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July 21, 2008

U.S. Election Assistance Commission
1225 New York Ave., NW
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Dear Commissioners:

Thank you for the opportunity to comment on Election Assistance Commission's proposed Notice and Public Comment Policy ("the Draft Policy"). As a researcher affiliated with A Center for Correct, Usable, Reliable, Auditable, and Transparent Elections (ACCURATE), I have commented frequently on the EAC's proposed policies, rules, and projects. Based on this experience, I believe that the Draft Policy's scope is appropriate and that its procedures would advance the underlying purpose of securing "public involvement in the policy process [as] the best way to develop sound policy and encourage public understanding" of the EAC's activities (Draft Policy § I).

I applaud the Draft Policy's inclusion of "any advisory, manual, procedure, regulation and rule of general applicability, which impacts outside parties" (§ III) within the scope of materials that are subject to public notice and comment. The example of the EAC's testing and certification manual—mentioned in the Draft Policy—aptly illustrates the wisdom of going beyond the Administrative Procedure Act's requirement for notice and public comment. That document laid the groundwork for the new system of voting system testing and certification. As such, I believe that public comment was highly effective in identifying potential problems and inconsistencies in the manual before the system was put in place. This feedback was made possible by the collaboration of computer scientists, attorneys, and nonprofit groups during the comment period. Given the intensity and diversity of views surrounding all elements of voting technologies, as well as the rapid change in the technologies themselves, seeking public comment on the broad category of documents specified in the Draft Policy is not only procedurally fair but also likely to lead to substantively better guidance from the Commission.

The Draft Policy also includes provisions that provide for timely and meaningful review of public comments. Specifically, ensuring that a comment period of less than 30 days must be justified by good cause (§ IV.B), and empowering the Responsible Program Director to extend the comment period (§ IV.A), are steps that will help to ensure appropriate time for public comment. The Draft Policy's requirement that the EAC issue a written summary of all comments within 14 days of the comment period (§ VI) would further inform public debate. Finally, the requirement that the Commissioners review and consider all public comments before voting on a rule or policy of general applicability would help to ensure that public comments inform the EAC's decisions.

I conclude by suggesting two changes to the Draft Policy that would further encourage public

comment:

1. Though the provisions for issuing notice (§ IV.A) make appropriate use of modern information technology, the Draft Policy could go further in making the public aware of opportunities for comment. In particular, I suggest that the EAC add a Web content feed system (e.g., Really Simple Syndication, or RSS) to announce public comment period. Such technologies allow individuals to use programs that automatically gather information from the EAC's website.
2. A related suggestion is to list all matters for which comment is open on the EAC's home page, or at least provide a stable, easy-to-find link to all such matters. Currently, one might have to check the calendar (including previous months) to find this information.

Thank you again for the opportunity to comment on the Draft Manual. The notice and comment procedures set forth in the Draft Manual would go a long way toward supporting public involvement in the EAC's activities, as well as transparent and well-informed decisionmaking at the EAC. Please contact me (aburstein@law.berkeley.edu, 510-410-6964) if I may answer any questions.

Sincerely yours,

Aaron Burstein