

# Calendar No. 44

116TH CONGRESS  
1ST SESSION

# S. 394

[Report No. 116–13]

To amend the Presidential Transition Act of 1963 to improve the orderly transfer of the executive power during Presidential transitions.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2019

Mr. JOHNSON (for himself, Mr. CARPER, and Ms. HASSAN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

MARCH 25, 2019

Reported by Mr. JOHNSON, with amendments

[Omit the part struck through and insert the part printed in *italie*]

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## A BILL

To amend the Presidential Transition Act of 1963 to improve the orderly transfer of the executive power during Presidential transitions.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Presidential Transition  
5 Enhancement Act of 2019”.

1 **SEC. 2. PRESIDENTIAL TRANSITION ENHANCEMENTS.**

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

4 (1) in subsection (a)—

5 (A) in the matter preceding paragraph (1),  
6 by striking “upon request,” and all that follows  
7 through “including” and inserting “upon re-  
8 quest, to each President-elect, each Vice-Presi-  
9 dent-elect, and, for up to 60 days after the date  
10 of the inauguration of the President-elect and  
11 Vice-President-elect, each President and Vice  
12 President, for use in connection with the prep-  
13 arations for the assumption of official duties as  
14 President or Vice President necessary services  
15 and facilities, including”; and

16 (B) in paragraph (2)—

17 (i) by inserting “, or an employee of  
18 a committee of either House of Congress,  
19 a joint committee of the Congress, or an  
20 individual Member of Congress,” after  
21 “any branch of the Government”; and

22 (ii) by inserting “, or in the case of an  
23 employee in a position in the legislative  
24 branch, with the consent of the supervising  
25 Member of Congress” after “with the con-  
26 sent of the head of the agency”;

1           (2) by striking subsection (b) and inserting the  
2 following:

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

5           “(1) in connection with any obligation incurred  
6 by the President-elect or Vice-President-elect, or  
7 after the inauguration of the President-elect as  
8 President and the inauguration of the Vice-Presi-  
9 dent-elect as Vice President incurred by the Presi-  
10 dent or Vice President, during the period—

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

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

18           “(2) without regard to whether the President-  
19 elect, Vice-President-elect, President, or Vice Presi-  
20 dent submits to the Administrator a request for pay-  
21 ment regarding services or facilities before the end  
22 of such period.”;

23           (3) in subsection (h)(2)(B)(ii), by striking  
24 “computers” and inserting “information tech-  
25 nology”; and

1 (4) By adding at the end the following:

2 “(i) MEMORANDUMS OF UNDERSTANDING.—

3 “(1) IN GENERAL.—Not later than September  
4 1 of a year during which a Presidential election oc-  
5 curs, the Administrator shall, to the maximum ex-  
6 tent practicable, enter into a memorandum of under-  
7 standing with each eligible candidate, which shall in-  
8 clude, at a minimum, the conditions for the adminis-  
9 trative support services and facilities described in  
10 subsection (a).

11 “(2) EXISTING RESOURCES.—To the maximum  
12 extent practicable, a memorandum of understanding  
13 entered into under paragraph (1) shall be based on  
14 memorandums of understanding relating to previous  
15 Presidential transitions.

16 “(3) TRANSITION REPRESENTATIVE.—

17 “(A) DESIGNATION OF REPRESENTATIVE  
18 FOR INQUIRIES.—Each memorandum of under-  
19 standing entered into under this subsection  
20 shall designate a representative of the eligible  
21 candidate to whom the Administrator shall di-  
22 rect any inquiries or legal instruments regard-  
23 ing the records of the eligible candidate that are  
24 in the custody of the Administrator.

1           “(B) CHANGE IN TRANSITION REPRESENT-  
2           ATIVE.—The designation of a new individual as  
3           the transition representative of an eligible can-  
4           didate shall not require the execution of a new  
5           memorandum of understanding under this sub-  
6           section.

7           “(C) TERMINATION OF DESIGNATION.—  
8           The designation of a transition representative  
9           under a memorandum of understanding shall  
10          terminate—

11                 “(i) not later than September 30 of  
12                 the year during which the inauguration of  
13                 the President-elect as President and the  
14                 inauguration of the Vice-President-elect as  
15                 Vice President occurs; or

16                 “(ii) before the date described in  
17                 clause (i), upon request of the President-  
18                 elect or the Vice-President-elect or, after  
19                 such inauguration, upon request of the  
20                 President or the Vice President.

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

24           “(5) PRIOR NOTIFICATION OF DEVIATION.—  
25           Each party to a memorandum of understanding en-

1       tered into under this subsection shall provide written  
2       notice, except to the extent prohibited under another  
3       provision of law, not later than 3 days before taking  
4       any action that deviates from the terms and condi-  
5       tions agreed to in the memorandum of under-  
6       standing.

7               “(6) DEFINITION.—In this subsection, the term  
8       ‘eligible candidate’ has the meaning given that term  
9       in subsection (h)(4).”.

10       (b) AGENCY TRANSITIONS.—Section 4 of the Presi-  
11       dential Transition Act of 1963 (3 U.S.C. 102 note) is  
12       amended—

13               (1) in subsection (a)—

14                       (A) in paragraph (3), by striking “and” at  
15       the end;

16                       (B) by redesignating paragraph (4) as  
17       paragraph (5); and

18                       (C) by inserting after paragraph (3) the  
19       following:

20               “(4) the term ‘nonpublic information’—

21                       “(A) means information from the Federal  
22       Government that a member of a transition team  
23       obtains as part of the employment of the mem-  
24       ber that such member knows or reasonably

1 should know has not been made available to the  
2 general public; and

3 “(B) includes information that a member  
4 of the transition team knows or reasonably  
5 should know—

6 “(i) is exempt from disclosure under  
7 section 552 of title 5, United States Code,  
8 or otherwise protected from disclosure by  
9 law; and

10 “(ii) is not authorized by the appro-  
11 priate government agency or officials to be  
12 released to the public; and”;

13 (2) in subparagraphs (C) and (D) of subsection  
14 (e)(3), by inserting “serving in a career position”  
15 after “senior representative”;

16 (3) by striking subsection (f)(2) and inserting  
17 the following:

18 “(2) ACTING OFFICERS.—Not later than Sep-  
19 tember 15 of a year during which a Presidential  
20 election occurs, and in accordance with subchapter  
21 III of chapter 33 of title 5, United States Code, the  
22 head of each agency shall ensure that a succession  
23 plan is in place for each senior noncareer position in  
24 the agency.”; and

25 (4) in subsection (g)—

1 (A) in paragraph (1), by striking “Novem-  
2 ber 1” and inserting “October 1”; and

3 (B) by adding at the end the following:

4 “(3) ETHICS PLAN.—

5 “(A) IN GENERAL.—Each memorandum of  
6 understanding under paragraph (1) shall in-  
7 clude an agreement that the eligible candidate  
8 will implement and enforce an ethics plan to  
9 guide the conduct of the transition beginning on  
10 the date on which the eligible candidate be-  
11 comes the President-elect.

12 “(B) CONTENTS.—The ethics plan shall  
13 include, at a minimum—

14 “(i) a description of the ethics re-  
15 quirements that will apply to all members  
16 of the transition team, including any spe-  
17 cific requirement for transition team mem-  
18 bers who will have access to nonpublic or  
19 classified information;

20 “(ii) a description of how the transi-  
21 tion team will—

22 “(I) address the role on the tran-  
23 sition team of—

24 “(aa) lobbyists registered  
25 under the Lobbying Disclosure



1 Act of 1995 (2 U.S.C. 1601 et  
2 seq.) and individuals who were  
3 former lobbyists registered under  
4 that Act; and

5 “(bb) persons registered  
6 under the Foreign Agents Reg-  
7 istration Act of 1938 (22 U.S.C.  
8 611 et seq.), foreign nationals,  
9 and other foreign agents;

10 “(II) prohibit a transition team  
11 member with conflicts of interest simi-  
12 lar to those applicable to Federal em-  
13 ployees under section 2635.402(a)  
14 and section 2635.502(a) of title 5,  
15 Code of Federal Regulations, related  
16 to current or former employment, af-  
17 filiations, clients, or investments, from  
18 working on particular matters involv-  
19 ing specific parties that affect the in-  
20 terests of such member; and

21 “(III) address how the covered  
22 eligible candidate will address his or  
23 her own conflicts of interest during a  
24 Presidential term if the covered eligi-

1           ble candidate becomes the President-  
2           elect;

3           “(iii) a Code of Ethical Conduct,  
4           which each member of the transition team  
5           will sign and be subject to, that reflects  
6           the content of the ethics plans under this  
7           paragraph and at a minimum requires  
8           transition team members to—

9                   “(I) seek authorization from  
10                   transition team leaders or their des-  
11                   ignees before seeking, on behalf of the  
12                   transition, access to any nonpublic in-  
13                   formation;

14                   “(II) keep confidential any non-  
15                   public information provided in the  
16                   course of the duties of the member  
17                   with the transition and exclusively use  
18                   such information for the purposes of  
19                   the transition; and

20                   “(III) not use any nonpublic in-  
21                   formation provided in the course of  
22                   transition duties, in any manner, for  
23                   personal or private gain for the mem-  
24                   ber or any other party at any time  
25                   during or after the transition; and

1           “(iv) a description of how the transi-  
2           tion team will enforce the Code of Ethical  
3           Conduct, including the names of the mem-  
4           bers of the transition team responsible for  
5           enforcement, oversight, and compliance.

6           “(C) PUBLICLY AVAILABLE.—The transi-  
7           tion team shall make the ethics plan described  
8           in this paragraph publicly available on the  
9           ~~Internet~~ *internet* website of the General Serv-  
10          ices Administration the earlier of—

11                   “(i) the day on which the memo-  
12                   randum of understanding is completed; or

13                   “(ii) October 1.”.

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