

Calendar No. 597

116TH CONGRESS }
2d Session }

SENATE

{ REPORT
116-302 }

PERIODICALLY LISTING AND UPDATING
MANAGEMENT ACT OF 2020

—
R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 3896

TO AMEND TITLE 5, UNITED STATES CODE, TO REQUIRE THE
DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT TO
ESTABLISH AND MAINTAIN A PUBLIC DIRECTORY OF THE
INDIVIDUALS OCCUPYING GOVERNMENT POLICY AND
SUPPORTING POSITIONS, AND FOR OTHER PURPOSES



NOVEMBER 30, 2020.—Ordered to be printed

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ACT OF 2020

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

R E P O R T

[To accompany S. 3896]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 3896) to amend title 5, United States Code, to require the Director of the Office of Personnel Management to establish and maintain a public directory of the individuals occupying Government policy and supporting positions, and for other purposes, 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	3
IV. Section-by-Section Analysis	3
V. Evaluation of Regulatory Impact	4
VI. Congressional Budget Office Cost Estimate	4
VII. Changes in Existing Law Made by the Bill, as Reported	5

I. PURPOSE AND SUMMARY

The purpose of S. 3896, the Periodically Listing Updates to Management Act of 2020, or PLUM Act of 2020, is to modernize the practice of publishing the United States Government Policy and Supporting Positions or “Plum book” that is published every four years following presidential elections. The bill is also intended to improve transparency by requiring more frequent updates on the

information regarding individuals who hold high-level policy and supporting positions in the Federal Government. The bill will also reduce unnecessary printing costs by eliminating the printing of the current list of those positions.

II. BACKGROUND AND THE NEED FOR LEGISLATION

The United States Government Policy and Supporting Positions book, commonly referred to as the Plum book, lists over nine thousand Federal civil service leadership and support positions in the Federal Government.¹ The Plum book was first published in 1952, when the Eisenhower Administration came into office after twenty years of Democratic administrations.² The Plum book's purpose at that time was to identify positions in the Federal Government for the new administration so that they had an understanding of the positions that they may consider filling via appointment.³ Since 1952, the Plum Book has been printed every four years, and available online since 1996.⁴ In 2012, the Government Printing Office introduced the Plum Book app, allowing users to view the Plum Book in a mobile and searchable format.⁵

Although the Plum book serves as a helpful tool for an incoming administration, the information is often dated when it is published and can contain errors. For example, the 2012 and 2016 Plum books listed appointees to the Federal Housing Finance Board, even though the agency has not existed since 2008.⁶ Further, some have argued that it should take on an additional role to inform the public with more up-to-date information about the individuals who are serving in specific positions in the Federal Government.⁷ In a May 2019 report, the Government Accountability Office found that information on political appointees was not comprehensive, timely, or complete, and recommended that Congress “consider legislation requiring comprehensive and timely information on political appointees serving in the executive branch to be collected and made publicly accessible.”⁸

S. 3896 as introduced would have required agencies, through the Office of Personnel Management (OPM), to update the information

¹U.S. Gen. Services Admin., *Presidential Transition Directory, Plum Book*, Dec. 2, 2019, available at <https://www.gsa.gov/governmentwide-initiatives/presidential-transition-directory/federal-government-structure/plum-book>.

²Trudy Hawkins, Senior Marketing and Promotions Specialist, GPO, Government Book Talk, *A Plum Book of Political Positions*, 2016, available at <https://govbooktalk.gpo.gov/2016/12/05/a-plum-book-of-political-positions/>.

³U.S. Gov't Publishing Office, Govinfo, *United States Gov't Policy and Supporting Positions (Plum Book)*, 2020 available at <https://www.govinfo.gov/collection/plum-book?path=/GPO/United%20States%20Government%20Policy%20and%20Supporting%20Positions%20%2528Plum%20Book%2529>.

⁴*Id.*

⁵U.S. Gov't Publishing Office, News and Press Releases, *GPO Releases Plum Book*, 2020, available at <https://www.gpo.gov/who-we-are/news-media/news-and-press-releases/gpo-releases-plum-book>.

⁶U.S. House of Representatives Committee on Oversight and Government Reform, *United States Government Policy and Supporting Positions 2012*, available at <https://www.govinfo.gov/content/pkg/GPO-PLUMBOOK-2012/pdf/GPO-PLUMBOOK-2012.pdf>; U.S. Senate Committee on Homeland Security and Governmental Affairs, *United States Government Policy and Supporting Positions*, 2016, available at <https://www.govinfo.gov/content/pkg/GPO-PLUMBOOK-2016/pdf/GPO-PLUMBOOK-2016.pdf>; Housing and Economic Recovery Act of 2008, P. Law 110–289.

⁷Amanda Patarino, *Not So Plum: The Shortcomings of the Plum Book and Tracking Political Appointments*, Harvard Kennedy School Student Publication, Jan. 23, 2020, available at <https://ksr.hkspublications.org/2020/01/23/not-so-plum-the-shortcomings-of-the-plum-book-and-tracking-political-appointments/>.

⁸U.S. Gov't Accountability Off., *Government-Wide Political Appointee Data and Some Ethics Oversight Procedures at Interior and SBA Could Be Improved* (Mar. 2019), available at <https://www.gao.gov/assets/700/697593.pdf>.

previously provided in the Plum Book monthly (as opposed to the current four-year requirement). An amendment offered and accepted at markup changed the reporting requirement from monthly to twice every four years to reduce the burden on agencies and OPM. S. 3896 also eliminates the costly printing of the Plum book and requires the reporting to move to an Internet platform hosted by the Director of OPM by 2024. The Committee intends the web site authorized by the legislation will cover the types of positions that have been covered in the traditional Plum Book in recent years.

III. LEGISLATIVE HISTORY

S. 3896 was introduced on June 4, 2020, by Senator Thomas Carper (D-DE). The bill was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered S. 3896 at a business meeting on July 22, 2020.

During the business meeting, Senator James Lankford and Chairman Ron Johnson offered an amendment clarifying that the policy and supporting positions included in the published list required by S. 3896 are the same as currently included in the Plum book. The amendment also changed the update frequency required from monthly to biennially to reduce the burden on OPM and Federal agencies, and to keep the Plum book more focused on its original purpose to provide information to the president's administration.

Senator Johnson also offered an amendment striking the bill's \$10 million authorization of appropriations and replaced it with an authorization for only such sums as may be necessary to build the website. The amendment also added a sunset provision eliminating the printing of hard copies of the Plum book beginning in 2024 to save money on the cost of unnecessary printing.

Both amendments and the legislation as modified by the amendments were passed by voice vote *en bloc* with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen present.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title; Purposes

This section establishes the short title of the bill as the Periodically Listing Updates to Management Act of 2020 or the PLUM Act of 2020.

It also provides that the purpose of the PLUM Act of 2020 is to modernize the publishing of the Plum book and enhance government transparency and accessibility by reporting who is filling government policy and supporting positions.

Section 2. Establishment of public website on government policy and supporting positions

This section creates a new section in Chapter 33 of title 5, United States Code, that establishes a public website to include the government policy and supporting positions previously reported in the Plum book.

Subsection (a) of the new section defines which agencies and positions are subject to reporting under the PLUM Act and details the positions currently reported in the Plum book.

Subsection (b) of the new section requires the establishment of a new website for the reporting of information regarding individuals who hold policy and supporting positions in the Federal government and the type of information about these individuals required to be included.

Subsection (c) of the new section details the information required to be included by the Director on the website.

Subsection (d) of the new section requires the website to be provided at no cost to the public in a searchable, sortable, readable format as required for an open Government data asset defined in section 3502 of title 44, United States Code.

Subsection (e) of the new section requires agencies to provide the required information to the Director of OPM, and requires the Director of OPM to provide instructions to agencies within one year after the date of enactment of the bill with requirements for the provision or uploading of information required under the bill. The Director of OPM is required to publicly identify any agency that has failed to provide required information. Finally, this subsection requires the information to be updated once every two years.

Subsections (f) and (g) of the new section requires each agency to comply with the instructions issued by the Director of OPM to fulfill the requirements of the bill, provide OPM with a certification that the data is complete, accurate and reliable and coordinate with the White House Office of Presidential Personnel to certify the same.

Subsection (h) of the new section requires the Director of OPM, in consultation with the Archivist of the United States, to archive the data included on the website.

The bill also authorizes appropriations for such sums as may be necessary to meet the website requirements and stops the printing of hard copies of the Plum book by January 2024.

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 ESTIMATES

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 17, 2020.

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. 3896, the PLUM Act of 2020.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 3896, PLUM Act of 2020			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 22, 2020			
By Fiscal Year, Millions of Dollars	2021	2021-2025	2021-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	2	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 3896 would require the Office of Personnel Management to maintain a website for *United States Government Policy and Supporting Positions*, a directory of certain government positions and government policies often referred to as the Plum Book. The volume is now published every four years, alternately by the House Committee on Oversight and Reform and the Senate Committee on Homeland Security and Governmental Affairs. The Government Publishing Office currently maintains the online version of the Plum Book. The bill would also discontinue the print version of the Plum Book in 2024. Finally, the bill would require the volume to be updated every two years and would direct the Government Accountability Office to report on the accuracy of information on the website.

CBO estimates that simply transferring management of the website to the Office of Personnel Management would not have a significant cost. Discontinuing the print version of the Plum Book would reduce costs by an insignificant amount. The cost of updating the Plum book every two years would be insignificant for any one agency, but CBO estimates that across the government those costs would cost about \$2 million over the 2021–2025 period. All spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Madeleine Fox. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of 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 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

PART III—EMPLOYEES

* * * * *

SUBPART B—EMPLOYMENT AND RETENTION

* * * * *

CHAPTER 33—EXAMINATION, CERTIFICATION, AND PLACEMENT

* * * * *

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

SUBCHAPTER I—FRONT MATTER

SEC. 3301. * * *

* * * * *

SEC. 3330f. GOVERNMENT POLICY AND SUPPORTING POSITION DATA.

(a) *DEFINITIONS.*—*In this section:*

(1) *AGENCY.*—*The term “agency” means—*

(A) *any Executive agency, including the United States Postal Service and the Postal Regulatory Commission;*

(B) *the Architect of the Capitol, the Government Accountability Office, the Government Publishing Office, and the Library of Congress; and*

(C) *the Executive Office of the President and any component within that Office (including any successor component), including—*

- (i) *the Council of Economic Advisors;*
- (ii) *the Council on Environmental Quality;*
- (iii) *the National Security Council;*
- (iv) *the Office of the Vice President;*
- (v) *the Office of Policy Development;*
- (vi) *the Office of Administration;*
- (vii) *the Office of Management and Budget;*
- (viii) *the Office of the United States Trade Representative;*
- (ix) *the Office of Science and Technology Policy;*

(x) the Office of National Drug Control Policy; and
 (xi) the White House Office.

(2) APPOINTEE.—The term ‘appointee’—

(A) means an individual serving in a policy and supporting position; and

(B) includes an individual serving in a policy and supporting position temporarily in an acting capacity in accordance with—

(i) sections 3345 through 3349d (commonly referred to as the ‘Federal Vacancies Reform Act of 1998’);

(ii) any other statutory provision described in section 3347(a)(1); or

(iii) a Presidential appointment described in section 3347(a)(2).

(3) COVERED WEBSITE.—The term ‘covered website’ means the website established and maintained by the Director under subsection (b).

(4) DIRECTOR.—The term ‘Director’ means the Director of the Office of Personnel Management.

(5) POLICY AND SUPPORTING POSITION.—The term ‘policy and supporting position’—

(A) means any position at an agency, as determined by the Director, that, but for this section and section 2(b)(4) of the PLUM Act of 2020, would be included in the publication entitled ‘United States Government Policy and Supporting Positions’ (commonly referred to as the ‘Plum Book’); and

(B) may include—

(i) a position on any level of the Executive Schedule under subchapter II of chapter 53, or another position with an equivalent rate of pay;

(ii) a general position (as defined in section 3132(a)(9)) in the Senior Executive Service;

(iii) a position in the Senior Foreign Service;

(iv) a position of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5, Code of Federal Regulations, or any successor regulation; and

(v) any other position classified at or above level GS-14 of the General Schedule (or equivalent) that is excepted from the competitive service by law because of the confidential or policy-determining nature of the position duties.

(b) ESTABLISHMENT OF WEBSITE.—The Director shall establish and maintain a public website containing the following information:

(1) Each policy and supporting position in the Federal Government, including any such position that is vacant.

(2) Each individual who—

(A) is serving in a position described in paragraph (1); or

(B) previously served in a position described in paragraph (1) under the President then in office.

(c) CONTENTS.—With respect to any policy and supporting position listed on the covered website, the Director shall include—

(1) the agency and agency component (including the agency and bureau code used by the Office of Management and Budget) in which the position is located;

(2) the name of the position;

(3) the name of the individual occupying the position (if any);

(4) the geographic location of the position, including the city, State or province, and country;

(5) the pay system for the position;

(6) the level, grade, or rate of pay;

(7) the term or duration of the appointment (if any);

(8) the expiration date, in the case of a time-limited appointment;

(9) a unique identifier for each appointee to enable tracking the appointee across positions; and

(10) whether the position is vacant.

(d) **FORMAT.**—The Director shall make the data on the covered website available to the public at no cost over the internet in a searchable, sortable, downloadable, and machine-readable format so that the data qualifies as an open Government data asset, as defined in section 3502 of title 44.

(e) **AUTHORITY OF DIRECTOR.**—

(1) **INFORMATION REQUESTED.**—Each agency shall provide to the Director any information that the Director determines necessary to establish and maintain the covered website, including the information uploaded under paragraph (4).

(2) **REQUIREMENTS FOR AGENCIES.**—Not later than 1 year after the date of enactment of the PLUM Act of 2020, the Director shall issue instructions to agencies with specific requirements for the provision or uploading of information required under paragraph (1), including—

(A) specific data standards that an agency shall follow to ensure that the information is complete, accurate, and reliable;

(B) data quality assurance methods; and

(C) the timeframe during which an agency shall provide or upload the information, including the timeframe described under paragraph (4).

(3) **PUBLIC ACCOUNTABILITY.**—The Director shall identify on the covered website any agency that has failed to provide—

(A) the information required by the Director;

(B) complete, accurate, and reliable information; or

(C) the information during the timeframe specified by the Director.

(4) **MONTHLY UPDATES.**—

(A) **IN GENERAL.**—Not later than 90 days after the date on which the covered website is established, and not less than once during each 30-day period thereafter, the head of each agency shall upload to the covered website updated information (if any) on—

(i) the policy and supporting positions in the agency;

(ii) the appointees occupying those positions in the agency; and

(iii) the former appointees who served in policy and supporting positions in the agency under the President then in office.

- (B) *SUPPLEMENT NOT SUPPLANT.*—Information provided under subparagraph (A) shall supplement, not supplant, data previously provided under that subparagraph.
- (5) *OPM HELP DESK.*—The Director shall establish a central help desk, to be operated by not more than 1 full-time employee, to assist any agency with implementing this section.
- (6) *COORDINATION.*—
- (A) *18F.*—The Director shall consult with the 18F office (or any successor office) within the General Services Administration for purposes of the development, establishment, operation, and support of the covered website.
- (B) *DESIGNATION OF AGENCIES.*—The Director—
- (i) may designate 1 or more agencies to participate in the development, establishment, operation, and support of the covered website; and
- (ii) with respect to any such designation, may specify the scope of the responsibilities of the agency so designated.
- (f) *RESPONSIBILITY OF AGENCIES.*—
- (1) *PROVISION OF INFORMATION.*—Each agency shall comply with the instructions and guidance issued by the Director to carry out this section, and, upon request of the Director, shall provide appropriate assistance to the Director to ensure the successful operation of the covered website in the manner and within the timeframe specified by the Director under subsection (e)(2).
- (2) *ENSURING COMPLETENESS, ACCURACY, AND RELIABILITY.*—The head of an agency shall include with any submission of information described in paragraph (1)—
- (A) an explanation of how the agency ensured the information is complete, accurate and reliable; and
- (B) a certification that the information is complete, accurate, and reliable.
- (g) *INFORMATION VERIFICATION.*—
- (1) *CONFIRMATION.*—
- (A) *IN GENERAL.*—On the date that is 90 days after the date on which the covered website is established, the Director, in coordination with the White House Office of Presidential Personnel, shall confirm that the information on the covered website is complete, accurate, reliable, and up-to-date.
- (B) *CERTIFICATION.*—On the date on which the Director makes a confirmation under subparagraph (A), the Director shall publish on the covered website a certification that the confirmation has been made.
- (2) *AUTHORITY OF DIRECTOR.*—In carrying out paragraph (1), the Director may—
- (A) request additional information from an agency; and
- (B) use any additional information provided to the Director or the White House Office of Presidential Personnel for the purposes of verification.
- (3) *PUBLIC COMMENT.*—The Director shall establish a process under which members of the public may provide feedback regarding the accuracy of the information on the covered website.
- (h) *DATA ARCHIVING.*—

(1) *IN GENERAL.*—As soon as practicable after a transitional inauguration day (as defined in section 3349a), the Director, in consultation with the Archivist of the United States, shall archive the data that was compiled on the covered website for the preceding presidential administration.

(2) *PUBLIC AVAILABILITY.*—The Director shall make the data described in paragraph (1) publicly available over the internet—

(A) on, or through a link on, the covered website;

(B) at no cost; and

(C) in a searchable, sortable, downloadable, and machine-readable format.

* * * * *

