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Presidential Transition Act: Provisions and Funding

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Presidential Transition Act: Provisions and Funding

The Presidential Transition Act of 1963 (PTA) authorizes funding for the General Services Administration (GSA) to provide suitable office space, staff compensation, and other services associated with the presidential transition process (3 U.S.C. §102 note). The act has been amended over six decades 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 government. From enactment of the PTA 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 expanded support for the presidential transition process to include authorization and funding for pre-election activities and support. Most recently, the act was amended by the Presidential Transition Improvement Act (P.L. 117-328, Div. P, Title II), enacted on December 29, 2022.

As amended, the PTA directs the President and the incumbent Administration to establish a specified transition-related infrastructure, with some features ongoing and others active during a presidential election year only. It also authorizes the provision by the incumbent Administration of certain pre-election transition support for eligible candidates. In addition, the PTA authorizes eligible candidates to fund pre-election transition activities through their campaigns. The statute also directs agencies to establish transition period succession plans for senior political positions and to ensure career officials so designated are prepared to lead federal agencies on an interim basis during the transition process. It further provides for the negotiation, before the election, of memorandums of understanding (MOUs) between the incumbent President and eligible candidates that specify the terms of access by transition staff 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.

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 or more candidates as apparently successful for purposes of the PTA when specified criteria are met under several different potential post-election scenarios. GSA’s transition support is authorized to continue after the new President and Vice President take office.

In general, presidential transition activities under the PTA are coordinated by GSA and the Office of Management and Budget (OMB). To receive services and funds under the act, eligible candidates and apparent successful candidates are required to adhere to certain transition-related contribution limits and disclosure requirements. Other provisions of the PTA provide for expedited security clearance processes for transition team members and the incoming President’s top appointees.

The President’s FY2024 budget proposal for GSA included a request for \$10.413 million in funding for activities authorized by the PTA. Congress matched this request in the Financial Services and General Government Appropriations Act for FY2024 (P.L. 118-47, Division B.) The President’s FY2025 budget proposal for GSA included a request for \$11.202 million in funding for PTA-authorized activities. Of this amount, \$7.222 million was for facilities, funds, and services to prepare candidates for future duties; \$2.980 million was for services and facilities for a potentially departing President and Vice President; and \$1 million was for briefings, workshops, and other orientation activities for key prospective appointees and for the GSA transition-created directory. Under the proposal, however, none of the requested funds, except those for a potentially departing President and Vice President, are to be used for activities in support of multiple apparent successful candidates.

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Introduction

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. This report discusses the provisions and funding of the statute that governs this process: the Presidential Transition Act (PTA) of 1963, as amended.¹

In recent decades, presidential transition activities often have begun informally months before the general election; the major candidates have usually asked individuals or small groups to begin to formulate transition plans in the event of an electoral victory. Preparations have generally accelerated after the election, as the attention of the apparent successful candidate and his supporters has turned from campaigning to governing. They have approximately 11 weeks between Election Day and Inauguration Day to organize the new Administration and to make plans for pursuing its policy agenda.² The incoming President must also prepare to assume national security and homeland security responsibilities from the incumbent—among a host of other duties and expectations.

While a formal transition process is essential to ensure 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 in 1964,³ 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.⁴ 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.

From enactment of the PTA 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 expanded support for the presidential transition process to include authorization and funding for pre-election activities and support:

- The *Pre-Election Presidential Transition Act of 2010* amended the PTA and included several other provisions pertaining to additional support for eligible candidates during pre-election transition planning.⁵
- The *Edward “Ted” Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015* (PTIA)—enacted on March 18, 2016—incorporated

¹ 3 U.S.C. §102 note.

² The Election Day for President falls on the first Tuesday following the first Monday of November of every fourth year (3 U.S.C. §1), and Inauguration Day falls on January 20 of the year that follows (U.S. Constitution, 20th Amendment).

³ This statute was enacted March 7, 1964, but it retained the title Presidential Transition Act of 1963. For a detailed discussion of presidential transitions preceding this act, see Laurin L. Henry, *Presidential Transitions* (Washington: Brookings Institution, 1960).

⁴ U.S. President's Commission on Campaign Costs, *Financing Presidential Campaigns*, April 1962, pp. 23-24.

⁵ P.L. 111-283; 124 Stat. 3045.

- some provisions of the 2010 law, with modifications, into the PTA.⁶ PTIA further amended the PTA with provisions for pre-election transition support for presidential candidates.
- The *Presidential Transition Enhancement Act of 2019*, enacted on March 3, 2020, amended the PTA to require the General Services Administration (GSA) to establish, by September 1 of a presidential election year, a memorandum of understanding (MOU) with each eligible candidate regarding the conditions under which facilities and services are to be provided by GSA.⁷ An additional amendment mandated the development of agency succession plans for potential leadership vacancies during the transition. The act also amended the PTA to extend GSA transition support to the new President and Vice President following inauguration.
 - The *Presidential Transition Improvement Act*, enacted on December 29, 2022, amended the PTA to specify the criteria that would be used to determine, following the election, the “apparent successful candidate” who would be eligible to receive transition resources and support under the PTA. Another PTA amendment under the act specified conditions, such as a contested election result, under which GSA could treat multiple candidates as “apparent successful candidates.” (See “Apparent Successful Candidates” below.)

Transition Support: Services, Facilities, and Funds

Pre-Election Services and Activities

The PTA, as amended, includes a number of provisions related to the pre-election portion of the presidential transition. It directs the President and the incumbent Administration to establish a specified transition-related organizational infrastructure, with some features ongoing and others operational during a presidential election year only. The PTA also authorizes the incumbent Administration to provide certain pre-election transition support for eligible candidates (as defined below). In addition, the PTA authorizes eligible candidates to fund pre-election transition activities through their campaigns. The statute also requires each agency head to establish, by September 15 of a presidential election year, a succession plan for each political position in the agency. It further provides for the negotiation, before the election, of memoranda of understanding between the incumbent President and eligible candidates concerning post-election transition matters.

For purposes of the act, *eligible candidate* is defined as “a candidate of a major party [as defined in 26 U.S.C. §9002(6)] for President or Vice-President of the United States; and ... any other candidate who has been determined by the [GSA] Administrator to be among the principal contenders for the general election to such offices.”⁸

⁶ P.L. 114-136; 130 Stat. 301.

⁷ P.L. 116-121; 134 Stat. 138.

⁸ 3 U.S.C. §102 note; Presidential Transition Act of 1963 [hereinafter cited as PTA], §3(h)(4). The *U.S. Code* section cited, 26 U.S.C. §9002(6), states: “The term ‘major party’ means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.” This section of the PTA also provides further guidance to the Administrator of General Services (Administrator) about how he or she would identify such an “other candidate ... among the principal contenders.”

In general, pre-election transition support is to be provided equally to eligible candidates, without regard to political affiliation.⁹

Transition-Related Infrastructure

The PTA directs the President, in general, to “take such actions as the President determines necessary and appropriate to plan and coordinate activities by the Executive branch ... to facilitate an efficient transfer of power.”¹⁰ More specifically, the law directs the President to establish and operate, as specified, a White House Transition Coordinating Council and an Agency Transition Directors Council (described in detail below).

The statute directs the Administrator of General Services (Administrator) to designate a senior career GSA official to be the Federal Transition Coordinator (the Coordinator). The Coordinator is to carry out transition-related functions assigned to GSA, coordinate transition planning across federal agencies, ensure agency compliance with transition-related planning and reporting requirements, and act as liaison to eligible candidates.¹¹

The President is to establish the White House Transition Coordinating Council no later than early May of the presidential election year. This council is tasked with providing guidance to federal agencies and the Coordinator on transition preparations, facilitating communication between eligible candidates’ representatives and senior officials in the agencies and in the Executive Office of the President (EOP), and preparing and hosting interagency emergency preparedness and response exercises. The members of this council are to include senior executive branch officials, the Coordinator, eligible candidates’ representatives (in an advisory capacity), and others, as the President deems appropriate.¹² The chairperson of this council is to be a senior EOP official designated by the President.

The Agency Transition Directors Council established by the President is required to meet not less than once per year but “on a regular basis as necessary” beginning in early May of a presidential election year. The PTA tasks this council with a number of duties, including assisting the Coordinator, facilitating the timely assembly of transition-related briefing materials by agencies, and ensuring preparation of career officials to lead federal agencies on an interim basis during the transition. The Coordinator and the Deputy Director for Management of the Office of Management and Budget are to serve as co-chairpersons of the council. Other members include senior EOP officials, senior career officials as representatives of specified federal agencies, and—during a presidential election year—eligible candidates’ representatives.¹³

The PTA also directs the Administrator to prepare, not later than a year before a presidential election, a report summarizing modern presidential transition activities. This report is to include a bibliography of transition-related resources. It is to be released to the public, generally, as well as to eligible candidates, specifically.¹⁴

⁹ 3 U.S.C. §102 note; PTA, §§3(h)(2)(B)(iii) and 4(h).

¹⁰ 3 U.S.C. §102 note; PTA, §4(b).

¹¹ 3 U.S.C. §102 note; PTA, §4(c).

¹² 3 U.S.C. §102 note; PTA, §4(d).

¹³ 3 U.S.C. §102 note; PTA, §4(e). The eligible candidates’ representatives are to serve in an advisory capacity.

¹⁴ 3 U.S.C. §102 note; PTA, §3(h)(1)(C). The Administrator is required to release this report to eligible candidates together with a notice regarding available services and facilities. In general, this notice is to be provided within three business days of the last nominating convention. 3 U.S.C. §102 note; PTA, §3(h)(1)(B). The Administrator is to make the report generally available to the public “promptly.”

The incumbent President, acting through the Coordinator, is required to report to Congress on pre-election presidential transition preparations twice: once at six months and again at three months before the election.¹⁵

Pre-Election Direct Transition Support

The PTA, as amended, authorizes the incumbent Administration to provide certain pre-election transition support to eligible candidates.

The Administrator is directed to enter into an MOU with each eligible candidate specifying the terms and conditions for the provision of administrative services and facilities. This MOU is to be completed by September 1 of a presidential election year. Where possible, the MOU is to be based on similar MOUs from prior transitions. The MOU is to designate a transition representative of the candidate, but a later change in this designation by the candidate does not necessitate a new MOU.¹⁶ Amendments to the MOU are to be agreed to in writing, and deviations from the MOU are to be preceded by written notice.

The statute provides for consultation between the Administrator and “any apparent successful candidate or eligible candidate ... to develop a systems architecture plan for the computer and communications systems of the candidate,” including human resource management system software compatible with that of the incumbent and likely to be used by the apparent successful candidates.¹⁷ The aim of this consultation is “to coordinate a transition to Federal systems if the candidate is elected.”

Other services and facilities authorized for eligible candidates include office space, appropriate furnishings, office equipment, communications services, and printing and binding.¹⁸ The Administrator is required to notify eligible candidates of the availability of these resources.¹⁹ Where services and facilities are provided to an eligible candidate, certain conditions apply. The Administrator shall (1) determine the location of any office space, (2) ensure the security of information technology or communications services, and (3) offer information and other assistance equally to all eligible candidates. Candidates may use these resources only to prepare for a potential transition.²⁰ A candidate is entitled to these services and facilities up to the date the “apparent successful candidates for the office of President and Vice President” have been determined.²¹ (See “Apparent Successful Candidates,” below, for a discussion of this determination process.)

The PTA also requires the Administrator to notify eligible candidates of certain services made available under the Intelligence Reform and Terrorism Prevention Act of 2004.²² The 2004 act directs the Office of Personnel Management to provide a list of presidentially appointed positions to each major party candidate not later than 15 days after his or her nomination. The same list is

¹⁵ 3 U.S.C. §102 note; PTA, §4(i).

¹⁶ 3 U.S.C. §102 note; PTA, §3(i). The service of this representative terminates no later than September 30 of the following year, but it may be ended earlier.

¹⁷ 3 U.S.C. §102 note; PTA, §3(a)(10).

¹⁸ 3 U.S.C. §102 note; PTA, §3(h)(2).

¹⁹ 3 U.S.C. §102 note; PTA, §3(h)(1). In general, this notice is to be provided within three business days of the last nominating convention.

²⁰ 3 U.S.C. §102 note; PTA, §§3(h)(2)(A), 3(h)(2)(C).

²¹ 3 U.S.C. §102 note; PTA, §3(h)(2)(D).

²² 3 U.S.C. §102 note; PTA, §3(h)(1)(A).

to go to other eligible candidates thereafter.²³ A second provision of the 2004 act pertains to expedited security clearances for transition team members.²⁴

In addition, the PTA authorizes the Administrator to fund, during the transition, orientation activities, primarily for “individuals the apparent successful candidate for the office of President or eligible candidate ... for President intends to nominate as department heads or appoint to key positions in the Executive Office of the President or Executive agencies.”²⁵ The purpose of these activities is to acquaint the incoming leadership “with the types of problems and challenges that most typically confront new political appointees when they make the transition from campaign and other prior activities to assuming the responsibility for governance.”²⁶ Personnel who may assist in the transition process include individuals who “(I) held similar leadership roles in prior administrations; (II) are department or agency experts from the Office of Management and Budget or an Office of Inspector General of a department or agency; or (III) are relevant staff from the” Government Accountability Office.²⁷ The orientation activities specified in the statute include “training or orientation in records management ... including training on the separation of Presidential records and personal records,” as well as “training or orientation in human resources management and performance-based management.”²⁸

The PTA directs the Administrator to work with the Archivist of the United States to create, in support of the orientation activities, a transition directory compiling “Federal publications and materials with supplementary materials developed by the Administrator.” The directory is to include “information on the officers, organization, and statutory and administrative authorities, functions, duties, responsibilities, and mission of each department and agency.”²⁹

Funding of Pre-Election Transition Activities by Campaigns

The PTA enables eligible presidential candidates to fund pre-election transition activities through their campaigns.³⁰ As described in the Senate report on the amendment that established this provision:

In order to supplement the services and access to facilities provided by the Administrator, an eligible candidate may, under the provisions of this subsection, establish a separate fund—qualifying for the purposes of section 501(c)(4) of the Internal Revenue Code of 1986—to pay for transition services and facilities. An eligible candidate may transfer into this fund contributions received for his or her general election campaign and may also solicit and accept donations directly into it.³¹

²³ 5 U.S.C. § 1101 note, “Transmittal of Record Relating to Presidentially Appointed Positions to Presidential Candidates.”

²⁴ This provision, which was amended by the Pre-Election Presidential Transition Act of 2010 (P.L. 111-283; 124 Stat. 3046), allows each eligible candidate to submit, before the general election, security clearance requests for “prospective transition team members who will have a need for access to classified information” in the course of their work. The law directs that resulting investigations and eligibility determinations be completed, as much as possible, by the day after the general election (50 U.S.C. § 3342).

²⁵ 3 U.S.C. § 102 note; PTA, § 3(a)(8)(B).

²⁶ 3 U.S.C. § 102 note; PTA, § 3(a)(8)(A)(i).

²⁷ 3 U.S.C. § 102 note; PTA, § 3(a)(8)(A)(ii).

²⁸ 3 U.S.C. § 102 note; PTA, § 3(a)(8)(A).

²⁹ 3 U.S.C. § 102 note; PTA, § 3(a)(9).

³⁰ 3 U.S.C. § 102 note; PTA, § 3(h)(3).

³¹ S.Rept. 111-239, p. 7. The entities identified in section 501(c)(4) of the Internal Revenue Code include those typically referred to as social welfare organizations. For more, see CRS Report 96-264, *Frequently Asked Questions About Tax-Exempt Organizations*.

The statute places limits on donations as a condition for receiving services and funds under the act. Under these limitations, the eligible candidate “shall not accept more than \$5,000 from any person, organization, or other entity for the purposes of carrying out activities authorized by” the PTA.³²

Transition Leadership

The PTA requires that agency heads designate, by early May of a presidential election year, senior career officials to oversee transition-related activities. Such a designation is to be made for the agency and each of its major components and subcomponents.³³

The PTA also provides for interim leadership of agencies during the transition. It directs agency heads to provide for a succession plan for each senior political position in the agency by September 15 of a presidential election year.³⁴ In the case of advice and consent positions, such designations are to be consistent with the Federal Vacancies Reform Act of 1998.³⁵ The Agency Transition Directors Council is to “ensure agencies adequately prepare career employees who are designated to fill non-career positions ... during a Presidential transition.”³⁶

Memoranda of Understanding on Transition³⁷

The PTA directs the President, acting through the Coordinator, to negotiate an MOU with each eligible candidate’s representative prior to October 1 of a presidential election year. The MOU is to address “at a minimum, the conditions of access to employees, facilities, and documents of agencies by transition staff.” As much as possible, these MOUs are to be based on MOUs from previous presidential transitions.³⁸ These MOUs are to be posted on the GSA website upon completion or by October 1, whichever is earlier.

³² 3 U.S.C. §102 note; PTA, §6(c). PTA §3(h)(3)(B)(iii) applies §6(c) to funds collected during campaigns.

³³ 3 U.S.C. §102 note; PTA, §4(f)(1).

³⁴ 3 U.S.C. §102 note; PTA, §4(f)(2).

³⁵ Advice and consent positions are those filled through appointment by the President, with the advice and consent of the Senate. For more on the Federal Vacancies Reform Act of 1998, see CRS Report R44997, *The Vacancies Act: A Legal Overview*.

³⁶ 3 U.S.C. §102 note; PTA, §4(e)(2)(D).

³⁷ This section pertains to one of two MOUs under the act. Whereas Section 3(i) provides for such an agreement between the Administrator and each eligible candidate specifying “the conditions for the administrative support services and facilities,” Section 4(g), discussed here, requires an MOU between the incumbent President, acting through the Coordinator, and each eligible candidate’s transition representative specifying conditions of access by transition staff to executive branch employees, facilities, and documents. The latter MOU is to include an agreement on implementation and enforcement of an ethics plan for transition staff. The provision concerning the former MOU does not include this requirement.

³⁸ 3 U.S.C. §102 note; PTA, §4(g). For examples of such memoranda of understanding, see “Memorandum of Understanding Between the Obama-Biden Transition Project and the General Services Administration,” at <https://presidentialtransition.org/publications/memorandum-of-understanding-between-the-obama-biden-transition-project-and-the-general-services-administration/>; “Memorandum of Understanding between the General Services Administration and the Romney Readiness Project,” at <https://presidentialtransition.org/publications/memorandum-of-understanding-between-the-general-services-administration-and-the-romney-readiness-project/>; “Memorandum of Understanding Between President-elect Trump and the White House,” at <https://presidentialtransition.org/reports-publications/memorandum-of-understanding-regarding-transition-procedurees/>; and “Memorandum of Understanding Between Joe Biden and GSA,” at <https://presidentialtransition.org/reports-publications/memorandum-of-understanding-between-joe-biden-and-gsa/>.

These MOUs are to include an ethics plan pertaining to the members of the transition team.³⁹ This plan is to include ethics requirements that apply generally as well as those that apply specifically to those who might have access to nonpublic or classified information. The PTA specifies relevant considerations that are to be addressed by the plan, including the roles of lobbyists and foreign agents and the means of identifying and addressing conflicts of interest. It requires that the plan also include a code of ethical conduct, to be signed by each transition team member, that spells out ethics requirements and the steps that members must take to meet them.

Post-Election Support

Following the presidential election, the PTA authorizes the 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 candidates as well as additional resources:

- suitable office space appropriately equipped with furniture, furnishings, office machines and equipment, and office supplies;
- payment of the compensation of members of office staffs designated by the apparent successful candidate;
- payment of expenses for the procurement of services of experts or consultants or organizations thereof for the apparent successful candidate;
- payment of travel expenses and subsistence allowances, including rental of government or hired motor vehicles;
- government aircraft for transition purposes on a reimbursable basis, when requested by the apparent successful candidate or a designee and approved by the President;
- aircraft chartered for transition purposes, when requested by the apparent successful candidate or a designee;
- communications services; and
- payment of expenses for printing and binding.⁴⁰

In addition, the PTA authorizes funding for the use of the U.S. Postal Service by each apparent successful candidate “in connection with [his or her] preparations for the assumption of official duties.”⁴¹

As discussed in greater detail above (“Pre-Election Direct Transition Support”), the PTA also authorizes the Administrator to fund incoming leadership orientation activities for “individuals the apparent successful candidate for the office of President ... intends to nominate as department heads or appoint to key positions in the Executive Office of the President or Executive agencies.”⁴² The purpose of these activities is to acquaint members of the new Administration with governance issues they are likely to face as they take office. The statute specifies the

³⁹ 3 U.S.C. §102 note; PTA, §4(g)(3).

⁴⁰ 3 U.S.C. §102 note; PTA, §3(a). Some of these resources would have been authorized to be provided while the apparent successful candidate was an eligible candidate as well. See “Pre-Election Direct Transition Support,” above.

⁴¹ 3 U.S.C. §102 note; PTA, §§3(a)(7) and 3(d).

⁴² 3 U.S.C. §102 note; PTA, §3(a)(8)(B).

personnel who may assist in the transition process,⁴³ and it also identifies orientation activities that may be included.⁴⁴

The statute also provides that these orientation activities “shall include the preparation of a detailed classified, compartmented summary ... of specific operational threats to national security; major military or covert operations; and pending decisions on possible uses of military force.”⁴⁵ This summary is to be conveyed to the apparent successful candidate for President as soon as possible after the general election.⁴⁶

As noted above (“Pre-Election Direct Transition Support”), the PTA provides for consultation between the Administrator and

any apparent successful candidate or eligible candidate ... to develop a systems architecture plan for the computer and communications systems of the candidate to coordinate a transition to Federal systems if the candidate is elected including ... human resource management system software

compatible with that of the incumbent and likely to be used by the apparent successful candidates.⁴⁷

Funding Authorization

Since the PTA was passed in 1964, the funding authorized for its implementation has grown. As originally enacted, the PTA authorized funding not to exceed \$900,000 for any one transition “for carrying out the purposes” of the act.⁴⁸ In 1976, this provision was amended to authorize “not more than \$2,000,000 ... for the purposes of providing services and facilities to the President-elect and Vice President-elect” and “not more than \$1,000,000 ... for the purposes of providing services and facilities to the former President and former Vice President.”⁴⁹ In 1988, this provision was amended once again and the authorized amounts were increased to \$3.5 million and \$1.5 million, respectively.⁵⁰ The 1988 amendments also directed that the “amounts authorized to be appropriated [by these provisions] be increased by an inflation adjusted amount, based on increases in the cost of transition services and expenses which have occurred in the years following the most recent Presidential transition.”⁵¹

⁴³ 3 U.S.C. §102 note; PTA, §3(a)(8). Personnel who may assist in the transition process include individuals who “(I) held similar leadership roles in prior administrations; (II) are department or agency experts from the Office of Management and Budget or an Office of Inspector General of a department or agency; or (III) are relevant staff from the” Government Accountability Office.

⁴⁴ 3 U.S.C. §102 note; PTA, §3(a)(8). The orientation activities specified in the statute include “training or orientation in records management ... including training on the separation of Presidential records and personal records,” as well as “training or orientation in human resources management and performance-based management.” As noted above, the PTA directs the Administrator and the Archivist to create a related transition directory (3 U.S.C. §102 note; PTA, §3(a)(9)). See “Pre-Election Direct Transition Support.”

⁴⁵ 3 U.S.C. §102 note; PTA, §3(a)(8)(A)(v).

⁴⁶ 3 U.S.C. §102 note; PTA, §3(a)(8)(A)(v).

⁴⁷ 3 U.S.C. §102 note; PTA, §3(a)(10).

⁴⁸ P.L. 88-277, §5; 78 Stat. 153, 156. The act’s authorization of appropriations, as amended, may be found at 3 U.S.C. §102 note; PTA, §7.

⁴⁹ P.L. 94-499, §a; 90 Stat. 2380.

⁵⁰ P.L. 100-398, §2; 102 Stat. 985.

⁵¹ P.L. 100-398, §2; 102 Stat. 985.

Section 4 of the Pre-Election Presidential Transition Act of 2010 authorizes “such sums as may be necessary to carry out the provisions” of that act.⁵²

A general provision of the PTA authorizes the Administrator to spend PTA-authorized funds for the provision of most of the specified “services and facilities ... in connection with any obligation incurred by the “Apparent Successful Candidates” between the day following the general election and 60 days after the inauguration.⁵³ As discussed above, a number of exceptions to this general provision authorize expenditures for specified pre-election transition-related services and facilities for “eligible candidates.”

Each apparent successful candidate or eligible candidate may designate an assistant to act on his or her behalf in connection with the support provided by the Administrator under the PTA. Up to 10% of the expenditures under the PTA may be made upon certification by an apparent successful candidate or the designated assistant “that such expenditures are classified and are essential to the national security” and are consistent with PTA provisions.⁵⁴

Funding for 2024-2025

The President’s FY2024 budget proposal for GSA included a request for \$10.413 million in funding for activities authorized by the PTA.⁵⁵ Congress matched this request in the Financial Services and General Government Appropriations Act for FY2024.⁵⁶

In recent decades, presidential budget proposals for fiscal years during which a presidential election has taken place have included funding requests for presidential-transition-related activities at GSA, the White House Office of Administration, and the National Archives and Records Administration.

The President’s FY2025 budget proposal for GSA included a request for \$11.202 million in funding for PTA-authorized activities. Of this amount, \$7.222 million was for facilities, funds, and services to prepare candidates for future duties; \$2.980 million was for services and facilities for a potentially departing President and Vice President; and \$1 million was for briefings, workshops, and other orientation activities for key prospective appointees and for the GSA transition-created directory.⁵⁷ Under the proposal, however, none of the requested funds, except those for a potentially departing President and Vice President, are to be used for activities in support of multiple apparent successful candidates.⁵⁸

⁵² P.L. 111-283, §4; 124 Stat. 3049.

⁵³ 3 U.S.C. §102 note; PTA, §3(b).

⁵⁴ 3 U.S.C. §102 note; PTA, §3(e).

⁵⁵ U.S. Office of Management and Budget, *Budget of the U.S. Government, Fiscal Year 2024—Appendix* (Washington: GPO, 2023), p. 1126.

⁵⁶ P.L. 118-47, Division B. See H.R. 2882-96 (enrolled).

⁵⁷ Office of Management and Budget, *Budget of the U.S. Government, Fiscal Year 2025—Appendix*, pp. 1067-1068.

⁵⁸ Office of Management and Budget, *Budget of the U.S. Government, Fiscal Year 2025—Appendix*, p. 1068. “Provided further, That notwithstanding sections 3(c)(1)(A)(ii) and 3(c)(2)(A) of the [PTA], none of the funds provided under this heading are available during any period of multiple possible apparent successful candidates as described in section 3(c)(2) of the [PTA] except for those amounts made available for section 5 of the [PTA].”

Other Provisions

“Apparent Successful Candidates”

The 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 the authority to make the determination to a specific official. It does, however, direct the Administrator to *treat* one or more candidates as apparently successful for purposes of the PTA when the criteria are met.

The PTA contemplates multiple 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.⁵⁹ 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.⁶⁰ The act includes two sets of criteria: interim discretionary qualifications and mandatory qualifications.

The Administrator may, on an interim discretionary basis, determine that a candidate “shall be *treated as*” the sole apparent successful candidate where, 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.”⁶¹

The mandatory qualifications in the act usually develop later in the transition period. The PTA provides that a candidate meeting one of these qualifications shall be the sole apparent successful candidate:

- A 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,
- A 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.⁶²

During any period in which there are multiple apparent successful candidates, the Administrator is authorized to provide access to PTA services and facilities to each of them. The Administrator, the Coordinator, and other governmental transition leaders are required to ensure that each apparent successful candidate is provided equal access to PTA-required information and spaces.⁶³

The Administrator is also required to submit to Congress weekly reports on the transition that specify the funds and access to agency information and spaces provided to each apparent

⁵⁹ 3 U.S.C. §102 note; PTA, §3(c)(1)(A)(i).

⁶⁰ 3 U.S.C. §102 note; PTA, §3(c)(1)(A)(ii).

⁶¹ 3 U.S.C. §102 note; PTA, §3(c)(1)(B). Emphasis added.

⁶² 3 U.S.C. §102 note; PTA, §3(c)(1)(C).

⁶³ 3 U.S.C. §102 note; PTA, §3(c)(2)(A) and (B).

successful candidate. This weekly report is also required to summarize the evolving status of each apparent successful candidate under PTA criteria.⁶⁴

When the PTA permits or requires that a single candidate be treated as the sole apparent successful candidate, the Administrator is required to inform the public through a written statement that includes a description of the legal basis and reasons for treating the candidate as such.⁶⁵

Inter-Term Transition for an Incumbent President

In the event “an apparent successful candidate for the office of President is the incumbent President or in the case where an apparent successful candidate for office of Vice President is the incumbent Vice President,” the PTA prohibits the expenditure of funds for the provision to such incumbent of most services and facilities specified under the act. Any funds appropriated for what turn out to be prohibited expenditures are to be returned to the general fund of the Treasury.⁶⁶ An exception to this general prohibition was added by PTIA, however. Under such circumstances, certain activities related to training and orientations of “key prospective Presidential appointees” are authorized to be funded.⁶⁷

Outgoing Administration

The Administrator is also authorized, under the PTA, to provide services and facilities to each outgoing President and Vice President “for use in connection with winding up the affairs of [his or her] office” for a period “not to exceed seven months from 30 days before the date of the expiration of [his or her] term of office.”⁶⁸ In the event that the outgoing Vice President is becoming President, the PTA limits the authorized expenditures in this area.⁶⁹

Transition-Related Security Clearances

Appointees: The PTA recommends that any apparent successful candidate for the office of President 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. It further recommends that this action be taken as soon as possible after the presidential election, and it requires the responsible agency or agencies to carry out background investigations of these candidates for high-level national security positions “as expeditiously as possible ... before the date of the inauguration.”⁷⁰

⁶⁴ 3 U.S.C. §102 note; PTA, §3(c)(2)(C).

⁶⁵ 3 U.S.C. §102 note; PTA, §3(c)(2)(D).

⁶⁶ 3 U.S.C. §102 note; PTA, §3(g).

⁶⁷ These activities are provided for in 3 U.S.C. §102 note; PTA, §3(a)(8)(A).

⁶⁸ 3 U.S.C. §102 note; PTA, §5. Other provisions of law provide each former President with an annual lifetime pension, Secret Service protection, and staff and office allowances after the transition period expires. See CRS Report RL34631, *Former Presidents: Pensions, Office Allowances, and Other Federal Benefits*. Other CRS reports related to departing Presidents include CRS Report R40238, *The Presidential Records Act: Background and Recent Issues for Congress*; and CRS Report R41513, *The Presidential Libraries Act and the Establishment of Presidential Libraries*.

⁶⁹ 3 U.S.C. §102 note; PTA, §7(a)(2). The provision stipulates that “not more than \$1,500,000 may be appropriated for the purposes of providing services and facilities to the former President and former Vice President ... except that any amount appropriated ... in excess of \$1,250,000 shall be returned to the general fund of the Treasury in the case where the former Vice President is the incumbent President.”

⁷⁰ 3 U.S.C. §102 note; PTA, §3(f).

Transition team members: A separate transition-related provision of law that is not included in the PTA is worth noting here. The Intelligence Reform and Terrorism Prevention Act of 2004 includes a provision that facilitates pre-election security clearances for transition team members.⁷¹ This provision, which was amended by the Pre-Election Presidential Transition Act of 2010,⁷² allows each eligible candidate to submit, before the general election, security clearance requests for “prospective transition team members who will have a need for access to classified information” in the course of their work. The law directs that resulting investigations and eligibility determinations “to permit appropriate prospective transition team members to have access to classified information shall be completed, to the fullest extent practicable, by the day after the date of the general election.”⁷³

Disclosure Requirements

The PTA requires each apparent successful candidate to disclose certain financial and personnel information as a condition for receiving services and funds under the act. They must disclose to the Administrator “the date of contribution, source, amount, and expenditure thereof” of all nonfederal funds (such as private contributions) received before or after the general election “for use in the preparation of the apparent successful candidate for the assumption of official duties.”⁷⁴ They must submit reports with such disclosures to the Administrator not later than 30 days after inauguration. These disclosures are then to be released to the public by the Administrator. In addition, the PTA requires, as a condition for receiving services and funds, that each apparent successful candidate “make available to the Administrator and the Comptroller General all information concerning such contributions” as may be required for “auditing both the public and private funding” used in PTA-authorized activities.

As noted, the PTA also limits the amount of individual transition-related donations as a condition for receiving services and funds under the act. Under these limitations, each apparent successful candidate “shall not accept more than \$5,000 from any person, organization, or other entity for the purposes of carrying out activities authorized by” the PTA.⁷⁵ The PTA also requires that the incoming team disclose to the public (1) “the names and most recent employment of all transition personnel . . . who are members of the apparent successful candidate’s Federal department or agency transition teams;” and (2) “information regarding the sources of funding which support the transition activities of each transition team member.” These disclosures, which must be kept up to date, are to be completed before the team contacts applicable departments or agencies.⁷⁶

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⁷¹ P.L. 108-458, §7601; 118 Stat. 3638.

⁷² P.L. 111-283; 124 Stat. 3046.

⁷³ 50 U.S.C. §3342.

⁷⁴ 3 U.S.C. §102 note; PTA, §6(a).

⁷⁵ 3 U.S.C. §102 note; PTA, §6(c).

⁷⁶ 3 U.S.C. §102 note; PTA, §6(b).

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