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Subject/Description: **MEMORANDUM OF UNDERSTANDING REGARDING TRANSITION PROCEDURES, IDENTIFICATION OF TRANSITION CONTACTS, AND ACCESS TO NON-PUBLIC GOVERNMENT AND TRANSITION INFORMATION SIGNED BY DENIS MCDONOUGH AND CHRIS CHRISTIE**

Memorandum of Understanding Regarding Transition Procedures, Identification of Transition Contacts, and Access to Non-public Government and Transition Information

1. The Chief of Staff to the President (the "Chief of Staff") and the designated Chair of the President-elect's Transition Team (the "Chair of the PETT") agree, on behalf of, respectively, the Administration and the PETT, that, in order to effect an orderly transition of power in accord with the Presidential Transition Act of 1963, as amended (the "Transition Act"), the Intelligence Reform and Terrorism Prevention Act of 2004, and Executive Order 13727 entitled "Facilitation of a Presidential Transition," 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. Section 4(b) of the Transition Act provides that "The President shall take such actions as the President determines necessary and appropriate to plan and coordinate activities by the Executive branch of the Federal Government to facilitate an efficient transfer of power to a successor President." Additionally, Executive Order 13727 provides that "it is the policy of the United States to undertake all reasonable efforts to ensure that Presidential transitions are well-coordinated and effective, without regard to party affiliation."

3. The Chief of Staff and the Chair of the PETT 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 PETT 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.

4. The Chair of the PETT (or his designee) will furnish in writing to the Chief of Staff the name of each individual authorized by the PETT to work with the Executive Office of the President (EOP) and particular Departments and Agencies, including the designation of a Transition Team lead or leads for the EOP and each Department or Agency. The Chair of the PETT (or his designee) 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 individual has been assigned to work on with the EOP or the relevant Department or Agency. These lists will be updated as new members are added to the teams. The Chief of Staff (or his designee) will promptly forward these names to the appropriate Departments, Agencies, and EOP offices. The Chief of Staff (or his designee) will also provide in writing to the Chair of the PETT the names of individuals in the Departments, Agencies, and specified offices in the EOP who will serve as contacts responsible for coordinating transition matters on behalf of those Departments, Agencies, or specified EOP offices. The Chief of Staff (or his designee) is the contact person responsible for coordinating transition matters on behalf of those offices of the EOP for which contact persons have not otherwise been designated.

5. The Administration will conduct its transition activities with the PETT through the contacts authorized by the Chief of Staff and the Chair of the PETT. The authorized contacts for the PETT will initiate transition activities with a particular Department, Agency, or specified office of the EOP through the individual(s) at that Department, Agency, or EOP office designated by the Chief of Staff to coordinate transition activities for that Department, Agency, or EOP office. The authorized contacts for the PETT will initiate transition activities involving any other office of the EOP through the Chief of Staff (or his designee).

6. Each Department and Agency will use best efforts to locate and set aside available space in their offices for the duration of the transition for use by authorized members of the PETT to facilitate review of information provided by the Department or Agency and communication with authorized contacts at such Department or Agency. Each Department or Agency will provide, to the extent practicable, appropriate support to and equipment for use by the PETT in such office space. The exact details of space and equipment will be worked out between the PETT lead(s) for that Department or Agency and the individual(s) at that Department or Agency designated by the Chief of Staff.

7. In order to facilitate a smooth transition, it likely will be necessary in some circumstances 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 restricted by law. The Chief of Staff has advised the Chair of the PETT that Administration personnel will take steps to protect non-public information that are required by law or otherwise necessary to preserve applicable privileges, such as actions based on the Executive Branch standards of conduct, the Privacy Act, or the attorney-client privilege. The PETT recognizes that there is some information that a Department or Agency may not be able to provide in order to comply with statutory requirements or otherwise preserve applicable privileges.

8. 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 (7), the Chief of Staff and the Chair of the PETT will each designate in writing an individual or individuals authorized to confer in order to resolve such concerns informally.

9. The Chief of Staff further advises that, before providing any classified information to a member of the PETT, pursuant to Executive Order 13526, it must be established:

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

10. The Chief of Staff advises that, before providing non-public information (including classified information) as described in paragraph (7) to a member of the PETT 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 Team personnel unless those other personnel satisfy the requirements for access to that information set forth in this memorandum.
- Require the Transition Team member to sign a statement representing that, to the 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. 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.
- Make a written record of any disclosure of non-public information made to a member of the PETT.

11. Upon request from the EOP, a Department, or an Agency, the PETT will provide a written statement indicating that Transition Team member's need for access to the non-public information. The statement of need will be provided by the Chair of the PETT (or his designee) to the Chief of Staff (or his designee).

12. 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.

13. It likely will be necessary for members of the PETT 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 PETT.

14. Any disagreements between the Administration and the PETT concerning the subject matter of this memorandum that are not resolved informally pursuant to paragraph (8) or otherwise will be referred by the Administration to the Chief of Staff (or his designee) and by the PETT to the Chair of the PETT (or his designee).

15. To the extent permitted by law, the Administration with respect to its staff members and the PETT with respect to its transition team members, state that they intend to take appropriate steps to discipline any person who fails to comply with the terms of this agreement.

11/8/16

Signed by:
Denis R. McDonough
Chief of Staff to the President
Date:

Signed by:
Chris Christie
Designated Chair of the
President-elect's Transition Team
Date: