

Calendar No. 499

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
111-239 }

PRE-ELECTION PRESIDENTIAL TRANSITION
ACT OF 2010

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 3196

TO AMEND THE PRESIDENTIAL TRANSITION ACT OF 1963 TO PRO-
VIDE THAT CERTAIN TRANSITION SERVICES SHALL BE AVAIL-
ABLE TO ELIGIBLE CANDIDATES BEFORE THE GENERAL ELEC-
TION



AUGUST 2, 2010.—Ordered to be printed

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Mr. LIEBERMAN, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 3196]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 3196) to amend the Presidential Transition Act of 1963 to provide that certain transition services shall be available to eligible candidates before the general election, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

Under current law, the federal government offers Presidents-elect services and facilities to help them plan and execute a smooth transition into office. While the period between Election and Inauguration Days may once have allowed for an adequate transition, those governing in the post-September 11th world need more preparation than they can reasonably get in the roughly eleven weeks now typically given them. S. 3196 seeks to remedy this situation by moving the transition planning calendar back and offering major party nominees and certain third-party candidates certain transition planning services following the candidates' nomination.

It also authorizes the incumbent administration to take certain steps to prepare for the transition.

II. BACKGROUND AND NEED FOR THE LEGISLATION

One of the greatest sources of Americans' pride in our country comes from the peaceful nature in which power is transferred following the election of a new president. But with that transfer of power comes potential vulnerability. If the new President and the new Administration are not ready to govern on their first day in office, our nation's adversaries may well see and take advantage of the situation.

Concerns over the need for a smooth transition first led Congress to address this issue during the Cold War, by enacting the Presidential Transition Act of 1963¹ in order to "promote the orderly transfer of executive power" during presidential transitions and to "prevent results detrimental to the safety and well-being of the United States and its people."² Before 1963, most expenses for presidential transitions were borne by the President-elect, the winning party, and volunteers.³ The Presidential Transition Act altered this model by directing the General Services Administration (GSA) to provide services, including office space and other facilities for the incoming transition team, the employment of transition staff, and the arrangement of staff from other agencies to assist in the transition.⁴

Subsequent legislation has updated and expanded the Presidential Transition Act. The Presidential Transition Effectiveness Act of 1988 increased the authorized appropriations to the GSA Administrator to provide services and facilities for the transition and to incoming and outgoing administrations; required that a specified amount of money be returned to the Treasury if the former Vice President becomes the President-elect; and added several reporting requirements, including the disclosure of all transition personnel and the disclosure of all private money received for use during the transition.⁵ The Presidential Transition Act of 2000 amended the law further to provide for additional appointee orientation and human resources support for the incoming administration.⁶ The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), enacted in response to the recommendations of the 9/11 Commission,⁷ also amended the Presidential Transition Act, providing that a President-elect should submit the names of candidates for high-level national security positions, and the appropriate agencies should conduct necessary background investigations of these individuals, as soon as possible after the presidential election.⁸ In addition, IRTPA allowed major party nominees to request security clearances for members of their transition team with a need for access to classified information and directed that background inves-

¹P.L. 88-277, 78 Stat. 153 (1964) (codified at 3 U.S.C. § 102 note).

²3 U.S.C. § 102 note.

³U.S. President's Commission on Campaign Costs, *Financing Presidential Campaigns*, April 1962 (Washington: GPO, 1962), pp. 23-24.

⁴*Id.*

⁵P.L. 100-398.

⁶P.L. 106-293.

⁷National Commission on Terrorist Attacks upon the United States., *The 9/11 Commission Report* (2004). For the Commission's recommendations with respect to improving transitions between Administrations, see pp. 422-3.

⁸P.L. 108-458, Section 7601(a), codified at 3 U.S.C. § 102 note, subsection (f).

tigations for these individuals be competed, to the fullest extent practicable, by the day after the general election.⁹

These legislative efforts have been largely aimed at transition activities after the general election. Historically, candidates have been reluctant to start transition activities before the election because doing so could tax limited resources, distract or conflict key campaign staff, or risk political damage by creating the impression that the candidate has prematurely assumed victory, among other reasons.¹⁰

The post-September 11 security environment has made the old transition model obsolete. Numerous challenges now necessitate earlier planning and closer cooperation between incoming and outgoing administrations; the period between Election Day and the inauguration of a new president simply provides too short a timeframe for an incoming administration to do everything it needs to prepare for taking office. The selection process for incoming senior administration officials, many of whom require extensive security clearance background checks, for example, can be long and cumbersome.¹¹ The Pre-Election Presidential Transition Act seeks to mitigate the risks inherent in the transfer of power and encourage early transition planning by providing resources and educating the campaigns, the press, and the public on the importance of early transition activities.

In recent elections, campaigns have begun informal transition planning months in advance of Election Day, even without access to GSA resources. According to a 2010 report by the Partnership for Public Service, both the Obama and McCain campaigns engaged in informal pre-election transition planning during the 2008 election year.¹² However, candidates tread into such early transition planning carefully, fearing the portrayal of such planning as a presumptuous “measuring of the drapes,” an accusation they worry could damage them politically. By codifying Congress’s view that candidates should start transition planning before the election, this legislation seeks to remove the stigma related to it and make pre-election transition planning an accepted part of a successful transition process.

Currently, incumbent administrations have little formal responsibility to undertake transition activities. The outgoing administration is required to prepare appropriate files and documents for archiving by the National Archives and Records Administration,¹³ and outgoing officials are required to brief their incoming counterparts on important national security matters, including ongoing or planned covert and military operations.¹⁴ Apart from these relatively few mandatory transition activities, further transition efforts on the part of the incumbent administration are discretionary.

⁹P.L. 108–458, Section 7601(c), codified at 50 U.S.C. § 435b note.

¹⁰Partnership for Public Service, *Ready to Govern: Improving the Presidential Transition*, January 2010, pp. 4–6 (hereinafter, *Ready to Govern*).

¹¹Statement of Clay Johnson, III, former Deputy Director for Management, Office of Management and Budget, for hearing entitled, “After the Dust Settles: Examining Challenges and Lessons Learned in Transitioning the Federal Government,” U.S. Senate Committee on Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, April 22, 2010, pp. 2–3.

¹²*Ready to Govern*, pp. 3–6.

¹³44 U.S.C. §§ 2201–2207.

¹⁴3 U.S.C. § 102 note; P.L. 108–458 § 7601.

The outgoing George W. Bush Administration provided a good example of transition planning, setting early goals and allocating time and resources to ensure that executive agencies laid the groundwork for an effective transition.¹⁵ First, in July 2008 the Office of Management and Budget (OMB) set deadlines for the members of the President's Management Council to ensure continuity of public services during the transition.¹⁶ Shortly thereafter, in October 2008, the President issued Executive Order 13476 establishing the Presidential Transition Coordinating Council to oversee transition efforts by his administration.¹⁷ This directive expanded upon the model created by President Clinton's Executive Order 13176 of November 30, 2000, which established a similar transition coordinating council, smaller in scope, to oversee his administration's transfer out of office.¹⁸

These steps, together with a dedication to early pre-election planning by the Obama campaign, helped ensure what has been characterized as one of the most seamless presidential transitions in modern history.¹⁹ Close coordination between outgoing and incoming officials prior to January 2009—a result of sound decisions by both the incumbent administration and the two major party candidates' campaigns to engage in early transition planning voluntarily—proved instrumental in preventing a gap in leadership in the face of a suspected terrorist plot during the inaugural ceremonies.²⁰

GSA played a critical role in the transition. It leased and furnished approximately 120,000 square feet of office space for use by the Obama-Biden Transition Project after the election, as well as for use by the Presidential Inaugural Committee and the Armed Forces Inaugural Committee. It provided a secure telecommunications infrastructure for 1,300 users. And it worked informally with both campaigns before Election Day to develop post-election plans based on their anticipated needs.²¹

Detailed accounts and analyses of the 2008–2009 transition's successes and challenges have been compiled in comprehensive studies, such as a December 2009 article by presidential scholar Martha Joynt Kumar²² and the January 2010 Partnership for Public Service report *Ready to Govern: Improving the Presidential Transi-*

¹⁵ Statement of Max Stier, President and CEO of the Partnership for Public Service, *After the Dust Settles: Examining Challenges and Lessons Learned in Transitioning the Federal Government*, hearing before the Senate Committee on Homeland Security and Governmental Affairs' Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, April 22, 2010, pp. 1–3.

¹⁶ Memorandum from Deputy Director for Management Clay Johnson to Members of the President's Management Council, July 18, 2008.

¹⁷ "Facilitation of a Presidential Transition," Executive Order No. 13476, 73 Fed. Reg. 60,605 (October 9, 2008).

¹⁸ Statement of John D. Podesta, President and CEO, Center for American Progress, *After the Dust Settles: Examining Challenges and Lessons Learned in Transitioning the Federal Government*, hearing before the Senate Committee on Homeland Security and Governmental Affairs' Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, April 22, 2010, pp. 3–4. Cf., "Facilitation of a Presidential Transition," Executive Order No. 13176, 65 Fed. Reg. 71,233 (November 27, 2000).

¹⁹ *Ready to Govern*, p. i.

²⁰ Kumar, Martha Joynt, "The 2008–2009 Presidential Transition Through the Voices of Its Participants," *Presidential Studies Quarterly*, December 2009, pp. 1–2.

²¹ Statement of Gail Lovelace, Chief People Officer, U.S. General Services Administration, *After the Dust Settles: Examining Challenges and Lessons Learned in Transitioning the Federal Government*, hearing before the Senate Committee on Homeland Security and Governmental Affairs' Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, April 22, 2010, pp. 2–4.

²² Kumar, Martha Joynt, "The 2008–2009 Presidential Transition Through the Voices of Its Participants."

tion.²³ These accounts as well as input from those who participated in earlier transitions was considered in drafting S. 3196.

In addition to providing services and facilities to eligible candidates and allowing candidates to raise funds to support transition activities, S. 3196, looking to the Bush Administration as a model, seeks to encourage incumbent administrations to take an early, organized approach to transition planning. Among other things, the bill specifically authorizes the creation of a transition coordinating council, to be composed of “high-level officials of the Executive branch, selected by the President,” such as the President’s Chief of Staff, the Director of OMB, the Administrator of GSA, and the Director of the Office of Personnel Management. The bill also authorizes the establishment of an agency transition directors council for career employees designated to lead transition efforts within their agencies, in order to ensure leadership continuity at a time when significant numbers of senior appointees are likely to be departing. Given their proven utility in the most recent transition, both councils are codified in the law as congressionally authorized models, in the hope that this will encourage their use. However, creation of neither the transition coordinating council nor the agency transition directors council is mandatory, preserving flexibility for future administrations to develop other vehicles for ensuring an efficient transfer of power. To further encourage transition planning by incumbent administrations, the bill also requires the President to submit two reports to Congress during a presidential election year describing the steps being taken to facilitate a trouble-free transition.

For eligible candidates, S. 3196 permits campaigns to establish separate accounts to fund transition activities not provided by GSA prior to Election Day or to supplement GSA-provided services. Past Presidents-elect and Vice Presidents-elect have used such accounts for post-Election Day transition activities. Eligible candidates could transfer money from their campaign accounts into these transition accounts as well as raise funds separately. Pre-election transition efforts by both the Obama and McCain campaigns in 2008 relied on volunteers or campaign staff paid by private funds.²⁴

Witnesses who appeared at an April 22, 2010 hearing before the Committee’s Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia expressed concern about other issues perceived as hurdles to an efficient transition process, including difficulties with the security clearance process and the sometimes long timetable for submitting and confirming nominees to senior administration positions.²⁵ Although such issues are beyond the scope of this bill,²⁶ the Com-

²³ *Ready to Govern*, supra n. 13.

²⁴ *Ready to Govern*, pp. ii–iii.

²⁵ See, e.g., Statement of Clay Johnson, III, April 22, 2010, pp. 2–3; Statement of John D. Podesta, April 22, 2010, pp. 10–11.

²⁶ The Committee, however, has pursued such issues through other means. For example, IRTPA, which originated in the Committee, includes provisions designed to bring greater efficiency and interagency reciprocity to the security clearance process overall, not just during transitions. See P.L. 108–459, sec. 3001, 118 Stat. 3705 (codified at 50 U.S.C. § 435b). Since the enactment of IRTPA, the Committee has continued to conduct oversight concerning this issue, with its Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia holding a series of six hearings on improving the security clearance process, including most recently a hearing entitled “Security Clearance Reform: Moving Forward on Modernization” on September 25, 2009.

mittee believes that S. 3196, if enacted, will go a long way toward providing for a smoother and safer transition between presidential administrations.

III. LEGISLATIVE HISTORY

Senators Kaufman, Voinovich, Akaka, and Lieberman introduced S. 3196 on April 13, 2010. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs.

The Committee's Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia held a hearing on April 22, 2010 on the subject of reforming the transition process, and the testimony addressed S. 3196. Witnesses included Gail Lovelace, who served as GSA's senior career executive for the presidential transition; John Podesta, who oversaw the Obama-Biden Transition Project; Clay Johnson, the former Bush Administration OMB Deputy Director for Management who helped lead transition efforts for the White House; and Max Stier, President and CEO of the non-profit, non-partisan Partnership for Public Service. These four shared their insights into obstacles they have encountered in presidential transitions and the steps that proved most successful.

The Committee considered S. 3196 at a business meeting that began on April 28, 2010 and then was adjourned and reconvened on May 17, 2010, when S. 3196 was favorably reported by voice vote. The members present for the vote were Senators Lieberman, Akaka, Carper, Pryor, Landrieu, Burriss, Collins, Brown, Voinovich, and Graham.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 designates the name of the act as the "Pre-Election Presidential Transition Act of 2010."

Section 2. Certain Presidential transition services may be provided to eligible candidates before general election

Subsection (a) amends Section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note) to extend to major party nominees and certain third party candidates certain GSA services and access to facilities previously provided only to the President-elect and Vice President-elect for the purposes of preparing to transition into office. The services offered would include office space and suitable furnishings; communications services; payment for printing and binding; funds for briefings, workshops, and other orientation activities for incoming staff; and a transition directory with information on the officers, organization, authorities and responsibilities of each department and agency. However, candidates would not be extended certain other services received by presidents-elect and vice

IRTPA also includes a provision expressing the Sense of the Senate that the President-elect should submit nominations for high-level national security positions by Inauguration Day and that the Senate should confirm or reject those nominations within 30 days of their submission. P.L. 108-458, sec. 7601(b), 118 Stat. 3857. In the 111th Congress, the Committee, for its part, has sought to act promptly on the nominations referred to it, reporting out all but four of the nominations for major administration positions (including those at the Department of Homeland Security and OMB) within 60 days of referral; a majority of these nominations were reported out within 30 days.

presidents-elect, including salaries, travel expenses, contractor or consultant fees, and postal reimbursement. The GSA Administrator (“the Administrator”) would be required to notify eligible candidates of their right to receive available GSA services and access to facilities and inform eligible candidates that certain additional services are provided under the Intelligence Reform and Terrorism Prevention Act of 2004. Eligible candidates would be permitted to use the services and facilities provided only in connection with their preparations for the assumption of official duties as President or Vice-President, and candidates would be required to reimburse GSA for any unauthorized use of services or access to facilities provided.

This subsection also requires the Administrator to prepare a quadrennial report by January 1 of each year in which a general election is held, which summarizes presidential transition activities and includes a bibliography of resources. This report would be released to the public and posted on the Internet in order to educate the press and public on the importance of early transition planning.

This subsection directs the Administrator to determine the location of any office space provided to eligible candidates, to ensure that computers or communications services provided by the GSA to eligible candidates are secure, to offer assistance to eligible candidates on an equal basis without regard to political affiliation, and to modify the scope of services to reflect that they are provided to candidates rather than to the President-elect and Vice President-elect.

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. All amounts received and disbursed must be done and reported in accordance with the requirements for transition accounts contained in Section 5 of the Presidential Transition Act of 1963, which among other things, limits contributions to \$5000 per person.

Finally, this subsection defines an “an eligible candidate” as either a major party nominee (as defined in section 9902(6) of the Internal Revenue Code of 1986) or a third-party candidate determined by the Administrator to be among the principle contenders in the general election. For a third-party candidate to be determined eligible by the Administrator, the candidate must meet all of the following criteria: (1) constitutional eligibility; (2) ballot qualification in a number of states sufficient to allow actual electoral college victory; and (3) a demonstration of significant public support so as to be considered realistically among the principle contenders for election to office. The Administrator is also directed to consider whether a candidate has been recognized to be among the principle contenders for office by national organizations, including whether the Commission on Presidential Debates has determined that candidate to be eligible for participation in the general election debates. The criteria set out in this subsection for determining the

eligibility of third-party candidates are modeled on those used by the Commission on Presidential Debates.

Subsection (b) requires the Administrator to provide eligible candidates with technology coordination upon request, including the development of a systems architecture plan for computer and communications systems of an eligible candidate to transition to federal systems should the candidate be elected.

Subsection (c) amends the Intelligence Reform and Terrorism Prevention Act of 2004 to include eligible third-party candidates among those able to request early security clearances for prospective transition team members and electronic records on presidentially appointed positions, as are currently available to major party nominees.

Subsection (d) makes conforming amendments to Section 3 of the Presidential Transition Act of 1963.

Section 3. Authorization of transition activities by the outgoing administration

Subsection (a) authorizes the incumbent President to take such actions as necessary and appropriate to plan and coordinate activities by the Executive Branch to facilitate an efficient transfer of power, including the establishment of a transition coordinating council comprised of high-level Executive Branch officials; the formation of an agency transition directors council that includes career employees designated to lead transition efforts within their agencies; the development of guidance to departments and agencies regarding briefing materials for an incoming administration and the development of such materials; and the development of computer software, contingency plans, memoranda, training and exercises, and other items for improving the effectiveness and efficiency of a Presidential transition. Under this subsection, any services extended to eligible candidates must be provided on an equal basis and without regard to political affiliation.

Subsection (b) requires the incumbent President to provide two reports to this Committee and to the Committee on Oversight and Government Reform of the House of Representatives that describe activities undertaken by the incumbent administration to prepare for a transfer of power. The reports are to be provided six months and three months before the general election.

Subsection (c) authorizes to be appropriated such sums as necessary to carry out the provisions of Section 3 of S. 3196.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact. The Congressional Budget Office states that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JULY 1, 2010.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 3196, the Pre-Election Presidential Transition Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 3196—Pre-Election Presidential Transition Act of 2010

Summary: S. 3196 would amend the Presidential Transition Act of 1963 (PTA) to direct the General Services Administration (GSA) to provide certain services and facilities to eligible presidential and vice-presidential candidates before the general election for president. Under the bill, presidential candidates could solicit donations to pay for the additional travel and staff expenses prior to a possible transition to the presidency. In addition, the legislation would authorize the appropriation of funds to establish a council to facilitate the transition between administrations.

CBO estimates that implementing S. 3196 would increase the administrative costs of GSA and a number of federal agencies by \$5 million over the 2012–2013 period, assuming the availability of appropriated funds. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

S. 3196 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 3196 is shown in the following table. The costs of this legislation would fall within budget functions 750 (administration of justice) and 800 (general government).

	By Fiscal Year in millions of dollars—					
	2011	2012	2013	2014	2015	2011–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	0	5	0	0	0	5
Estimated Outlays	0	3	2	0	0	5

Basis of estimate: For this estimate, CBO assumes that S. 3196 will be enacted this year and that spending will follow historical patterns for similar activities.

The PTA authorizes appropriations for GSA to provide suitable office space, staff compensation, and other services associated with the presidential transition process. Most of such support is provided after the election of a president. In 2009, about \$9 million was appropriated for the cost of the most recent transition. S. 3196 would require GSA to provide those transitional services to presi-

dential candidates after major political parties hold their nominating conventions.

Based on information from GSA, the Office of Personnel Management, the Department of Homeland Security, and other security-related agencies, CBO estimates that implementing S. 3196 would increase administrative costs prior to the next presidential election by about \$5 million over the 2012–2013 period, assuming the availability of appropriated funds. The cost of the legislation could vary depending on whether an incumbent president is a candidate and the number of candidates that are eligible to receive funds from the Presidential Election Campaign Fund. That amount would cover additional office space, communications costs, training sessions, and the initiation of security clearances for potential administration officials.

Section 3 would authorize appropriations for the outgoing administration to establish a council to facilitate the transition between administrations. Based on information from the White House and the Office of Management and Budget, this provision would codify Executive Order 13476 and current practice. CBO estimates that this provision would cost less than \$500,000 during each presidential election cycle.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: S. 3196 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Matthew Pickford; Impact on State, Local, and Tribal Governments: Elizabeth Cove Delisle; Impact on the Private Sector: Sam Wice.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

VI. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 3196 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italics*, and existing law in which no change is proposed is shown in roman):

PRESIDENTIAL TRANSITION ACT OF 1963

Public Law 88–277

(as codified at 3 U.S.C § 102 note)

* * * * *

SEC. 3. (a) The Administrator of General Services, referred to hereafter in this Act as “the Administrator,” is authorized to provide, upon request, to each President-elect and each Vice-President-elect, for use in connection with his preparations for the assumption of official duties as President or Vice President necessary services and facilities, including the following:

* * * * *

(8)(A)(i) Notwithstanding subsection (b), payment of expenses during the transition for briefings, workshops, or other

activities to acquaint key prospective Presidential appointees 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 after inauguration.

* * * * *

(B) Activities under this paragraph shall be conducted primarily for individuals the **【President-elect】** *President-elect or eligible candidate (as defined in subsection (h)(4))* for President intends to nominate as department heads or appoint to key positions in the Executive Office of the President.

* * * * *

(10)**【(A)】** Notwithstanding subsection (b), consultation by the Administrator with any **【candidate for】** *President-elect, 【or】 Vice President-elect, or eligible candidate (as defined in subsection (h)(4))* 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.

【(B) Consultations under this paragraph shall be conducted at the discretion of the Administrator.】

* * * * *

(e) Each President-elect and Vice-President-elect *or eligible candidate (as defined in subsection (h)(4)) for President or Vice-President*, may designate to the Administrator an assistant authorized to make on his behalf such designations or findings of necessity as may be required in connection with the services and facilities to be provided under this Act. Not more than 10 per centum of the total expenditures under this Act for any President-elect or Vice-President-elect may be made upon the basis of a certificate by him or the assistant designated by him pursuant to this section that such expenditures are classified and are essential to the national security, and that they accord with the provisions of subsections (a), (b), and (d) of this section.

* * * * *

(h)(1)(A) In the case of an eligible candidate, the Administrator—

(i) shall notify the candidate of the candidate's right to receive the services and facilities described in paragraph (2) and shall provide with such notice a description of the nature and scope of each such service and facility; and

(ii) upon notification by the candidate of which such services and facilities such candidate will accept, shall, notwithstanding subsection (b), provide such services and facilities to the candidate during the period beginning on the date of the notification and ending on the date of the general elections described in subsection (b)(1).

The Administrator shall also notify the candidate of the services provided under sections 7601(c) and 8403(b) of the Intelligence Reform and Terrorism Prevention Act of 2004.

(B) The Administrator shall provide the notice under subparagraph (A)(i) to each eligible candidate—

(i) in the case of a candidate of a major party (as defined in section 9002(6) of the Internal Revenue Code of 1986), on one

of the first 3 business days following the last nominating convention for such major parties; and

(ii) in the case of any other candidate, as soon as practicable after an individual becomes an eligible candidate (or, if later, at the same time as notice is provided under clause (i)).

(C)(i) The Administrator shall, not later than January 1 of 2012 and of every 4th year thereafter, prepare a report summarizing modern presidential transition activities, including a bibliography of relevant resources.

(ii) The Administrator shall promptly make the report under clause (i) generally available to the public (including through electronic means) and shall include such report with the notice provided to each eligible candidate under subparagraph (A)(i).

(2)(A) Except as provided in subparagraph (B), the services and facilities described in this paragraph are the services and facilities described in subsection (a) (other than paragraphs (2), (3), (4), and (7) thereof), but only to the extent that the use of the services and facilities is for use in connection with the eligible candidate's preparations for the assumption of official duties as President or Vice-President.

(B) The Administrator—

(i) shall determine the location of any office space provided to an eligible candidate under this subsection;

(ii) shall, as appropriate, ensure that any computers or communications services provided to an eligible candidate under this subsection are secure;

(iii) shall offer information and other assistance to eligible candidates on an equal basis and without regard to political affiliation; and

(iv) may modify the scope of any services to be provided under this subsection to reflect that the services are provided to eligible candidates rather than the President-elect or Vice-President-elect, except that any such modification must apply to all eligible candidates.

(C) An eligible candidate, or any person on behalf of the candidate, shall not use any services or facilities provided under this subsection other than for the purposes described in subparagraph (A), and the candidate or the candidate's campaign shall reimburse the Administrator for any unauthorized use of such services or facilities.

(3)(A) Notwithstanding any other provision of law, an eligible candidate may establish a separate fund for the payment of expenditures in connection with the eligible candidate's preparations for the assumption of official duties as President or Vice-President, including expenditures in connection with any services or facilities provided under this subsection (whether before such services or facilities are available under this section or to supplement such services or facilities when so provided). Such fund shall be established and maintained in such manner as to qualify such fund for purposes of section 501(c)(4) of the Internal Revenue Code of 1986.

(B)(i) The eligible candidate may—

(I) transfer to any separate fund established under subparagraph (A) contributions (within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 (2

U.S.C. 431(8)) the candidate received for the general election for President or Vice-President or payments from the Presidential Election Campaign Fund under chapter 95 of the Internal Revenue Code of 1986 the candidate received for the general election; and

(II) solicit and accept amounts for receipt by such separate fund.

(ii) Any expenditures from the separate fund that are made from such contributions or payments described in clause (i)(I) shall be treated as expenditures (within the meaning of section 301(9) of such Act (2 U.S.C. 431(9))) or qualified campaign expenses (within the meaning of section 9002(11) of such Code), whichever is applicable.

(iii) An eligible candidate establishing a separate fund under subparagraph (A) shall (as a condition for receiving services and facilities described in paragraph (2)) comply with all requirements and limitations of section 5 in soliciting or expending amounts in the same manner as the President-elect or Vice-President-elect, including reporting on the transfer and expenditure of amounts described in subparagraph (B)(i) in the disclosures required by section 5.

(4)(A) In this subsection, the term “eligible candidate” means, with respect to any presidential election (as defined in section 9002(10) of the Internal Revenue Code of 1986)—

(i) a candidate of a major party (as defined in section 9002(6) of such Code) for President or Vice-President of the United States; and

(ii) any other candidate who has been determined by the Administrator to be among the principle contenders for the general election to such offices.

(B) In making a determination under subparagraph (A)(ii), the Administrator shall—

(i) ensure that any candidate determined to be an eligible candidate under such subparagraph—

(I) meets the requirements described in article II, section 1, of the United States Constitution for eligibility to the office of President;

(II) has qualified to have his or her name appear on the ballots of a sufficient number of States such that the total number of electors appointed in those States is greater than 50 percent of the total number of electors appointed in all of the States; and

(III) has demonstrated a significant level of public support in national public opinion polls, so as to be realistically considered among the principal contenders for President or Vice-President of the United States; and

(ii) consider whether other national organizations have recognized the candidate as being among the principal contenders for the general election to such offices, including whether the Commission on Presidential Debates has determined that the candidate is eligible to participate in the candidate debates for the general election to such offices.

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INTELLIGENCE REFORM AND TERRORISM PREVENTION
ACT OF 2004

Public Law 108-458

(as codified at 50 U.S.C. 435b)

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SEC. 7601. PRESIDENTIAL TRANSITION.

* * * * *

(c) SECURITY CLEARANCES FOR TRANSITION TEAM MEMBERS.—

[(1) DEFINITIONS.—In this section, the term “major party” shall have the meaning given under section 9002(6) of the Internal Revenue Code of 1986]

(1) DEFINITION.—*In this section, the term ‘eligible candidate’ has the meaning given such term by section 3(h)(4) of the Presidential Transition Act of 1963 (3 U.S.C. 102 note).*

(2) IN GENERAL.—Each [major party candidate] *eligible candidate* for President may submit, before the date of the general election, requests for security clearances for prospective transition team members who will have a need for access to classified information to carry out their responsibilities as members of the President-elect’s transition team.

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INTELLIGENCE REFORM AND TERRORISM PREVENTION
ACT OF 2004

Public Law 108-458

(as codified at 5 U.S.C. 1101)

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SEC. 8403. FINANCIAL DISCLOSURE AND RECORDS.

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(b) TRANSMITTAL OF RECORDS RELATING TO PRESIDENTIALLY APPOINTED POSITIONS TO PRESIDENTIAL CANDIDATES.—

* * * * *

(2) TRANSMITTAL.—

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(B) OTHER CANDIDATES.—After making transmittals under subparagraph (A), the Office of Personnel Management [may] *shall* transmit [an] *such* electronic record [on Presidentially appointed positions] to any other candidate for President [.] *who is an eligible candidate described in section 3(h)(4)(B) of the Presidential Transition Act of 1963 (3 U.S.C. 102 note) and may transmit such electronic record to any other candidate for President.*