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S. 1172

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2015

Referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

AN ACT

To improve the process of presidential transition.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Edward ‘Ted’ Kauf-
3 man and Michael Leavitt Presidential Transitions Im-
4 provements Act of 2015”.

5 **SEC. 2. PRESIDENTIAL TRANSITION IMPROVEMENTS.**

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

8 (1) by redesignating sections 4, 5, and 6 as sec-
9 tions 5, 6, and 7, respectively; and

10 (2) by inserting after section 3 the following:

11 **“SEC. 4. TRANSITION SERVICES AND ACTIVITIES BEFORE**
12 **ELECTION.**

13 “(a) DEFINITIONS.—In this section—

14 “(1) the term ‘Administrator’ means the Ad-
15 ministrator of General Services;

16 “(2) the term ‘agency’ means an Executive
17 agency, as defined in section 105 of title 5, United
18 States Code;

19 “(3) the term ‘eligible candidate’ has the mean-
20 ing given that term in section 3(h)(4); and

21 “(4) the term ‘Presidential election’ means a
22 general election held to determine the electors of
23 President and Vice President under section 1 or 2
24 of title 3, United States Code.

25 “(b) GENERAL DUTIES.—The President shall take
26 such actions as the President determines necessary and

1 appropriate to plan and coordinate activities by the Execu-
2 tive branch of the Federal Government to facilitate an effi-
3 cient transfer of power to a successor President, including
4 by—

5 “(1) establishing and operating a White House
6 transition coordinating council in accordance with
7 subsection (d); and

8 “(2) establishing and operating an agency tran-
9 sition directors council in accordance with subsection
10 (e).

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

15 “(1) carry out the duties and authorities of the
16 General Services Administration relating to Presi-
17 dential transitions under this Act or any other provi-
18 sion of law;

19 “(2) serve as the Federal Transition Coordi-
20 nator with responsibility for coordinating transition
21 planning across agencies, including through the
22 agency transition directors council established under
23 subsection (e);

1 “(3) ensure agencies comply with all statutory
2 requirements relating to transition planning and re-
3 porting; and

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

5 “(d) WHITE HOUSE TRANSITION COORDINATING
6 COUNCIL.—

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

12 “(2) DUTIES.—The White House transition co-
13 ordinating council shall—

14 “(A) provide guidance to agencies and the
15 Federal Transition Coordinator regarding prep-
16 arations for the Presidential transition, includ-
17 ing succession planning and preparation of
18 briefing materials;

19 “(B) facilitate communication and infor-
20 mation sharing between the transition rep-
21 resentatives of eligible candidates and senior
22 employees in agencies and the Executive Office
23 of the President; and

24 “(C) prepare and host interagency emer-
25 gency preparedness and response exercises.

1 “(3) MEMBERSHIP.—The members of the
2 White House transition coordinating council shall in-
3 clude—

4 “(A) senior employees of the Executive
5 branch selected by the President, which may in-
6 clude the Chief of Staff to the President, any
7 Cabinet officer, the Director of the Office of
8 Management and Budget, the Administrator,
9 the Director of the Office of Personnel Manage-
10 ment, the Director of the Office of Government
11 Ethics, and the Archivist of the United States;

12 “(B) the Federal Transition Coordinator;

13 “(C) the transition representative for each
14 eligible candidate, who shall serve in an advi-
15 sory capacity; and

16 “(D) any other individual the President de-
17 termines appropriate.

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

22 “(e) AGENCY TRANSITION DIRECTORS COUNCIL.—

23 “(1) IN GENERAL.—The President shall estab-
24 lish and operate an agency transition directors coun-
25 cil, which shall—

1 “(A) ensure the Federal Government has
2 an integrated strategy for addressing inter-
3 agency challenges and responsibilities around
4 Presidential transitions and turnover of non-
5 career appointees;

6 “(B) coordinate transition activities be-
7 tween the Executive Office of the President,
8 agencies, and the transition team of eligible
9 candidates and the President-elect and Vice-
10 President-elect; and

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

15 “(2) DUTIES.—As part of carrying out the re-
16 sponsibilities under paragraph (1), the agency tran-
17 sition directors council shall—

18 “(A) assist the Federal Transition Coordi-
19 nator in identifying and carrying out the re-
20 sponsibilities of the Federal Transition Coordi-
21 nator relating to a Presidential transition;

22 “(B) provide guidance to agencies in gath-
23 ering briefing materials and information relat-
24 ing to the Presidential transition that may be
25 requested by eligible candidates;

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

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

9 “(E) consult with the President’s Manage-
10 ment Council, or any successor thereto, in car-
11 rying out the duties of the agency transition di-
12 rectors council.

13 “(3) MEMBERSHIP.—The members of the agen-
14 cy transition directors council shall include—

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

20 “(B) other senior employees serving in the
21 Executive Office of the President, as deter-
22 mined by the President;

23 “(C) a senior representative from each
24 agency described in section 901(b)(1) of title
25 31, United States Code, the Office of Personnel

1 Management, the Office of Government Ethics,
2 and the National Archives and Records Admin-
3 istration whose responsibilities include leading
4 Presidential transition efforts within the agen-
5 cy;

6 “(D) a senior representative from any
7 other agency determined by the Co-Chair-
8 persons to be an agency that has significant re-
9 sponsibilities relating to the Presidential transi-
10 tion process; and

11 “(E) during a year during which a Presi-
12 dential election will be held, a transition rep-
13 resentative for each eligible candidate, who shall
14 serve in an advisory capacity.

15 “(4) MEETINGS.—The agency transition direc-
16 tors council shall meet—

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

19 “(B) during the period beginning on the
20 date that is 6 months before a Presidential elec-
21 tion and ending on the date on which the Presi-
22 dent-elect is inaugurated, on a regular basis as
23 necessary to carry out the duties and authori-
24 ties of the agency transition directors council.

1 “(f) INTERIM AGENCY LEADERSHIP FOR TRANSI-
2 TIONS.—

3 “(1) OVERSIGHT AND IMPLEMENTATION OF
4 TRANSITION.—Not later than 6 months before the
5 date of a Presidential election, the head of each
6 agency shall designate a senior career employee of
7 the agency and a senior career employee of each
8 major component and subcomponent of the agency
9 to oversee and implement the activities of the agen-
10 cy, component, or subcomponent relating to the
11 Presidential transition.

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

21 “(g) MEMORANDUMS OF UNDERSTANDING.—

22 “(1) IN GENERAL.—Not later than November 1
23 of a year during which a Presidential election oc-
24 curs, the President (acting through the Federal
25 Transition Coordinator) shall, to the maximum ex-

1 tent practicable, negotiate a memorandum of under-
2 standing with the transition representative of each
3 eligible candidate, which shall include, at a min-
4 imum, the conditions of access to employees, facili-
5 ties, and documents of agencies by transition staff.

6 “(2) EXISTING RESOURCES.—To the maximum
7 extent practicable, the memorandums of under-
8 standing negotiated under paragraph (1) shall be
9 based on memorandums of understanding from pre-
10 vious Presidential transitions.

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

15 “(i) REPORTS.—

16 “(1) IN GENERAL.—The President, acting
17 through the Federal Transition Coordinator, shall
18 submit to the Committee on Oversight and Govern-
19 ment Reform of the House of Representatives and
20 the Committee on Homeland Security and Govern-
21 mental Affairs of the Senate reports describing the
22 activities undertaken by the President and agencies
23 to prepare for the transfer of power to a new Presi-
24 dent.

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

4 (b) OTHER IMPROVEMENTS.—Section 3 of the Presi-
5 dential Transition Act of 1963 (3 U.S.C. 102 note) is
6 amended—

7 (1) in subsection (a)—

8 (A) in paragraph (8)—

9 (i) in subparagraph (A)(i)—

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

13 (II) by striking “after inaugura-
14 tion”; and

15 (ii) in subparagraph (B), by inserting
16 “or Executive agencies (as defined in sec-
17 tion 105 of title 5, United States Code)”
18 before the period; and

19 (B) in paragraph (10), by inserting “in-
20 cluding, to the greatest extent practicable,
21 human resource management system software
22 compatible with the software used by the in-
23 cumbent President and likely to be used by the
24 President-elect and Vice President-elect” before
25 the period;

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

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

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

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

13 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

14 (1) Section 3 of the Pre-Election Presidential
15 Transition Act of 2010 (3 U.S.C. 102 note) is re-
16 pealed.

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

19 (A) in section 3—

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

22 (ii) in subsection (b), in the matter
23 preceding paragraph (1), by striking “sec-
24 tion 3 of this Act” and inserting “this sec-
25 tion”; and

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

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

8 (C) in section (7)(a)(2), as redesignated by
 9 subsection (a) of this section, by striking “sec-
 10 tion 4” and inserting “section 5”.

11 (3) Section 8331(1)(K) of title 5, United States
 12 Code, is amended by striking “section 4” and insert-
 13 ing “section 5”.

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

17 (5) Section 8901(1)(I) of title 5, United States
 18 Code, is amended by striking “section 4” and insert-
 19 ing “section 5”.

20 **SEC. 3. NATIONAL ARCHIVES PRESIDENTIAL TRANSITION.**

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

23 (1) by redesignating paragraph (3) as para-
 24 graph (4); and

1 (2) by inserting after paragraph (2) the fol-
 2 lowing:

3 “(3) When the President considers it prac-
 4 ticable and in the public interest, the President shall
 5 include in the President’s budget transmitted to
 6 Congress, for each fiscal year in which the term of
 7 office of the President will expire, such funds as may
 8 be necessary for carrying out the authorities of this
 9 subsection.”.

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

12 (a) DEFINITIONS.—In this section—

13 (1) the term “agency” has the meaning given
 14 the term “Executive agency” in section 105 of title
 15 5, United States Code;

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

20 (A) a temporary position; or

21 (B) a political position;

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

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

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

5 (4) the term “political appointee” means an in-
 6 dividual serving in an appointment to a political po-
 7 sition; and

8 (5) the term “political position” means—

9 (A) a position described under sections
 10 5312 through 5316 of title 5, United States
 11 Code (relating to the Executive Schedule);

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

16 (C) a position in the executive branch of
 17 the Government of a confidential or policy-de-
 18 termining character under schedule C of sub-
 19 part C of part 213 of title 5, Code of Federal
 20 Regulations.

21 (b) REPORTING ON CURRENT OR RECENT POLITICAL
 22 APPOINTEES APPOINTED TO COVERED CIVIL SERVICE
 23 POSITIONS.—The Director of the Office of Personnel
 24 Management shall submit to the Committee on Homeland
 25 Security and Governmental Affairs of the Senate and the

1 Committee on Oversight and Government Reform of the
2 House of Representatives a quarterly report regarding re-
3 quests by agencies to appoint political appointees or
4 former political appointees to covered civil service posi-
5 tions, which shall—

6 (1) for each request by an agency that a polit-
7 ical appointee be appointed to a covered civil service
8 position during the period covered by the quarterly
9 report, provide—

10 (A) the date on which the request was re-
11 ceived by the Office of Personnel Management;

12 (B) subject to subsection (c), the name of
13 the individual and the political position held by
14 the individual, including title, office, and agen-
15 cy;

16 (C) the date on which the individual was
17 first appointed to a political position in the
18 agency in which the individual is serving as a
19 political appointee;

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

22 (E) the proposed covered civil service posi-
23 tion, including title, office, and agency, and the
24 proposed grade and rate of basic pay for the in-
25 dividual;

1 (F) whether the Office of Personnel Man-
2 agement approved or denied the request; and

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

6 (2) for each request by an agency that a former
7 political appointee be appointed to a covered civil
8 service position during the period covered by the
9 quarterly report, provide—

10 (A) the date on which the request was re-
11 ceived by the Office of Personnel Management;

12 (B) subject to subsection (c), the name of
13 the individual and the political position held by
14 the individual, including title, office, and agen-
15 cy;

16 (C) the date on which the individual was
17 first appointed to any political position;

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

20 (E) the date on which the individual
21 ceased to serve in a political position;

22 (F) the proposed covered civil service posi-
23 tion, including title, office, and agency, and the
24 proposed grade and rate of basic pay for the in-
25 dividual;

1 (G) whether the Office of Personnel Man-
 2 agement approved or denied the request; and

3 (H) the date on which the individual was
 4 first appointed to a covered civil service posi-
 5 tion, if applicable.

6 (c) NAMES AND TITLES OF CERTAIN APPOINTEES.—

7 If determined appropriate by the Director of the Office
 8 of Personnel Management, a report submitted under sub-
 9 section (b) may exclude the name or title of a political
 10 appointee or former political appointee—

11 (1) who—

12 (A) was requested to be appointed to a
 13 covered civil service position; and

14 (B) was not appointed to a covered civil
 15 service position; or

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

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

21 (a) DEFINITIONS.—In this section—

22 (1) the term “covered presidential transition pe-
 23 riod” means—

24 (A) the 120-day period ending on January
 25 20, 1993.

1 (B) the 120-day period ending on January
2 20, 2001;

3 (C) the 120-day period ending on January
4 20, 2009; and

5 (D) the 120-day period ending on January
6 20, 2017;

7 (2) the term “covered regulation” means a final
8 regulation promulgated by an Executive department;
9 and

10 (3) the term “Executive department” has the
11 meaning given that term under section 101 of title
12 5, United States Code.

13 (b) REPORTS.—

14 (1) IN GENERAL.—The Comptroller General of
15 the United States shall submit to the Committee on
16 Homeland Security and Governmental Affairs of the
17 Senate and the Committee on Oversight and Govern-
18 ment Reform of the House of Representatives a re-
19 port regarding covered regulations promulgated dur-
20 ing the covered presidential transition periods de-
21 scribed in subparagraph (A), (B), or (C) of sub-
22 section (a)(1).

23 (2) NEXT PRESIDENTIAL TRANSITION.—The
24 Comptroller General of the United States shall sub-
25 mit to the Committee on Homeland Security and

1 Governmental Affairs of the Senate and the Com-
2 mittee on Oversight and Government Reform of the
3 House of Representatives a report regarding covered
4 regulations promulgated during the covered presi-
5 dential transition period described in subsection
6 (a)(1)(D).

7 (3) CONTENTS OF REPORTS.—The reports re-
8 quired under paragraphs (1) and (2) shall, for each
9 covered presidential transition period covered by the
10 report—

11 (A) compare the number, scope, and cost
12 (if possible) of, and type of rulemaking proce-
13 dure used for, covered regulations promulgated
14 during the covered presidential transition period
15 to the number, scope, and cost of, and type of
16 rulemaking procedure used for, covered regula-
17 tions promulgated during the 120-day periods
18 ending on January 20 of each year after 1988,
19 other than 1993, 2001, and 2009;

20 (B) determine the statistical significance of
21 any differences identified under subparagraph
22 (A) and whether and to what extent such dif-
23 ferences indicate any patterns;

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

4 (D) assess the extent to which the regu-
5 larly required processes for the promulgation of
6 covered regulations were followed during the
7 covered presidential transition period, including
8 compliance with the requirements under—

9 (i) chapter 8 of title 5, United States
10 Code (commonly known as the “Congres-
11 sional Review Act”);

12 (ii) the Small Business Regulatory
13 Enforcement Fairness Act of 1996 (5
14 U.S.C. 601 note);

15 (iii) chapter 6 of title 5, United States
16 Code (commonly known as the “Regulatory
17 Flexibility Act”); and

18 (iv) chapter 35 of title 44, United
19 States Code (commonly known as the “Pa-
20 perwork Reduction Act”).

21 **SEC. 6. ANALYSIS OF THREATS AND VULNERABILITIES.**

22 (a) IN GENERAL.—Not later than February 15,
23 2016, the Secretary of Homeland Security shall submit
24 to Congress a report analyzing the threats and

1 vulnerabilities facing the United States during a presi-
2 dential transition, which—

3 (1) shall identify and discuss vulnerabilities re-
4 lated to border security and threats related to ter-
5 rorism, including from weapons of mass destruction;

6 (2) shall identify steps being taken to address
7 the threats and vulnerabilities during a presidential
8 transition; and

9 (3) may include recommendations for actions by
10 components and agencies within the Department of
11 Homeland Security.

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

Passed the Senate July 30, 2015.

Attest:

JULIE E. ADAMS,
Secretary.