

EDWARD “TED” KAUFMAN AND MICHAEL LEAVITT PRESIDENTIAL TRANSITIONS IMPROVEMENTS ACT OF 2015

DECEMBER 18, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany S. 1172]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (S. 1172) to improve the process of presidential transition, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Edward ‘Ted’ Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015”.

SEC. 2. PRESIDENTIAL TRANSITION IMPROVEMENTS.

(a) IN GENERAL.—The Presidential Transition Act of 1963 (3 U.S.C. 102 note) is amended—

- (1) by redesignating sections 4, 5, and 6 as sections 5, 6, and 7, respectively; and
- (2) by inserting after section 3 the following:

“SEC. 4. TRANSITION SERVICES AND ACTIVITIES BEFORE ELECTION.

“(a) DEFINITIONS.—In this section—

- “(1) the term ‘Administrator’ means the Administrator of General Services;
- “(2) the term ‘agency’ means an Executive agency, as defined in section 105 of title 5, United States Code;
- “(3) the term ‘eligible candidate’ has the meaning given that term in section 3(h)(4); and
- “(4) the term ‘Presidential election’ means a general election held to determine the electors of President and Vice President under section 1 or 2 of title 3, United States Code.

“(b) GENERAL DUTIES.—The President shall take such actions as the President determines necessary and appropriate to plan and coordinate activities by the Executive branch of the Federal Government to facilitate an efficient transfer of power to a successor President, including by—

- “(1) establishing and operating a White House transition coordinating council in accordance with subsection (d); and
- “(2) establishing and operating an agency transition directors council in accordance with subsection (e).

“(c) FEDERAL TRANSITION COORDINATOR.—The Administrator shall designate an employee of the General Services Administration who is a senior career appointee to—

- “(1) carry out the duties and authorities of the General Services Administration relating to Presidential transitions under this Act or any other provision of law;
- “(2) serve as the Federal Transition Coordinator with responsibility for coordinating transition planning across agencies, including through the agency transition directors council established under subsection (e);
- “(3) ensure agencies comply with all statutory requirements relating to transition planning and reporting; and
- “(4) act as a liaison to eligible candidates.

“(d) WHITE HOUSE TRANSITION COORDINATING COUNCIL.—

“(1) ESTABLISHMENT.—Not later than 6 months before the date of a Presidential election, the President shall establish a White House transition coordinating council for purposes of facilitating the Presidential transition.

“(2) DUTIES.—The White House transition coordinating council shall—

- “(A) provide guidance to agencies and the Federal Transition Coordinator regarding preparations for the Presidential transition, including succession planning and preparation of briefing materials;
- “(B) facilitate communication and information sharing between the transition representatives of eligible candidates and senior employees in agencies and the Executive Office of the President; and
- “(C) prepare and host interagency emergency preparedness and response exercises.

“(3) MEMBERSHIP.—The members of the White House transition coordinating council shall include—

- “(A) senior employees of the Executive branch selected by the President, which may include the Chief of Staff to the President, any Cabinet officer, the Director of the Office of Management and Budget, the Administrator, the Director of the Office of Personnel Management, the Director of the Office of Government Ethics, and the Archivist of the United States;
- “(B) the Federal Transition Coordinator;
- “(C) the transition representative for each eligible candidate, who shall serve in an advisory capacity; and
- “(D) any other individual the President determines appropriate.

“(4) CHAIRPERSON.—The Chairperson of the White House transition coordinating council shall be a senior employee in the Executive Office of the President, designated by the President.

“(e) AGENCY TRANSITION DIRECTORS COUNCIL.—

“(1) IN GENERAL.—The President shall establish and operate an agency transition directors council, which shall—

“(A) ensure the Federal Government has an integrated strategy for addressing interagency challenges and responsibilities around Presidential transitions and turnover of noncareer appointees;

“(B) coordinate transition activities between the Executive Office of the President, agencies, and the transition team of eligible candidates and the President-elect and Vice-President-elect; and

“(C) draw on guidance provided by the White House transition coordinating council and lessons learned from previous Presidential transitions in carrying out its duties.

“(2) DUTIES.—As part of carrying out the responsibilities under paragraph (1), the agency transition directors council shall—

“(A) assist the Federal Transition Coordinator in identifying and carrying out the responsibilities of the Federal Transition Coordinator relating to a Presidential transition;

“(B) provide guidance to agencies in gathering briefing materials and information relating to the Presidential transition that may be requested by eligible candidates;

“(C) ensure materials and information described in subparagraph (B) are prepared not later than November 1 of a year during which a Presidential election is held;

“(D) ensure agencies adequately prepare career employees who are designated to fill non-career positions under subsection (f) during a Presidential transition; and

“(E) consult with the President’s Management Council, or any successor thereto, in carrying out the duties of the agency transition directors council.

“(3) MEMBERSHIP.—The members of the agency transition directors council shall include—

“(A) the Federal Transition Coordinator and the Deputy Director for Management of the Office of Management and Budget, who shall serve as Co-Chairpersons of the agency transition directors council;

“(B) other senior employees serving in the Executive Office of the President, as determined by the President;

“(C) a senior representative from each agency described in section 901(b)(1) of title 31, United States Code, the Office of Personnel Management, the Office of Government Ethics, and the National Archives and Records Administration whose responsibilities include leading Presidential transition efforts within the agency;

“(D) a senior representative from any other agency determined by the Co-Chairpersons to be an agency that has significant responsibilities relating to the Presidential transition process; and

“(E) during a year during which a Presidential election will be held, a transition representative for each eligible candidate, who shall serve in an advisory capacity.

“(4) MEETINGS.—The agency transition directors council shall meet—

“(A) subject to subparagraph (B), not less than once per year; and

“(B) during the period beginning on the date that is 6 months before a Presidential election and ending on the date on which the President-elect is inaugurated, on a regular basis as necessary to carry out the duties and authorities of the agency transition directors council.

“(f) INTERIM AGENCY LEADERSHIP FOR TRANSITIONS.—

“(1) OVERSIGHT AND IMPLEMENTATION OF TRANSITION.—Not later than 6 months before the date of a Presidential election, the head of each agency shall designate a senior career employee of the agency and a senior career employee of each major component and subcomponent of the agency to oversee and implement the activities of the agency, component, or subcomponent relating to the Presidential transition.

“(2) ACTING OFFICERS.—Not later than September 15 of a year during which a Presidential election occurs, and in accordance with subchapter III of chapter 33 of title 5, United States Code, for each noncareer position in an agency that the head of the agency determines is critical, the head of the agency shall designate a qualified career employee to serve in the position in an acting capacity if the position becomes vacant.

“(g) MEMORANDUMS OF UNDERSTANDING.—

“(1) IN GENERAL.—Not later than November 1 of a year during which a Presidential election occurs, the President (acting through the Federal Transition Coordinator) shall, to the maximum extent practicable, negotiate a memorandum of understanding with the transition representative of each eligible candidate,

which shall include, at a minimum, the conditions of access to employees, facilities, and documents of agencies by transition staff.

“(2) EXISTING RESOURCES.—To the maximum extent practicable, the memorandums of understanding negotiated under paragraph (1) shall be based on memorandums of understanding from previous Presidential transitions.

“(h) EQUITY IN ASSISTANCE.—Any information or other assistance provided to eligible candidates under this section shall be offered on an equal basis and without regard to political affiliation.

“(i) REPORTS.—

“(1) IN GENERAL.—The President, acting through the Federal Transition Coordinator, shall submit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate reports describing the activities undertaken by the President and agencies to prepare for the transfer of power to a new President.

“(2) TIMING.—The reports under paragraph (1) shall be provided 6 months and 3 months before the date of a Presidential election.”.

(b) OTHER IMPROVEMENTS.—Section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note) is amended—

(1) in subsection (a)—

(A) in paragraph (8)—

(i) in subparagraph (A)(i)—

(I) by inserting “and during the term of a President” after “during the transition”; and

(II) by striking “after inauguration”; and

(ii) in subparagraph (B), by inserting “or Executive agencies (as defined in section 105 of title 5, United States Code)” before the period; and

(B) in paragraph (10), by inserting “including, to the greatest extent practicable, human resource management system software compatible with the software used by the incumbent President and likely to be used by the President-elect and Vice President-elect” before the period;

(2) in subsection (b)(2), by striking “30 days” and inserting “180 days”;

(3) in subsection (g), by inserting “except for activities under subsection (a)(8)(A),” before “there shall be no”; and

(4) in subsection (h)(2), by adding at the end the following:

“(D) An eligible candidate shall have a right to the services and facilities described in this paragraph until the date on which the Administrator is able to determine the apparent successful candidates for the office of President and Vice President.”.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 3 of the Pre-Election Presidential Transition Act of 2010 (3 U.S.C. 102 note) is repealed.

(2) The Presidential Transition Act of 1963 (3 U.S.C. 102 note) is amended—

(A) in section 3—

(i) in subsection (a)(4)(B), by striking “section 6” and inserting “section 7”;

(ii) in subsection (b), in the matter preceding paragraph (1), by striking “section 3 of this Act” and inserting “this section”; and

(iii) in subsection (h)(3)(B)(iii), by striking “section 5” each place it appears and inserting “section 6”;

(B) in section 6, as redesignated by subsection (a) of this section, by striking “section 6(a)(1)” each place it appears and inserting “section 7(a)(1)”;

and

(C) in section 7(a)(2), as redesignated by subsection (a) of this section, by striking “section 4” and inserting “section 5”.

(3) Section 8331(1)(K) of title 5, United States Code, is amended by striking “section 4” and inserting “section 5”.

(4) Section 8701(a)(10) of title 5, United States Code, is amended by striking “section 4” and inserting “section 5”.

(5) Section 8901(1)(I) of title 5, United States Code, is amended by striking “section 4” and inserting “section 5”.

SEC. 3. NATIONAL ARCHIVES PRESIDENTIAL TRANSITION.

Section 2203(g) of title 44, United States Code, is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

“(3) When the President considers it practicable and in the public interest, the President shall include in the President’s budget transmitted to Congress, for each

fiscal year in which the term of office of the President will expire, such funds as may be necessary for carrying out the authorities of this subsection.”.

SEC. 4. REPORTS ON POLITICAL APPOINTEES APPOINTED TO NONPOLITICAL PERMANENT POSITIONS.

(a) DEFINITIONS.—In this section—

(1) the term “agency” has the meaning given the term “Executive agency” in section 105 of title 5, United States Code;

(2) the term “covered civil service position” means a position in the civil service (as defined in section 2101 of title 5, United States Code) that is not—

(A) a temporary position; or

(B) a political position;

(3) the term “former political appointee” means an individual who—

(A) is not serving in an appointment to a political position; and

(B) served as a political appointee during the 5-year period ending on the date of the request for an appointment to a covered civil service position in any agency;

(4) the term “political appointee” means an individual serving in an appointment to a political position; and

(5) the term “political position” means—

(A) a position described under sections 5312 through 5316 of title 5, United States Code (relating to the Executive Schedule);

(B) a noncareer appointment in the Senior Executive Service, as defined under paragraph (7) of section 3132(a) of title 5, United States Code; or

(C) a position in the executive branch of the Government of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5, Code of Federal Regulations.

(b) REPORTING ON CURRENT OR RECENT POLITICAL APPOINTEES APPOINTED TO COVERED CIVIL SERVICE POSITIONS.—

(1) ANNUAL REPORT.—Except as provided in paragraph (2), the Director of the Office of Personnel Management shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives an annual report regarding requests by agencies to appoint political appointees or former political appointees to covered civil service positions. Each report shall cover one calendar year and shall—

(A) for each request by an agency that a political appointee be appointed to a covered civil service position during the period covered by the report, provide—

(i) the date on which the request was received by the Office of Personnel Management;

(ii) subject to subsection (c), the name of the individual and the political position held by the individual, including title, office, and agency;

(iii) the date on which the individual was first appointed to a political position in the agency in which the individual is serving as a political appointee;

(iv) the grade and rate of basic pay for the individual as a political appointee;

(v) the proposed covered civil service position, including title, office, and agency, and the proposed grade and rate of basic pay for the individual;

(vi) whether the Office of Personnel Management approved or denied the request; and

(vii) the date on which the individual was appointed to a covered civil service position, if applicable; and

(B) for each request by an agency that a former political appointee be appointed to a covered civil service position during the period covered by the report, provide—

(i) the date on which the request was received by the Office of Personnel Management;

(ii) subject to subsection (c), the name of the individual and the political position held by the individual, including title, office, and agency;

(iii) the date on which the individual was first appointed to any political position;

(iv) the grade and rate of basic pay for the individual as a political appointee;

(v) the date on which the individual ceased to serve in a political position;

(vi) the proposed covered civil service position, including title, office, and agency, and the proposed grade and rate of basic pay for the individual;

(vii) whether the Office of Personnel Management approved or denied the request; and

(viii) the date on which the individual was first appointed to a covered civil service position, if applicable.

(2) QUARTERLY REPORT IN CERTAIN YEARS.—In the last year of the term of a President, or, if applicable, the last year of the second consecutive term of a President, the report required under paragraph (1) shall be submitted quarterly and shall cover each quarter of the year, except that the last quarterly report shall also cover January 1 through 20 of the following year.

(c) NAMES AND TITLES OF CERTAIN APPOINTEES.—If determined appropriate by the Director of the Office of Personnel Management, a report submitted under subsection (b) may exclude the name or title of a political appointee or former political appointee—

(1) who—

(A) was requested to be appointed to a covered civil service position; and
(B) was not appointed to a covered civil service position; or

(2) relating to whom a request to be appointed to a covered civil service position is pending at the end of the period covered by that report.

SEC. 5. REPORT ON REGULATIONS PROMULGATED NEAR THE END OF PRESIDENTIAL TERMS.

(a) DEFINITIONS.—In this section:

(1) The term “covered presidential transition period” means each of the following:

(A) The 120-day period ending on January 20, 2001.

(B) The 120-day period ending on January 20, 2009.

(C) The 120-day period ending on January 20, 2017.

(2) The term “covered regulation” means a final significant regulatory action promulgated by an Executive department.

(3) The term “significant regulatory action” means any regulatory action that is likely to result in a rule that may—

(A) have an annual effect on the economy of \$100,000,000 or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(B) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(D) raise novel legal or policy issues.

(4) The term “Executive department” has the meaning given that term under section 101 of title 5, United States Code.

(b) REPORT.—

(1) IN GENERAL.—The Comptroller General of the United States shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report regarding covered regulations promulgated during each covered presidential transition period.

(2) CONTENTS OF REPORT.—The report required under paragraph (1) shall, to the extent feasible, for each covered presidential transition period—

(A) compare the number, scope, and impact of, and type of rulemaking procedure used for, covered regulations promulgated during the covered presidential transition period to the number, scope, and impact of, and type of rulemaking procedure used for, covered regulations promulgated during the 120-day periods ending on January 20 of each year after 1996, other than 2001, 2009, and 2017;

(B) determine the statistical significance of any differences identified under subparagraph (A) and whether and to what extent such differences indicate any patterns;

(C) evaluate the size, scope, and effect of the covered regulations promulgated during the covered presidential transition period; and

(D) assess the extent to which the regularly required processes for the promulgation of covered regulations were followed during the covered presidential transition period, including compliance with the requirements under—

- (i) chapter 8 of title 5, United States Code (commonly known as the “Congressional Review Act”);
- (ii) the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note);
- (iii) sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532-1535);
- (iv) chapter 6 of title 5, United States Code (commonly known as the “Regulatory Flexibility Act”); and
- (v) chapter 35 of title 44, United States Code (commonly known as the “Paperwork Reduction Act”).

SEC. 6. ANALYSIS OF THREATS AND VULNERABILITIES.

(a) **IN GENERAL.**—Not later than February 15, 2016, the Secretary of Homeland Security shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committees on Oversight and Government Reform and Homeland Security of the House of Representatives a report analyzing the threats and vulnerabilities facing the United States during a presidential transition, which—

- (1) shall identify and discuss vulnerabilities related to border security and threats related to terrorism, including from weapons of mass destruction;
- (2) shall identify steps being taken to address the threats and vulnerabilities during a presidential transition; and
- (3) may include recommendations for actions by components and agencies within the Department of Homeland Security.

(b) **FORM.**—The report submitted under subsection (a) shall be prepared in unclassified form, but may contain a classified annex.

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

S. 1172, the Edward “Ted” Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015, builds on the Pre-Presidential Transition Act of 2010 to mandate several processes that have been effective in past presidential transitions. The bill requires the interagency transition coordinating council to be established no later than six months before the presidential election, creates an Agency Transition Directors Council and Federal Transition Coordinator, and extends transition services from 30 to 180 days after inauguration day. The bill also requires a report to Congress on national security threats related to terrorism and border security during a transition.

BACKGROUND AND NEED FOR LEGISLATION

The smooth transfer of executive power from one president to the next expresses American democratic ideals as no other single act does. In the modern world, a smooth transition requires meticulous planning and high standards to ensure both the continued seamless operation of day to day government operations, and the national security of the United States.

Since 1963, Presidential transition procedures have been repeatedly amended in order to meet the security and monetary requirements of the day. Before 1963, the government had no fiscal responsibility to provide for transitions.¹ Beginning with the Presidential Transitions Act of 1963, the Government Services Administration (GSA) was directed to provide the base framework including staff, office space, and agency liaisons.² In 1988, the process was

¹ Congressional Research Service (CRS) *Presidential Transition Act: Provisions and Funding*, RS22979, December 17, 2012.

² Public Law 88–277.

streamlined to ensure fiscal and resource responsibility.³ The transition model was again updated in 2000, to provide for political appointee training, and additional resources for the incoming President.⁴

Before September 11, 2001, Presidential transitions took into account a broader national security view when addressing the format and timeline of executive power transfer.⁵ However, following the recommendations laid out in the report filed by the National Commission on Terrorist Attacks upon the United States (9/11 Commission), Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA).⁶ Included in this legislation is a provision that requires high-level appointees to be vetted to the highest possible extent, and requires the President-elect to submit the names of candidates for high level national security positions for background checks so they may obtain security clearances and receive top-secret information the day after the election.⁷

The most recent legislation affecting the transition process is the Pre-Election Presidential Transition Act of 2010 (PEPTA), which, for the first time, requires that major party candidates be included in transition procedures.⁸ The Act authorized the creation of an interagency council that oversees the transition process, consisting of senior officials who can guide the transition process. However, this council is not mandatory, leaving ambiguity for future presidential transition processes. Additionally, PEPTA expedited security clearances, and streamlined processes to provide for a smoother and safer transition.

The bill discussed in this report, the Ted Kaufmann and Michael Leavitt Presidential Transitions Improvements Act of 2015, builds upon PEPTA by further codifying transition procedures, ensuring that the foundation of the presidential transition team is built well before Election Day, and ensures that presidential candidates teams are informed and involved from day one. The bill expands the role of GSA, directing the GSA Administrator to designate a senior career appointee to the role of Federal Transition Coordinator, and mandates that the White House Transition Coordinating Council and the Agency Transition Directors Council be established not later than six months before Election Day. These councils will be responsible for overall guidance of the transition. The bill also requires the head of each agency to appoint a senior career employee to oversee transition planning and execution at the agency.

The bill also directs GSA to provide human resource management support until the outcome of Election Day, and up to 180 days following the inauguration. The bill further requires Office of Personnel Management (OPM) transition teams to provide to congress quarterly reports detailing the “burrowing in” of political appointees into civil service positions.

³Public Law 100–398.

⁴Public Law 106–293.

⁵CRS *Presidential Transitions: Issues Involving Outgoing and Incoming Administrations* RL34722, November 25, 2008.

⁶Senate Report 49–010.

⁷Public Law 108–458.

⁸Public Law 111–283.

LEGISLATIVE HISTORY

S. 1172, the Edward “Ted” Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015, was introduced by Senator Tom Carper (D–DE) on April 30, 2015, and referred to the Senate committee on Homeland Security and Government Affairs (HSGAC). The bill was ordered favorably reported by HSGAC on July 27, 2015. The bill was received in the House and referred to the House Committee on Oversight and Government Reform on July 31, 2015.

SECTION-BY-SECTION

Section 1. Short title

Designates the short title of the bill as the “Edward ‘Ted’ Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015.”

Section 2. Presidential transition improvements

Requires the GSA Administrator to designate a senior career appointee as the Federal Transition Coordinator to carry out the duties and authorities of GSA relating to presidential transitions, to ensure that agencies comply with all statutory requirements relating to transition planning and reporting, and to serve as a liaison to eligible presidential candidates.

Requires the renamed White House Transition Coordinating Council be established not later than six months before Election Day. This council will be responsible for providing guidance to agencies and the Federal Transition Coordinator, facilitating information sharing and communication between eligible candidates and senior officials in the White House and in federal agencies, and conducting inter-agency emergency preparedness and response exercises.

Establishes an Agency Transition Directors Council, chaired by the Federal Transition Coordinator, to assist in developing an integrated government-wide transition strategy and ensure that any briefing material requested by eligible candidates be provided not later than November 1 in a presidential election year.

Requires the head of each agency to designate a senior career employee of each major component and subcomponent of the agency to oversee transition activities. Also, not later than September 15 of a presidential election year, for each non-career position the head of the agency determines is critical, the agency head shall designate a qualified career employee to serve in an acting capacity during the transition.

Requires, to the greatest extent practicable, the negotiation of memorandums of understanding between the incumbent administration (acting through the Federal Transition Coordinator) and the transition teams of major candidates, not later than November 1 of a presidential election year.

Makes clear that GSA may provide human resource management support as part of its transition services, and also clarifies that, in the event of a contested or undetermined election outcome, GSA can continue to provide services to the presidential contenders until the outcome of the election is determined. GSA may provide for

transition services up to 180 days after Inauguration Day (from 30 days).

Section 3. National Archives presidential transition

Amends the Presidential Records Act to allow the National Archives and Records Administration (NARA) to include estimates of NARA's presidential activities in the budget submission for the fiscal year in which an incumbent president's first term would expire.

Section 4. Reports on political appointees appointed to nonpolitical permanent positions

Requires OPM to submit to the Oversight and Government Reform Committee, and the Homeland Security and Governmental Affairs Committee, quarterly reports regarding requests by agencies to appoint political appointees or former political appointees to nonpolitical civil service positions. These reports are required to include details on both the political and civil service positions related to each request and whether OPM approved or denied the request.

Section 5. Report on regulations promulgated near the end of presidential terms

Requires GAO to produce a report regarding regulations promulgated during the last 120-day period of presidential administrations ending in 2001, 2009 and 2017.

Section 6. Analysis of threats and vulnerabilities

Requires the Secretary of Homeland Security to submit to Congress no later than February 15, 2016, a report analyzing the threats and vulnerabilities facing the United States during a presidential transition. The report shall identify and discuss vulnerabilities related to border security and threats related to terrorism, including from weapons of mass destruction; shall identify steps being taken to address the threats and vulnerabilities during a presidential transition; and may include recommendations for actions by components and agencies within the Department of Homeland Security.

EXPLANATION OF AMENDMENTS

Chairman Jason Chaffetz (R-UT) offered an amendment in the nature of a substitute, which requires OPM to report on requests for current or former political appointees to civil service positions annually in the first three years of a presidential term and quarterly in the final year of each presidential term. The amendment also adjusts requirements for GAO to report on rulemaking during presidential transition years by clarifying which years and regulations will be covered. The amendment was adopted by unanimous consent.

COMMITTEE CONSIDERATION

On October 9, 2015 the Committee met in open session and ordered reported favorably the bill, S. 1172, as amended, by unanimous consent, a quorum being present.

ROLL CALL VOTES

There were no recorded votes during Full Committee consideration of S. 1172.

JASON CHAFFETZ, UTAH
CHAIRMAN

CORRESPONDENCE
ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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December 11, 2015

The Honorable Michael T. McCaul
Chairman
Committee on Homeland Security
176 Ford HOB
Washington, D.C. 20515

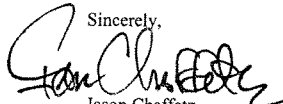
Dear Mr. Chairman:

On October 9, 2015, the Committee on Oversight and Government Reform ordered reported with an amendment S. 1172, the Edward "Ted" Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015, by unanimous consent. The bill was referred primarily to the Committee on Oversight and Government Reform, with an additional referral to the Committee on Homeland Security.

I ask that you allow the Homeland Security Committee to be discharged from further consideration of the bill so that it may be scheduled by the Majority Leader. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on Homeland Security represented on the conference committee. Finally, I would be pleased to include this letter and any response in the bill report filed by the Committee on Oversight and Government Reform, as well as in the *Congressional Record* during floor consideration, to memorialize our understanding.

Thank you for your consideration of my request.

Sincerely,



Jason Chaffetz
Chairman

cc: The Honorable Paul D. Ryan, Speaker
The Honorable Elijah E. Cummings
The Honorable Bennie G. Thompson
The Honorable Thomas J. Wickham, Parliamentarian

MICHAEL T. McCAUL, TEXAS
CHAIRMAN



BENNIE G. THOMPSON, MISSISSIPPI
RANKING MEMBER

One Hundred Fourteenth Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515
December 11, 2015

The Honorable Jason Chaffetz
Chairman, Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Chaffetz,

Thank you for letter regarding S. 1172, the "Edward 'Ted' Kaufman and Michael Leavitt Presidential Transitions and Improvements Act of 2015." As a result of your having consulted with us on provisions in S. 1172 that fall within the Rule X jurisdiction of the Committee on Homeland Security, I agree to discharge our Committee from further consideration of this bill so that it may proceed expeditiously to the House floor for consideration.

The Committee on Homeland Security takes this action with our mutual understanding that by forgoing consideration of S. 1172 at this time, we do not waive any jurisdiction over subject matter contained in this or similar legislation, and that our Committee will be appropriately consulted and involved as this bill or similar legislation moves forward so that we may address any remaining issues in our jurisdiction. Our Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation, and I ask that your support any such request.

To memorialize our understanding, please include a copy of of this letter exchange in the report filed by the Committee on Oversight and Government Reform, as well as in the *Congressional Record* during floor consideration.

Sincerely,

A handwritten signature in cursive script that reads "Michael T. McCaul".

MICHAEL T. McCAUL
Chairman

cc: The Honorable Paul Ryan, Speaker
The Honorable Bennie G. Thompson
The Honorable Elija E. Cummings

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill improves the process of presidential transitions. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective is to improve the process of presidential transitions.

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of Congressional Budget Office:

S. 1172—Edward “Ted” Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015

S. 1172 would amend federal law to codify the process of transitioning from one presidential administration to another. The legislation would establish councils of federal employees to oversee and coordinate transition activities within the White House and across all federal agencies. S. 1172 also would require each agency to appoint staff to manage internal transition activities and several entities to submit reports on political appointees, regulations, and security vulnerabilities during presidential transitions. Finally, S. 1172 would extend the period of time during which the General Services Administration could spend funds on services and facilities for the incoming administration after the inauguration.

According to major government agencies and non-profit organizations involved with previous presidential transitions, most of the legislation’s provisions are similar to practices typically followed immediately preceding and following a presidential election. Therefore, CBO estimates that implementing this legislation would cost less than \$500,000 over the next five years. Enacting S. 1172 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 1172 would not increase direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

S. 1172 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.

On June 16, 2015, CBO transmitted a cost estimate for S. 1172 as ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on May 6, 2015. The two versions of the legislation are similar, and the estimated costs are the same.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black 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

* * * * *

SERVICES AND FACILITIES AUTHORIZED TO BE PROVIDED TO
PRESIDENTS-ELECT AND VICE-PRESIDENTS-ELECT

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:

(1) Suitable office space appropriately equipped with furniture, furnishings, office machines and equipment, and office supplies, as determined by the Administrator, after consultation with the President-elect, the Vice-President-elect, or their designee provided for in subsection (e) of this section, at such place or places within the United States as the President-elect or Vice-President-elect shall designate.

(2) Payment of the compensation of members of office staffs designated by the President-elect or Vice-President-elect at rates determined by them not to exceed the rate provided by the Classification Act of 1949, as amended, for grade GS-18: *Provided*, That any employee of any agency of any branch of the Government may be detailed to such staffs on a reimbursable basis with the consent of the head of the agency; and while so detailed such employee shall be responsible only to the President-elect or Vice-President-elect for the performance of his duties: *Provided further*, That any employee so detailed shall continue to receive the compensation provided pursuant to law for his regular employment, and shall retain the rights and privileges of such employment without interruption. Notwithstanding any other law, persons receiving compensation as members of office staffs under this subsection, other than those detailed from agencies, shall not be held or considered to be employees of the Federal Government except for purposes of the Civil Service Retirement Act, the Federal Employees' Compensation Act, the Federal Employees' Group Life Insurance Act of 1954, and the Federal Employees Health Benefits Act of 1959.

(3) Payment of expenses for the procurement of services of experts or consultants or organizations thereof for the President-elect or Vice-President-elect, as authorized for the head of any department by section 15 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 55a),.

(4)(A) Payment of travel expenses and subsistence allowances, including rental of Government or hired motor vehicles, found necessary by the President-elect or Vice-President-elect, as authorized for persons employed intermittently or for persons serving without compensation by section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 73b-2), as may be appropriate;

(B) When requested by the President-elect or Vice-President-elect or their designee, and approved by the President, Government aircraft may be provided for transition purposes on a reimbursable basis; when requested by the President-elect, the Vice-President-elect, or the designee of the President-elect or Vice-President-elect, aircraft may be chartered for transition purposes; and any collections from the Secret Service, press, or other occupying space on chartered aircraft shall be deposited to the credit of the appropriations made under [section 6] *section 7* of this Act.

(5) Communications services found necessary by the President-elect or Vice-President-elect.

(6) Payment of expenses for necessary printing and binding, notwithstanding the Act of January 12, 1895, and the Act of March 1, 1919, as amended (44 U.S.C. 111).

(7) Reimbursement to the postal revenues in amounts equivalent to the postage that would otherwise be payable on mail matter referred to in subsection (d) of this section.

(8)(A)(i) Notwithstanding subsection (b), payment of expenses during the transition *and during the term of a President* 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].

(ii) Activities under this paragraph may include interchange between such appointees and 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 General Accounting Office.

(iii) Activities under this paragraph may include training or orientation in records management to comply with section 2203 of title 44, United States Code, including training on the separation of Presidential records and personal records to comply with subsection (b) of that section.

(iv) Activities under this paragraph may include training or orientation in human resources management and performance-based management.

(v) Activities under this paragraph shall include the preparation of a detailed classified, compartmented summary by the relevant outgoing executive branch officials of specific operational threats to national security; major military or covert operations; and pending decisions on possible uses of military force. This

summary shall be provided to the President-elect as soon as possible after the date of the general elections held to determine the electors of President and Vice President under section 1 or 2 of title 3, United States Code.

(B) Activities under this paragraph shall be conducted primarily for individuals the 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 or *Executive agencies (as defined in section 105 of title 5, United States Code)*.

(9)(A) Notwithstanding subsection (b), development of a transition directory by the Administrator of General Services Administration, in consultation with the Archivist of the United States (head of the National Archives and Records Administration) for activities conducted under paragraph (8).

(B) The transition directory shall be a compilation of Federal publications and materials with supplementary materials developed by the Administrator that provides information on the officers, organization, and statutory and administrative authorities, functions, duties, responsibilities, and mission of each department and agency.

(10) Notwithstanding subsection (b), consultation by the Administrator with any President-elect, 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 *including, to the greatest extent practicable, human resource management system software compatible with the software used by the incumbent President and likely to be used by the President-elect and Vice President-elect*.

(b) The Administrator may not expend funds for the provision of services and facilities under [section 3 of this Act] *this section* in connection with any obligations incurred by the President-elect or Vice-President-elect—

(1) before the day following the date of the general elections held to determine the electors of President and Vice President under section 1 or 2 of title 3, United States Code; or

(2) after [30 days] *180 days* after the date of the inauguration of the President-elect as President and the inauguration of the Vice-President-elect as Vice President.

(c) The terms “President-elect” and “Vice-President-elect” as used in this Act shall mean such persons as are the apparent successful candidates for the office of President and Vice President, respectively, as ascertained by the Administrator following the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2.

(d) Each President-elect shall be entitled to conveyance within the United States and its territories and possessions of all mail matter, including airmail, sent by him in connection with his preparations for the assumption of official duties as President, and such mail matter shall be transmitted as penalty mail as provided in title 39, United States Code, section 4152. Each Vice-President-

elect shall be entitled to conveyance within the United States and its territories and possessions of all mail matter, including airmail, sent by him under his written autograph signature in connection with his preparations for the assumption of official duties as Vice President.

(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.

(f)(1) The President-elect should submit to the Federal Bureau of Investigation or other appropriate agency and then, upon taking effect and designation, to the agency designated by the President under section 115(b) of the National Intelligence Reform Act of 2004, the names of candidates for high level national security positions through the level of undersecretary of cabinet departments as soon as possible after the date of the general elections held to determine the electors of President and Vice President under section 1 or 2 of title 3, United States Code.

(2) The responsible agency or agencies shall undertake and complete as expeditiously as possible the background investigations necessary to provide appropriate security clearances to the individuals who are candidates described under paragraph (1) before the date of the inauguration of the President-elect as President and the inauguration of the Vice-President-elect as Vice President.

(g) In the case where the President-elect is the incumbent President or in the case where the Vice-President-elect is the incumbent Vice President, *except for activities under subsection (a)(8)(A)*, there shall be no expenditures of funds for the provision of services and facilities to such incumbent under this Act, and any funds appropriated for such purposes shall be returned to the general funds of the Treasury.

(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 that sections 7601(c) and 8403(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 provide additional services.

(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 12 months before the date of each general election for President and Vice-President (beginning with the election to be held in 2012), 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), (7), and 8(A)(v) 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.

(D) An eligible candidate shall have a right to the services and facilities described in this paragraph until the date on which the Administrator is able to determine the apparent successful candidates for the office of President and Vice President.

(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 serv-

ices 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] *section 6* 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] *section 6*.

(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 principal 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.

SEC. 4. TRANSITION SERVICES AND ACTIVITIES BEFORE ELECTION.

(a) *DEFINITIONS.*—*In this section—*

(1) *the term “Administrator” means the Administrator of General Services;*

(2) *the term “agency” means an Executive agency, as defined in section 105 of title 5, United States Code;*

(3) *the term “eligible candidate” has the meaning given that term in section 3(h)(4); and*

(4) *the term “Presidential election” means a general election held to determine the electors of President and Vice President under section 1 or 2 of title 3, United States Code.*

(b) *GENERAL DUTIES.*—*The President shall take such actions as the President determines necessary and appropriate to plan and coordinate activities by the Executive branch of the Federal Government to facilitate an efficient transfer of power to a successor President, including by—*

(1) *establishing and operating a White House transition coordinating council in accordance with subsection (d); and*

(2) *establishing and operating an agency transition directors council in accordance with subsection (e).*

(c) *FEDERAL TRANSITION COORDINATOR.*—*The Administrator shall designate an employee of the General Services Administration who is a senior career appointee to—*

(1) *carry out the duties and authorities of the General Services Administration relating to Presidential transitions under this Act or any other provision of law;*

(2) *serve as the Federal Transition Coordinator with responsibility for coordinating transition planning across agencies, including through the agency transition directors council established under subsection (e);*

(3) *ensure agencies comply with all statutory requirements relating to transition planning and reporting; and*

(4) *act as a liaison to eligible candidates.*

(d) *WHITE HOUSE TRANSITION COORDINATING COUNCIL.*—

(1) *ESTABLISHMENT.*—*Not later than 6 months before the date of a Presidential election, the President shall establish a White House transition coordinating council for purposes of facilitating the Presidential transition.*

(2) *DUTIES.*—*The White House transition coordinating council shall—*

(A) *provide guidance to agencies and the Federal Transition Coordinator regarding preparations for the Presidential transition, including succession planning and preparation of briefing materials;*

(B) *facilitate communication and information sharing between the transition representatives of eligible candidates and senior employees in agencies and the Executive Office of the President; and*

(C) *prepare and host interagency emergency preparedness and response exercises.*

(3) *MEMBERSHIP.*— *The members of the White House transition coordinating council shall include—*

(A) *senior employees of the Executive branch selected by the President, which may include the Chief of Staff to the President, any Cabinet officer, the Director of the Office of Management and Budget, the Administrator, the Director of the Office of Personnel Management, the Director of the Office of Government Ethics, and the Archivist of the United States;*

(B) *the Federal Transition Coordinator;*

(C) *the transition representative for each eligible candidate, who shall serve in an advisory capacity; and*

(D) *any other individual the President determines appropriate.*

(4) *CHAIRPERSON.*— *The Chairperson of the White House transition coordinating council shall be a senior employee in the Executive Office of the President, designated by the President.*

(e) *AGENCY TRANSITION DIRECTORS COUNCIL.*—

(1) *IN GENERAL.*— *The President shall establish and operate an agency transition directors council, which shall—*

(A) *ensure the Federal Government has an integrated strategy for addressing interagency challenges and responsibilities around Presidential transitions and turnover of noncareer appointees;*

(B) *coordinate transition activities between the Executive Office of the President, agencies, and the transition team of eligible candidates and the President-elect and Vice-President-elect; and*

(C) *draw on guidance provided by the White House transition coordinating council and lessons learned from previous Presidential transitions in carrying out its duties.*

(2) *DUTIES.*— *As part of carrying out the responsibilities under paragraph (1), the agency transition directors council shall—*

(A) *assist the Federal Transition Coordinator in identifying and carrying out the responsibilities of the Federal Transition Coordinator relating to a Presidential transition;*

(B) *provide guidance to agencies in gathering briefing materials and information relating to the Presidential transition that may be requested by eligible candidates;*

(C) *ensure materials and information described in subparagraph (B) are prepared not later than November 1 of a year during which a Presidential election is held;*

(D) *ensure agencies adequately prepare career employees who are designated to fill non-career positions under subsection (f) during a Presidential transition; and*

(E) *consult with the President's Management Council, or any successor thereto, in carrying out the duties of the agency transition directors council.*

(3) *MEMBERSHIP.*— *The members of the agency transition directors council shall include—*

(A) *the Federal Transition Coordinator and the Deputy Director for Management of the Office of Management and*

Budget, who shall serve as Co-Chairpersons of the agency transition directors council;

(B) other senior employees serving in the Executive Office of the President, as determined by the President;

(C) a senior representative from each agency described in section 901(b)(1) of title 31, United States Code, the Office of Personnel Management, the Office of Government Ethics, and the National Archives and Records Administration whose responsibilities include leading Presidential transition efforts within the agency;

(D) a senior representative from any other agency determined by the Co-Chairpersons to be an agency that has significant responsibilities relating to the Presidential transition process; and

(E) during a year during which a Presidential election will be held, a transition representative for each eligible candidate, who shall serve in an advisory capacity.

(4) MEETINGS.— The agency transition directors council shall meet—

(A) subject to subparagraph (B), not less than once per year; and

(B) during the period beginning on the date that is 6 months before a Presidential election and ending on the date on which the President-elect is inaugurated, on a regular basis as necessary to carry out the duties and authorities of the agency transition directors council.

(f) INTERIM AGENCY LEADERSHIP FOR TRANSITIONS.—

(1) OVERSIGHT AND IMPLEMENTATION OF TRANSITION.— Not later than 6 months before the date of a Presidential election, the head of each agency shall designate a senior career employee of the agency and a senior career employee of each major component and subcomponent of the agency to oversee and implement the activities of the agency, component, or subcomponent relating to the Presidential transition.

(2) ACTING OFFICERS.— Not later than September 15 of a year during which a Presidential election occurs, and in accordance with subchapter III of chapter 33 of title 5, United States Code, for each noncareer position in an agency that the head of the agency determines is critical, the head of the agency shall designate a qualified career employee to serve in the position in an acting capacity if the position becomes vacant.

(g) MEMORANDUMS OF UNDERSTANDING.—

(1) IN GENERAL.— Not later than November 1 of a year during which a Presidential election occurs, the President (acting through the Federal Transition Coordinator) shall, to the maximum extent practicable, negotiate a memorandum of understanding with the transition representative of each eligible candidate, which shall include, at a minimum, the conditions of access to employees, facilities, and documents of agencies by transition staff.

(2) EXISTING RESOURCES.— To the maximum extent practicable, the memorandums of understanding negotiated under paragraph (1) shall be based on memorandums of understanding from previous Presidential transitions.

(h) *EQUITY IN ASSISTANCE.*—Any information or other assistance provided to eligible candidates under this section shall be offered on an equal basis and without regard to political affiliation.

(i) *REPORTS.*—

(1) *IN GENERAL.*— The President, acting through the Federal Transition Coordinator, shall submit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate reports describing the activities undertaken by the President and agencies to prepare for the transfer of power to a new President.

(2) *TIMING.*— The reports under paragraph (1) shall be provided 6 months and 3 months before the date of a Presidential election.

SERVICES AND FACILITIES AUTHORIZED TO BE PROVIDED TO FORMER PRESIDENTS AND FORMER VICE PRESIDENTS

SEC. [4.] 5. The Administrator is authorized to provide, upon request to each former President and each former Vice President, for a period not to exceed seven months from 30 days before the date of the expiration of his term of office as President or Vice President, for use in connection with winding up the affairs of his office, necessary, services and facilities of the same general character as authorized by this Act to be provided to Presidents-elect and Vice-Presidents-elect. Any person appointed or detailed to serve a former President or former Vice President under authority of this section shall be appointed or detailed in accordance with, and shall be subject to, all of the provisions of section 3 of this Act applicable to persons appointed or detailed under authority of that section. The provisions of the Act of August 25, 1958 (72 Stat. 838; 3 U.S.C. 102, note), other than subsections (a) and (e) shall not become effective with respect to a former President until six months after the expiration of his term of office as President.

* * * * *

DISCLOSURES OF FINANCING AND PERSONNEL; LIMITATION ON ACCEPTANCE OF DONATIONS

SEC. [5.] 6. (a)(1) The President-elect and Vice-President-elect (as a condition for receiving services under section 3 and for funds provided under [section 6(a)(1)] *section 7(a)(1)*) shall disclose to the Administrator the date of contribution, source, amount, and expenditure thereof of all money, other than funds from the Federal Government, and including currency of the United States and of any foreign nation, checks, money orders, or any other negotiable instruments payable on demand, received either before or after the date of the general elections for use in the preparation of the President-elect or Vice-President-elect for the assumption of official duties as President or Vice President.

(2) The President-elect and Vice-President-elect (as a condition for receiving such services and funds) shall make available to the Administrator and the Comptroller General all information concerning such contributions as the Administrator or Comptroller General may require for purposes of auditing both the public and private funding used in the activities authorized by this Act.

(3) Disclosures made under paragraph (1) shall be—

(A) in the form of a report to the Administrator within 30 days after the inauguration of the President-elect as President and the Vice-President-elect as Vice President; and

(B) made available to the public by the Administrator upon receipt by the Administrator.

(b)(1) The President-elect and Vice-President-elect (as a condition for receiving services provided under section 3 and funds provided under **[section 6(a)(1)]** *section 7(a)(1)*) shall make available to the public—

(A) the names and most recent employment of all transition personnel (full-time or part-time, public or private, or volunteer) who are members of the President-elect or Vice-President-elect's Federal department or agency transition teams; and

(B) information regarding the sources of funding which support the transition activities of each transition team member.

(2) Disclosures under paragraph (1) shall be made public before the initial transition team contact with a Federal department or agency and shall be updated as necessary.

(c) The President-elect and Vice-President-elect (as a condition for receiving services under section 3 and for funds provided under **[section 6(a)(1)]** *section 7(a)(1)*) shall not accept more than \$5,000 from any person, organization, or other entity for purposes of carrying out activities authorized by this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. **[6.]** 7. (a) There are hereby authorized to be appropriated to the Administrator such funds as may be necessary for carrying out the purposes of this Act, except that with respect to any one Presidential transition—

(1) not more than \$3,500,000 may be appropriated for the purposes of providing services and facilities to the President-elect and Vice President-elect under section 3, and

(2) 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 under **[section 4]** *section 5* , except that any amount appropriated pursuant to this paragraph 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.

The President shall include in the budget transmitted to Congress, for each fiscal year in which his regular term of office will expire, a proposed appropriation for carrying out the purposes of this Act.

(b) The amount authorized to be appropriated under subsection (a) shall 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, and shall be included in the proposed appropriation transmitted by the President under the last sentence of subsection (a).

PRE-ELECTION PRESIDENTIAL TRANSITION ACT OF 2010

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[SEC. 3. AUTHORIZATION OF TRANSITION ACTIVITIES BY THE INCUMBENT ADMINISTRATION.

[(a) IN GENERAL.—The President of the United States, or the President's delegate, may take such actions as the President determines necessary and appropriate to plan and coordinate activities by the Executive branch of the Federal Government to facilitate an efficient transfer of power to a successor President, including—

[(1) the establishment and operation of a transition coordinating council comprised of—

[(A) high-level officials of the Executive branch selected by the President, which may include the Chief of Staff to the President, any Cabinet officer, the Director of the Office of Management and Budget, the Administrator of the General Services Administration, the Director of the Office of Personnel Management, the Director of the Office of Government Ethics, and the Archivist of the United States, and

[(B) any other persons the President determines appropriate;

[(2) the establishment and operation of an agency transition directors council which includes career employees designated to lead transition efforts within Executive Departments or agencies;

[(3) the development of guidance to Executive Departments and agencies regarding briefing materials for an incoming administration, and the development of such materials; and

[(4) the development of computer software, publications, contingency plans, issue memoranda, memoranda of understanding, training and exercises (including crisis training and exercises), programs, lessons learned from previous transitions, and other items appropriate for improving the effectiveness and efficiency of a Presidential transition that may be disseminated to eligible candidates (as defined in section 3(h)(4) of the Presidential Transition Act of 1963, as added by section 2(a)) and to the President-elect and Vice-President-elect.

Any information and other assistance to eligible candidates under this subsection shall be offered on an equal basis and without regard to political affiliation.

[(b) REPORTS.—

[(1) IN GENERAL.— The President of the United States, or the President's delegate, shall provide to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate reports describing the activities undertaken by the President and the Executive Departments and agencies to prepare for the transfer of power to a new President.

[(2) TIMING.— The reports under paragraph (1) shall be provided six months and three months before the date of the general election for the Office of President of the United States.]

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TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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SUBPART G—INSURANCE AND ANNUITIES

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CHAPTER 83—RETIREMENT

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SUBCHAPTER III—CIVIL SERVICE RETIREMENT

§ 8331. Definitions

For the purpose of this subchapter—

(1) “employee” means—

(A) an employee as defined by section 2105 of this title;

(B) the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden;

(C) a Congressional employee as defined by section 2107 of this title (other than the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden), after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(D) a temporary Congressional employee appointed at an annual rate of pay, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(E) a United States Commissioner whose total pay for services performed as Commissioner is not less than \$3,000 in each of the last 3 consecutive calendar years ending after December 31, 1954;

(F) an individual employed by a county committee established under section 590h(b) of title 16;

(G) an individual first employed by the government of the District of Columbia before October 1, 1987;

(H) an individual employed by Gallaudet College;

(I) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

(J) an alien (i) who was previously employed by the Government, (ii) who is employed full time by a foreign government for the purpose of protecting or furthering the interests of the United States during an interruption of diplomatic or consular relations, and (iii) for whose services reimbursement is made to the foreign government by the United States;

(K) an individual appointed to a position on the office staff of a former President, or a former Vice President

under [section 4] *section 5* of the Presidential Transition Act of 1963, as amended (78 Stat. 153), who immediately before the date of such appointment was an employee as defined under any other subparagraph of this paragraph; and

(L) an employee described in section 2105(c) who has made an election under section 8347(q)(1) to remain covered under this subchapter; but does not include—

(i) a justice or judge of the United States as defined by section 451 of title 28;

(ii) an employee subject to another retirement system for Government employees (besides any employee excluded by clause (x), but including any employee who has made an election under section 8347(q)(2) to remain covered by a retirement system established for employees described in section 2105(c));

(iii) an employee or group of employees in or under an Executive agency excluded by the Office of Personnel Management under section 8347(g) of this title;

(iv) an individual or group of individuals employed by the government of the District of Columbia excluded by the Office under section 8347(h) of this title;

(v) an employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or a court named by section 610 of title 28, excluded by the Director of the Administrative Office under section 8347(o) of this title;

(vi) a construction employee or other temporary, part-time, or intermittent employee of the Tennessee Valley Authority;

(vii) an employee under the Office of the Architect of the Capitol excluded by the Architect of the Capitol under section 8347(i) of this title;

(viii) an employee under the Library of Congress excluded by the Librarian of Congress under section 8347(j) of this title;

(ix) a student-employee as defined by section 5351 of this title;

(x) an employee subject to the Federal Employees' Retirement System;

(xi) an employee under the Botanic Garden excluded by the Director or Acting Director of the Botanic Garden under section 8347(l) of this title; or

(xii) a member of the Foreign Service (as described in section 103(6) of the Foreign Service Act of 1980), appointed after December 31, 1987.

Notwithstanding this paragraph, the employment of a teacher in the recess period between two school years in a position other than a teaching position in which he served immediately before the recess period does not qualify the individual as an employee for the purpose of this subchapter. For the purpose of the preceding sentence, "teacher" and "teaching position" have the meanings given them by section 901 of title 20;

(2) “Member” means a Member of Congress as defined by section 2106 of this title, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter, but does not include any such Member of Congress who is subject to the Federal Employees’ Retirement System or who makes an election under section 8401(20) of this title not to be subject to such System;

(3) “basic pay” includes—

(A) the amount a Member received from April 1, 1954, to February 28, 1955, as expense allowance under section 601(b) of the Legislative Reorganization Act of 1946 (60 Stat. 850), as amended; and that amount from January 3, 1953, to March 31, 1954, if deposit is made therefor as provided by section 8334 of this title;

(B) additional pay provided by—

(i) subsection (a) of section 60e-7 of title 2 and the provisions of law referred to by that subsection; and

(ii) sections 60e-8, 60e-9, 60e-10, 60e-11, 60e-12, 60e-13, and 60e-14 of title 2;

(C) premium pay under section 5545(c)(1) of this title;

(D) with respect to a law enforcement officer, premium pay under section 5545(c)(2) of this title;

(E) availability pay—

(i) received by a criminal investigator under section 5545a of this title; or

(ii) received after September 11, 2001, by a Federal air marshal of the Department of Transportation, subject to all restrictions and earning limitations imposed on criminal investigators under section 5545a;

(F) pay as provided in section 5545b (b)(2) and (c)(2);

(G) with respect to a customs officer (referred to in subsection (e)(1) of section 5 of the Act of February 13, 1911), compensation for overtime inspectional services provided for under subsection (a) of such section 5, but not to exceed 50 percent of any statutory maximum in overtime pay for customs officers which is in effect for the year involved;

(H) any amount received under section 5948 (relating to physicians comparability allowances); and

(I) with respect to a border patrol agent, the amount of supplemental pay received through application of the level 1 border patrol rate of pay or the level 2 border patrol rate of pay for scheduled overtime within the regular tour of duty of the border patrol agent as provided in section 5550;

but does not include bonuses, allowances, overtime pay, military pay, pay given in addition to the base pay of the position as fixed by law or regulation except as provided by subparagraphs (B) through (I) of this paragraph retroactive pay under section 5344 of this title in the case of a retired or deceased employee, uniform allowances under section 5901 of this title, or lump-sum leave payments under subchapter VI of chapter 55 of this title. For an employee paid on a fee basis, the maximum amount of basic pay which may be used is \$10,000;

(4) “average pay” means the largest annual rate resulting from averaging an employee’s or Member’s rates of basic pay

in effect over any 3 consecutive years of creditable service or, in the case of an annuity under subsection (d) or (e)(1) of section 8341 of this title based on service of less than 3 years, over the total service, with each rate weighted by the time it was in effect;

(5) “Fund” means the Civil Service Retirement and Disability Fund;

(7) “Government” means the Government of the United States, the government of the District of Columbia, Gallaudet University, and, in the case of an employee described in paragraph (1)(L), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);

(8) “lump-sum credit” means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of an employee or Member;

(B) amounts deposited by an employee or Member covering earlier service, including any amounts deposited under section 8334(j) of this title; and

(C) interest on the deductions and deposits at 4 percent a year to December 31, 1947, and 3 percent a year thereafter compounded annually to December 31, 1956, or, in the case of an employee or Member separated or transferred to a position in which he does not continue subject to this subchapter before he has completed 5 years of civilian service, to the date of the separation or transfer;

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for the fractional part of a month in the total service;

(9) “annuitant” means a former employee or Member who, on the basis of his service, meets all requirements of this subchapter for title to annuity and files claim therefor;

(10) “survivor” means an individual entitled to annuity under this subchapter based on the service of a deceased employee, Member, or annuitant;

(11) “survivor annuitant” means a survivor who files claim for annuity;

(12) “service” means employment creditable under section 8332 of this title;

(13) “military service” means honorable active service—

(A) in the armed forces;

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or

(C) as a commissioned officer of the Environmental Science Services Administration after June 30, 1961;

and includes service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, but does not include service in the National Guard except when ordered to active duty in the service of the United States or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this sub-

chapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990;

(14) "Member service" means service as a Member and includes the period from the date of the beginning of the term for which elected or appointed to the date on which he takes office as a Member;

(15) "price index" means the Consumer Price Index (all items - United States city average) published monthly by the Bureau of Labor Statistics;

(16) "base month" means the month for which the price index showed a percent rise forming the basis for a cost-of-living annuity increase;

(17) "normal-cost percentage" means the entry-age normal cost computed by the Office of Personnel Management in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay;

(18) "Fund balance" means the current net assets of the Fund available for payment of benefits, as determined by the Office in accordance with appropriate accounting standards, but does not include any amount attributable to—

(A) the Federal Employees' Retirement System; or

(B) contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of any individual who became subject to the Federal Employees' Retirement System;

(19) "unfunded liability" means the estimated excess of the present value of all benefits payable from the Fund to employees and Members, and former employees and Members, subject to this subchapter, and to their survivors, over the sum of—

(A) the present value of deductions to be withheld from the future basic pay of employees and Members currently subject to this subchapter and of future agency contributions to be made in their behalf; plus

(B) the present value of Government payments to the Fund under section 8348(f) of this title; plus

(C) the Fund balance as of the date the unfunded liability is determined;

(20) "law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this paragraph, "detention" includes the duties of—

(A) employees of the Bureau of Prisons and Federal Prison Industries, Incorporated;

(B) employees of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated;

(C) employees in the field service at Army or Navy disciplinary barracks or at confinement and rehabilitation facilities operated by any of the armed forces; and

(D) employees of the Department of Corrections of the District of Columbia, its industries and utilities;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniformed Code of Military Justice (chapter 47 of title 10) require frequent (as determined by the appropriate administrative authority with the concurrence of the Office) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation;

(21) “firefighter” means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position;

(22) “bankruptcy judge” means an individual—

(A) who is appointed under section 34 of the Bankruptcy Act (11 U.S.C. 62) or under section 404(d) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549), and—

(i) who is serving as a United States bankruptcy judge on March 31, 1984; or

(ii) whose service as a United States bankruptcy judge at any time in the period beginning on October 1, 1979, and ending on July 10, 1984, is terminated by reason of death or disability; or

(B) who is appointed as a bankruptcy judge under section 152 of title 28;

(23) “former spouse” means a former spouse of an individual—

(A) if such individual performed at least 18 months of civilian service covered under this subchapter as an employee or Member, and

(B) if the former spouse was married to such individual for at least 9 months;

(24) “Indian court” means an Indian court as defined by section 201(3) of the Act entitled “An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes”, approved April 11, 1968 (25 U.S.C. 1301(3); 82 Stat. 77);

(25) “magistrate judge” or “United States magistrate judge” means an individual appointed under section 631 of title 28;

(26) “Court of Federal Claims judge” means a judge of the United States Court of Federal Claims who is appointed under chapter 7 of title 28 or who has served under section 167 of the Federal Courts Improvement Act of 1982;

(27) “Nuclear materials courier”—

(A) means an employee of the Department of Energy, the duties of whose position are primarily to transport, and provide armed escort and protection during transit of, nuclear weapons, nuclear weapon components, strategic quantities of special nuclear materials or other materials related to national security; and

(B) includes an employee who is transferred directly to a supervisory or administrative position within the same

Department of Energy organization, after performing duties referred to in subparagraph (A) for at least 3 years;

(28) “Government physician” has the meaning given that term under section 5948;

(29) “dynamic assumptions” means economic assumptions that are used in determining actuarial costs and liabilities of a retirement system and in anticipating the effects of long-term future—

(A) investment yields;

(B) increases in rates of basic pay; and

(C) rates of price inflation;

(30) the term “air traffic controller” or “controller” means—

(A) a controller within the meaning of section 2109(1);

and

(B) a civilian employee of the Department of Transportation or the Department of Defense who is the immediate supervisor of a person described in section 2109(1)(B);

(31) “customs and border protection officer” means an employee in the Department of Homeland Security (A) who holds a position within the GS-1895 job series (determined applying the criteria in effect as of September 1, 2007) or any successor position, and (B) whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry, including any such employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties (as described in subparagraph (B)) in 1 or more positions (as described in subparagraph (A)) for at least 3 years; and

(32) “Director” means the Director of the Office of Personnel Management.

* * * * *

CHAPTER 87—LIFE INSURANCE

§ 8701. Definitions

(a) For the purpose of this chapter, “employee” means—

(1) an employee as defined by section 2105 of this title;

(2) a Member of Congress as defined by section 2106 of this title;

(3) a Congressional employee as defined by section 2107 of this title;

(4) the President;

(5) a justice or judge of the United States appointed to hold office during good behavior (i) who is in regular active judicial service, or (ii) who is retired from regular active service under section 371(b) or 372(a) of title 28, United States Code, or (iii) who has resigned the judicial office under section 371(a) of title 28 with the continued right during the remainder of his lifetime to receive the salary of the office at the time of his resignation;

(6) an individual first employed by the government of the District of Columbia before October 1, 1987;

(7) an individual employed by Gallaudet College;

(8) an individual employed by a county committee established under section 590h(b) of title 16;

(9) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838); and

(10) an individual appointed to a position on the office staff of a former President, or a former Vice President under [section 4] *section 5* of the Presidential Transition Act of 1963, as amended (78 Stat. 153), who immediately before the date of such appointment was an employee as defined under any other paragraph of this subsection;

but does not include—

(A) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(B) an individual who is not a citizen or national of the United States and whose permanent duty station is outside the United States, unless the individual was an employee for the purpose of this chapter on September 30, 1979, by reason of service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area which was then known as the Canal Zone; or

(C) an employee excluded by regulation of the Office of Personnel Management under section 8716(b) of this title.

(b) Notwithstanding subsection (a) of this section, the employment of a teacher in the recess period between two school years in a position other than a teaching position in which he served immediately before the recess period does not qualify the individual as an employee for the purpose of this chapter. For the purpose of this subsection, “teacher” and “teaching position” have the meanings given them by section 901 of title 20.

(c) For the purpose of this chapter, “basic insurance amount” means, in the case of any employee under this chapter, an amount equal to the greater of—

- (1) the annual rate of basic pay payable to the employee, rounded to the next higher multiple of \$1,000, plus \$2,000, or
- (2) \$10,000.

In the case of any former employee entitled to coverage under this chapter, the term means the basic insurance amount applicable for the employee at the time the insurance to which the employee is entitled as an employee under this chapter stops pursuant to section 8706(a) of this title.

(d)(1) For the purpose of this chapter, “family member”, when used with respect to any individual, means—

- (A) the spouse of the individual; and
- (B) an unmarried dependent child of the individual (other than a stillborn child), including an adopted child, stepchild or foster child (but only if the stepchild or foster child lived with the individual in a regular parent-child relationship), or recognized natural child—

(i) who is less than 22 years of age, or

(ii) who is 22 years of age or older and is incapable of self-support because of a mental or physical disability which existed before the child became 22 years of age.

(2) For the purpose of this subsection, “dependent”, in the case of any child, means that the individual involved was, at the time of the child’s death, either living with or contributing to the support of the child, as determined in accordance with the regulations the Office shall prescribe.

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CHAPTER 89—HEALTH INSURANCE

§ 8901. Definitions

For the purpose of this chapter—

(1) “employee” means—

(A) an employee as defined by section 2105 of this title;

(B) a Member of Congress as defined by section 2106 of this title;

(C) a Congressional employee as defined by section 2107 of this title;

(D) the President;

(E) an individual first employed by the government of the District of Columbia before October 1, 1987;

(F) an individual employed by Gallaudet College;

(G) an individual employed by a county committee established under section 590h(b) of title 16;

(H) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

(I) an individual appointed to a position on the office staff of a former President, or a former Vice President under [section 4] *section 5* of the Presidential Transition Act of 1963, as amended (78 Stat. 153), who immediately before the date of such appointment was an employee as defined under any other subparagraph of this paragraph; and

(J) an individual who is employed by the Roosevelt Campobello International Park Commission and is a citizen of the United States,

but does not include—

(i) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(ii) an individual who is not a citizen or national of the United States and whose permanent duty station is outside the United States, unless the individual was an employee for the purpose of this chapter on September 30, 1979, by reason of service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area which was then known as the Canal Zone;

(iii) an employee of the Tennessee Valley Authority; or

(iv) an employee excluded by regulation of the Office of Personnel Management under section 8913(b) of this title;

(2) “Government” means the Government of the United States and the government of the District of Columbia;

(3) “annuitant” means—

(A) an employee who retires—

(i) on an immediate annuity under subchapter III of chapter 83 of this title, or another retirement system for employees of the Government, after 5 or more years of service;

(ii) under section 8412 or 8414 of this title;

(iii) for disability under subchapter III of chapter 83 of this title, chapter 84 of this title, or another retirement system for employees of the Government; or

(iv) on an immediate annuity under a retirement system established for employees described in section 2105(c), in the case of an individual who elected under section 8347(q)(2) or 8461(n)(2) to remain subject to such a system;

(B) a member of a family who receives an immediate annuity as the survivor of an employee (including a family member entitled to an amount under section 8442(b)(1)(A), whether or not such family member is entitled to an annuity under section 8442(b)(1)(B)) or of a retired employee described by subparagraph (A) of this paragraph;

(C) an employee who receives monthly compensation under subchapter I of chapter 81 of this title and who is determined by the Secretary of Labor to be unable to return to duty; and

(D) a member of a family who receives monthly compensation under subchapter I of chapter 81 of this title as the surviving beneficiary of—

(i) an employee who dies as a result of injury or illness compensable under that subchapter; or

(ii) a former employee who is separated after having completed 5 or more years of service and who dies while receiving monthly compensation under that subchapter and who has been held by the Secretary to have been unable to return to duty;

(4) “service”, as used by paragraph (3) of this section, means service which is creditable under subchapter III of chapter 83 or chapter 84 of this title;

(5) “member of family” means the spouse of an employee or annuitant and an unmarried dependent child under 22 years of age, including—

(A) an adopted child or recognized natural child; and

(B) a stepchild or foster child but only if the child lives with the employee or annuitant in a regular parent-child relationship;

or such an unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability which existed before age 22;

(6) “health benefits plan” means a group insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangement provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for health services;

(7) “carrier” means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or con-

tracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization and an association of organizations or other entities described in this paragraph sponsoring a health benefits plan;

(8) "employee organization" means—

(A) an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under this chapter and which, after December 31, 1978, and before January 1, 1980, applied to the Office for approval of a plan provided under section 8903(3) of this title; and

(B) an association or other organization which is national in scope, in which membership is open only to employees, annuitants, or former spouses, or any combination thereof, and which, during the 90-day period beginning on the date of enactment of section 8903a of this title, applied to the Office for approval of a plan provided under such section;

(9) "dependent", in the case of any child, means that the employee or annuitant involved is either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office shall prescribe;

(10) "former spouse" means a former spouse of an employee, former employee, or annuitant—

(A) who has not remarried before age 55 after the marriage to the employee, former employee, or annuitant was dissolved,

(B) who was enrolled in an approved health benefits plan under this chapter as a family member at any time during the 18-month period before the date of the dissolution of the marriage to the employee, former employee, or annuitant, and

(C)(i) who is receiving any portion of an annuity under section 8345(j) or 8467 of this title or a survivor annuity under section 8341(h) or 8445 of this title (or benefits similar to either of the aforementioned annuity benefits under a retirement system for Government employees other than the Civil Service Retirement System or the Federal Employees' Retirement System),

(ii) as to whom a court order or decree referred to in section 8341(h), 8345(j), 8445, or 8467 of this title (or similar provision of law under any such retirement system other than the Civil Service Retirement System or the Federal Employees' Retirement System) has been issued, or for whom an election has been made under section 8339(j)(3) or 8417(b) of this title (or similar provision of law), or

(iii) who is otherwise entitled to an annuity or any portion of an annuity as a former spouse under a retirement system for Government employees,

except that such term shall not include any such unremarried former spouse of a former employee whose marriage was dis-

solved after the former employee's separation from the service (other than by retirement); and

- (11) "qualified clinical social worker" means an individual—
 - (A) who is licensed or certified as a clinical social worker by the State in which such individual practices; or
 - (B) who, if such State does not provide for the licensing or certification of clinical social workers—
 - (i) is certified by a national professional organization offering certification of clinical social workers; or
 - (ii) meets equivalent requirements (as prescribed by the Office).

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TITLE 44, UNITED STATES CODE

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CHAPTER 22—PRESIDENTIAL RECORDS

* * * * *

§ 2203. Management and custody of Presidential records

(a) Through the implementation of records management controls and other necessary actions, the President shall take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of the President's constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are preserved and maintained as Presidential records pursuant to the requirements of this section and other provisions of law.

(b) Documentary materials produced or received by the President, the President's staff, or units or individuals in the Executive Office of the President the function of which is to advise or assist the President, shall, to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately.

(c) During the President's term of office, the President may dispose of those Presidential records of such President that no longer have administrative, historical, informational, or evidentiary value if—

(1) the President obtains the views, in writing, of the Archivist concerning the proposed disposal of such Presidential records; and

(2) the Archivist states that the Archivist does not intend to take any action under subsection (e) of this section.

(d) In the event the Archivist notifies the President under subsection (c) that the Archivist does intend to take action under subsection (e), the President may dispose of such Presidential records if copies of the disposal schedule are submitted to the appropriate Congressional Committees at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purpose of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than

three days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

(e) The Archivist shall request the advice of the Committee on Rules and Administration and the Committee on Governmental Affairs of the Senate and the Committee on House Oversight and the Committee on Government Operations of the House of Representatives with respect to any proposed disposal of Presidential records whenever the Archivist considers that—

(1) these particular records may be of special interest to the Congress; or

(2) consultation with the Congress regarding the disposal of these particular records is in the public interest.

(f) During a President's term of office, the Archivist may maintain and preserve Presidential records on behalf of the President, including records in digital or electronic form. The President shall remain exclusively responsible for custody, control, and access to such Presidential records. The Archivist may not disclose any such records, except under direction of the President, until the conclusion of a President's term of office, if a President serves consecutive terms upon the conclusion of the last term, or such other period provided for under section 2204 of this title.

(g)(1) Upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President. The Archivist shall have an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of this chapter.

(2) The Archivist shall deposit all such Presidential records in a Presidential archival depository or another archival facility operated by the United States. The Archivist is authorized to designate, after consultation with the former President, a director at each depository or facility, who shall be responsible for the care and preservation of such records.

(3) *When the President considers it practicable and in the public interest, the President shall include in the President's budget transmitted to Congress, for each fiscal year in which the term of office of the President will expire, such funds as may be necessary for carrying out the authorities of this subsection.*

[(3)] (4) The Archivist is authorized to dispose of such Presidential records which the Archivist has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation. Notice of such disposal shall be published in the Federal Register at least 60 days in advance of the proposed disposal date. Publication of such notice shall constitute a final agency action for purposes of review under chapter 7 of title 5, United States Code.

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