POLITICAL TRANSITION PROCESS

Presidential and Congressional

Patricia R. Eltona
Editor

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POLITICAL TRANSITION PROCESS: PRESIDENTIAL AND CONGRESSIONAL

PATRICIA R. ELTONA
EDITOR

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PREFACE

The 2009 transition will be a unique and critical period for the U.S. government. It marks the first wartime presidential transition in 40 years. It will also be the first administration change for the relatively new Department of Homeland Security operating in the post 9/11 environment. The next administration will fill thousands of positions across government; there will be a number of new faces in Congress as well. Making these transitions as seamlessly as possible is pivotal to effectively and efficiently help accomplish the federal government's many essential missions.

Chapter 1 - Since President George Washington first relinquished his office to incoming President John Adams in 1797, this peaceful transition, symbolizing both continuity and change, has demonstrated the stability of our system of government. Aside from the symbolic transfer of power, an orderly transition from the outgoing Administration to the incoming Administration is essential to ensure continuity in the working affairs of government. Necessary funding for both the incoming and outgoing Administrations is authorized by the Presidential Transition Act (PTA), as amended. The General Services Administration (GSA) is authorized to provide suitable office space, staff compensation, communications services, and printing and postage costs associated with the transition. For the last presidential transition, GSA was authorized a total of $7.1 million in FY2001: $1.83 million for the outgoing William Clinton Administration; $4.27 million for the incoming Administration of George W. Bush; and $1 million for GSA to provide additional assistance as required by law.

In order to provide federal funding in the event of a 2004-2005 presidential transition, the President's FY2005 budget proposal requested a total of $7.7 million. It also proposed to amend the PTA to permit the expenditure of not more than $1 million for training and briefings for incoming appointees associated with the second term of an incumbent President. The House passed H.R. 5025, the FY2005 Transportation, Treasury, and Independent Agencies appropriations bill, on September 22, 2004. The legislation recommended for GSA a total of $7.7 million for transition expenses, and recommended that, if no transition occurred, $1 million be used by the incumbent President for briefings of incoming personnel associated with a second term. In the Senate, S. 2806 also recommended a total of $7.7 million to implement a possible transition. However, the Senate Committee on Appropriations denied the request to allow $1 million for training for incoming appointees associated with the second term of an incumbent President, stating that "it should be properly budgeted for and requested by the appropriate agencies." P.L. 108-309 was enacted on September 30, 2004, to provide continuing non-defense appropriations through November 20, 2004. A total of $2.5 million was authorized in the event of a presidential transition, until enactment of the FY2005 omnibus appropriations bill. Due to the outcome of the 2004 presidential election, no funds were provided in P.L. 108-447, the FY2005 Consolidated Appropriations Act.

The 108th Congress amended the PTA to require that outgoing executive branch officials prepare a classified summary of specific national security threats to be presented to the President-elect as soon as possible after the general election (118 Stat. 3856). P.L. 108-458 also provided for expedited security clearance determinations for members of a President-elect's transition team, and recommended that the Senate give expedited consideration to national security officials nominated by the incoming President.

The President' FY2009 budget requests $8,520,000 in funding for the upcoming presidential transition.

Chapter 2 - The Presidential Transition Act (PTA), as amended, authorizes funding for the General Services Administration (GSA) to provide suitable office space, staff compensation, and other services associated with the transition process.[1] Section 5 of the PTA authorizes the President to include in his budget request for each fiscal year in which his regular term of office will expire, a proposed appropriation for carrying out the purposes of the act. The President's FY2009 budget requests $8,520,000 in funding for the upcoming presidential transition. Of this total, $1 million is provided for briefings and related transition services for incoming personnel associated with the new administration.

Chapter 3 - The upcoming 2009 transition will be a unique and critical period for the U.S. government. It marks the first wartime presidential transition in 40 years. It will also be the first administration change for the relatively new Department of Homeland Security operating in the post 9/11 environment. The next administration will fill thousands of positions across government; there will be a number of new faces in Congress as well. Making these transitions as seamlessly as possible is pivotal to effectively and efficiently help accomplish the federal government's many essential missions.

While the Government Accountability Office (GAO), as a legislative branch agency, has extensive experience helping each new Congress, the Presidential Transition Act points to GAO as a resource to incoming administrations as well. The Act specifically identifies GAO as a source of briefings and other materials to help presidential appointees make the leap from campaigning to governing by informing them of the major management issues, risks, and challenges they will face.

GAO has traditionally played an important role as a resource for new Congresses and administrations, providing insight into the issues where GAO has done work. This testimony provides an overview of GAO's objectives for assisting the 111th Congress and the next administration in their all-important transition efforts.

Chapter 4 - OGE begins its work by assisting the new administration with a critical component of the confirmation process for Senate-confirmed positions. Working closely with the transition team and the new White House, OGE helps prospective nominees for such positions (PAS nominees) to comply with the extensive financial disclosure requirements of the Ethics in Government Act. OGE also carefully evaluates their financial disclosure reports and prepares ethics agreements to resolve potential conflicts of interest before they enter Government service. We conduct our work as quickly and thoroughly as possible.

In the early stages of the new President's term, OGE can help the leadership team establish a strong foundation for ethics. Traditionally, OGE also has assisted new Presidential administrations by providing initial ethics briefings to their incoming leadership teams. Either before or after the Inauguration, OGE can provide useful instruction on Government ethics to potential appointees to the Executive Office of the President, the President's cabinet and other senior administration positions. Agency ethics officials also will provide detailed briefings when the Senate confirms their appointments.

Thereafter, OGE can continue to provide support and oversight to the decentralized executive branch ethics program throughout the President's term. OGE will tailor its support to the needs of the new administration.

Chapter 5 - All executive branch employees are subject to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635. The standards include 14 basic principles of ethical conduct and provide uniform rules about gifts from outside sources, gifts between employees, conflicting financial interests, impartiality in performing official duties, seeking other employment, misuse of position, and outside activities. Some employees also are subject to supplemental regulations promulgated by their agencies

CONTENTS

In: Political Transition Process: Presidential...
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Chapter 1

PRESIDENTIAL TRANSITIONS

Stephanie Smith

SUMMARY

Since President George Washington first relinquished his office to incoming President John Adams in 1797, this peaceful transition, symbolizing both continuity and change, has demonstrated the stability of our system of government. Aside from the symbolic transfer of power, an orderly transition from the outgoing Administration to the incoming Administration is essential to ensure continuity in the working affairs of government. Necessary funding for both the incoming and outgoing Administrations is authorized by the Presidential Transition Act (PTA), as amended. The General Services Administration (GSA) is authorized to provide suitable office space, staff compensation, communications services, and printing and postage costs associated with the transition. For the last presidential transition, GSA was authorized a total of $7.1 million in FY2001: $1.83 million for the outgoing William Clinton Administration; $4.27 million for the incoming Administration of George W. Bush; and $1 million for GSA to provide additional assistance as required by law.

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The President' FY2009 budget requests $8,520,000 in funding for the upcoming presidential transition.

INTRODUCTION

Since outgoing President George Washington first relinquished his office to incoming President John Adams in 1797, this peaceful transition, symbolizing both continuity and change, has demonstrated the "best of American democracy to the world."[1] The activities surrounding a presidential transition today begin shortly after the election, as the President-elect has fewer than 11 weeks to formulate the new Administration before taking the oath of office on January 20. A formal transition process has been shown to be essential to ensure continuity in the conduct of the affairs of the executive branch, as well as the rest of the federal government.

Before 1963, the primary source of funding for transition expenses was the political party organization of the incoming President, and the efforts of volunteer staff. Realizing the importance of presidential transitions for effective government, Congress first enacted the Presidential Transition Act of 1963 (PTA) to authorize federal funding and assistance for future incoming Administrations.[2] The act was amended by Congress in 1976, to increase the authorization for a presidential transition to $3 million, with $2 million available to the President-elect and Vice President-elect and $1 million to the outgoing President and Vice President.[3]

In 1988, Congress enacted the Presidential Transitions Effectiveness Act to increase federal funding to $5 million to support a change of Administrations.[4] Of this total, $3.5 million was authorized to be appropriated for services and facilities to the President-elect and Vice President-elect. The outgoing President and Vice President were authorized $1.5 million in federal funds. A total of $250,000 would be returned to the Treasury if the outgoing Vice President were subsequently elected President. These funds were authorized to be increased in future transitions to accommodate inflation. The new legislation also amended the PTA to require that private contributions and names of transition personnel be publicly disclosed.

In anticipation of the 2000-2001 transition, the 106th Congress enacted P.L. 106293, the Presidential Transition Act of 2000, which President Clinton signed on October 13, 2000.[5] It amended the PTA to authorize the General Services Administration (GSA) to provide additional support in the orientation of the President-elect's newly appointed senior staff.

Part I of this chapter discusses legislative actions to enhance the transition process, each transition since the 1960-1961 arrival of President John F. Kennedy, and general considerations for the presidential transition process. Part II contains the text of the major transition statutes discussed in the report.

PRESIDENT'S COMMISSION ON CAMPAIGN COSTS

Subsequent to the 1960 election, it was widely recognized that changes were needed in campaign finance practices. Funding for presidential transition activities was among the issues discussed. Accordingly, on November 8, 1961, President Kennedy established the President's Commission on Campaign Costs to make recommendations on "improved ways of financing expenditures required of nominees for the offices of President and Vice President" as well as other relevant costs associated with presidential campaigns.[6] Five months later, the 12-member bipartisan commission completed its final report, entitled Financing *Presidential Campaigns,* which included a recommendation on presidential transitions.[7]

The commission reported that the 1952-1953 transition for President Dwight D. Eisenhower cost a special Republican committee more than $200,000, and the 19601961 transition for President Kennedy cost $360,000, funded by the Democratic National Committee. Noting that such expenses created financial hardship for the political parties, especially after an election, the commission recommended that funding for the President-elect and Vice President-elect should not be the responsibility of a political party.

> We endorse proposals to "institutionalize" the transition from one administration to another when the party in power changes. Important reasons for doing so exist wholly aside from the costs to the parties. The new President must select and assemble the staff to man his administration, and they in return must prepare themselves for their new responsibilities.[8]

The commission also recommended that the outgoing President be authorized to receive federally funded facilities and services to assist in the orderly transfer of executive power.[9]

In a May 29, 1962, letter to Congress transmitting legislation to implement the commission's final recommendations, President Kennedy stated:

> Traditionally, the political parties have had to pay the costs of the President-elect and Vice President-elect during the transition period between the election and the inauguration of a new Administration. It is entirely desirable and appropriate that the Federal government provide funds for paying the reasonable and necessary costs of installing a new Administration in office.[10]

In addition to the importance of federal funding, President Kennedy stressed that an incoming President must select "responsible public officials who must prepare themselves for their new responsibilities"during the transition period.

THE PRESIDENTIAL TRANSITION ACT OF 1963

As recommended by the President's Commission on Campaign Costs, legislation was introduced during the 87th Congress to provide federal financial support for presidential transitions. Although it was supported by President Kennedy, there was no action on the bill. During the following Congress, H.R. 4638, the Presidential Transition Act of 1963 (PTA), was introduced on April 24, 1963, and was enacted on March 7, 1964, as P.L. 88-277.[11]

The PTA authorized the Administrator of General Services to provide to the President-elect and Vice President-elect office space, compensation to office staff, the detail of personnel on a reimbursable or non-reimbursable basis from federal agencies, the hiring of consultants, and travel expenses. It also authorized the provision of such services to the outgoing President and Vice President, for a period not to exceed six months from the expiration of their terms of office. The act authorized the appropriation of $900,000 for each presidential transition, but did not specify how the amount was to be divided between the incoming and outgoing Administrations. However, the legislative history indicated that the funds were to be divided equally.[12]

FUNDING UNDER THE PRESIDENTIAL TRANSITION ACT

Even though the PTA was enacted in 1964, its provisions were not fully applied following President Johnson's reelection in 1964, since he was already in office. Vice President-elect Hubert Humphrey spent approximately $72,000 in transition expenses under the act.[13]

Johnson-Nixon Transition

The PTA was first fully implemented during the transition from the Administration of President Johnson to that of President Richard Nixon in 19681969, when the transition funds were divided equally between the two Administrations. The following year, the General Accounting Office (GAO) reviewed the operation of the act. GAO found that President Nixon incurred transition costs of $1.5 million, and it recommended that the $900,000 limit be increased to better reflect actual transition expenses.[14] A 1982 GAO report stated that President-elect Nixon raised $1 million in private funds to supplement the $450,000 available to him under the act.[15]

President Johnson spent $370,276 of the $375,000 allocated to him under the PTA.[16] He also had the assistance of employees provided by federal agencies on a nonreimbursable basis.[17] Vice President Humphrey spent $75,000 to pay the salaries and expenses of his staff and consultants.[18]

Nixon-Ford Transition

In 1974, Vice President Gerald Ford faced a situation entirely different from that of the first presidential transition covered by the PTA. Because of the resignation of President Nixon, Mr. Ford was not a President-elect, and he received no funds under the Presidential Transition Act.[19]

Due to the manner in which President Nixon left office, there was some debate as to whether he was entitled to allowances and services as a former President. The Justice Department ruled that he was entitled to federal funds as a former President, since he had not been removed by impeachment.[20] Funds are appropriated under the Presidential Transition Act only for presidential election years; therefore, no funds were specifically available when President Nixon left office. On August 29, 1974, the Ford Administration requested Congress to appropriate $450,000 to GSA for carrying out the provisions of the act. The Supplemental Appropriations Act of 1975 appropriated $100,000 to President Nixon under the Presidential Transition Act for a period of six months ending February 9, 1975.[21] In addition, most of the clerical and staff work was done by detailed employees provided by several federal agencies, on a nonreimbursable basis.[22]

Ford-Carter Transition

Based on earlier GAO recommendations, the Presidential Transition Act was amended by Congress in 1976 to increase the authorization for a presidential transition to $3 million, with $2 million available to the President-elect and Vice President-elect and $1 million to the outgoing President and Vice President.[23] The act also amended the earlier legislation to authorize the detail of personnel, on a reimbursable basis only.

The increase in funding was first made available to President Ford and President Jimmy Carter in the 1976-1977 transition. The incoming Carter-Mondale Administration spent approximately $1.7 million of the $2 million made available to it pursuant to the act, without any reported private additional assistance.[24]

Of the $1 million appropriated to the outgoing Ford Administration, President Ford was allocated $905,000, and $95,000 went to Vice President Nelson Rockefeller. As of August 31, 1977, former President Ford had spent approximately $63 5,000 of the total appropriation, but GAO found that an additional amount would be needed to pay for the use of military aircraft.[25]

At the end of the six-month transition period, Vice President Rockefeller had used $51,292 of the total funds available to him under the PTA, as amended.[26]

Carter-Reagan Transition

During the 1980-1981 transition, President Carter spent $672,659 for transition purposes, and Vice President Walter Mondale used $188,867 of the $1 million available to the outgoing Carter Administration.[27]

The incoming Administration of Ronald Reagan spent approximately $1.75 million of the $2 million in available transition funds. Of this total, $63,378 went to Vice President-elect George H. W. Bush for personnel compensation and benefits.[28]

A 1982 GAO review of the Reagan-Bush transition team's activities at six federal agencies found that approximately $235,000 in transition-related expenses were charged to the agencies' general appropriations. According to GAO, most of the expenses were incurred for gathering and communicating information about agency operations to the transition team. However, certain expenses were related to salaries for secretarial employees who were assigned to the transition team on a nonreimbursable basis and who worked at the team's direction on a full-time or nearly full-time basis. Since the PTA authorized that agency employee details to the transition team be made on a reimbursable basis only, GAO found that the transition team did not always follow correct procedures.[29]

In addition to federal appropriations, funds for the Reagan transition were solicited from the public by the Presidential Transition Foundation, Inc., a private corporation. GAO attempted to audit these funds, but was denied access to the accounts and records by the foundation's legal counsel. According to GAO's report, the foundation stated that it would be audited by a public accounting firm. GAO found that federal funds appropriated under the PTA were kept separate from private funds donated to the foundation.[30] A 1988 Senate report stated that, based on Internal Revenue Service documents and Federal Election Commission reports:

> President-elect Reagan raised approximately $1.25 million for both his preelection and post-election transition activities in 1980. None of the sources or expenditures associated with the private cash were ever disclosed to the public, creating the potential for hidden conflicts of interest.[31]

PRESIDENTIAL TRANSITIONS EFFECTIVENESS ACT

In anticipation of a new President being elected in the November 1988 general election, the 100th Congress began consideration of legislation to provide increased federal funding for the 1988-1989 transition. After examining the transition expenditures for previous incoming Presidents Carter and Reagan, the Senate Committee on Governmental Affairs expressed concern that future incoming Presidents would have to raise private funds to finance their transitions if the funding under the PTA were not increased.[32]

Prior to the enactment of the PTA, and subsequently, many candidates had initiated transition activities and studies before the election, in some cases before the convention. The committee affirmed that pre-election transition planning is a legitimate cost of a presidential transition and concluded that such planning should be covered, at least partially, by public funds. However, the Federal Elections Commission indicated that there were regulatory prohibitions:

> [I]t appears that, under current law and regulations, the FEC would find that federal campaign funds — as opposed to segregated private donations — are not available for transition funding during a campaign. Furthermore, we are aware of no FEC reporting or disclosure requirements applicable to private transition funds.[33]

As reported, the Senate bill provided for limited public funding of pre-election transition planning. Those provisions were not enacted. It continues to be the practice that all pre-election transition planning is privately financed.

As a result of these deliberations, Congress enacted the Presidential Transitions Effectiveness Act to increase federal funding for presidential transitions and to amend the 1964 legislation to require that private contributions and names of transition personnel be publicly disclosed (see Part II for complete text).[34]

The act authorized $3.5 million to be appropriated for the funding of services and facilities to the President-elect and Vice President-elect. The outgoing President and Vice President were authorized $1.5 million in federal funds. In the event the outgoing Vice President were subsequently elected President, the new Administration would receive only $1.25 million in assistance. For future transitions, these figures were to be increased by an inflation-adjusted amount, based on actual costs of transition expenses and services of the most recent presidential transition.

In addition to funding provisions, the new legislation amended the PTA to require that private contributions and names of transition personnel be publicly disclosed. As a condition for receiving federal funding and services, the President- elect and Vice President-elect must formally disclose the date, source, and amount of all privately contributed funds for the transition, with a maximum contribution of $5,000 allowed from any person or organization. These written disclosures must be made to GSA within 30 days after the January 20 inauguration. The President-elect must also disclose information about transition team members before initial contact with a federal department or agency. The act also limits any temporary appointment to an executive branch vacancy to 120 days, unless a nomination has been submitted to the Senate.

FUNDING UNDER THE PRESIDENTIAL TRANSITIONS EFFECTIVENESS ACT

As authorized by the act, the funding for an incoming Administration is available from the day following the general elections until 30 days after the inauguration. For the outgoing President and Vice President, transition funding was extended from six to seven months, beginning one month before the inauguration, to facilitate their relocation to private life. Separate legislation also provides former Presidents an annual lifetime pension and staff and office allowances after the transition period expires, as well as Secret Service protection.[35]

The increase in funding under the Presidential Transitions Effectiveness Act was first made available during the 1988-1989 transition of outgoing President Reagan and his successor, George H. W. Bush.

Reagan-George H. W. Bush Transition

President Reagan used $697,034 of the $1.25 million available to him under the act as the outgoing President.[36] Outgoing Vice President Bush was authorized $250,000 for expenses related to his transition from that office. The $250,000 was transferred to the Federal Election

Commission.[37] Incoming President Bush and Vice President Dan Quayle spent $2.3 million of the $3.5 million authorized under the PTA, as amended, and transferred $1 million to the government of the District of Columbia for inaugural expenses.[38]

George H. W. Bush-Clinton Transition

For the 1992-1993 presidential transition, $3.5 million was appropriated to GSA for the incoming Administration of President William Clinton and Vice President Albert Gore Jr., and $1.5 million for the outgoing Administration of President George H. W. Bush and Vice President Quayle.[39] Of this total, the Bush Administration determined that $1.25 million would be made available to President Bush, with the remaining $250,000 to be used by Vice President Quayle. During the transition period, President Bush used $907,939, with an unobligated balance of $342,061. Vice President Quayle used $244,192, with an unobligated balance of $5,808. President Clinton and Vice President Gore jointly spent $3,485,000, with an unobligated balance of $15,000.

For FY1997, $5.6 million was authorized in the event of a presidential transition in January 1997, which did not occur.[40]

Presidential Transition Act of 2000

While the PTA, as amended, has authorized federal funds and facilities to ensure smooth transitions in the past, no formalized attention was given to orientation of a President-elect's newly appointed senior staff. In anticipation of the 2000-2001 transition, the 106th Congress enacted P.L. 106-293, the Presidential Transition Act of 2000, which President Clinton signed on October 13, 2000.[41]

New Provisions to Facilitate the Transition Process

The legislation amended the PTA to authorize GSA to provide additional support during the 2000-2001 transition period. Most importantly, GSA was authorized to coordinate the development and presentation of orientation sessions for the President-elect's nominees for cabinet and high-level executive branch positions. Prior to the election on November 7, 2000, GSA was authorized to consult with the presidential candidates in order to begin development of a computer and communications system for use during the transition period. In conjunction with the National Archives and Records Administration (NARA), GSA was required to create a transition directory, composed of federal publications and materials pertaining to the statutory and administrative functions of each federal department and agency. A fourth major provision required the Office of Government Ethics to prepare a report on needed improvements to the financial disclosure process currently required for presidential nominees.

Clinton-George W. Bush Transition

For FY2001, GSA requested a total of $7.1 million for the 2000-2001 presidential transition. Of this total, $1.83 million was budgeted for the outgoing Clinton Administration, with $305,000 to be returned to the Treasury if Vice President Albert Gore was elected President; and $4.27 million was requested for the incoming Administration.[42] GSA requested an additional $1 million to fund its new responsibilities under the Presidential Transition Act of 2000. On October 12, 2000, the Senate gave final approval to the conference agreement that funded this account at $7.1 million in the FY2001 Treasury, Postal Service, and General Government Appropriations Act.[43] On October 30, President Clinton vetoed the legislation. On November 3, 2000, President Clinton signed the measure that funded the 2000-2001 transition at the requested levels.[44]

Passage of the Presidential Transition Act of 2000 was intended to allow the President-elect and his appointees to "hit the ground running" as they took office on January 20, and increase their effectiveness during the crucial first year in office. However, the significance of the relatively short transition period came under intense scrutiny during the historic events surrounding the presidential election of 2000.

With less than five weeks available for formal transition activities, $1.83 million was provided to the outgoing Administration of President Clinton, which included $305,000 for Vice President Gore; $4.27 million for the incoming Administration of President-elect George W. Bush; and $1 million to provide briefings for incoming Bush appointees. According to GSA, actual FY2001 obligations for the outgoing Clinton Administration totaled $1,788,623, which included $282,935 for Vice President Gore. Actual FY2001 obligations for the incoming Bush-Cheney Administration totaled $4,000,836 in transition costs, plus an additional $983,507 for agency briefings for incoming Bush appointees.[45]

FY2005 Transition Funding

Section 6 of the PTA authorizes the President to include in his budget request for each fiscal year in which his regular term of office will expire, a proposed appropriation for carrying out the purposes of the act. In order to provide federal funding in the event of a 2004 presidential transition, the President's FY2005 budget proposal requested a total of $7.7 million. Of this total, $1 million would be provided for briefings and related transition services for incoming personnel associated with a new administration.[46]

Currently, Section 3(f) of the PTA states that there shall be no expenditures of funds for the provision of services and facilities in the event the President-elect is the incumbent President, or when the Vice President-elect is the incumbent Vice President. Any funds appropriated for such purposes "shall be returned to the general funds of the Treasury." In the event no transition occurs, the President's FY2005 budget request for GSA proposed to amend the PTA through appropriation language to permit the expenditure of not more than $1 million for training and briefings for incoming appointees associated with the second term of an incumbent President.[47] No other expenditure of appropriated funds for transition purposes would be made available to the incumbent President, and the remaining $6.7 million would be returned to the general fund of the Treasury.