellence in Education Foundation
Broadcasting Board of Governors
Chemical Safety Board
Christopher Columbus Fellowship Foundation
Commission for the Preservation of America's Heritage Abroad
Commission on Civil Rights
Commission on Fine Arts
Commodity Futures and Trading Commission
Consumer Financial Protection Bureau
Consumer Product Safety Commission
Corporation for National and Community Service
Corporation for Public Broadcasting
Council of Governors
Defense Nuclear Facilities Safety Board
Delta Regional Authority
Denali Commission
District of Columbia Commission on Judicial Disabilities and Tenure
Dwight D. Eisenhower Memorial Commission
Election Assistance Commission
Equal Employment Opportunity Commission
Export Import Bank of the United States
Farm Credit Administration
Federal Agricultural Mortgage Corporation (Farmer Mac)
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Election Commission
Federal Energy Regulatory Commission
Federal Housing Finance Agency
Federal Labor Relations Authority
Federal Maritime Commission
Federal Mediation and Conciliation Service

Federal Mine Safety and Health Review Commission
Federal Permitting Improvement Steering Council
Federal Reserve Board
Federal Retirement Thrift Investment Board
Federal Trade Commission
Gulf Coast Ecosystem Restoration Council
Harry S. Truman Scholarship Foundation
Institute of American Indian Arts
Institute of Museum and Library Services
Interagency Council on Homelessness
Inter-American Foundation
Inter-American Tropical Tuna Commission
International Boundary and Water Commission
International Pacific Halibut Commission
Interstate Commission on the Potomac River Basin
J. William Fulbright Foreign Scholarship Board
James Madison Memorial Fellowship Foundation
John F. Kennedy Center for the Performing Arts
Legal Services Corporation
Marine Mammal Commission
Merit Systems Protection Board
Metropolitan Washington Airports Authority
Mickey Leland National Urban Air Toxic Research Committee
Millennium Challenge Corporation
Mississippi River Commission
Morris K. Udall and Stewart L. Udall Foundation
National Capital Planning Commission
National Consumer Cooperative Bank
National Council on Disability
National Credit Union Administration
National Endowment for the Arts
National Endowment for the Humanities
National Indian Gaming Commission
National Institute of Building Sciences
National Labor Relations Board
National Mediation Board
National Science Foundation
National Transportation Safety Board
Northern Border Regional Commission
Nuclear Regulatory Commission
Nuclear Waste Technical Review Board
Occupational Safety and Health Review Commission
Office of Navajo and Hopi Indian Relocation
Office of the Director of National Intelligence
Overseas Private Investment Corporation
Peace Corps

Pension Benefit Guaranty Corporation
Postal Regulatory Commission
President's Commission on White House Fellowships
President's Committee on the Arts and the Humanities
Presidio Trust
Privacy and Civil Liberties Oversight Board
Railroad Retirement Board
Selective Service System
Small Business Administration
Smithsonian Institution
Social Security Administration
Social Security Advisory Board
State Justice Institute
Tennessee Valley Authority
U.S. Agency for International Development
U.S. Institute of Peace
U.S. International Trade Commission
U.S. Mission to the United Nations
U.S. Office of Special Counsel
U.S. Postal Service
U.S. Securities and Exchange Commission
U.S. Trade and Development Agency
United Service Organizations
United States Commission on International Religious Freedom
United States Holocaust Memorial Museum
United States Patent & Trademark Office
Utah Reclamation Mitigation and Conservation Commission
Vietnam Education Foundation
Woodrow Wilson International Center for Scholars (Board of Trustees)
World War I Centennial Commission

Enclosure 3

Text of Presidential Transition Act of 1963, as amended (3 U.S.C. 102 note)

<https://www.govinfo.gov/content/pkg/PLAW-114publ136/pdf/PLAW-114publ136.pdf>

Public Law 114-136
114th Congress

An Act

To improve the process of presidential transition.

Mar. 18, 2016

[S. 1172]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Edward 'Ted'
Kaufman and
Michael Leavitt
Presidential
Transitions
Improvements
Act of 2015.
5 USC 101 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Edward ‘Ted’ Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015”.

SEC. 2. PRESIDENTIAL TRANSITION IMPROVEMENTS.

(a) IN GENERAL.—The Presidential Transition Act of 1963 (3 U.S.C. 102 note) is amended—

- (1) by redesignating sections 4, 5, and 6 as sections 5, 6, and 7, respectively; and
- (2) by inserting after section 3 the following:

“SEC. 4. TRANSITION SERVICES AND ACTIVITIES BEFORE ELECTION.

“(a) DEFINITIONS.—In this section—

“(1) the term ‘Administrator’ means the Administrator of General Services;

“(2) the term ‘agency’ means an Executive agency, as defined in section 105 of title 5, United States Code;

“(3) the term ‘eligible candidate’ has the meaning given that term in section 3(h)(4); and

“(4) the term ‘Presidential election’ means a general election held to determine the electors of President and Vice President under section 1 or 2 of title 3, United States Code.

“(b) GENERAL DUTIES.—The President shall 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, including by—

“(1) establishing and operating a White House transition coordinating council in accordance with subsection (d); and

“(2) establishing and operating an agency transition directors council in accordance with subsection (e).

“(c) FEDERAL TRANSITION COORDINATOR.—The Administrator shall designate an employee of the General Services Administration who is a senior career appointee to—

Designation.

“(1) carry out the duties and authorities of the General Services Administration relating to Presidential transitions under this Act or any other provision of law;

“(2) serve as the Federal Transition Coordinator with responsibility for coordinating transition planning across agencies, including through the agency transition directors council established under subsection (e);

“(3) ensure agencies comply with all statutory requirements relating to transition planning and reporting; and

“(4) act as a liaison to eligible candidates.

“(d) WHITE HOUSE TRANSITION COORDINATING COUNCIL.—

Deadline.

“(1) ESTABLISHMENT.—Not later than 6 months before the date of a Presidential election, the President shall establish a White House transition coordinating council for purposes of facilitating the Presidential transition.

“(2) DUTIES.—The White House transition coordinating council shall—

“(A) provide guidance to agencies and the Federal Transition Coordinator regarding preparations for the Presidential transition, including succession planning and preparation of briefing materials;

“(B) facilitate communication and information sharing between the transition representatives of eligible candidates and senior employees in agencies and the Executive Office of the President; and

“(C) prepare and host interagency emergency preparedness and response exercises.

“(3) MEMBERSHIP.—The members of the White House transition coordinating council shall include—

“(A) senior employees of the Executive branch selected by the President, which may include the Chief of Staff to the President, any Cabinet officer, the Director of the Office of Management and Budget, the Administrator, the Director of the Office of Personnel Management, the Director of the Office of Government Ethics, and the Archivist of the United States;

“(B) the Federal Transition Coordinator;

“(C) the transition representative for each eligible candidate, who shall serve in an advisory capacity; and

“(D) any other individual the President determines appropriate.

“(4) CHAIRPERSON.—The Chairperson of the White House transition coordinating council shall be a senior employee in the Executive Office of the President, designated by the President.

“(e) AGENCY TRANSITION DIRECTORS COUNCIL.—

Establishment.

“(1) IN GENERAL.—The President shall establish and operate an agency transition directors council, which shall—

“(A) ensure the Federal Government has an integrated strategy for addressing interagency challenges and responsibilities around Presidential transitions and turnover of noncareer appointees;

“(B) coordinate transition activities between the Executive Office of the President, agencies, and the transition team of eligible candidates and the President-elect and Vice-President-elect; and

“(C) draw on guidance provided by the White House transition coordinating council and lessons learned from previous Presidential transitions in carrying out its duties.

“(2) DUTIES.—As part of carrying out the responsibilities under paragraph (1), the agency transition directors council shall—

“(A) assist the Federal Transition Coordinator in identifying and carrying out the responsibilities of the Federal Transition Coordinator relating to a Presidential transition;

“(B) provide guidance to agencies in gathering briefing materials and information relating to the Presidential transition that may be requested by eligible candidates;

“(C) ensure materials and information described in subparagraph (B) are prepared not later than November 1 of a year during which a Presidential election is held;

“(D) ensure agencies adequately prepare career employees who are designated to fill non-career positions under subsection (f) during a Presidential transition; and

“(E) consult with the President’s Management Council, or any successor thereto, in carrying out the duties of the agency transition directors council.

“(3) MEMBERSHIP.—The members of the agency transition directors council shall include—

“(A) the Federal Transition Coordinator and the Deputy Director for Management of the Office of Management and Budget, who shall serve as Co-Chairpersons of the agency transition directors council;

“(B) other senior employees serving in the Executive Office of the President, as determined by the President;

“(C) a senior representative from each agency described in section 901(b)(1) of title 31, United States Code, the Office of Personnel Management, the Office of Government Ethics, and the National Archives and Records Administration whose responsibilities include leading Presidential transition efforts within the agency;

“(D) a senior representative from any other agency determined by the Co-Chairpersons to be an agency that has significant responsibilities relating to the Presidential transition process; and

“(E) during a year during which a Presidential election will be held, a transition representative for each eligible candidate, who shall serve in an advisory capacity.

“(4) MEETINGS.—The agency transition directors council shall meet—

“(A) subject to subparagraph (B), not less than once per year; and

“(B) during the period beginning on the date that is 6 months before a Presidential election and ending on the date on which the President-elect is inaugurated, on a regular basis as necessary to carry out the duties and authorities of the agency transition directors council.

“(f) INTERIM AGENCY LEADERSHIP FOR TRANSITIONS.—

“(1) OVERSIGHT AND IMPLEMENTATION OF TRANSITION.—Not later than 6 months before the date of a Presidential election, the head of each agency shall designate a senior career employee of the agency and a senior career employee of each major component and subcomponent of the agency to oversee and implement the activities of the agency, component, or subcomponent relating to the Presidential transition.

Time periods.

Deadlines.
Designation.

Deadline.

“(2) ACTING OFFICERS.—Not later than September 15 of a year during which a Presidential election occurs, and in accordance with subchapter III of chapter 33 of title 5, United States Code, for each noncareer position in an agency that the head of the agency determines is critical, the head of the agency shall designate a qualified career employee to serve in the position in an acting capacity if the position becomes vacant.

Deadline.

“(g) MEMORANDUMS OF UNDERSTANDING.—

“(1) IN GENERAL.—Not later than November 1 of a year during which a Presidential election occurs, the President (acting through the Federal Transition Coordinator) shall, to the maximum extent practicable, negotiate a memorandum of understanding with the transition representative of each eligible candidate, which shall include, at a minimum, the conditions of access to employees, facilities, and documents of agencies by transition staff.

“(2) EXISTING RESOURCES.—To the maximum extent practicable, the memorandums of understanding negotiated under paragraph (1) shall be based on memorandums of understanding from previous Presidential transitions.

“(h) EQUITY IN ASSISTANCE.—Any information or other assistance provided to eligible candidates under this section shall be offered on an equal basis and without regard to political affiliation.

“(i) REPORTS.—

“(1) IN GENERAL.—The President, acting through the Federal Transition Coordinator, shall submit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate reports describing the activities undertaken by the President and agencies to prepare for the transfer of power to a new President.

“(2) TIMING.—The reports under paragraph (1) shall be provided 6 months and 3 months before the date of a Presidential election.”

(b) OTHER IMPROVEMENTS.—Section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note) is amended—

(1) in subsection (a)—

(A) in paragraph (8)—

(i) in subparagraph (A)(i)—

(I) by inserting “and during the term of a President” after “during the transition”; and

(II) by striking “after inauguration”; and

(ii) in subparagraph (B), by inserting “or Executive agencies (as defined in section 105 of title 5, United States Code)” before the period; and

(B) in paragraph (10), by inserting “including, to the greatest extent practicable, human resource management system software compatible with the software used by the incumbent President and likely to be used by the President-elect and Vice President-elect” before the period;

(2) in subsection (b)(2), by striking “30 days” and inserting “180 days”;

(3) in subsection (g), by inserting “except for activities under subsection (a)(8)(A),” before “there shall be no”; and

(4) in subsection (h)(2), by adding at the end the following:

“(D) An eligible candidate shall have a right to the services and facilities described in this paragraph until the date on which the Administrator is able to determine the apparent successful candidates for the office of President and Vice President.”.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 3 of the Pre-Election Presidential Transition Act of 2010 (3 U.S.C. 102 note) is repealed.

(2) The Presidential Transition Act of 1963 (3 U.S.C. 102 note) is amended—

(A) in section 3—

(i) in subsection (a)(4)(B), by striking “section 6” and inserting “section 7”;

(ii) in subsection (b), in the matter preceding paragraph (1), by striking “section 3 of this Act” and inserting “this section”; and

(iii) in subsection (h)(3)(B)(iii), by striking “section 5” each place it appears and inserting “section 6”;

(B) in section 6, as redesignated by subsection (a) of this section, by striking “section 6(a)(1)” each place it appears and inserting “section 7(a)(1)”; and

(C) in section 7(a)(2), as redesignated by subsection (a) of this section, by striking “section 4” and inserting “section 5”.

(3) Section 8331(1)(K) of title 5, United States Code, is amended by striking “section 4” and inserting “section 5”.

(4) Section 8701(a)(10) of title 5, United States Code, is amended by striking “section 4” and inserting “section 5”.

(5) Section 8901(1)(I) of title 5, United States Code, is amended by striking “section 4” and inserting “section 5”.

SEC. 3. NATIONAL ARCHIVES PRESIDENTIAL TRANSITION.

Section 2203(g) of title 44, United States Code, is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

“(3) When the President considers it practicable and in the public interest, the President shall include in the President’s budget transmitted to Congress, for each fiscal year in which the term of office of the President will expire, such funds as may be necessary for carrying out the authorities of this subsection.”.

SEC. 4. REPORTS ON POLITICAL APPOINTEES APPOINTED TO NON-POLITICAL PERMANENT POSITIONS.

5 USC 3101 note.

(a) DEFINITIONS.—In this section—

(1) the term “agency” has the meaning given the term “Executive agency” in section 105 of title 5, United States Code;

(2) the term “covered civil service position” means a position in the civil service (as defined in section 2101 of title 5, United States Code) that is not—

(A) a temporary position; or

(B) a political position;

(3) the term “former political appointee” means an individual who—

(A) is not serving in an appointment to a political position; and

(B) served as a political appointee during the 5-year period ending on the date of the request for an appointment to a covered civil service position in any agency;

(4) the term “political appointee” means an individual serving in an appointment to a political position; and

(5) the term “political position” means—

(A) a position described under sections 5312 through 5316 of title 5, United States Code (relating to the Executive Schedule);

(B) a noncareer appointment in the Senior Executive Service, as defined under paragraph (7) of section 3132(a) of title 5, United States Code; or

(C) a position in the executive branch of the Government of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5, Code of Federal Regulations.

(b) REPORTING ON CURRENT OR RECENT POLITICAL APPOINTEES APPOINTED TO COVERED CIVIL SERVICE POSITIONS.—

(1) ANNUAL REPORT.—Except as provided in paragraph (2), the Director of the Office of Personnel Management shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives an annual report regarding requests by agencies to appoint political appointees or former political appointees to covered civil service positions. Each report shall cover one calendar year and shall—

(A) for each request by an agency that a political appointee be appointed to a covered civil service position during the period covered by the report, provide—

(i) the date on which the request was received by the Office of Personnel Management;

(ii) subject to subsection (c), the name of the individual and the political position held by the individual, including title, office, and agency;

(iii) the date on which the individual was first appointed to a political position in the agency in which the individual is serving as a political appointee;

(iv) the grade and rate of basic pay for the individual as a political appointee;

(v) the proposed covered civil service position, including title, office, and agency, and the proposed grade and rate of basic pay for the individual;

(vi) whether the Office of Personnel Management approved or denied the request; and

(vii) the date on which the individual was appointed to a covered civil service position, if applicable; and

(B) for each request by an agency that a former political appointee be appointed to a covered civil service position during the period covered by the report, provide—

(i) the date on which the request was received by the Office of Personnel Management;

(ii) subject to subsection (c), the name of the individual and the political position held by the individual, including title, office, and agency;

(iii) the date on which the individual was first appointed to any political position;

(iv) the grade and rate of basic pay for the individual as a political appointee;

(v) the date on which the individual ceased to serve in a political position;

(vi) the proposed covered civil service position, including title, office, and agency, and the proposed grade and rate of basic pay for the individual;

(vii) whether the Office of Personnel Management approved or denied the request; and

(viii) the date on which the individual was first appointed to a covered civil service position, if applicable.

(2) **QUARTERLY REPORT IN CERTAIN YEARS.**—In the last year of the term of a President, or, if applicable, the last year of the second consecutive term of a President, the report required under paragraph (1) shall be submitted quarterly and shall cover each quarter of the year, except that the last quarterly report shall also cover January 1 through 20 of the following year.

(c) **NAMES AND TITLES OF CERTAIN APPOINTEES.**—If determined appropriate by the Director of the Office of Personnel Management, a report submitted under subsection (b) may exclude the name or title of a political appointee or former political appointee—

(1) who—

(A) was requested to be appointed to a covered civil service position; and

(B) was not appointed to a covered civil service position;

or

(2) relating to whom a request to be appointed to a covered civil service position is pending at the end of the period covered by that report.

SEC. 5. REPORT ON REGULATIONS PROMULGATED NEAR THE END OF PRESIDENTIAL TERMS.

(a) **DEFINITIONS.**—In this section:

(1) The term “covered presidential transition period” means each of the following:

(A) The 120-day period ending on January 20, 2001.

(B) The 120-day period ending on January 20, 2009.

(C) The 120-day period ending on January 20, 2017.

(2) The term “covered regulation” means a final significant regulatory action promulgated by an Executive department.

(3) The term “significant regulatory action” means any regulatory action that is likely to result in a rule that may—

(A) have an annual effect on the economy of \$100,000,000 or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(B) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(D) raise novel legal or policy issues.

(4) The term “Executive department” has the meaning given that term under section 101 of title 5, United States Code.

(b) **REPORT.**—

(1) **IN GENERAL.**—The Comptroller General of the United States shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report regarding covered regulations promulgated during each covered presidential transition period.

(2) **CONTENTS OF REPORT.**—The report required under paragraph (1) shall, to the extent feasible, for each covered presidential transition period—

Time periods.

(A) compare the number, scope, and impact of, and type of rulemaking procedure used for, covered regulations promulgated during the covered presidential transition period to the number, scope, and impact of, and type of rulemaking procedure used for, covered regulations promulgated during the 120-day periods ending on January 20 of each year after 1996, other than 2001, 2009, and 2017;

Determination.

(B) determine the statistical significance of any differences identified under subparagraph (A) and whether and to what extent such differences indicate any patterns;

Evaluation.

(C) evaluate the size, scope, and effect of the covered regulations promulgated during the covered presidential transition period; and

Assessment.

(D) assess the extent to which the regularly required processes for the promulgation of covered regulations were followed during the covered presidential transition period, including compliance with the requirements under—

(i) chapter 8 of title 5, United States Code (commonly known as the “Congressional Review Act”);

(ii) the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note);

(iii) sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532–1535);

(iv) chapter 6 of title 5, United States Code (commonly known as the “Regulatory Flexibility Act”); and

(v) chapter 35 of title 44, United States Code (commonly known as the “Paperwork Reduction Act”).

SEC. 6. ANALYSIS OF THREATS AND VULNERABILITIES.

Deadline.
Reports.

(a) **IN GENERAL.**—Not later than February 15, 2016, the Secretary of Homeland Security shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committees on Oversight and Government Reform and Homeland Security of the House of Representatives a report analyzing the threats and vulnerabilities facing the United States during a presidential transition, which—

(1) shall identify and discuss vulnerabilities related to border security and threats related to terrorism, including from weapons of mass destruction;

(2) shall identify steps being taken to address the threats and vulnerabilities during a presidential transition; and

(3) may include recommendations for actions by components and agencies within the Department of Homeland Security.

(b) FORM.—The report submitted under subsection (a) shall be prepared in unclassified form, but may contain a classified annex.

Approved March 18, 2016.

LEGISLATIVE HISTORY—S. 1172:

HOUSE REPORTS: No. 114-384, Pt. 1 (Comm. on Oversight and Government Reform).

SENATE REPORTS: No. 114-94 (Comm. on Homeland Security and Governmental Affairs).

CONGRESSIONAL RECORD:

Vol. 161 (2015): July 30, considered and passed Senate.

Vol. 162 (2016): Feb. 29, considered and passed House, amended.

Mar. 8, Senate concurred in House amendment.



Moran, John (ODAG)

From: Moran, John (ODAG)
Sent: Tuesday, August 18, 2020 1:45 PM
To: Levi, William (OAG)
Subject: RE: Potential Presidential Transition - Component Head ACTION Item

Thanks!

From: Levi, William (OAG) <wlevi@jmd.usdoj.gov>
Sent: Tuesday, August 18, 2020 1:43 PM
To: Moran, John (ODAG) <johmoran@jmd.usdoj.gov>
Subject: FW: Potential Presidential Transition - Component Head ACTION Item

From: Levi, William (OAG)
Sent: Tuesday, August 18, 2020 10:35 AM
To: Lofthus, Lee J (JMD (b)(6) per JMD >
Subject: RE: Potential Presidential Transition - Component Head ACTION Item

Thanks Lee. Extremely helpful. Let us know what support you need as this process unfolds, if any, and what you need from us.

From: Lofthus, Lee J (JM (b)(6) per JMD >
Sent: Monday, August 17, 2020 2:59 PM
To: Levi, William (OAG) <wlevi@jmd.usdoj.gov>
Subject: RE: Potential Presidential Transition - Component Head ACTION Item

Will, no, not OAG unless something changes. (b) (5)

[Redacted]

(b) (5)

[Redacted]

(b) (5)

(b) (5)

Anyway, pardon the rambling. It is still early. I'd planned to give you a call and go through what you can expect if there's a change in November, but nothing much until late Sept/Oct probably. Lee

From: Levi, William (OAG) <wlevi@jmd.usdoj.gov>
Sent: Monday, August 17, 2020 1:40 PM
To: Lofthus, Lee J (JMD) (b)(6) per JMD >
Subject: Re: Potential Presidential Transition - Component Head ACTION Item

Would this apply to OAG?

On Aug 17, 2020, at 12:09 PM, Lofthus, Lee J (JMD (b)(6) per JMD > wrote:

Component Heads:

It is that time in a first term that we have to look ahead to potential transition activities. The Presidential Transition Act requires that each Agency have a succession plan in place by September 15 that ensures a senior career employee has been identified to act in each senior non-career position following the inauguration in the event of a change in administration. In DOJ parlance, this means we need to identify career acting officials for our PAS Component Head positions, and certain other politically-appointed office directors and heads.

As the career Agency Transition Director for DOJ, one of my roles is obtain from each of you your recommendation for a career employee to serve as acting component head/office head in the event of a transition. The recommendations will be reviewed by our leadership here prior to submission to OMB and GSA.

Also, internal to your component, you will need to identify a career employee to act in any other key non-career SES position, typically the Deputy Assistant Attorneys General. We don't need those names yet, we just need to know you have a plan, but as we near November, we will need

the names. You are not required to identify acting personnel for other non-career SES positions or Schedule C positions.

Please send your recommendation for your career Acting Component Head to me not later than August 28. We will compile the listings for review by our leadership before we submit the names to OMB and the GSA-designated Federal Transition Coordinator. Of course, should there be a second term, this will all be moot.

Please **do not** announce your recommended names to your workforce the first step is to review the names with leadership here and make our September submission, then await the outcome in November, and if there is a transition, await any other changes that may occur prior to January 20.

Finally, in the coming weeks we will ask you to designate your career transition point of contact for (typically, your Executive Officer or equivalent) working with us through the transition period. This will be accompanied by a tasking to update your basic organization, mission, and functions materials as is normally done for a potential transition.

If you have any questions regarding this email, please call me o (b) (6). Your Executive Officer may also be helpful in reviewing past acting official selections with you if you wish.

Thanks. Lee L. JMD



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 4, 2020

M-20-33

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Michael Rigas *Michael Rigas*
Acting Deputy Director for Management, Office of Management and Budget
Mary Gibert *Mary Gibert*
Federal Transition Coordinator, General Services Administration

SUBJECT: Guidance on Presidential Transition Preparations

This memorandum provides guidance to agencies on transition preparation requirements and deadlines consistent with the statutory obligations in the Presidential Transition Act of 1963, as amended (3 U.S.C. § 102 note) (the Act) and best practices. In addition to the ongoing work required by the Act, this guidance is intended to ensure the seamless continuity of Federal government operations and services during a transition to a second term of an administration or to a new administration. It also increases the transparency of the transition process. As agencies implement the guidance outlined below, officials should approach the work in ways that are responsive to the ongoing needs of the current administration while balancing the preparations for a potential new administration.

To prepare for a transition to a second term of an administration or to a new administration, agencies shall do the following:

- 1. Agency Transition Governance.** The Act requires each agency head to designate a senior career employee of the agency and a senior career employee of each major component and subcomponent of the agency to oversee and implement the activities of the agency, component, or subcomponent relating to the Presidential transition. Where agencies have multiple components and subcomponents, working groups can be established to discuss the status of transition preparations at all levels of the agency. The senior career employees have been identified and have been meeting with the Co-Chairs of the Agency Transition Directors Council.
- 2. Pre-Election Engagement with Transition Teams of Eligible Candidates.** To ensure proper, consistent, and equitable dissemination of information to the authorized representatives of the eligible candidates, Federal employees should refer any inquiries from the campaigns to their Agency Transition Director or Presidential Transition Communication Point of Contact, who will refer the campaign to the Office of Management and Budget (OMB) Deputy Director for Management and the Federal Transition Coordinator (FTC). To

increase transparency, the name of each individual requesting information on behalf of a campaign from an agency, the date of the request and the request itself are to be compiled by the agency for posting on the Presidential Transition Directory website. Federal officials should not engage with candidates or their authorized representatives on any matter related to their official duties without prior written approval from the OMB Deputy Director for Management or the FTC.

- 3. Succession Planning.** Agency heads are statutorily required to ensure that a succession plan is in place for each senior noncareer position in the agency. Agencies shall ensure that such succession plans are in place no later than September 15, 2020. Under the Act, agencies' succession plans must be in accordance with subchapter III of chapter 33 of title 5, which includes the Federal Vacancies Reform Act (VRA). As such, no later than September 15, 2020, agencies shall submit (1) a certification of completion of a succession plan for all senior noncareer positions; (2) a high level organizational chart inclusive of the senior noncareer positions identified in the succession plan; and (3) any other relevant materials. The FTC will provide separate instructions to agencies as to how and where to submit the required information for succession planning.
- 4. Agency Briefing Materials.** Agencies are statutorily required to prepare and finalize briefing materials no later than November 1, 2020. As such, agencies should certify that they have done so on or before November 1, 2020. The FTC will provide separate instructions to agencies as to how and where to submit the agency briefing material certification. Given the different needs of potential agency review teams and incoming administration officials, agencies may be requested to prepare tailored briefing materials as appropriate. While agencies have discretion as to the format and information included in the briefing materials, they should be prepared with the needs of the intended audiences in mind, and agencies should make electronic versions available. At a minimum, briefing materials should include information on the following: (1) an overview of the organization; (2) the top five to ten most pressing operational items a new administration will have to handle immediately after Inauguration; (3) a budget overview; (4) the current leadership team; and (5) Congressional considerations. Agencies should ensure information included in briefing materials is approved for release to the intended audience. As a general principle, briefing materials for the agency review teams may include information that is releasable to members of the public through a Freedom of Information Act (FOIA) request, but should not include pre-decisional or deliberative information, information that is otherwise privileged, or other information that is exempted from disclosure under FOIA, the Privacy Act, or other law.

Recognizing that it may be necessary in some circumstances to provide specified transition personnel with access to non-disclosable information, a clearance mechanism will be established through a memorandum of understanding (MOU) between the President and the representative of the eligible candidate on the conditions of access to employees, facilities, and documents of agencies. The MOU will be in place prior to the election.

In accordance with the Presidential Transition Act of 1963, as amended, upon the ascertainment of the President-elect and Vice President-elect, agencies shall be prepared for the following if there will be a transition to a new administration:

- 1. Agency Review Team Preparations.** Agency review teams will be deployed by the President-elect or his transition team to a subset of Federal agencies immediately following the ascertainment of the election results. Agency interactions with agency review teams will be governed by the MOU described in section 4 above. Agencies are to act in accordance with any requirements, including transparency, incorporated into the MOU.

The teams will review briefing materials and meet with internal agency transition teams to develop a better understanding of each agency and its current state of affairs. Not all agencies should expect to receive agency review teams, and we will work with the President-elect's transition team to identify the respective agency review list. Agencies that have historically received agency review teams should begin making the necessary preparations so that by November 1, 2020, the resources are in place to provide the agency review teams with logistical and administrative support, including building access and work spaces. Moreover, upon the arrival of agency review teams, Agency Transition Directors and Presidential Transition Communication Point of Contact should assist the teams with the coordination of briefings and generally be responsive to requests by the teams for permissible information and assistance.

- 2. Off-Boarding Current Noncareer Employees.** A key component of a change in administrations is the successful outward transition of current noncareer employees. As needed, agencies should develop guidance on the records management responsibilities of departing political appointees. For additional information, agencies should consult guidance issued by the National Archives and Records Administration. In addition, agencies should develop a briefing on "exit ethics" and post-service health benefit coverage and retirement benefits, which should include information about whom to contact with related questions after noncareer employees leave government service. As a matter of best practice, agencies may establish "one-stop" briefings for noncareer employees so they may be informed in the most efficient manner.