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Presidential Transitions: A Brief Summary of the Presidential Transition Act

This In Focus provides a brief summary of the provisions of the Presidential Transition Act of 1963, as amended (PTA). For a discussion of the PTA and associated statutes in greater depth, see CRS Report R46602, *Presidential Transition Act: Provisions and Funding*.

The constitutional transfer of power and authority from an incumbent American President to a successor is a momentous occasion in American government. In the present day, this transfer of authority is a complex and multifaceted undertaking, as the outgoing Administration concludes its affairs and the incoming Administration prepares to govern.

Presidential Transition Evolution

While a formal presidential transition process is designed to ensure some continuity in the conduct of the executive branch's affairs, the concept of a federally funded, institutionalized transition process is relatively new. Before enactment of the PTA, the methods for transferring information and responsibility between Administrations were developed in an ad hoc fashion. In addition, the political party organization of the incoming President was the primary source of funding for transition expenses. Many facets of presidential transitions continued to be developed anew, according to the preferences and priorities of each outgoing and, in particular, each incoming President. Now, however, the PTA provides a framework for funding and supporting the transition process that begins months before the presidential election and continues after the new President's inauguration. The act does not explicitly provide for presidential transitions that occur as a result of the removal, death, or resignation of an incumbent President between elections. (For more on this topic, see CRS Report R46450, *Presidential Succession: Perspectives and Contemporary Issues for Congress*.)

Congress has amended the PTA over the course of 60 years and 11 presidencies in response to evolving views of the role of the government in the transition process and the importance of a smooth transition process in ensuring continuity of the federal government. From its enactment in 1964 through the presidential transition of 2008-2009, most PTA-authorized support was provided after the election of the incoming President and Vice President. In the years since, Congress has amended the PTA on multiple occasions and expanded support for the presidential transition process to include pre-election activities. Now, the PTA provides a framework for funding and supporting a transition process that begins months before the presidential election and continues after the new President's inauguration.

Pre-Election Provisions

The PTA includes a number of provisions related to the pre-election portion of the presidential transition.

Under the act, the General Services Administration (GSA) administrator designates a senior career GSA official as the federal transition coordinator. This official plays a key coordinating role across federal agencies and acts as a liaison to "eligible candidates"—major party candidates and other principal contenders. The GSA administrator designated the current coordinator prior to 2024.

The PTA directs the President and the incumbent Administration to establish a specified transition-related infrastructure, including:

- a White House transition coordinating council headed by a senior official in the Executive Office of the President.
- an agency transition directors council co-chaired by the deputy director for management at the Office of Management and Budget and the federal transition coordinator, and
- a report summarizing transition activities and listing transition-related resources.

The PTA authorizes the incumbent Administration to provide certain pre-election transition support to eligible candidates. GSA is directed to establish a memorandum of understanding (MOU) with each candidate regarding terms and conditions related to that support. Support includes, for example, office space and equipment, communications services, consultation about potential transition from the candidate's information technology systems to federal systems, and orientation activities.

The PTA authorizes eligible candidates to fund pre-election transition activities through their campaigns. The statute places limits on donations toward PTA-related activities as a condition for receiving services and funds under the act.

The PTA also directs agencies to establish transition-period succession plans for senior political positions and to ensure that career officials so designated are prepared to lead federal agencies on an interim basis during the transition process.

The statute also provides for the negotiation, before the election, of MOUs between the incumbent President and eligible candidates that specify the terms of transition staff access to executive branch employees, facilities, and

documents. Each MOU is to include an ethics plan, with specified provisions, pertaining to the members of the transition team. The MOU between eligible candidate Joe Biden and GSA became effective at the beginning of September 2020.

Post-Election Provisions

Post-election provisions of the PTA generally apply to the “apparent successful candidate.” The act provides criteria for the determination of apparent successful candidates, but it does not explicitly assign to a specific official the authority to make this determination. It does, however, permit and direct the GSA administrator to *treat* one candidate—or, in a close election outcome, more candidates—as apparently successful for purposes of the PTA when specified criteria are met under several different potential post-election scenarios.

If all but one presidential candidate has conceded the election, the act provides that the remaining candidate shall be the apparent successful candidate. Where two or more candidates have not conceded within five days of election day, the remaining candidates shall be treated as apparent successful candidates until the criteria for one of them to be treated as the sole apparent successful candidate are met. The act includes two sets of criteria for determining an apparent successful candidate: interim discretionary qualifications and mandatory qualifications.

On an interim discretionary basis, the GSA administrator may determine that a candidate “shall be *treated as*” the sole apparent successful candidate if, five or more days after the election, “it is substantially certain” that a single candidate will “receive a majority of the pledged votes of electors.” Factors to be used when determining whether this is the case include (1) whether “significant legal challenges” that could alter the outcome of a state’s election have been “substantially resolved,” (2) the certified results of the election in each state, and (3) the level of certainty of states’ election results given the “totality of circumstances.”

The PTA also provides that a candidate *shall* be the sole apparent successful candidate for purposes of the act if:

- the candidate receives a majority of pledged electoral votes based on state certifications and there are no further legal or administrative actions pertaining to the results,
- the candidate receives the majority of electoral votes at the meeting of electors in December following the election, or
- the candidate is formally elected at the joint meeting of Congress.

GSA’s transition support is authorized to continue after the new President and Vice President take office.

The PTA authorizes the GSA administrator to provide each apparent successful candidate with certain facilities, funds, and services to prepare for future duties, including those that were available to them as eligible candidates.

Additional resources available after the election include, for example:

- payment of transition office staff,
- payment for services of experts or consultants,
- payment of certain travel expenses and subsistence allowances, and
- the use of government aircraft for transition purposes on a reimbursable basis.

The PTA authorizes the funding for incoming orientation activities for intended nominees for department heads and other key leadership positions. It also provides for preparation of a detailed classified, compartmented summary of national security threats, major military or covert operations, and pending decisions on possible uses of military force. This summary is to be conveyed to the apparent successful candidate for President as soon as possible after the general election.

Funding

The PTA authorizes appropriations for implementation of its provisions. The FY2024 Financial Services and General Government Appropriations Act provided \$10.413 million in funding for PTA-authorized activities.

Other PTA Provisions

In the event that an incumbent President and Vice President are reelected, the PTA prohibits the expenditure of funds for most services and facilities under the act. However, certain activities related to training and orientations of key prospective presidential appointees may be funded.

To receive services and funds under the act, eligible candidates and apparent successful candidates are required to adhere to specified limits and disclosure requirements pertaining to transition-related contributions.

The GSA administrator is authorized to provide to an outgoing President and Vice President services and facilities associated with winding up the affairs of their term in office. Where the outgoing Vice President is becoming President, the PTA limits authorized expenditures for these purposes.

The PTA recommends that any apparent successful candidate submit the “names of candidates for high level national security positions through the level of undersecretary of cabinet departments” to the agency with national security clearance functions as soon as possible after the presidential election. The statute requires the responsible agency to carry out background investigations of these candidates “as expeditiously as possible ... before the date of the inauguration.”

Henry B. Hogue, Specialist in American National Government

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