



## CRS Report for Congress

# Presidential Transitions: Background and Federal Support

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### Summary

The Presidential Transition Act (PTA), as amended, authorizes funding for the General Services Administration (GSA) to provide suitable office space, staff compensation, and other services associated with the transition process.<sup>1</sup> Section 5 of the PTA authorizes the President to include in his budget request for each fiscal year in which his regular term of office will expire, a proposed appropriation for carrying out the purposes of the act. The President's FY2009 budget requests \$8,520,000 in funding for the upcoming presidential transition. Of this total, \$1 million is provided for briefings and related transition services for incoming personnel associated with the new administration.

### Introduction

Since President George Washington first relinquished his office to incoming President John Adams in 1797, this peaceful transition, symbolizing both continuity and change, has demonstrated the "best of American democracy to the world."<sup>2</sup> Today, however, the activities surrounding a presidential transition begin shortly after the election, as the President-elect has less than 11 weeks to formulate the new administration before taking the oath of office on January 20. The significance of the relatively short transition period recently came under intense scrutiny against the background of the historic and dramatic events surrounding the presidential election of 2000. With less than five weeks available for formal transition preparations, Vice President-elect Richard

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<sup>1</sup> 3 U.S.C. § 102 note.

<sup>2</sup> Alvin S. Felzenberg, ed., *The Keys to a Successful Presidency* (Washington: Heritage Foundation, 2000), p. 7. For a detailed discussion of early presidential transitions, see also Laurin L. Henry, *Presidential Transitions* (Washington: Brookings Institution, 1960).

Cheney stated on December 14, 2000, that the transition was “well under way ... to have a Cabinet in place by the inauguration.”<sup>3</sup>

While a formal transition process is essential to ensure continuity in the conduct of the affairs of the executive branch, the concept of a federally funded transition period is relatively new. Before enactment of the Presidential Transition Act in 1964, the primary source of funding for transition expenses was the political party organization of the incoming President.<sup>4</sup>

## Transition Funding

As enacted in 1964, the PTA provided a \$900,000 authorization for GSA to provide suitable office space, staff compensation, and other services associated with the transition process. Since that time, the PTA has been amended on three occasions to provide increases in funding and to prescribe additional requirements for GSA.<sup>5</sup>

Currently, funding is authorized for an incoming Administration from the day following the general election until 30 days after the inauguration. For the outgoing President and Vice President, transition funding is available for seven months, beginning one month before the inauguration, until six months after their terms of office, to facilitate their relocation to private life.<sup>6</sup>

As a condition for receiving federal funding and services, the President-elect and Vice President-elect must formally disclose the dates, sources, and amounts of all private contributions for the transition, with a maximum contribution of \$5,000 allowed from any person or organization. These written disclosures must be made to GSA not later than 30 days after the January 20 inauguration. The PTA also limits all temporary appointments to executive branch vacancies to 120 days, unless a nomination has been submitted to the Senate.

The PTA was amended in 2000 to prescribe additional requirements for GSA to coordinate the development and presentation of orientation sessions for the President-elect’s nominees for Cabinet and high-level executive branch positions. In conjunction with the National Archives and Records Administration (NARA), GSA was also required to create a transition directory, composed of federal publications and materials pertaining to the statutory and administrative functions of each federal department and agency. A third major provision required the Office of Government Ethics to prepare a report on needed improvements to the financial disclosure process for presidential nominees.

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<sup>3</sup> Karen Gullo, “Cheney Gets Transition Office Keys,” *USA Today*, Dec. 14, 2000, p. 3A.

<sup>4</sup> 78 Stat. 153. See CRS Report RL30736, *Presidential Transitions 1960-2001*, by Stephanie Smith.

<sup>5</sup> 90 Stat. 2380; 102 Stat. 985; and 114 Stat. 711.

<sup>6</sup> Separate legislation also provides former Presidents an annual lifetime pension and staff and office allowances after the transition period expires, as well as Secret Service protection. See CRS Report 98-249, *Former Presidents: Federal Pension and Retirement Benefits*, by Stephanie Smith.

For FY2001, GSA was appropriated a total of \$7.1 million for the 2000-2001 transition.<sup>7</sup> Of this total, \$1.83 million was provided for the outgoing Administration of President William Clinton; \$4.27 million for the incoming Administration of President-elect George W. Bush; and \$1 million for GSA to provide orientation sessions and related assistance for the incoming Bush appointees.<sup>8</sup>

Section 6 of the PTA authorizes the President to include in his budget request for each fiscal year in which his regular term of office will expire, a proposed appropriation for carrying out the purposes of the act. In order to provide federal funding in the event of a 2004 presidential transition, the President's FY2005 budget proposal requested a total of \$7.7 million. Of this total, \$1 million would be provided for briefings and related transition services for incoming personnel associated with a new administration.<sup>9</sup>

Currently, Section 3(f) of the PTA states that there shall be no expenditures of funds for the provision of services and facilities in the event the President-elect is the incumbent President, or when the Vice President-elect is the incumbent Vice President. Any funds appropriated for such purposes "shall be returned to the general funds of the Treasury." In the event no transition occurs, the President's FY2005 budget request for GSA proposed to amend the PTA through appropriation language to permit the expenditure of not more than \$1 million for training and briefings for incoming appointees associated with the second term of an incumbent President.<sup>10</sup> No other expenditure of appropriated funds for transition purposes would be made available to the incumbent President, and the remaining \$6.7 million would be returned to the general fund of the Treasury.

The House passed H.R. 5025, the FY2005 Transportation, Treasury, and Independent Agencies appropriations bill, on September 22, 2004. The legislation recommended for GSA a total of \$7.7 million for the expenses associated with a possible 2004-2005 presidential transition, which included \$1 million to brief incoming personnel. If no transition occurred, H.R. 5025 authorized that \$1 million be used by the incumbent President for the training of new appointees associated with a second term of office. The House Committee on Appropriations also recommended the \$1 million appropriation to be used by the incumbent President, and stated that the remaining \$6.7 million in transition funds would be returned to the Treasury, if no transition occurred.<sup>11</sup> Following its passage, H.R. 5025 was received in the Senate on September 29, 2004, and placed on the Senate Legislative Calendar.

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<sup>7</sup> 114 Stat. 2763.

<sup>8</sup> P.L. 100-398 amended the PTA in 1988 to authorize \$1.5 million to be appropriated to the outgoing administration and \$3.5 million to be appropriated to the incoming administration, with these totals to be increased in future budget requests by an inflation-adjusted amount, based on the costs of the most recent presidential transition. P.L. 106-293 amended the PTA to authorize \$1 million for briefings and related transition expenses for incoming presidential appointees.

<sup>9</sup> U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2005* — Appendix (Washington: 2004), p. 972.

<sup>10</sup> *Ibid.*

<sup>11</sup> U.S. Congress, House Committee on Appropriations, *Transportation, Treasury, and Independent Agencies Appropriations Act, 2005*, report to accompany H.R. 5025, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 108-671 (Washington: GPO, 2004), p. 146.

In the Senate, S. 2806, the FY2005 Transportation, Treasury, and Independent Agencies appropriations bill, also recommended a total of \$7.7 million for GSA to implement a possible presidential transition, including \$1 million for incoming appointees. However, the Senate Committee on Appropriations denied the request to amend the PTA to allow \$1 million for training and briefings for incoming appointees associated with the second term of an incumbent President. The committee stated that it had no objection to funding such training, but believed that “it should be properly budgeted for and requested by the appropriate agencies.”<sup>12</sup> On September 15, 2004, S. 2806 was reported to the Senate and placed on the Senate Legislative Calendar.

P.L. 108-309 was enacted on September 30, 2004, to provide continuing non-defense appropriations through November 20. A total of \$2.5 million was authorized in the event of a presidential transition, until enactment of the FY2005 omnibus appropriations bill. Any transition expenditures made pursuant to P.L. 108-309 were to be charged to the applicable authorization once the FY2005 omnibus legislation was enacted. Due to the outcome of the 2004 presidential election, no funds were provided in P.L. 108-447, the FY2005 Consolidated Appropriations Act.<sup>13</sup>

The President’s FY2009 budget requests \$8,520,000 to provide funding for the upcoming presidential transition. Of this total, \$1 million is provided for briefings and related transition services for incoming personnel associated with the new administration.<sup>14</sup>

## Clinton-Bush Transition

As a result of the ballot challenges concerning the November 7, 2000, presidential election, White House Chief of Staff John Podesta issued a November 13, 2000, memorandum to executive branch agencies stating that, “because of the uncertainty over election results, no President-elect has been identified to receive federal funds and assistance under the Presidential Transition Act of 1963.”<sup>15</sup> The memo advised executive branch officials to provide any assistance that was “typically” provided to presidential candidates. Following the certification of the Florida popular vote on November 26, 2000, by the Florida Secretary of State in favor of Governor George W. Bush, GSA Administrator David J. Barram announced the following day that he would not authorize the release of federal transition funds since the final outcome remained “unclear and unapparent,”<sup>16</sup> due to ongoing legal challenges to the Florida certification. Since the PTA

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<sup>12</sup> U.S. Congress, Senate Committee on Appropriations, *Transportation, Treasury, and Independent Agencies Appropriations Act, 2005*, report to accompany S. 2806, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 108-342 (Washington: GPO, 2004), p. 186.

<sup>13</sup> 118 Stat. 3253.

<sup>14</sup> U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2009 — Appendix* (Washington: GPO, 2008), p. 1075.

<sup>15</sup> Executive Office of the President, Memorandum from Chief of Staff John Podesta for the Heads of Executive Departments and Agencies, “Presidential Transition Guidance,” Nov. 13, 2000.

<sup>16</sup> U.S. General Services Administration, Office of Communications statement released Nov. 27, (continued...)

provides no explicit criteria for determining the “apparent successful candidates,” the GSA administrator based his decision on the 1963 legislative history, which stated that, “in a close contest, the Administrator simply would not make the decision.”<sup>17</sup> Also at issue was the use of 90,000 square feet of office space in Washington, DC, that GSA had leased in anticipation of the transition period between election day on November 7 and the presidential inauguration on January 20, 2001, at a cost of approximately \$700,000.<sup>18</sup>

In response to GSA’s decision to withhold funding and office space, Governor Bush announced the establishment of his transition offices in McLean, VA, to be headed by the vice presidential candidate, former Secretary of Defense Richard Cheney. In a November 27, 2000, news conference, Cheney stated that the Bush-Cheney transition would be funded by private contributions as a “non-profit corporation and will seek 501(c)(4) status from the Internal Revenue Service.”<sup>19</sup>

On December 4, 2000, oversight hearings on the presidential transition were held before the House Government Reform Subcommittee on Government Management, Information, and Technology. In his opening statement, subcommittee chairman Stephen Horn expressed concern that, in spite of long-standing congressional intent to federally fund presidential transitions, “today — nearly four weeks after the presidential election — the administrator says he is still unable to ascertain a winner and, thus, is not providing the appropriate assistance required by the Presidential Transition Act.”<sup>20</sup> In a written statement for the hearings record, Comptroller General David M. Walter wrote that, “given the current extraordinary circumstances surrounding the election, Congress should consider extending the existing time limitation on the obligation of funds under the Transition Act to help mitigate the unforeseen delay in the initial release of public funds.”<sup>21</sup> As a result of these hearings, H.R. 5643 was introduced in the House on December 6, 2000, to clarify the definition of “apparent successful candidates” to permit the GSA administrator to provide transition funding and services to the President-elect and Vice President-elect as determined by official state certifications. The legislation was referred to the House Committee on Government Reform.

Immediately following Vice President Albert Gore’s concession speech on December 13, 2000, GSA Administrator David Barram authorized President-elect George

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<sup>16</sup> (...continued)  
2000.

<sup>17</sup> Rep. Dante Fascell, “Presidential Transition Act of 1963,” remarks in the House, *Congressional Record*, vol. 109, July 25, 1963, p. 12238.

<sup>18</sup> U.S. General Services Administration, Office of Communications, *Media Advisory Presidential Transition Fact Sheet*, Nov. 17, 2000.

<sup>19</sup> “Transcript of Former Secretary Richard Cheney’s News Conference,” *Washington Post*, Nov. 27, 2000, p. A9.

<sup>20</sup> U.S. House of Representatives, Committee on Government Reform, Subcommittee on Government Management, Information, and Technology, *Opening Statement by Chairman Stephen Horn*, hearings, Dec. 4, 2000.

<sup>21</sup> U.S. General Accounting Office, *Presidential Transition: Challenges and Opportunities*, Dec. 4, 2000 (Washington: GPO, 2000), p. 1.

Bush's use of federal transition funds and office space.<sup>22</sup> The following day, GSA Deputy Administrator Thurman Davis presented Vice President-elect Cheney with an electronic card that served as the key to the Washington, DC, transition office, located at 1800 G Street, NW. The Bush-Cheney transition officials assigned to coordinate with congressional staff and prospective Cabinet members were the first to relocate from their McLean, VA, headquarters to the GSA office space.

Shortly after President-elect Bush's first formal address to the nation on December 13, he received a congratulatory call from President Bill Clinton. The following day, President-elect Bush announced his plans to travel to Washington, DC, on December 18, to conduct separate visits with President Clinton and Vice President Gore, as well as to conduct interviews with possible Cabinet members.<sup>23</sup>

With less than five weeks until his inauguration, President-elect Bush made his Cabinet selections in just 20 days. According to newspaper accounts, the President-elect and his aides used the five weeks of the election dispute to narrow their list of possible appointments, even though they were criticized by some for "presumptuously" proceeding with the transition. With so little time left before he took office, President-elect Bush narrowed his selections to nominees who had previously been through Senate confirmations in the past, selecting Donald Rumsfeld for Secretary of Defense, Colin Powell for Secretary of State, and Norman Mineta for Secretary of Transportation. In addition to their government and corporate expertise, the Cabinet nominees also had long-standing professional associations with the President-elect and his family.<sup>24</sup>

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<sup>22</sup> U.S. General Services Administration, Office of Communications statement released Dec. 13, 2000.

<sup>23</sup> Mike Allen and Dana Milbank, "Bush Reaches Out to Democrats," *Washington Post*, Dec. 15, 2000, p. A1.

<sup>24</sup> Mike Allen and Dana Milbank, "Cabinet Chosen Quietly, Quickly," *Washington Post*, Jan. 7, 2001, p. A1.