



Recommendation 88-1

Presidential Transition Workers' Code of Ethical Conduct

(Adopted June 9, 1988)

The orderly and peaceful transfer of governmental authority following presidential elections is a hallmark of American government. The Presidential Transition Act of 1963 recognizes a smooth transition is necessary to "assure continuity in the faithful execution of the laws and in the conduct of the affairs of the Federal Government, both domestic and foreign," and it directs all officers of the government to take steps to promote the orderly transition of power between the outgoing and incoming administrations.¹

Since 1933, when Inauguration Day was moved forward from March 4 to January 20, the length of presidential transitions has been moved between 71 and 79 days. However, the size and complexity of the transition task has grown steadily over time, corresponding to the tremendous growth in federal responsibilities. Each new President-elect has required a larger and more sophisticated transition organization than his predecessor.

The President-elect's transition organization must, in this brief period, prepare to provide the new leadership with comprehensive information on the organization and responsibilities of each federal agency; on the resources within each agency, including the budget, legislative initiatives, personnel and grants or contracts; and on the policy questions that will require decision by the new administration. This information is the basis for the President-elect's personnel, budgetary and policy decisions during the critical initial period of the new administration.

A large number of private citizens must be relied upon to accomplish these important tasks. During the 1980-81 presidential transition, over six hundred persons, most serving as volunteers, had active assignments on agency transition teams. Many of these persons were selected because of their substantive knowledge of the agency's mission, acquired either through past service in the government or in private sector jobs that brought them in contact with the agency. The magnitude and importance of the transition tasks, and the limited time available to complete them, suggest that future Presidents-elect will continue to rely upon large

¹ 78 Stat. 153, section 2; 3 U.S.C. 102 note.



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numbers of private citizens, some of whom later will be offered government appointments but many of whom will return to their private sector jobs.

The Administrative Conference wishes to encourage the participation of well qualified individuals in presidential transitions, but it recognizes that the presence of large numbers of private transition workers dealing with federal agencies offers the potential for conflicts of interest or abuse of the public trust that accompanies their special access to government information and facilities. The Conference is not acting upon knowledge of serious problems in this regard in recent transitions, but rather upon the need to prevent such problems from occurring in the future.

In this recommendation the Conference urges the President to issue an executive order to the heads of all federal agencies (including independent regulatory agencies), conditioning special access to federal agency records and facilities by members of the President-elect's transition team upon their agreement in writing to the standards of conduct set forth in the Appendix to this recommendation. The recommended executive order would cover the activities only of "special transition team members," *i.e.*, transition workers, who are not existing government employees, who serve with or without compensation, and who are authorized by the President-elect's transition organization to seek or obtain access to non-public government information. The Conference believes private citizens are not, and should not be considered, special government employees and thereby subject to federal conflict-of-interest laws, solely because of their activities as special transition team members.

Two concerns are addressed by this recommendation. First, federal agency officials need to know who actually represents the President-elect before granting special access to information. Second, the public needs assurance that authorized transition workers will not use such information to further their own financial interests or the interests of their present or future employers or other private persons.

The Conference believes the recommended executive order and transition standards of conduct will alleviate these concerns without reducing the flexibility of the President-elect's transition effort. By urging the President to direct federal agencies affirmatively to cooperate with authorized transition personnel to the extent permitted by law and consistent with their official duties, the recommendation should facilitate the President-elect's transition efforts.

The Conference's recommendation includes requirements contained in pending legislation to amend the Presidential Transition Act of 1963 for minimal disclosure of personal or financial



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information by transition team workers.² The Conference believes transition team members should supply this limited information to agencies, whether or not the pending legislation is enacted. The Conference also recommends that special transition team members agree not to use non-public government information, or to take any action as transition team members which could further their own financial interests.

Recommendation

1. The Conference recommends the President issue an executive order that conditions access by special transition team members to government facilities or non-public information upon their agreement in writing to the standards of conduct set forth in the Appendix to this recommendation. The term "special transition team member" is used herein to mean a person who is not a government employee, who serves with or without compensation as a member of a transition team, and who is authorized by the President-elect to seek or obtain access to non-public government information or facilities.

2. The executive order should direct the heads of all federal agencies to require the President-elect's transition organization to provide each agency with a list of the special transition team members for that agency, copies of their written agreements to comply with the standards of conduct and copies of information disclosure statements, as a condition of access by such members. The agencies should be required to maintain and make those documents available to the public upon request.

3. The executive order should direct all agency heads, subject to the above conditions, to cooperate with persons named by the President-elect or his designees as special transition team members to the extent permitted by law and consistent with the performance of official duties.

4. The executive order should direct all agency heads to take appropriate action against any person found to have violated the standards of conduct agreement, including, where authorized and in accordance with applicable procedures, barring the person from

² H.R. 3932, passed by the House of Representatives on March 31, 1988, and S. 2037, passed by the Senate on April 26, 1988, would require disclosure of the names of transition team workers, their most recent employment and the source of funding of their transition activities as a condition of receipt of public funds for transition activities.



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employment, receipt of contracts, representation of others before the agency, or referral of the matter to appropriate professional disciplinary bodies.

Appendix--Transition Code of Ethical Conduct

Each person who is not an employee or special government employee of the federal government and who assists in the presidential transition, with or without compensation, and who is designated by the President-elect to seek or obtain access to non-public government information or facilities during the transition period (herein referred to as a "special transition team member"), shall agree to comply with the following standards of conduct as a condition of such access.

1. Disclosure of Information

A special transition team member shall supply the agency with a statement as to his or her present employment and the sources of funding which support his or her transition activities.

2. Misuse of Inside Information

A special transition team member shall not use, permit others to use, or disclose non-public information except for the public purposes of the transition.

3. Financial Self-Dealing

During the transition period, a special transition team member shall not knowingly take any action on a particular matter involving the federal agency which could have a direct effect upon a financial interest of the transition team member, his or her spouse, a family member, or any individual with whom the transition team member has a business, professional or close personal relationship.

4. Concurrent Representation in Agency Proceedings

During the transition period, a special transition team member shall not advise or represent, with or without compensation, anyone in any particular matter involving a federal agency to which he or she has had access to non-public information. This restriction does not extend to the special transition team member's firm or organization, but the team member should advise his or her firm or organization to establish procedures to assure that the team member does not participate in any way in any such agency proceeding.



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5. Misuse of Government Property

A special transition team member shall conserve and protect federal property entrusted to him or her, and shall not use federal property, including equipment and supplies, other than for purposes directly related to transition activities.

6. Post-Transition Activities

For two years after the transition, a former special transition team member shall not represent, with or without compensation, any person before an agency in any particular matter involving a specific party or parties as to which he or she obtained government information not then available to the public and not made public prior to the request for advice or representation.

7. Definitions

As used in this Appendix [Order], the terms "employee," "special government employee," "particular matter"³ and "particular matter involving a specific party or parties" shall have the same meaning as in title 18, United States Code 202-209. The term "transition period" shall extend from the date of the general election in which the identity of the President-elect is established until Inauguration Day, or if the transition organization continues to operate after the inauguration, such later date through which the special transition team member continues to serve in that capacity.

Citations:

53 FR 26026 (July 11, 1988)

___ FR _____ (2011)

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³ It is noted that the term "particular matter" has been interpreted to include rulemaking and general policy matters, and extends to all discrete matters that are the subject of agency action, no matter how general the effect.