



United States  
**Office of Government Ethics**  
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Washington, DC 20005-3917

December 28, 2000  
DO-00-048

## MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Amy L. Comstock  
Director

SUBJECT: Presidential Transition

Designated Agency Ethics Officials have an important role to play during the transition to the new Presidential Administration. They review financial disclosure reports of prospective Presidential nominees and prepare ethics briefings and training materials for incoming senior officials. In addition, ethics officials may find themselves confronting questions concerning the activities of members of the President-elect's Transition Team.

The answers to some of these questions will depend upon the circumstances and employment status of individual members of the President-elect's Transition Team. The President-elect's Transition Team includes people from a variety of backgrounds, such as campaign staff, unpaid volunteers, experts from previous administrations, and the private sector. Most of these people are not current Federal employees, although some may have prior executive branch experience. It is critical to know whether an individual member of the President-elect's Transition Team is a current or former Federal employee whenever a question arises concerning a particular activity.

The purpose of this memorandum is to provide guidance on these and other relevant transition issues.

### **Standards of Conduct and Disclosure Requirements Applicable to Transition Team Members**

The President-elect's Transition Team is not a Federal agency, and, except for limited purposes not relevant here, its members do not become Federal employees by virtue of their service on it. Accordingly, members of the President-elect's Transition Team who are not otherwise executive branch employees are not subject to the ethics laws and regulations applicable to members of the President-elect's Transition Team who are executive branch employees.

Following the practice of recent transitions, the President-elect's Transition Team has adopted its own code of ethical conduct to which its members must agree to abide as a condition of service. A copy of the "Transition Code of Ethical Conduct" is attached. Note that while it resembles the Standards of Ethical Conduct for Employees of the Executive Branch, it is not

enforceable through agency processes. Also attached are a copy of the Memorandum of Understanding (MOU) entered into between the current Administration and the Chairman of the President-elect's Transition Team, and a copy of a policy statement accompanying the MOU regarding the identification of individuals charged with transition responsibilities and the disclosure of information to transition personnel.

Members of the President-elect's Transition Team do not file the public or confidential financial disclosure reports required of executive branch employees. However, they are subject to reporting requirements under the Presidential Transition Act. Section 5(b) of the Act, as amended by the Presidential Transitions Effectiveness Act, provides that the names and most recent employment of the personnel of a department or agency's transition team, as well as information regarding the sources of funding that support the transition activities of each member of that team, shall be made public before the initial contact by the department or agency transition team. This applies whether the team member is full or part-time, a Federal or non-Federal employee, or a volunteer. This information must be updated as necessary. Pursuant to the above-referenced MOU, the Office of the President-elect is designating department and agency transition team chiefs and members, and providing the information required to be made public about those individuals, in letters to the current Administration. The current Administration, in turn, through the Office of the Chief of Staff to the President (which is serving as the Office of the President's Transition Team), is providing to each department's and agency's designated transition point of contact updated copies of the official register of individuals on the President-elect's Transition Team authorized to work with that department or agency.

### **Transition Team Members Who Are Former Government Employees**

For members of the President-elect's Transition Team who are former executive branch employees, consideration must be given to potential post-employment issues. For example, a question may arise regarding the applicability of the one-year no-contact bar under 18 U.S.C. § 207(c) where a former senior official who, within one year after having resigned his or her position with the agency, becomes a member of the President-elect's Transition Team and is assigned to work on transition matters involving their former agency. For very senior employees subject to the one-year bar under 18 U.S.C. § 207(d), the scope of the restriction could potentially apply to contacts across the executive branch.

Section 207(j)(7) provides an exception to the one-year no-contact ban where the "communication or appearance is made solely on behalf of a candidate in his or her capacity as a candidate . . . ." In a recent opinion, the Office of Legal Counsel (OLC) at the Department of Justice determined that a candidate for President of the United States remains a candidate, for purposes of 18 U.S.C. § 207, until he or she assumes that office. Consequently, notwithstanding the post-employment restrictions at 18 U.S.C. §§ 207(c) and (d), a member of the President-elect's Transition Team who otherwise meets the conditions of the section 207(j)(7) exception may continue to communicate on behalf of the President-elect until he assumes office. This OLC opinion, as well as the relevant DAEOgram dated November 17, 2000, are available on the Office of Government Ethics (OGE) Website at [www.usoge.gov](http://www.usoge.gov).

### **Transition Team Members Who Are Current Government Employees**

Questions may also arise with regard to the assignments of current Federal employees who are detailed to the President-elect's Transition Team. Consistent with its prior holding in 4 Op. O.L.C. 498 (1980) and with advice OLC provided to this Office in 1988, it is OLC's view that agency contacts made by current Federal employees who are detailed to the President-elect's Transition Team do not violate 18 U.S.C. §§ 203 and 205.

**Processing Nominee Reports During the Transition**

Under an arrangement with the Transition Clearance Counsel, draft financial disclosure reports for potential nominees will come to the Office of Government Ethics (OGE) which, in turn, will forward them to the appropriate Designated Agency Ethics Official (DAEO). It is our plan that nominee forms will be reviewed by OGE and the agency concurrently. An OGE reviewer will contact you as soon as we receive a form for your agency.

In a separate DAEOgram we hope to provide you with the names and telephone numbers of persons to whom you may address questions concerning interpretations of the Transition Code of Ethical Conduct, and questions concerning the clearance of nominee financial disclosure reports. In the meantime, please do not hesitate to contact OGE with any questions you may have about the information in this DAEOgram.

TRANSITION CODE OF ETHICAL CONDUCT

As a condition of being permitted to serve as a member of the transition of the President-elect, I agree to abide by the following requirements:

1. I will disqualify myself from involvement in any particular transition matter which to my knowledge may directly conflict or appear to conflict with a financial interest of mine, my spouse, minor child, partner, client or other individual or organization with which I have a business or close personal relationship.
2. I will not solicit or accept any money or things of value in exchange for a promise to support or use influence on behalf of any person who is a candidate for any appointive office or place in the United States Government.
3. I understand that in my transition-related activities, unless given specific authorization, I am not permitted to make any representations on behalf of President-elect Bush or Vice President-elect Cheney, their designees, or any official of the transition.
4. I understand that authorization is required from the transition Chairman, Executive Director or a designee of one of them before seeking, on behalf of the transition, access to any non-public information.
5. I will hold in confidence any non-public information provided to me in the course of my duties with the transition and ensure that such information is used exclusively for purposes of the transition.
6. I will not use or permit to be used any non-public information, in any manner, for any private gain for myself or any other party, at any time during or after the transition.
7. For six (6) months after the transition, I will not represent, with or without compensation, any person before an agency in any particular matter involving a specific party or parties as to which I obtained government information not then available to the public and not made public prior to the request for advice or representation.
8. I will conserve and protect any federal property entrusted to me, and shall not use federal property, including equipment and supplies, other than for purposes directly related to transition activities.
9. I understand that my commitment to abide by these requirements may be made public and that this document will be made available to any department or agency to which I may be assigned. I will seek guidance from the Counsel to the President-elect, or designated agency ethics officials, as appropriate, if necessary to ensure compliance with these standards of conduct. I furthermore acknowledge that failure to comply with the above provisions may result in my dismissal from the transition and that other sanctions may be imposed as appropriate.

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Signature

\_\_\_\_\_  
Date

Name and Address:  
  
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## POLICY STATEMENT CONCERNING IDENTIFICATION OF TRANSITION CONTACTS AND INFORMATION DISCLOSURE TO TRANSITION PERSONNEL

To effect an orderly transition, the President-elect and his associates must become knowledgeable about current government policies and operations so that they can begin making informed decisions immediately upon taking office. This policy statement addresses the procedures for identifying individuals charged with transition responsibilities and for disclosing information to transition personnel. It implements a Memorandum of Understanding entered into between the Director of the President's Transition Team and the Chairman of the President-elect's Transition Team, a copy of which is attached.

### I. Identification of Transition Contacts

In order to protect interests of the President and the President-elect and to avoid unnecessary interference with ongoing government operations, it is important that Departments and agencies verify that the individuals who seek access to government information or employees are, in fact, authorized members of the President-elect's Transition Team. Consequently, the Departments and agencies should, before they have any dealings with individuals representing themselves as members of the President-elect's Transition Team, verify that the individual's names appear on the official register of the President-elect's Transition Team. The Chairman of the President-elect's Transition Team will agree to provide to the Director of the President's Transition Team the names of all authorized individuals (including a Transition Team chief for each Department or agency who heads the transition effort for that Department or agency), along with written assurance that the individuals have agreed to abide by the Transition's Code of Ethical Conduct and have thereby represented that they have no conflict of interest that precludes them from working on the matters they have been assigned to work on by the President-elect's Transition Team. The Director of the President's Transition Team will provide an updated copy of that register to the Departments and agencies when any changes to the authorized list occur. If an individual contacts a Department or agency on behalf of the Transition who is not listed on that register as authorized to work with that Department or agency, the individual will be informed that assistance cannot be provided to that individual until he or she appears on the Transition Team's official register of individuals authorized to receive assistance and, if necessary, the Department or agency will contact the Office of the Director of the President's Transition Team [the Office of the Chief of Staff] for guidance.

### II. Transition Point of Contact

The official transition point of contact designated by each Department and agency will serve as the point of contact for providing other contacts, information, and services to authorized members of the President-elect's Transition Team. Thus, any meetings with the President-elect's Transition Team members should be authorized by that contact, and any materials provided to the President-elect's Transition Team members should likewise be authorized by that contact.

### III. Disclosure of Information Not Available to the General Public

As a general matter, most of the information needs of the President-elect's Transition Team can be met by providing them with access to public information. In limited circumstances, however, it will be necessary to provide specified transition personnel with access to information or records not available to the general public. Such material may be protected by constitutional, statutory or common law privileges, or its distribution may otherwise be restricted by law. In addition, provision of such information may raise issues under the Government's standards of conduct, which preclude government employees from allowing the improper use of non-public information to further the private interests of another through knowing unauthorized disclosure.

The following procedures should be observed in disclosing information not available to the general public to members of the President-elect's Transition Team.

#### A. General Procedures for Disclosure of Information Not Available to the General Public

Before providing information not available to the general public to a member of the President-elect's Transition Team, Departments and agencies should expeditiously:

- Brief the Transition Team member on the importance of maintaining the constitutional, statutory and/or common law safeguards afforded the non-public information.
- Clearly label non-public records provided to Transition Team personnel with a warning against subsequent disclosures to unauthorized individuals, including unauthorized members of the Transition Team.
- Specifically advise Transition Team members that non-public information provided to them cannot be shared with other Transition personnel unless they meet the requirements for access to that information.
- Require the Transition Team member to sign a statement representing that, to that member's knowledge, he or she has no financial interest or imputed financial interest that would be directly and predictably affected by a particular matter to which the information is pertinent,<sup>1</sup> and that he or she pledges to abide by applicable nondisclosure requirements, as defined by the department or agency. The Department or agency may require such additional information from the Transition Team member as the Department or agency deems necessary, in light of the proposed disclosure.

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<sup>1</sup> The Terms "financial interest," "imputed financial interest," "direct and predictable effect," and "particular matter" have the same meaning in this memorandum as in 18 U.S.C. 208 and the regulations interpreting those terms set out in 5 C.F.R. parts 2635 & 2640. A financial interest for which 5 C.F.R. part 2640 provides a waiver will not block access to information.

- Where advisable, prohibit the Transition member from removing records containing non-public information from the offices of the Department or agency.

Upon request from the Department or agency, the Chairman of the President-elect's Transition Team (or his designee, identified in writing to the Director of the President's Transition Team) will provide a statement indicating the Transition Team member's need for access to the non-public information.

After a disclosure of information not available to the general public is made, Department or agency personnel should make a written record of the disclosure, including a description of the non-public information, the identity of the person to whom the disclosure was made, and a summary of the steps taken to protect against subsequent disclosure of the information.

#### B. Classified Information

Before providing any classified information to a member of the President-elect's Transition, pursuant to Executive Order 12598, as amended. Departments and agencies must establish the following:

- That the member has the security clearances necessary to have access to that information, and has the requisite need to know, and
- That the member has signed the requisite non-disclosure agreement.

#### C. Attorney-Client Material

Information protected by the attorney-client privilege should not be disclosed to any member of the President-elect's Transition Team. The Department of Justice advises that disclosure of such information may waive this privilege.

#### D. Privacy Act Material

To avoid any possible violation of the Privacy Act, Departments and agencies should not disclose any Privacy Act records or information, including official personnel folders, performance evaluation information, information from a resume, or Form SF-171 Personnel Qualification Statement, without the express written consent of the affected employee.

#### E. Material Subject to Other Statutory Protections

The above list does not exhaust the list of statutory protections that may preclude disclosure of material. Departments and agencies should, of course, abide by other applicable statutory restrictions on disclosure of information.

F. Issues Relating to This Policy Statement

Any issues between members of the President-elect's Transition Team and Departments and agencies should be addressed, in the first instance, by discussion between the Department's or agency's transition contact and the Office of the President-elect's designated Transition Team chief for the Department or agency. Matters that cannot be resolved should be referred to the respective Directors.

Attachment



MEMORANDUM OF UNDERSTANDING REGARDING TRANSITION PROCEDURES,  
IDENTIFICATION OF TRANSITION CONTACTS, AND ACCESS TO NON-PUBLIC  
GOVERNMENT AND TRANSITION INFORMATION

- (1) The Administration and the President-elect's Transition Team agree that, in order to effect an orderly transition of power in accord with the Presidential Transition Act, as amended, and Executive Order 13176, the President-elect and certain of his associates must become knowledgeable about current government policies and operations so that they can begin making informed decisions immediately upon taking office.
- (2) The Administration and the President-elect's Transition Team enter into this memorandum of understanding in order to establish an orderly process for identifying individuals charged with transition responsibilities, to ensure that the Government's and the Office of the President-Elect's standards of conduct are observed, to protect the confidentiality of non-public government information made available to the President-elect's Transition Team during the transition period, to preserve the constitutional, statutory and common law privileges that attach to such information in the possession of the Executive Branch, and to protect the confidentiality of transition information made available to the Government.
- (3) The Chairman of the President-elect's Transition Team will furnish in writing to the Director of the President's Transition Team the name of each individual authorized by the President-elect's Transition Team to work with particular Departments and agencies, including designation of a Transition Team chief for that Department or agency. The Chairman of the President-elect's Transition Team will also indicate in writing that each individual on the list has met the applicable public disclosure requirements of the Presidential Transition Act, as amended, has agreed to abide by the Transition's Code of Ethical Conduct, and has thereby represented that he or she has no conflict of interest that precludes the individual from working on the matters the Transition has assigned the individual to work on with that Department or agency. The Director of the President's Transition Team will forward these names to the appropriate Departments and agencies. The Director of the President's Transition Team will also provide in writing to the Chairman of the President-elect's Transition Team the names of individuals in the Departments and agencies responsible for transition matters.
- (4) The Administration will conduct its transition activities with the President-elect's Transition Team through the contacts authorized by the President-elect's Transition Team. The authorized members of the President-elect's Transition Team will initiate transition activities with the Administration involving a particular Department or agency by contacting the individual designated by the President's Transition Team Director and will go through that individual with respect to other contacts it wishes to make or information it wishes to seek.
- (5) In some limited circumstances, it may be necessary to provide specified transition personnel with access to non-public information that may be protected by constitutional, statutory or common law privileges, and material whose distribution is otherwise restricted by law. The President's Transition Team Director has advised the President-elect's Transition Team that

agency personnel will take the steps required by law, including the Executive Branch standards of conduct, the Privacy Act and the attorney-client privilege, to protect such information. In particular, a government employee may not allow the improper use of non-public information to further his own private interest or that of another by knowing unauthorized disclosure. 5 C.F.R. 2640. The President-elect's Transition Team recognizes that there is some information that the Department or agency may not be able to provide in order to comply with statutory requirements or otherwise preserve applicable privileges.

- (6) In order to facilitate a smooth transition and provide a mechanism for expeditiously addressing any concerns, including ethical, privacy and privilege concerns, regarding access to non-public information as described in paragraph (5), the Director of the President's Transition Team and the Chairman of the President-elect's Transition Team will each designate in writing an official or officials authorized to confer in order to resolve such concerns informally.
- (7) The President's Transition Director further advises that, before providing any classified information to a member of the President-elect's Transition, pursuant to Executive Order 12958, as amended, Departments and agencies must establish the following:
  - That the member has the security clearances necessary to have access to that information, and the requisite right to know, and
  - That the member has signed the requisite non-disclosure agreement.
- (8) The President's Transition Director advises that, before providing non-public information as described in paragraph (5) to a member of the President-elect's Transition authorized to receive it under the guidelines established in this memorandum, Departments and agencies will expeditiously:
  - Brief the Transition Team member on the importance of maintaining the constitutional, statutory and/or common law safeguards afforded the non-public information.
  - Clearly label non-public records provided to Transition Team personnel with a warning against subsequent disclosures to unauthorized individuals, including unauthorized members of the Transition Team.
  - Specifically advise Transition Team members that non-public information provided to them cannot be shared with other Transition personnel unless they meet the requirements for access to that information.
  - Require the Transition Team member to sign a statement representing that, to that member's knowledge, he or she has no financial interest or imputed


financial interest<sup>2</sup> that would be directly and predictably affected by a particular matter to which the information is pertinent. The Department or agency may require such additional information from the Transition Team member as the Department or agency deems necessary, in light of the proposed disclosure.


- Where advisable, prohibit the Transition Team member from removing records containing non-public information from the offices of the Department or agency.

Upon request from the Department or agency, the President-elect's Transition Team will provide a statement indicating that Transition Team member's need for access to the non-public information. The statement of need will be provided by the Chairman of the President-elect's Transition Team (or individuals designated by him to do so in writing) to the Director of the President's Transition Team.

After such a disclosure is made, Department or agency personnel shall make a written record thereof.

- (9) It may also be necessary for members of the President-elect's Transition Team to share with the Administration information that they wish to be kept confidential. Accordingly, to the extent permitted by law, the Administration agrees to protect the confidentiality of information provided to it on a confidential basis by the President-elect's Transition Team.
- (10) Any disagreements between the Administration and the President-elect's Transition Team concerning the subject matter of this memorandum that are not resolved informally pursuant to paragraph (6) or otherwise will be referred by the Administration to the President's Transition Director and by the President-elect's Transition Team to the President-elect's Transition Team Executive Director.
- (11) To the extent permitted by law, the Administration, with respect to its staff members and the President-elect's Transition Team, state that they intend to take appropriate steps to discipline any person who fails to comply with the terms of this agreement.

  
Dated: 12/18/00

  
VICE PRESIDENT-ELECT AND  
CHAIRMAN OF THE TRANSITION  
Dated: 12-19-00

<sup>2</sup> The Terms "financial interest," "imputed financial interest," "direct and predictable effect," and "particular matter" have the same meaning in this memorandum as in 18 U.S.C. 208 and the regulations interpreting those terms set out in 5 C.F.R. parts 2635 & 2640. A financial interest for which 5 C.F.R. part 2640 provides a waiver will not block access to the information.