AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

**Calendar No. 672**

| 115TH CONGRESS *2d Session* | SENATE | REPORT 115–386 |
|---|---|---|

# PRESIDENTIAL TRANSITION ENHANCEMENT ACT OF 2018

## R E P O R T

OF THE

## COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

## S. 3487

TO AMEND THE PRESIDENTIAL TRANSITION ACT OF 1963 TO IMPROVE THE ORDERLY TRANSFER OF THE EXECUTIVE POWER DURING PRESIDENTIAL TRANSITIONS

NOVEMBER 26, 2018.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

89–010 WASHINGTON : 2018

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

RON JOHNSON, Wisconsin, *Chairman*

JOHN McCAIN, Arizona
ROB PORTMAN, Ohio
RAND PAUL, Kentucky
JAMES LANKFORD, Oklahoma
MICHAEL B. ENZI, Wyoming
JOHN HOEVEN, North Dakota
STEVE DAINES, Montana

CLAIRE McCASKILL, Missouri
THOMAS R. CARPER, Delaware
HEIDI HEITKAMP, North Dakota
GARY C. PETERS, Michigan
MAGGIE HASSAN, New Hampshire
KAMALA D. HARRIS, California
DOUG JONES, Alabama

CHRISTOPHER R. HIXON, *Staff Director*
GABRIELLE D'ADAMO SINGER, *Chief Counsel*
COURTNEY J. ALLEN, *Deputy Chief Counsel for Governmental Affairs*
MARGARET E. DAUM, *Minority Staff Director*
CHARLES A. MOSKOWITZ, *Minority Senior Legislative Counsel*
KATHERINE C. SYBENGA, *Minority Counsel*
LAURA W. KILBRIDE, *Chief Clerk*

**Calendar No. 672**

115TH CONGRESS, 2d Session | SENATE | REPORT 115–386

# PRESIDENTIAL TRANSITION ENHANCEMENT ACT OF 2018

NOVEMBER 26, 2018.—Ordered to be printed

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

## R E P O R T

[To accompany S. 3487]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 3487) to amend the Presidential Transition Act of 1963 to improve the orderly transfer of the executive power during Presidential transitions, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

CONTENTS

| | | Page |
|---|---|---|
| I. | Purpose and Summary | 1 |
| II. | Background and Need for the Legislation | 2 |
| III. | Legislative History | 4 |
| IV. | Section-by-Section Analysis | 4 |
| V. | Evaluation of Regulatory Impact | 5 |
| VI. | Congressional Budget Office Cost Estimate | 5 |
| VII. | Changes in Existing Law Made by the Bill, as Reported | 6 |

## I. PURPOSE AND SUMMARY

The purpose of S. 3487 is to strengthen the presidential transition process by clarifying responsibilities of the General Services Administration (GSA) and other agencies during a transition and by requiring a contractual relationship between GSA and a transition team to guide the transition process.

## II. Background and Need for Legislation

To "promote the orderly transfer of the executive power," Congress passed the Presidential Transition Act of 1963.[1] This law and its successor statutes require the GSA to provide the President-elect and the Vice-President-elect with office space, equipment, staff, and communications services to prepare for the assumption of their official duties as President and Vice President.[2] The Edward "Ted" Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015 (hereinafter the "2015 Presidential Transitions Act") established the White House Transition Coordinating Council and the agency transition directors council to ensure efficient coordination between Federal agencies and transition teams when conducting transition activities.[3]

Trump for America, Inc. (TFA) was the organization designated to carry out pre-election and post-election transition activities for then-candidate Donald J. Trump.[4] In December 2017, the Committee received an allegation from TFA that GSA had unlawfully disclosed its privileged communications.[5] Since the allegation raised concerns about whether future presidential transition teams would trust GSA to safeguard their confidential material, and as the committee tasked by the Standing Rules of the Senate to oversee presidential transitions, the Committee opened an examination of the GSA's actions.[6] The Committee received 6,400 of pages of documents produced by GSA and conducted an interview with a GSA attorney.[7]

The information provided to the Committee demonstrated that both GSA and transition teams need additional guidance and protections in the event of third-party interest in the activities and records of a transition team. Specifically, there is no statutory requirement for GSA and transition teams to enter into a memorandum of understanding (MOU) to lay out the terms and responsibilities for each party regarding transition services. There also is no statutory language to ensure GSA is fully transparent with a transition team regarding its maintenance and distribution of transition team records.

This bill will address those deficiencies by requiring GSA and transition teams to enter into a MOU that sets the terms and conditions by which GSA will provide, and the transition team will receive, transition-related services. In addition, the MOU must des-

---

[1] Presidential Transition Act of 1963, § 2, Pub. L. No. 88–277, 78 Stat. 153 (1964).

[2] *Id.* at § 3; *see also* Pre-Election Presidential Transition Act of 2010, Pub. L. No. 111–283, 124 Stat. 3045 (2010).

[3] Edward "Ted" Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015, Pub. L. No. 114–136, 130 Stat. 301 (2016).

[4] Letter from Christopher J. Christie, Transition Chairman, Trump for America, Inc., to Timothy Horne, Federal Transition Coordinator, Gen. Serv. Admin. (Aug. 1, 2016) [GSA 004583].

[5] Letter from Kory Langhofer, Counsel, Trump for America, Inc., to Senator Ron Johnson, Chairman, S. Comm. on Homeland Security and Governmental Affairs (Dec. 16, 2017). Acting Attorney General Rod J. Rosenstein appointed Robert S. Mueller III to serve as a Special Counsel of the U.S. Department of Justice on May 17, 2017, and ordered the Special Counsel to investigate "the Russian government's efforts to interfere in the 2016 presidential election." *See* U.S. Dep't of Justice, Order No. 3915–2017, Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters, *available at* https://www.justice.gov/opa/press-release/file/967231/download.

[6] Letter from Senator Ron Johnson, Chairman, S. Comm. on Homeland Security and Governmental Affairs, to Emily Murphy, Administrator, Gen. Serv. Admin. (Dec. 19, 2017). *See also* S. Rule XXV(k)(10) referring to the Committee matters relating to "organization and reorganization of the executive branch of the Government."

[7] Letter from Emily Murphy, Administrator, Gen. Serv. Admin., to Senator Ron Johnson, Chairman, S. Comm. on Homeland Security and Governmental Affairs (Jan. 19, 2018).

ignate a transition representative in the transition team to whom GSA must direct all third-party inquiries for transition team records. The bill also requires GSA and transition teams to provide advance notice if any deviation from the terms of the MOU is anticipated.

In addition to the issue regarding transition team records, the non-partisan Partnership for Public Service (Partnership) learned of other statutory obstacles transition teams faced during the 2016 presidential transition through interviews with transition officials.[8] A main concern included differing interpretations of the services GSA could provide a transition team after inauguration day. According to the Partnership, despite the fact that the 2015 Presidential Transitions Act authorized GSA to continue providing services and facilities for up to 180 days after inauguration day, GSA and the Trump transition team negotiated an agreement whereby the transition team paid a lease to remain in GSA building space through February 2017.[9] Transition officials also told the Partnership that 60 days, rather than the 180 days authorized under current statute, is a sufficient amount of time to allow transition officials "to focus on recruiting and filling key positions while also transitioning incoming White House personnel officials into their new physical quarters within the Executive Office of the President."[10] Current statute also caused unnecessary delays for transition teams onboarding detailed congressional staff because statute requires an agency head to approve the detail.[11]

The Partnership also identified potential areas of improvement for transition activities within agencies during a presidential transition. According to the Partnership, transition officials viewed the agency transition directors council, established under the 2015 Presidential Transitions Act, "as helping to build trust with the incoming administration because almost all [council] members were the senior career officials responsible for their agencies' transitions."[12] However, a few agencies sent an official to the council who was not the person responsible for their agency's transition responsibilities, raising "a risk of undermining the cohesiveness of the transition strategy."[13] The Partnership also learned of confusion among agencies regarding the statutory requirement to designate career officials to serve in an acting role for vacant senior political positions to be appointed by the incoming administration.[14]

This bill also addresses these concerns identified by the Partnership by clarifying that GSA can provide a transition team with services and facilities for up to 60 days after inauguration. This bill will reduce delays in detailing congressional staff to transition teams by having the Member of Congress for whom the staff works approve the detail rather than an agency head. The agency transition directors council will be required to be an agency employee whose job responsibilities include implementing presidential transi-

[8] E-mail from Partnership of Public Service to Committee staff (Nov. 2, 2018, 16:39 EDT).

[9] *Id. See also* Edward "Ted" Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015, *supra* note 3 at § 2.

[10] *Id.*

[11] *Id. See also* Presidential Transition Act of 1963, *supra* note 1 at § 3.

[12] *Id.*

[13] *Id.*

[14] *Id. See also* Edward "Ted" Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015, *supra* note 3 at § 2.

tion activities in order to prevent different individuals from leading transition activities of each agency and clarifies the requirement for agencies to establish a succession plan for each outgoing senior political position.

## III. Legislative History

Senator Ron Johnson (R–WI) introduced S. 3487 on September 25, 2018. The bill was referred to the Committee on Homeland Security and Governmental Affairs on September 25, 2018.

The Committee considered S. 3487 at a business meeting on September 26, 2018. Senator Johnson offered an amendment that would allow GSA to provide services and facilities to a transition team for up to 60 days after inauguration of the President-elect and Vice-President-elect. The amendment would also terminate the designation of a transition representative under the MOU between a transition team and GSA either upon the request of the transition team or 180 days after inauguration of the President-elect and Vice-President-elect. The amendment was adopted by voice vote with Senators Johnson, Portman, Paul, Lankford, Enzi, Hoeven, Daines, McCaskill, Carper, Heitkamp, Peters, Hassan, Harris, and Jones present.

Senator Tom Carper offered an amendment that would impose new requirements on transition teams to develop an ethics plan and to report to Congress on each transition team member who applies for or receives a security clearance. It would also impose new requirements on any individual involved with a transition team to publicly disclose certain sources of their private income, regardless of the duration of involvement or the voluntary or compensated nature of the involvement. A voice vote was held on the amendment, and the amendment was not adopted. Senators Johnson, Portman, Paul, Lankford, Enzi, Hoeven, Daines, McCaskill, Carper, Heitkamp, Peters, Hassan, Harris and Jones were present for the voice vote.

The legislation as amended by the Johnson amendment was passed by voice vote with Senators Johnson, Portman, Paul, Lankford, Enzi, Hoeven, Daines, McCaskill, Carper, Heitkamp, Peters, Hassan, Harris and Jones present.

## IV. Section-by-Section Analysis of the Bill, as Reported

*Section 1. Short title*

This section gives the bill the short title of the "Presidential Transition Enhancement Act of 2018".

*Section 2. Presidential transition enhancements*

This section improves the operation of presidential transitions for GSA and presidential transition teams.

Subsection (a) allows GSA to provide transition services to a transition team for up to 60 days after the inauguration of the President-elect and Vice-President-elect. This subsection clarifies that congressional employees may be detailed to a transition team and replaces the term "computers" with "information technology." Under this subsection, transition teams and GSA will be required to enter into a MOU that will include the conditions by which transition teams will access GSA staff, facilities, and agency docu-

ments. The MOU also requires the transition team to designate a transition representative to whom GSA will direct any inquiries or legal instruments for transition team records. This designation ends either upon the request of the transition team or 180 days after the inauguration of the President-elect and Vice-President-elect. GSA will be required to notify a transition team at least three days in advance of taking any action that deviates from the terms and conditions of the MOU.

Subsection (b) requires that an agency employee serving as a senior representative in the agency transition directors council must be serving in a career position at the agency. This subsection also requires each agency to develop a succession plan for each senior non-career position in the agency by September 15 of a Presidential election year.

## V. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

## VI. Congressional Budget Office Cost Estimate

U.S. Congress,
Congressional Budget Office,
*Washington, DC, October 23, 2018.*

Hon. Ron Johnson,
*Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.*

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 3487, the Presidential Transitions Enhancement Act of 2018.

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

Sincerely,

Keith Hall,
*Director.*

Enclosure.

*S. 3487—Presidential Transition Enhancement Act of 2018*

S. 3487 would limit the period during which services and facilities are provided to Presidential transition teams and would authorize the executive branch to pay legislative employees working for them. S. 3487 also would set a timeline for the General Services Administration (GSA) to enter into agreements with campaigns to prepare for possible transitions.

According to GSA, most of the bill's provisions would not have a significant effect on the cost of a Presidential transition. However, by reducing from 180 days to 60 days after an inauguration the period in which a transition team may use government services and

facilities, the bill would reduce costs for staffing and office space. CBO estimates that the decrease in costs would be less than $500,000 annually over the next five years.

Enacting S. 3487 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 3487 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 3487 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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

## VII. Changes in Existing Law Made by the Bill, as Reported

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

# UNITED STATES CODE

* * * * * * *

# TITLE 3—THE PRESIDENT

* * * * * * *

## CHAPTER 2—OFFICE AND COMPENSATION OF PRESIDENT

* * * * * * *

## SECTION 102—COMPENSATION OF THE PRESIDENT

* * * * * * *

Notes

* * * * * * *

Presidential Transition Act of 1963

* * * * * * *

### SEC. 3. SERVICES AND FACILITIES AUTHORIZED TO BE PROVIDED TO PRESIDENTS-ELECT AND VICE-PRESIDENTS-ELECT

(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] *upon request, to each President-elect, each Vice-President-elect, and for up to 60 days after the date of the inauguration of the President-elect and Vice-President-elect, each President and Vice President, for use in connection with the preparations for*

*the assumption of official duties as President or Vice President necessary services and facilities, including* the following:

(1) * * *

(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 (chapter 51 and subchapter III of chapter 53 of title 5), for grade GS–18: *Provided*, That any employee of any agency of any branch of the Government*, or an employee of a committee of either House of Congress, a joint committee of the Congress, or an individual Member of Congress*, may be detailed to such staffs on a reimbursable basis with the consent of the head of the agency*, or in the case of an employee in a position in the legislative branch, with the consent of the supervising Member of Congress*; and while so detailed such employee shall be responsible only to the 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 Reform Act (section 8301 et seq. of title 5), the Federal Employees' Compensation Act (section 8501 et seq. of title 5), the Federal Employees' Group Life Insurance Act of 1954 (section 8701 et seq. of title 5), and the Federal Employees Health Benefits Act of 1959 (section 8901 et seq. of title 5).

* * * * * * *

[(b) The Administrator may not expend funds for the provision of services and facilities under 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 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.]

*(b) The Administrator shall expend funds for the provision of services and facilities under this section—*

*(1) in connection with any obligation incurred by the President-elect or Vice-President-elect, or after the inauguration of the President-elect as President and the inauguration of the Vice-President-elect as Vice President incurred by the President or Vice President, during the period—*

*(A) beginning on the day after the date of the general elections held to determine the electors of the President and Vice President under section 1 or 2 of title 3, United States Code; and*

*(B) ending on the date that is 60 days after the date of such inauguration; and*

*(2) without regard to whether the President-elect, Vice-President-elect, President, or Vice President submits to the Administrator a request for payment regarding services or facilities before the end of such period.*

* * * * * * *

(h) * * *

(1) * * *

(2)

(A) * * *

(B)

(i) * * *

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

* * * * * * *

*(i) MEMORANDUMS OF UNDERSTANDING.*

*(1) IN GENERAL.—Not later than September 1 of a year during which a Presidential election occurs, the Administrator shall, to the maximum extent practicable, enter into a memorandum of understanding with 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, a memorandum of understanding entered into under paragraph (1) shall be based on memorandums of understanding relating to previous Presidential transitions.*

*(3) TRANSITION REPRESENTATIVE.—*

*(A) DESIGNATION OF REPRESENTATIVE FOR INQUIRIES.—Each memorandum of understanding entered into under this subsection shall designate a representative of the eligible candidate to whom the Administrator shall direct any inquiries or legal instruments regarding the records of the eligible candidate that are in the custody of the Administrator.*

*(B) CHANGE IN TRANSITION REPRESENTATIVE.—The designation of a new individual as the transition representative of an eligible candidate shall not require the execution of a new memorandum of understanding under this subsection.*

*(C) TERMINATION OF DESIGNATION.—The designation of a transition representative under a memorandum of understanding shall terminate—*

*(i) not later than 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; or*

*(ii) before the date described in clause (i), upon the request of the President-elect or Vice-President-elect, or after such inauguration upon request of the President or Vice President.*

*(4) AMENDMENTS.—Any amendment to a memorandum of understanding entered into under this subsection shall be agreed to in writing.*

*(5) PRIOR NOTIFICATION OF DEVIATION.—Each party to a memorandum of understanding entered into under this subsection shall provide written notice, except to the extent prohibited under another provision of law, not later than 3 days before taking any action that deviates from the terms and conditions agreed to in the memorandum of understanding.*

*(6) DEFINITION.—In this subsection, the term "eligible candidate" has the meaning given that term in subsection (h)(4).*

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

(a) * * *

* * * * * * *

(e)

(1) * * *

(2) * * *

(3)

(A) * * *

(B) * * *

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

* * * * * * *

(f)

(1) * * *

[(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 that position in an acting capacity if the position becomes vacant.] *(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, the head of each agency shall ensure that a succession plan is in place for each senior noncareer position in the agency.*

* * * * * * *

○