

Presidential Transition Act Summary

INTRODUCTION

In passing the Presidential Transition Act of 1963, Congress explained: “Any disruption occasioned by the transfer of the executive power could produce results detrimental to the safety and well-being of the United States and its people.” To promote the orderly transfer of power, Congress established a framework for the federal government to prepare for a transition from one president to another.

With strong bipartisan support, the Act has been amended over the years to recognize the increasing complexities of presidential transitions¹. The law requires the General Services Administration to provide office space and other core support services to presidents-elect and vice presidents-elect, as well as pre-election space and support to eligible candidates.² The Act also requires the White House and agencies to begin transition planning well before a presidential election, benefitting both first and second term administrations.

WHAT ARE AGENCY AND INTER-AGENCY TRANSITION PLANNING REQUIREMENTS?

The Act establishes an early and organized cadence for the federal government’s transition planning.

Before the election, each agency must: designate a senior career official who will be in charge of transition planning; prepare transition briefing materials; and ensure that succession plans are in place so that as political appointees depart, career officials are prepared to step in place until new political appointees arrive.

At least six months before an election, the President must establish a White House Transition Coordinating Council, chaired by a senior employee of the Executive Office of the President and consisting of other high-level officials, such as cabinet officers; the Directors of the Office of Management and Budget, the Office of Personnel Management, the Office of Government

¹ 3 U.S.C. 102 note. The Act has been updated in the last two decades by the Presidential Transition Act of 2000 (P.L. 106-293), the Pre-Election Presidential Act of 2010 (P.L. 111-283), the Edward “Ted” Kaufman and Michael Leavitt Presidential Transitions Act of 2015 (P.L. 114-136), and the Presidential Transition Enhancement Act of 2019 (P.L. 116-121).

² Under the PTA, a candidate is eligible for pre-election services and facilities if either nominated by a major party or is otherwise determined by the GSA administrator to be eligible. The administrator is instructed to make that determination by relying on several criteria, such as the number of states where the candidate’s name appears on the ballot, national poll numbers and recognition by other national organizations such as the Commission on Presidential Debates.

Ethics; the Administrator of GSA; and the Archivist of the United States. A transition representative of the major candidates also sits on the council. The council provides guidance to agencies on transition and facilitates communications between the administration and the transition teams.

The Act requires a standing Agency Transition Directors Council, co-chaired by GSA's Federal Transition Coordinator and the Office of Management and Budget's Deputy Director for Management and includes agency senior career officials responsible for transition activities as well as transition representatives of the major candidates. This working-level council works toward an integrated, government-wide approach to transition and ensures that briefing materials are prepared.

WHAT IS THE ROLE OF THE GENERAL SERVICES ADMINISTRATION?

The Act requires GSA to provide office space and administrative support (such as information technology and communications capabilities) to a president-elect and vice president-elect. Recognizing a growing need for transition activities to start well before election day, the Act also requires GSA to offer office space and support to eligible candidates in the months preceding the election, following the political conventions. In the post-election period, GSA is also authorized to pay expenses for staff, experts, postage, and travel for the transition team of the president-elect, if the president-elect is not a president who has been re-elected. Use of government aircraft also may be provided on a reimbursable basis.

GSA also serves a liaison between transition teams and the federal government. For example, GSA helps coordinate the provision of names of transition staff cleared by the president-elect's team for access to each agency. The law requires the GSA Administrator to designate a senior career official to serve as the Federal Transition Coordinator, who coordinates transition planning across agencies. GSA is also required to compile a report on modern transitions and create a transition directory with comprehensive information on the officers, organization, and responsibilities of each federal agency. GSA also provides support to help outgoing presidents as they depart the White House.

Also, recognizing that incoming political appointees face unique challenges and requirements coming into federal service, the Act allows GSA to expend funds of training for new appointees during the transition and for the entire duration of a president's term. In past transition years, Congress has provided funding only for the fiscal year in which the transition takes place.

HOW DOES THE ACT HELP WITH TRANSITION RELATED TO NATIONAL SECURITY?

The Act directs the Federal Bureau of Investigation and other agencies responsible for conducting background investigations to conduct those investigations expeditiously, with the goal of providing appropriate security clearances before inauguration for the individuals that the President-elect has identified for high level national security positions, including secretaries and undersecretaries of cabinet-level agencies. The law also requires that the president-elect be given a classified summary as soon as possible after the election on threats to national security, covert military operations, and pending decisions on possible uses of military force. The White House Transition Coordinating Council is tasked with conducting interagency emergency preparedness and response exercises.

Separately, the Intelligence Reform and Terrorism Prevention Act of 2004³ allows each eligible candidate, before the election, to submit security clearance requests for prospective transition team members who will need access to classified information. The law directs that background investigations and security clearance determinations for these individuals be completed, to the fullest extent practicable, by the day after the date of the election.

WHAT REQUIREMENTS ARE PLACED ON RECIPIENTS OF TRANSITION ASSISTANCE?

As a condition of receiving office space and related services, eligible candidates, the president-elect and the vice president-elect are required to disclose to GSA all non-federal contributions received for transition activities. The transition teams must also disclose to the public the identities and sources of funding of individuals who enter federal agencies after the election as part of the President-elect's transition team. GSA, to the maximum extent practicable, shall enter a memorandum of understanding with each eligible candidate which includes the conditions for the services and facilities provided by GSA and designation of a transition representative to receive inquiries related to transition team documents. Also, the administration (acting through the Federal Transition Coordinator), enters memoranda of understanding with the eligible candidates including conditions for access to agencies by the president-elect's transition team, and agreement by transition teams to implement, enforce and publicly disclose ethics plans for transition team members.

HOW ARE PRESIDENTIAL TRANSITIONS FUNDED?

Presidential transitions are funded through a combination of federally appropriated funds and private funds. For the 2020-2021 transition cycle, Congress provided \$9.62 million for transition activities in fiscal year 2020 and \$9.9 million in fiscal year 2021.

³ P.L. 108-458, as amended by the Pre-Election Presidential Transition Act of 2010 (P.L. 111-283)

To accept private funding, an eligible candidate must establish an entity that is legally separate from the campaign and that qualifies under section 501(c)(4) of the Internal Revenue Code. An eligible candidate may transfer into this entity contributions received for his or her general election campaign and may also solicit and accept donations directly into it. Contributions per person or organization may not exceed \$5,000. As noted above, contributions must be disclosed to GSA.

WHAT HAPPENS IF A PRESIDENT IS RE-ELECTED?

In the event that the president-elect is the incumbent or where the vice president-elect is the incumbent, federal transition funds for post-election transition activities are returned to the Treasury. The law does allow, though, for GSA to use funds for training of new political appointees even if the president is re-elected.

WHAT HAPPENS IF THE RESULT OF THE ELECTION IS UNCLEAR?

The law provides that an eligible candidate has the right to the facilities and services provided to eligible candidates until the date on which the Administrator is able to determine the apparent successful candidates for the office of president and vice president.

Also, under legislation passed by Congress in 2022, if more than one eligible candidate has not conceded, beginning five days after the election, equitable post-election transition assistance will be provided to any remaining eligible candidates and all will be treated as an “apparent successful candidate” until GSA determines a sole apparent successful candidate.⁴

The 2022 law also lays out discretionary factors that the Administrator of GSA should look to in determining a winner (e.g., certified state results) as well as, if necessary, mandatory factors (e.g., a majority of pledged electors based on state certifications of their final canvass and conclusion of related administrative/legal actions).

Timeline of Requirements

Ongoing

- GSA designates a Federal Transition Coordinator (generally designated roughly two years before the election)

⁴ P.L. 108-458, as amended by the Pre-Election Presidential Transition Act of 2010 (P.L. 111-283).

- GSA develops a transition directory with information on federal agencies (generally updated with the report described below)
- Agency Transition Directors Council meets (not less than one meeting per year in off-election years)
- Training for appointees (authorized by the Act during transition and throughout a president's term, but in past, Congress has provided funding only for the fiscal year in which the transition takes place)

12 months before election

- GSA produces report summarizing modern transition activities and relevant resources

6 months before election

- President establishes a White House Transition Coordinating Council
- Agency Transition Directors Council begins to meet on a regular basis
- Each agency designates a senior career employee to oversee transition activities
- The Federal Transition Coordinator reports to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Accountability on transition preparations

Post-conventions through election

- GSA begins providing pre-election office space and support to the eligible candidates on one of the first three business days following the last nominating convention for the major parties
- Three months before the election, the Federal Transition Coordinator reports to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Accountability on transition preparations
- Not later than September 1, GSA enters memorandums of understanding with eligible candidates regarding support services
- Not later than September 15, heads of agencies ensure succession plans are in place for non-career positions
- Not later than October 1, the Executive Office of the President, acting through the Federal Transition Coordinator, negotiates memorandums of understanding with transition teams regarding conditions of access to agencies, including agreement by transition teams to implement and make public their ethics plans
- Not later than November 1, the Agency Transition Directors Council ensures that transition briefing materials are prepared

Post-election (while results are unclear)

- Pre-election support continues for five days unless all but one candidate concedes
- If a “sole apparent successful candidate” is not determined within five days of the election, post-election transition assistance is provided on an equitable basis to any remaining “apparent successful candidates” until there is one apparent successful candidate

Post-election (once there is clarity on the outcome, and if there is a change in administration)

- On the day following a concession of all but one eligible candidate, or the determination of a sole apparent successful candidate, GSA continues to provide office space and support services to the President-elect and Vice President-elect, with support continuing up to 60 days after inauguration
- A classified summary regarding national security is given to the president-elect as soon as possible after the election
- Training and orientation activities commence for prospective presidential appointees (typically funded by Congress for the fiscal year in which the transition falls)
- 30 days before the expiration of the term, GSA begins support to outgoing president and vice president, with support continuing for seven months total