

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO S. 1172
OFFERED BY MR. CHAFFETZ OF UTAH AND MR.
CUMMINGS OF MARYLAND**

Strike all after the enacting clause and insert the following:

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;

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

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

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

10 “(b) GENERAL DUTIES.—The President shall take
11 such actions as the President determines necessary and
12 appropriate to plan and coordinate activities by the Execu-
13 tive branch of the Federal Government to facilitate an effi-
14 cient transfer of power to a successor President, including
15 by—

16 “(1) establishing and operating a White House
17 transition coordinating council in accordance with
18 subsection (d); and

19 “(2) establishing and operating an agency tran-
20 sition directors council in accordance with subsection
21 (e).

22 “(c) FEDERAL TRANSITION COORDINATOR.—The
23 Administrator shall designate an employee of the General
24 Services Administration who is a senior career appointee
25 to—

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

5 “(2) serve as the Federal Transition Coordi-
6 nator with responsibility for coordinating transition
7 planning across agencies, including through the
8 agency transition directors council established under
9 subsection (e);

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

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

14 “(d) WHITE HOUSE TRANSITION COORDINATING
15 COUNCIL.—

16 “(1) ESTABLISHMENT.—Not later than 6
17 months before the date of a Presidential election, the
18 President shall establish a White House transition
19 coordinating council for purposes of facilitating the
20 Presidential transition.

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

23 “(A) provide guidance to agencies and the
24 Federal Transition Coordinator regarding prep-
25 arations for the Presidential transition, includ-

1 ing succession planning and preparation of
2 briefing materials;

3 “(B) facilitate communication and infor-
4 mation sharing between the transition rep-
5 resentatives of eligible candidates and senior
6 employees in agencies and the Executive Office
7 of the President; and

8 “(C) prepare and host interagency emer-
9 gency preparedness and response exercises.

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

13 “(A) senior employees of the Executive
14 branch selected by the President, which may in-
15 clude the Chief of Staff to the President, any
16 Cabinet officer, the Director of the Office of
17 Management and Budget, the Administrator,
18 the Director of the Office of Personnel Manage-
19 ment, the Director of the Office of Government
20 Ethics, and the Archivist of the United States;

21 “(B) the Federal Transition Coordinator;

22 “(C) the transition representative for each
23 eligible candidate, who shall serve in an advi-
24 sory capacity; and

1 “(D) any other individual the President de-
2 termines appropriate.

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

7 “(e) AGENCY TRANSITION DIRECTORS COUNCIL.—

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

11 “(A) ensure the Federal Government has
12 an integrated strategy for addressing inter-
13 agency challenges and responsibilities around
14 Presidential transitions and turnover of non-
15 career appointees;

16 “(B) coordinate transition activities be-
17 tween the Executive Office of the President,
18 agencies, and the transition team of eligible
19 candidates and the President-elect and Vice-
20 President-elect; and

21 “(C) draw on guidance provided by the
22 White House transition coordinating council
23 and lessons learned from previous Presidential
24 transitions in carrying out its duties.

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

4 “(A) assist the Federal Transition Coordi-
5 nator in identifying and carrying out the re-
6 sponsibilities of the Federal Transition Coordi-
7 nator relating to a Presidential transition;

8 “(B) provide guidance to agencies in gath-
9 ering briefing materials and information relat-
10 ing to the Presidential transition that may be
11 requested by eligible candidates;

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

16 “(D) ensure agencies adequately prepare
17 career employees who are designated to fill non-
18 career positions under subsection (f) during a
19 Presidential transition; and

20 “(E) consult with the President’s Manage-
21 ment Council, or any successor thereto, in car-
22 rying out the duties of the agency transition di-
23 rectors council.

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

1 “(A) the Federal Transition Coordinator
2 and the Deputy Director for Management of
3 the Office of Management and Budget, who
4 shall serve as Co-Chairpersons of the agency
5 transition directors council;

6 “(B) other senior employees serving in the
7 Executive Office of the President, as deter-
8 mined by the President;

9 “(C) a senior representative from each
10 agency described in section 901(b)(1) of title
11 31, United States Code, the Office of Personnel
12 Management, the Office of Government Ethics,
13 and the National Archives and Records Admin-
14 istration whose responsibilities include leading
15 Presidential transition efforts within the agen-
16 cy;

17 “(D) a senior representative from any
18 other agency determined by the Co-Chair-
19 persons to be an agency that has significant re-
20 sponsibilities relating to the Presidential transi-
21 tion process; and

22 “(E) during a year during which a Presi-
23 dential election will be held, a transition rep-
24 resentative for each eligible candidate, who shall
25 serve in an advisory capacity.

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

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

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

11 “(f) INTERIM AGENCY LEADERSHIP FOR TRANSI-
12 TIONS.—

13 “(1) OVERSIGHT AND IMPLEMENTATION OF
14 TRANSITION.—Not later than 6 months before the
15 date of a Presidential election, the head of each
16 agency shall designate a senior career employee of
17 the agency and a senior career employee of each
18 major component and subcomponent of the agency
19 to oversee and implement the activities of the agen-
20 cy, component, or subcomponent relating to the
21 Presidential transition.

22 “(2) ACTING OFFICERS.—Not later than Sep-
23 tember 15 of a year during which a Presidential
24 election occurs, and in accordance with subchapter
25 III of chapter 33 of title 5, United States Code, for

1 each noncareer position in an agency that the head
2 of the agency determines is critical, the head of the
3 agency shall designate a qualified career employee to
4 serve in the position in an acting capacity if the po-
5 sition becomes vacant.

6 “(g) MEMORANDUMS OF UNDERSTANDING.—

7 “(1) IN GENERAL.—Not later than November 1
8 of a year during which a Presidential election oc-
9 curs, the President (acting through the Federal
10 Transition Coordinator) shall, to the maximum ex-
11 tent practicable, negotiate a memorandum of under-
12 standing with the transition representative of each
13 eligible candidate, which shall include, at a min-
14 imum, the conditions of access to employees, facili-
15 ties, and documents of agencies by transition staff.

16 “(2) EXISTING RESOURCES.—To the maximum
17 extent practicable, the memorandums of under-
18 standing negotiated under paragraph (1) shall be
19 based on memorandums of understanding from pre-
20 vious Presidential transitions.

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

25 “(i) REPORTS.—

1 “(1) IN GENERAL.—The President, acting
2 through the Federal Transition Coordinator, shall
3 submit to the Committee on Oversight and Govern-
4 ment Reform of the House of Representatives and
5 the Committee on Homeland Security and Govern-
6 mental Affairs of the Senate reports describing the
7 activities undertaken by the President and agencies
8 to prepare for the transfer of power to a new Presi-
9 dent.

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

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

16 (1) in subsection (a)—

17 (A) in paragraph (8)—

18 (i) in subparagraph (A)(i)—

19 (I) by inserting “and during the
20 term of a President” after “during
21 the transition”; and

22 (II) by striking “after inaugura-
23 tion”; and

24 (ii) in subparagraph (B), by inserting
25 “or Executive agencies (as defined in sec-

1 tion 105 of title 5, United States Code)”
2 before the period; and

3 (B) in paragraph (10), by inserting “in-
4 cluding, to the greatest extent practicable,
5 human resource management system software
6 compatible with the software used by the in-
7 cumbent President and likely to be used by the
8 President-elect and Vice President-elect” before
9 the period;

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

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

15 (4) in subsection (h)(2), by adding at the end
16 the following:

17 “(D) An eligible candidate shall have a right to the
18 services and facilities described in this paragraph until the
19 date on which the Administrator is able to determine the
20 apparent successful candidates for the office of President
21 and Vice President.”.

22 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

23 (1) Section 3 of the Pre-Election Presidential
24 Transition Act of 2010 (3 U.S.C. 102 note) is re-
25 pealed.

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

3 (A) in section 3—

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

6 (ii) in subsection (b), in the matter
7 preceding paragraph (1), by striking “sec-
8 tion 3 of this Act” and inserting “this sec-
9 tion”; and

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

13 (B) in section 6, as redesignated by sub-
14 section (a) of this section, by striking “section
15 6(a)(1)” each place it appears and inserting
16 “section 7(a)(1)”; and

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

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

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

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

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

5 Section 2203(g) of title 44, United States Code, is
6 amended—

7 (1) by redesignating paragraph (3) as para-
8 graph (4); and

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

11 “(3) When the President considers it prac-
12 ticable and in the public interest, the President shall
13 include in the President’s budget transmitted to
14 Congress, for each fiscal year in which the term of
15 office of the President will expire, such funds as may
16 be necessary for carrying out the authorities of this
17 subsection.”.

18 **SEC. 4. REPORTS ON POLITICAL APPOINTEES APPOINTED**

19 **TO NONPOLITICAL PERMANENT POSITIONS.**

20 (a) DEFINITIONS.—In this section—

21 (1) the term “agency” has the meaning given
22 the term “Executive agency” in section 105 of title
23 5, United States Code;

24 (2) the term “covered civil service position”
25 means a position in the civil service (as defined in

1 section 2101 of title 5, United States Code) that is
2 not—

3 (A) a temporary position; or

4 (B) a political position;

5 (3) the term “former political appointee” means
6 an individual who—

7 (A) is not serving in an appointment to a
8 political position; and

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

13 (4) the term “political appointee” means an in-
14 dividual serving in an appointment to a political po-
15 sition; and

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

17 (A) a position described under sections
18 5312 through 5316 of title 5, United States
19 Code (relating to the Executive Schedule);

20 (B) a noncareer appointment in the Senior
21 Executive Service, as defined under paragraph
22 (7) of section 3132(a) of title 5, United States
23 Code; or

24 (C) a position in the executive branch of
25 the Government of a confidential or policy-de-

1 termining character under schedule C of sub-
2 part C of part 213 of title 5, Code of Federal
3 Regulations.

4 (b) REPORTING ON CURRENT OR RECENT POLITICAL
5 APPOINTEES APPOINTED TO COVERED CIVIL SERVICE
6 POSITIONS.—

7 (1) ANNUAL REPORT.—Except as provided in
8 paragraph (2), the Director of the Office of Per-
9 sonnel Management shall submit to the Committee
10 on Homeland Security and Governmental Affairs of
11 the Senate and the Committee on Oversight and
12 Government Reform of the House of Representatives
13 an annual report regarding requests by agencies to
14 appoint political appointees or former political ap-
15 pointees to covered civil service positions. Each re-
16 port shall cover one calendar year and shall—

17 (A) for each request by an agency that a
18 political appointee be appointed to a covered
19 civil service position during the period covered
20 by the report, provide—

21 (i) the date on which the request was
22 received by the Office of Personnel Man-
23 agement;

24 (ii) subject to subsection (c), the name
25 of the individual and the political position

1 held by the individual, including title, of-
2 fice, and agency;

3 (iii) the date on which the individual
4 was first appointed to a political position
5 in the agency in which the individual is
6 serving as a political appointee;

7 (iv) the grade and rate of basic pay
8 for the individual as a political appointee;

9 (v) the proposed covered civil service
10 position, including title, office, and agency,
11 and the proposed grade and rate of basic
12 pay for the individual;

13 (vi) whether the Office of Personnel
14 Management approved or denied the re-
15 quest; and

16 (vii) the date on which the individual
17 was appointed to a covered civil service po-
18 sition, if applicable; and

19 (B) for each request by an agency that a
20 former political appointee be appointed to a
21 covered civil service position during the period
22 covered by the report, provide—

23 (i) the date on which the request was
24 received by the Office of Personnel Man-
25 agement;

1 (ii) subject to subsection (c), the name
2 of the individual and the political position
3 held by the individual, including title, of-
4 fice, and agency;

5 (iii) the date on which the individual
6 was first appointed to any political posi-
7 tion;

8 (iv) the grade and rate of basic pay
9 for the individual as a political appointee;

10 (v) the date on which the individual
11 ceased to serve in a political position;

12 (vi) the proposed covered civil service
13 position, including title, office, and agency,
14 and the proposed grade and rate of basic
15 pay for the individual;

16 (vii) whether the Office of Personnel
17 Management approved or denied the re-
18 quest; and

19 (viii) the date on which the individual
20 was first appointed to a covered civil serv-
21 ice position, if applicable.

22 (2) QUARTERLY REPORT IN CERTAIN YEARS.—

23 In the last year of the term of a President, or, if ap-
24 plicable, the last year of the second consecutive term
25 of a President, the report required under paragraph

1 (1) shall be submitted quarterly and shall cover each
2 quarter of the year, except that the last quarterly re-
3 port shall also cover January 1 through 20 of the
4 following year.

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

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

10 (1) who—

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

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

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

18 **SEC. 5. REPORT ON REGULATIONS PROMULGATED NEAR**

19 **THE END OF PRESIDENTIAL TERMS.**

20 (a) DEFINITIONS.—In this section:

21 (1) The term “covered presidential transition
22 period” means each of the following:

23 (A) The 120-day period ending on January
24 20, 2001.

1 (B) The 120-day period ending on January
2 20, 2009.

3 (C) The 120-day period ending on January
4 20, 2017.

5 (2) The term “covered regulation” means a
6 final significant regulatory action promulgated by an
7 Executive department.

8 (3) The term “significant regulatory action”
9 means any regulatory action that is likely to result
10 in a rule that may—

11 (A) have an annual effect on the economy
12 of \$100,000,000 or more or adversely affect in
13 a material way the economy, a sector of the
14 economy, productivity, competition, jobs, the
15 environment, public health or safety, or State,
16 local, or tribal governments or communities;

17 (B) create a serious inconsistency or other-
18 wise interfere with an action taken or planned
19 by another agency;

20 (C) materially alter the budgetary impact
21 of entitlements, grants, user fees, or loan pro-
22 grams or the rights and obligations of recipi-
23 ents thereof; or

24 (D) raise novel legal or policy issues.

1 (4) The term “Executive department” has the
2 meaning given that term under section 101 of title
3 5, United States Code.

4 (b) REPORT.—

5 (1) IN GENERAL.—The Comptroller General of
6 the United States shall submit to the Committee on
7 Homeland Security and Governmental Affairs of the
8 Senate and the Committee on Oversight and Govern-
9 ment Reform of the House of Representatives a re-
10 port regarding covered regulations promulgated dur-
11 ing each covered presidential transition period.

12 (2) CONTENTS OF REPORT.—The report re-
13 quired under paragraph (1) shall, to the extent fea-
14 sible, for each covered presidential transition pe-
15 riod—

16 (A) compare the number, scope, and im-
17 pact of, and type of rulemaking procedure used
18 for, covered regulations promulgated during the
19 covered presidential transition period to the
20 number, scope, and impact of, and type of rule-
21 making procedure used for, covered regulations
22 promulgated during the 120-day periods ending
23 on January 20 of each year after 1996, other
24 than 2001, 2009, and 2017;

1 (B) determine the statistical significance of
2 any differences identified under subparagraph
3 (A) and whether and to what extent such dif-
4 ferences indicate any patterns;

5 (C) evaluate the size, scope, and effect of
6 the covered regulations promulgated during the
7 covered presidential transition period; and

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

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

16 (ii) the Small Business Regulatory
17 Enforcement Fairness Act of 1996 (5
18 U.S.C. 601 note);

19 (iii) sections 202, 203, 204, and 205
20 of the Unfunded Mandates Reform Act of
21 1995 (2 U.S.C. 1532-1535);

22 (iv) chapter 6 of title 5, United States
23 Code (commonly known as the “Regulatory
24 Flexibility Act”); and

1 (v) chapter 35 of title 44, United
2 States Code (commonly known as the “Pa-
3 perwork Reduction Act”).

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

5 (a) IN GENERAL.—Not later than February 15,
6 2016, the Secretary of Homeland Security shall submit
7 to the Committee on Homeland Security and Govern-
8 mental Affairs of the Senate and the Committees on Over-
9 sight and Government Reform and Homeland Security of
10 the House of Representatives a report analyzing the
11 threats and vulnerabilities facing the United States during
12 a presidential transition, which—

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

16 (2) shall identify steps being taken to address
17 the threats and vulnerabilities during a presidential
18 transition; and

19 (3) may include recommendations for actions by
20 components and agencies within the Department of
21 Homeland Security.

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

