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THE WHITE HOUSE

WASHINGTON

December 18, 2000

MEMORANDUM FOR CABINET AND AGENCY HEADS

FROM: John Podesta *John Podesta*
SUBJECT: Transition Procedures

The purpose of this memorandum is to provide additional guidance for planning the orderly transition to the presidency of George W. Bush. As you know, the President has signed an executive order establishing a Presidential Transition Coordinating Council. The Council is actively working to facilitate the orderly transition to a new administration and fulfill the requirements of the Presidential Transition Act of 1963 and its amendments. The President has designated me to serve as overall coordinator of the outgoing administration's transition effort as the Chair of the Council and Director of the President's Transition Team. I am being assisted in these efforts by Maria Echaveste, Bob Nash, Beth Nolan, Thurgood Marshall, Jr., Mark Lindsay, and the other members of the Council.

Transition Agency Contacts

My office has been working with agency heads to discuss the designation of one presidential appointee holding an office that requires Senate confirmation who will remain at the agency to fulfill the responsibilities and functions of the agency until the incoming President has appointed a new agency head. We have also worked with the agencies on the designation of personnel who will coordinate transition efforts in your agency. In the near future, I will be informing you, in writing, of the President-elect's Transition Team members assigned to your agency. *You are requested to alert all members of your agency that contacts with the President-elect's Transition Team are to be limited to those members verified by this office.* Moreover, the President-elect's Transition Team members will coordinate their activities through the individual designated in your agency to manage the transition effort.

Attached to this memorandum is a statement of policy concerning access to Administration records. The statement reiterates the need to ensure that contacts occur only between authorized personnel. It further spells out the steps necessary to insure that careful consideration is given to materials given to the Transition Team. Without appropriate procedures, any materials given the President-elect's Transition Team members could become public information. Accordingly, extreme care is required in granting access to privileged information, classified information, personnel records, proprietary information, and market-sensitive information. I urge you to see that this policy is followed scrupulously.

Attachment A: Policy Statement Concerning Information Disclosure to Transition Personnel

Attachment B: Memorandum of Understanding Regarding Transition Procedures

POLICY STATEMENT CONCERNING IDENTIFICATION OF TRANSITION CONTACTS AND INFORMATION DISCLOSURE TO TRANSITION PERSONNEL

To effect an orderly transition, the President-elect and his associates must become knowledgeable about current government policies and operations so that they can begin making informed decisions immediately upon taking office. This policy statement addresses the procedures for identifying individuals charged with transition responsibilities and for disclosing information to transition personnel. It implements a Memorandum of Understanding entered into between the Director of the President's Transition Team and the Chairman of the President-elect's Transition Team, a copy of which is attached.

I. Identification of Transition Contacts

In order to protect interests of the President and the President-elect and to avoid unnecessary interference with ongoing government operations, it is important that Departments and agencies verify that the individuals who seek access to government information or employees are, in fact, authorized members of the President-elect's Transition Team. Consequently, the Departments and agencies should, before they have any dealings with individuals representing themselves as members of the President-elect's Transition Team, verify that the individuals' names appear on the official register of the President-elect's Transition Team. The Chairman of the President-elect's Transition Team will agree to provide to the Director of the President's Transition Team the names of all authorized individuals (including a Transition Team chief for each Department or agency who heads the transition effort for that Department or agency), along with written assurance that the individuals have agreed to abide by the Transition's Code of Ethical Conduct and have thereby represented that they have no conflict of interest that precludes them from working on the matters they have been assigned to work on by the President-elect's Transition Team. The Director of the President's Transition Team will provide an updated copy of that register to the Departments and agencies when any changes to the authorized list occur. If an individual contacts a Department or agency on behalf of the Transition who is not listed on that register as authorized to work with that Department or agency, the individual will be informed that assistance cannot be provided to that individual until he or she appears on the Transition Team's official register of individuals authorized to receive assistance and, if necessary, the Department or agency will contact the Office of the Director of the President's Transition Team [the Office of the Chief of Staff] for guidance.

II. Transition Point of Contact

The official transition point of contact designated by each Department and agency will serve as the point of contact for providing other contacts, information, and services to authorized members of the President-elect's Transition Team. Thus, any meetings with the President-elect's Transition Team members should be authorized by that contact, and any materials provided to the President-elect's Transition Team members should likewise be authorized by that contact.

III. Disclosure of Information Not Available to the General Public

As a general matter, most of the information needs of the President-elect's Transition Team can be met by providing them with access to public information. In limited circumstances, however, it will be necessary to provide specified transition personnel with access to information or records not available to the general public. Such material may be protected by constitutional, statutory or common law privileges, or its distribution may otherwise be restricted by law. In addition, provision of such information may raise issues under the Government's standards of conduct, which preclude government employees from allowing the improper use of non-public information to further the private interests of another through knowing unauthorized disclosure.

The following procedures should be observed in disclosing information not available to the general public to members of the President-elect's Transition Team.

A. General Procedures for Disclosure of Information Not Available to the General Public

Before providing information not available to the general public to a member of the President-elect's Transition Team, Departments and agencies should expeditiously:

- Brief the Transition Team member on the importance of maintaining the constitutional, statutory and/or common law safeguards afforded the non-public information.
- Clearly label non-public records provided to Transition Team personnel with a warning against subsequent disclosures to unauthorized individuals, including unauthorized members of the Transition Team.
- Specifically advise Transition Team members that non-public information provided to them cannot be shared with other Transition personnel unless they meet the requirements for access to that information.
- Require the Transition Team member to sign a statement representing that, to that member's knowledge, he or she has no financial interest or imputed financial interest that would be directly and predictably affected by a particular matter to which the information is pertinent,¹ and that he or she pledges to abide by applicable nondisclosure requirements, as defined by the department or agency. The Department or agency may require such additional information from the Transition Team member as the Department or agency deems necessary, in light of the proposed disclosure.

¹ The Terms "financial interest," "imputed financial interest," "direct and predictable effect," and "particular matter" have the same meaning in this memorandum as in 18 U.S.C. 208 and the regulations interpreting those terms set out in 5 C.F.R. parts 2635 & 2640. A financial interest for which 5 C.F.R. part 2640 provides a waiver will not block access to information.

- Where advisable, prohibit the Transition Team member from removing records containing non-public information from the offices of the Department or agency.

Upon request from the Department or agency, the Chairman of the President-elect's Transition Team (or his designee, identified in writing to the Director of the President's Transition Team) will provide a statement indicating the Transition Team member's need for access to the non-public information.

After a disclosure of information not available to the general public is made, Department or agency personnel should make a written record of the disclosure, including a description of the non-public information, the identity of the person to whom the disclosure was made, and a summary of the steps taken to protect against subsequent disclosure of the information.

B. Classified Information

Before providing any classified information to a member of the President-elect's Transition, pursuant to Executive Order 12598, as amended, Departments and agencies must establish the following:

- That the member has the security clearances necessary to have access to that information, and has the requisite need to know, and
- That the member has signed the requisite non-disclosure agreement.

C. Attorney-Client Material

Information protected by the attorney-client privilege should not be disclosed to any member of the President-elect's Transition Team. The Department of Justice advises that disclosure of such information may waive this privilege.

D. Privacy Act Material

To avoid any possible violation of the Privacy Act, Departments and agencies should not disclose any Privacy Act records or information, including official personnel folders, performance evaluation information, information from a resume, or Form SF-171 Personnel Qualification Statement, without the express written consent of the affected employee.

E. Material Subject to Other Statutory Protections

The above list does not exhaust the list of statutory protections that may preclude disclosure of material. Departments and agencies should, of course, abide by other applicable statutory restrictions on disclosure of information.

F. Issues Relating to This Policy Statement

Any issues between members of the President-elect's Transition Team and Departments and agencies should be addressed, in the first instance, by discussion between the Department's or agency's transition contact and the Office of the President-elect's designated Transition Team chief for the Department or agency. Matters that cannot be resolved should be referred to the respective Directors.

Attachment

MEMORANDUM OF UNDERSTANDING REGARDING TRANSITION PROCEDURES,
IDENTIFICATION OF TRANSITION CONTACTS, AND ACCESS TO NON-PUBLIC
GOVERNMENT AND TRANSITION INFORMATION

- (1) The Administration and the President-elect's Transition Team agree that, in order to effect an orderly transition of power in accord with the Presidential Transition Act, as amended, and Executive Order 13176, the President-elect and certain of his associates must become knowledgeable about current government policies and operations so that they can begin making informed decisions immediately upon taking office.
- (2) The Administration and the President-elect's Transition Team enter into this memorandum of understanding in order to establish an orderly process for identifying individuals charged with transition responsibilities, to ensure that the Government's and the Office of the President-Elect's standards of conduct are observed, to protect the confidentiality of non-public government information made available to the President-elect's Transition Team during the transition period, to preserve the constitutional, statutory and common law privileges that attach to such information in the possession of the Executive Branch, and to protect the confidentiality of transition information made available to the Government.
- (3) The Chairman of the President-elect's Transition Team will furnish in writing to the Director of the President's Transition Team the name of each individual authorized by the President-elect's Transition Team to work with particular Departments and agencies, including designation of a Transition Team chief for that Department or agency. The Chairman of the President-elect's Transition Team will also indicate in writing that each individual on the list has met the applicable public disclosure requirements of the Presidential Transition Act, as amended, has agreed to abide by the Transition's Code of Ethical Conduct, and has thereby represented that he or she has no conflict of interest that precludes the individual from working on the matters the Transition has assigned the individual to work on with that Department or agency. The Director of the President's Transition Team will forward these names to the appropriate Departments and agencies. The Director of the President's Transition Team will also provide in writing to the Chairman of the President-elect's Transition Team the names of individuals in the Departments and agencies responsible for transition matters.
- (4) The Administration will conduct its transition activities with the President-elect's Transition Team through the contacts authorized by the President-elect's Transition Team. The authorized members of the President-elect's Transition Team will initiate transition activities with the Administration involving a particular Department or agency by contacting the individual designated by the President's Transition Team Director and will go through that individual with respect to other contacts it wishes to make or information it wishes to seek.
- (5) In some limited circumstances, it may be necessary to provide specified transition personnel with access to non-public information that may be protected by constitutional, statutory or common law privileges, and material whose distribution is otherwise restricted by law. The President's Transition Team Director has advised the President-elect's Transition Team that

agency personnel will take the steps required by law, including the Executive Branch standards of conduct, the Privacy Act and the attorney-client privilege, to protect such information. In particular, a government employee may not allow the improper use of non-public information to further his own private interest or that of another by knowing unauthorized disclosure. 5 C.F.R. 2640. The President-elect's Transition Team recognizes that there is some information that the Department or agency may not be able to provide in order to comply with statutory requirements or otherwise preserve applicable privileges.

- (6) In order to facilitate a smooth transition and provide a mechanism for expeditiously addressing any concerns, including ethical, privacy and privilege concerns, regarding access to non-public information as described in paragraph (5), the Director of the President's Transition Team and the Chairman of the President-elect's Transition Team will each designate in writing an official or officials authorized to confer in order to resolve such concerns informally.
- (7) The President's Transition Director further advises that, before providing any classified information to a member of the President-elect's Transition, pursuant to Executive Order 12958, as amended, Departments and agencies must establish the following:
 - That the member has the security clearances necessary to have access to that information, and the requisite right to know, and
 - That the member has signed the requisite non-disclosure agreement.
- (8) The President's Transition Director advises that, before providing non-public information as described in paragraph (5) to a member of the President-elect's Transition authorized to receive it under the guidelines established in this memorandum, Departments and agencies will expeditiously:
 - Brief the Transition Team member on the importance of maintaining the constitutional, statutory and/or common law safeguards afforded the non-public information.
 - Clearly label non-public records provided to Transition Team personnel with a warning against subsequent disclosures to unauthorized individuals, including unauthorized members of the Transition Team.
 - Specifically advise Transition Team members that non-public information provided to them cannot be shared with other Transition personnel unless they meet the requirements for access to that information.
 - Require the Transition Team member to sign a statement representing that, to that member's knowledge, he or she has no financial interest or imputed

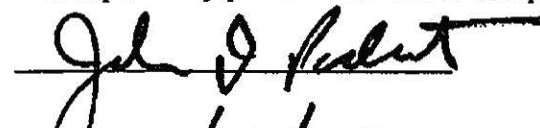
financial interest² that would be directly and predictably affected by a particular matter to which the information is pertinent. The Department or agency may require such additional information from the Transition Team member as the Department or agency deems necessary, in light of the proposed disclosure.

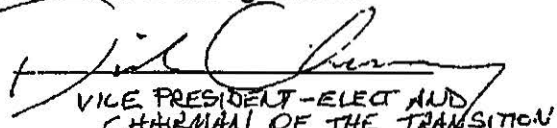
- Where advisable, prohibit the Transition Team member from removing records containing non-public information from the offices of the Department or agency.

Upon request from the Department or agency, the President-elect's Transition Team will provide a statement indicating that Transition Team member's need for access to the non-public information. The statement of need will be provided by the Chairman of the President-elect's Transition Team (or individuals designated by him to do so in writing) to the Director of the President's Transition Team.

After such a disclosure is made, Department or agency personnel shall make a written record thereof.

- (9) It may also be necessary for members of the President-elect's Transition Team to share with the Administration information that they wish to be kept confidential. Accordingly, to the extent permitted by law, the Administration agrees to protect the confidentiality of information provided to it on a confidential basis by the President-elect's Transition Team.
- (10) Any disagreements between the Administration and the President-elect's Transition Team concerning the subject matter of this memorandum that are not resolved informally pursuant to paragraph (6) or otherwise will be referred by the Administration to the President's Transition Director and by the President-elect's Transition Team to the President-elect's Transition Team Executive Director.
- (11) To the extent permitted by law, the Administration, with respect to its staff members and the President-elect's Transition Team, state that they intend to take appropriate steps to discipline any person who fails to comply with the terms of this agreement.


Dated: 12/18/00


VICE PRESIDENT-ELECT AND
CHAIRMAN OF THE TRANSITION
Dated: 12-19-00

² The Terms "financial interest," "imputed financial interest," "direct and predictable effect," and "particular matter" have the same meaning in this memorandum as in 18 U.S.C. 208 and the regulations interpreting those terms set out in 5 C.F.R. parts 2635 & 2640. A financial interest for which 5 C.F.R. part 2640 provides a waiver will not block access to the information.