

Responses to Questions of the Subcommittees of November 29, 2000

1. What criteria are the Administrator of General Services using to ascertain the apparent successful candidates for the Office of the President and Office of the Vice President? How did GSA develop these criteria? By whom were these criteria approved? With whom has the Administrator consulted to develop these criteria and/or to make a determination that the election outcome remains unclear?

The Presidential Transition Act of 1963 makes the Administrator of General Services responsible for "ascertaining" the "apparent successful candidates" for President and Vice President before the funds, services and facilities authorized by the Act become available to the Presidential Transition Team. The Act gives no guidance, criteria, or deadlines for making this ascertainment, and the General Services Administration (GSA) has not created any criteria for making this determination. Our interpretation of the Act is that that this determination should not be made unless and until it is clear who the winners are. Under the Presidential Transition Act, GSA has no role in determining who the next President will be or affecting the contest for the Presidency. The law does not authorize the Administrator to pick the next President or predict who the next president will be. Instead, the law creates a simple, common sense requirement for the Administrator to identify the President-elect after it is clear that one candidate has won the election. In this unprecedented, incredibly close, and intensely contested election, with legal action being pursued by both candidates, it is not apparent to the Administrator who the winner is. That is why he has not "ascertained" a President-elect.

The Administrator has read the law and listened carefully to his legal staff. They, in turn, have sought information and legal assistance from the Department of Justice and information from the Secret Service. No one has told the Administrator what to do – not the President, nor anyone else in the White House. The Administrator has consistently said the same thing: the apparent winner will become obvious. It is not obvious as of the writing of this response.

2. For the purposes of the Presidential Transition Act, the certification of the vote in Florida and the awarding of a majority of the electoral votes to Governor George W. Bush makes Governor George W. Bush the apparent successful Presidential candidate. Does GSA agree or disagree? Why or why not?

As stated in response to question 1, the only requirement of the Act is that the successful candidate be apparent. As these words are written, in consideration of all the facts and circumstances surrounding the election, the Administrator does not consider that there is an apparent winner.

3. How long will GSA wait before releasing Presidential Transition funding to the Presidential Transition Team of the apparent successful Presidential candidate? Does this delay in releasing the funds constitute a deferral? If so, when will the Clinton Administration submit a deferral message to the Congress?

In accordance with the Presidential Transition Act of 1963, as amended, funding will be available, upon request, to the President-elect and Vice President-elect, once the Administrator has ascertained the apparent successful candidates. In our opinion, compliance with the plain language of the Presidential Transition Act does not constitute a deferral under the terms of and the intent of 2 U.S. Code 681-688, since we are ready to make the funds available as soon as the terms of the Presidential Transition Act are met.

4. Under the Presidential Transition Act, authorization for the expenditure of funds incurred by the President-elect and Vice President-elect expires 30 days after the date of the inauguration. Given the delay in the transition, does GSA anticipate a need to extend this authorization and will GSA seek such authority?

GSA has requested the Congress to extend the time available for expenditure of transition funds to allow the funds to be expended for 60 days after the date of the inauguration. Such an extension would apply to this transition only, because of the unprecedented circumstances that surround it.

5. Inclusion of these funds as part of a continuing resolution was justified by the Administration on the basis of the critical need for moving quickly to support the Presidential transition team of the incoming Administration. Given the strength of this argument, why is GSA delaying its support for the Presidential transition team of the apparent successful candidate?

GSA has supported the transition teams of both candidates since August and continues to do so every day. GSA has worked very hard to have capabilities ready so the winning team can be productive quickly once we have an apparent winner. As stated in response to questions 1 and 2, as of this writing, it is not apparent who the successful candidates for President and Vice President are.

Because the President-elect and his team will have a shortened transition period, we at GSA know we will have to move quickly to give them the tools they need for a smooth transition. In order to facilitate this, we have worked diligently with both campaigns since August and we continue to do so on a daily basis. We have leased office space, provided security for it, fully furnished and equipped it, and arranged for telecommunications and information technology services to

begin as soon as a President-elect is apparent. We have begun planning the orientation activities and prepared a working draft of the transition directory authorized under the Presidential Transition Act of 2000.

We are continuing to work closely with both campaigns to shorten the turnover time so that what once took a week or more can now be done in a day or within hours. We talked with both campaigns before the election to ensure we were setting up the space and systems so that they could use them productively. In the last few days we have suggested additional steps to speed the turnover – such things as creating Local Area Network and e-mail accounts and passwords, beginning background checks on their staffs, providing their staffs with remote access to the Transition intranet, preparing financial and contractual documents for goods and services their teams will need, and even ordering stationery.

We are acting professionally and with no bias toward either candidate. We will keep doing all we can to help the turnover occur at net speed.

6. How much of the \$5,270,000 appropriated to support the Presidential Transition team of the incoming Administration has GSA expended to date and for what purposes? To date, has GSA obligated funds for the transition from any other appropriation account? If so, from what account? Will GSA seek reimbursement from the Presidential Transition fund for these obligations? Provide both obligations to date and total estimated obligations, by object class and appropriation account.

GSA has not expended any of the \$5,270,000 appropriated to support the incoming Presidential Transition team.

Section 2 of the Transition Act permits officers of the Government to conduct the affairs of the government for which they exercise responsibility and authority so as to promote an orderly transition in the Office of the President. As in past transitions, in fulfilling our role under the Act, GSA has expended funds to procure and install telecommunications and IT equipment, deliver furniture and furnishings, and provide security for the selected space to ensure that the facility is ready and available, upon the request of the President-elect or his designee. To date, GSA has obligated \$208,000 from the IT Fund, \$173,000 from the General Supply Fund, and \$17,500 from the Working Capital Fund in support of the Transition for which we will seek reimbursement. A list of obligations to date and total estimated obligations, by object class and appropriation account is attached.

The cost of rent is estimated to be approximately \$700,000 for three months. GSA has traditionally waived rent charges upon the request of the President-elect, when this space is available in our inventory at no additional cost to the Government, as it is in this case.

7. Are there any restrictions on a candidate's ability to use funds from private sources or campaign funds for Presidential transition activities? What experiences, amounts, and mechanisms have been used in the past to augment federally appropriated Presidential Transition funding?

The 1988 amendments to the Act provide that, as a condition for receiving funds and services under the Act, the President-elect must disclose the date of the contribution, source, amount, and expenditure of all monetary contributions. These amounts for transition purposes can be received before or after the date of the election and must be limited to no more than \$ 5,000 from any person, organization, or other entity. The General Services Administration defers to the Federal Elections Commission on whether campaign funds are available for Presidential transition activities. It is our understanding, however, that 2 U.S.C. § 439a provides that contributed amounts can be used to defray any ordinary and necessary expenses incurred in connection with a successful candidate's duties as a holder of Federal office.

Before the Presidential Transition Act of 1963, the President-elect and his political party privately funded all transition efforts. Amounts spent on prior transition efforts were discussed most recently in Senate Report Presidential Transitions Effectiveness Act, S. REP. NO. 100-317, at 2-4 (1988) which is attached. Because this reporting requirement became effective in 1988, information is only available from the past two transitions. For the Bush/Quayle incoming administration, no donated funds were accepted, and \$140,075 in in-kind donations were reported. For the Clinton/Gore incoming administration \$5,263,963 in donated funds were reported. The requirement to report in-kind donations was a one-time requirement for the 1988-1989 transition, and in-kind donations were not reported to the Administrator for the 1992-1993 transition.

8. In the event that private or campaign funds are used for transition-related expenses typically covered by federally-appropriated Presidential Transition funding, is GSA authorized to reimburse the President-elect and Vice-President-elect for these transition-related expenses?

This issue has never come up before and GSA is still reviewing the matter.