



THE ROLES AND RESPONSIBILITIES OF THE COMMISSIONERS AND EXECUTIVE DIRECTOR OF THE U.S. ELECTION ASSISTANCE COMMISSION

The purpose of this policy is to identify the specific roles and responsibilities of the U.S. Election Assistance Commission (EAC) Executive Director and its four Commissioners in order to improve the operations of the agency. While the Commissioners serve as the authority to approve EAC policy, HAVA provides for an Executive Director and staff in order to carry out the administration of the agency, its day-to-day management and the implementation of agency policy. The following policy outlines the general roles and responsibilities of the Commissioners and delegates certain authorities to the EAC Chair and Executive Director. Specific areas of responsibility, processes and prohibitions are also identified.

I. Roles – Generally.

EAC is a collegial body headed by four commissioners. HAVA requires that any action of the commissioners be carried out only with the approval (vote) of at least three. (42 U.S.C. §15328). In addition, as a collegial body, the EAC is subject to the procedural requirements of the Government in the Sunshine Act (5 U.S.C. §552b). This requires that any deliberations of three or more commissioners concerning the conduct of official agency business be noticed and take place in public.¹ (5 U.S.C. §552b(a)(2)). Ultimately, if all functions of the Commission (large and small) were performed by the commissioners, the onerous public meeting process would make the agency unable to function in a timely and effective matter. Recognizing these facts, HAVA provides the EAC with an Executive Director and staff. (42 U.S.C. §15324).

While HAVA says little about the roles of the Executive Director and the Commissioners, a review of the statute, the structure of the EAC and EAC's mission suggest a general division of responsibility as follows:

1. **Commissioners shall take action in areas of policy.** Policy is a high-level determination, setting an overall agency goal/objective or otherwise setting rules, guidance or guidelines at the highest level. Policy makers set organizational purpose, or the ends the agency seeks to achieve. They leave the means by which the ends are achieved or policy is implemented to the discretion of the Executive Director. The EAC only makes policy through the formal voting process.
2. **The Executive Director is expected to: (1) prepare policy for commissioner approval, (2) implement policies once made, and (3) take responsibility for administrative matters.** The Executive Director may carry out these responsibilities by delegating matters to staff. Individual commissioners shall not direct EAC staff.

What follows is (1) a listing of those matters that must be decided by a vote of the commissioners, (2) a delegation of authority for the Chair or Vice Chair (when acting as Chair) of the EAC, and (3) a delegation of authority for the Executive Director and staff.

¹ There are exceptions to the requirement, allowing the Commission's meetings to be closed. (5 U.S.C. §552b(c)(1) – (10)). However, this must be done only after proper notice.

II. Roles – Commissioners.

The following identifies policy issues requiring a vote of the commissioners. Also discussed is a description of how to document these decisions and the roles of staff in the policy process.

Matters Requiring a Vote of the Commissioners. Overall, the Commissioners establish policy regarding the mission, goals and objectives of the EAC. The following may only be accomplished by vote of the Commissioners.

1. Matters of agency strategic planning, objective and policy:

- Adoption of NVRA regulations, voluntary guidance under HAVA Section 311, Voluntary Voting System Guidelines, program manuals and other policies of general applicability that impact parties outside of the EAC;
- Adoption of an annual EAC research plan;
- Issuance of EAC advisories; and
- Issuance of Policy Directives. A policy directive is a document which states agency goals and objectives or sets the scope of an EAC program. It is a means by which the commissioners may make a policy statement or determination in any area of EAC operations. A policy directive is a short, simple document that informs staff of the high-level goals or objectives for a particular EAC program or operation. This tool provides the commissioners with a means to set and document policy in a transparent way, which provides clear guidance to implementing staff.

2. Executive operational matters:

- Adoption of reports to be submitted to Congress (except Inspector General reports);
- Adoption of public meeting or hearing agendas;
- Appointment of the Executive Director, General Counsel, and Inspector General;
- Appointment of the Chair and Vice Chair of the Commission;
- Adoption of EAC annual budget request. In the event that the budget appropriated by Congress provides funds for EAC operations in an amount which differs by more than 10% from the budget request originally approved by the commissioners, the annual budget execution plan shall also be approved by vote of the commissioners;
- Adoption of EAC strategic plan;
- Adoption or acceptance of EAC research;

- Accreditation of EAC Voting System Test Laboratories; and
- Action on appeals of audit resolutions and other matters as set forth in approved manuals or regulations.

Policy Documentation. Each of the actions noted above must be accomplished by an affirmative vote of three or more commissioners. This action will be documented either through a vote to adopt a specified document (such as a report to Congress or a budget), take a stated action or issue a Policy Directive. Votes shall be taken consistent with the voting procedures adopted by the EAC.

Executive Director Responsibilities. Matters subject to a vote of the commissioners require active participation by the Executive Director and staff. The Executive Director and staff shall provide research, prepare draft policies and otherwise assist the commissioners in developing policy documents. The Executive Director shall develop written procedures concerning the process by which agency policy or executive operational matters are researched, developed, reviewed and finally approved. For issues identified above as *matters of agency strategic planning, objective and policy*, each procedure shall have (at a minimum) the following elements: (1) An initial presentation at a staff briefing where particular issue(s) or question(s) associated with the policy are presented to commissioners; (2) An initial discussion at a public meeting to introduce the issue to the public, set priorities, allow for early commissioner discussion, and display initial commissioner viewpoints; (3) a staff team, led by a subcommittee of two commissioners, to develop a proposed policy; (4) additional briefings, public meetings and public hearings if necessary to collect and share information and keep the public and commission informed; and (5) final action at a public meeting to allow additional commissioner dialog and vote on any proposed policy. The procedure shall also provide a means for the commissioners to expedite the policy making process when necessary.

III. Roles – EAC Chair.

In order to promote the effective administration of agency business, it is recognized that some matters must be managed promptly by a single individual.

Matters Delegated to the Chair. The following roles and responsibilities of the commissioners are delegated to the Chair of the commission or, in the event the Chair is not able to act, the Vice Chair.

1. Preside over all public meetings, hearings or other official EAC functions;
2. Serve as the primary spokesperson of the EAC;
3. Schedule, notice and call EAC public meetings, hearings and other events;
4. Create and assign commissioners to subcommittees;
5. Assign commissioners or staff to serve as Designated Federal Officers to EAC Advisory Committees.
6. Serve as the reporting official for and provide administrative direction to the Executive Director. In this capacity the Chair shall form an Executive Director Performance Evaluation Subcommittee composed of the Chair and Vice Chair. This subcommittee shall be responsible for:
 - a. Identifying and documenting performance expectations for the Executive Director. The subcommittee shall draft written performance goals and measures. In doing so, the subcommittee shall request and consider written input from each commissioner. Upon completion, the subcommittee shall provide each commissioner with the proposed performance goals and measures for review and comment, before a final document is issued to the Executive Director.
 - b. The Executive Director's performance evaluation (including—at a minimum—a midterm review and annual review). The subcommittee shall request written feedback from each of the commissioners regarding the Executive Director's performance. Each commissioner's feedback shall be made available to the Executive Director. In the event the written feedback of the four commissioners is inconsistent, the Chair (or Vice Chair) shall meet with each commissioner to further clarify and document (in writing) their feedback. The subcommittee shall consider the input of each commissioner in the drafting of the Executive Director's performance evaluations. Upon completion, the subcommittee shall provide each commissioner with the proposed final performance evaluation for review and comment, before a final performance evaluation is issued to the Executive Director.
7. Represent the EAC as head of agency (or delegates this role) when a single representative or signatory is necessary;

8. Certify all agency votes consistent with EAC procedures and policy.

Obligation of the Chair to Keep Commissioners and Executive Director Informed. It is the responsibility of the Chair (or Vice Chair when acting as Chair) to keep each commissioner and the Executive Director timely informed of all significant issues presented and action taken pursuant to the authorities delegated above.

Obligation of the Chair to Consider Input from Commissioners. The Chair (or Vice Chair when acting as Chair), shall seek and consider input from each commissioner before taking action on items 3, 4, 5, and 6, above.

IV. Roles – Executive Director.

In addition to assisting the commissioners in the development and drafting of policies, the Executive Director shall be responsible for implementing EAC policy and administering EAC's day-to-day operations. The following is a description of roles and duties that the commissioners have determined to be the responsibility of or otherwise delegated to the Executive Director. Also discussed below is a description of the Executive Director's obligation to keep the commissioners informed of significant action and the roles of the commissioners regarding these matters.

Responsibilities of the Executive Director. The following responsibilities are hereby delegated to the Executive Director. Any responsibility delegated, below, may be further delegated by the Executive Director unless otherwise noted. All further delegation shall be made in writing. The Executive Director shall have full and sole responsibility for all duties delegated and shall exercise said roles at his or her discretion. The Executive Director shall:

1. Provide for the overall administration of the EAC consistent with the agency's strategic plan and any applicable commissioner adopted policies. This includes but is not limited to the following:
 - Establish, maintain and amend EAC's organizational structure and staffing as necessary to implement EAC's mission, goals, objectives, and policies;
 - Develop and adopt EAC annual performance plans, consistent with EAC's Strategic Plan;
 - Develop and execute the internal operational policies and procedures of EAC;
 - Manage the daily operations of EAC consistent with Federal statutes, regulations and EAC policies;
 - Coordinate, staff and plan EAC events, meetings and conferences;
 - Maintain and account for all property, records, and space and administer EAC safety and emergency management programs, consistent with Federal statutes and regulations;
 - Oversee EAC's information technology programs and systems consistent with Federal statutes and regulations.
 - Manage the distribution, publication and inventory of official EAC documents;
 - Manage, develop and oversee EAC's annual financial plan and financial programs, consistent with EAC's annual budget request, Federal statutes and applicable regulations. In the event that the budget appropriated by Congress provides funds for EAC operations in an amount which differs by more than 10% from the budget request approved by the commissioners, the annual financial plan shall be approved by vote of the commissioners;

- Implement all applicable administrative, programmatic and reporting requirements imposed upon independent Federal agencies pursuant to Federal statute or regulation;
 - Manage all aspects of EAC's personnel programs consistent with EAC policy and all applicable Federal statutory and regulatory requirements;
 - Manage all aspects of EAC's government procurement program consistent with EAC policy and all applicable statutory and regulatory requirements;
 - Maintain liaison with other Executive Branch organizations, Congress and the White House; and
 - Authorize the filing or settlement of law suits or claims. This authority may not be delegated further, except with respect to (1) the settlement of liabilities in amounts equal to or less than \$100,000; or (2) particular matters for which the Executive Director is unable to act because of a conflict of interest or similar prohibition.
2. Provide for the overall direction and administration of EAC's operating units and programs, consistent with the agency's strategic plan and any applicable commissioner adopted policies. This includes but is not limited to the following:
- Implement and interpret policy directives, regulations, guidance, guidelines, manuals and other policies of general applicability issued by the commissioners;
 - Conduct research and draft reports according to approved annual research plan;
 - Issue, manage and oversee all Federal financial assistance consistent with statutory mandates, regulations and EAC policies and advisories;
 - Manage and answer questions from states and other stakeholders regarding the use of HAVA funding consistent with EAC advisories and policies;
 - Answer questions from stakeholders regarding the application of NVRA or HAVA consistent with EAC's published Guidance, regulations, advisories and policy;
 - Provide for the testing and certification of voting systems to Federal standards consistent with EAC manuals and policies;
 - Provide for the accreditation of voting system test laboratories consistent with EAC manuals and policies;
 - Manage EAC Clearinghouse program consistent with EAC policies;
 - Manage the timely dissemination of EAC information to stakeholders, the media and the public consistent with EAC policies;
 - Maintain the Federal Voter Registration Form consistent with the NVRA and EAC Regulations and policies; and

- Manage the collection of election information from states consistent with the requirements of the NVRA, HAVA, UOCAVA, EAC Regulations, and EAC policy.

Obligation of the Executive Director to Keep Commissioners Informed. It is the responsibility of the Executive Director to keep each commissioner timely informed of all significant issues presented and actions taken pursuant to the authorities delegated above. The Executive Director must provide for appropriate briefings, memoranda or similar means to routinely and timely provide commissioners important information on staff actions. While the commissioners will not directly act on these matters, it is important that they are informed (1) in order to provide accurate information to the media and stakeholders and (2) to have sufficient information to know when the issuance of a Policy Directive is needed to clarify or set policy.

Role and Responsibility of the Commissioners. Commissioners shall ensure that they establish clear policies to appropriately guide the Executive Director in the execution of his or her duties. Each commissioner shall keep informed about these activities and provide oversight at the policy level through the clarification or issuance of policy. This shall be accomplished through Policy Directives adopted by vote of the commissioners. Commissioners shall not individually direct the actions the Executive Director or EAC staff regarding the responsibilities delegated, above.

V. Policy Implementation.

This policy shall be effective upon a vote of the Commissioners. This policy supersedes and replaces any existing EAC policy that is inconsistent with its provisions. Any existing policies (not inconsistent with this policy) issued by an authority no longer responsible for the matter covered, shall be treated as if issued by the authority identified in this policy. In implementing this policy, the Executive Director shall issue internal procedures which provide for the further delegation of responsibilities among program staff and set procedures (from planning to approval) for all program responsibilities. The Executive Director shall provide a monthly progress report to the commissioners regarding his or her progress, until all internal EAC policies are in place.