U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

May 18, 2007

The Honorable Zoe Lofgren
Chairwoman, House Committee on House Administration
Subcommittee on Elections
1309 Longworth House Office Building
Washington, DC 20515

Via Hand Delivery
DELIVERY #3

RE: Requested documents

Dear Congresswoman Lofgren:

Pursuant to your request, we have completed compiling the documents that you have requested in your letter of April 23, 2007. Those documents primarily fell into two categories: 1) emails, memos and documents related to the data, content, and methodology of the voter identification or voting fraud and voter intimidation studies and 2) memos, emails and documents related to the application of several administrative laws to the EAC, specifically the Freedom of Information Act (FOIA), Administrative Procedures Act (APA), Paperwork Reduction Act (PRA), and Federal Advisory Committee Act (FACA). The documents that are provided today are the third and last delivery in our ongoing response to your request.

The documents provided today (numbered 11985 – 31441) represent:

1) staff communications and project documents related to the voting fraud and voter intimidation project;
2) staff communications and project documents related to the voter identification project; and
3) documents responsive to your request concerning the application of the Freedom of Information Act, Federal Advisory Committee Act and Sunshine Act to the EAC.

As I stated in our previous response, many of the documents that we provide today and which we will provide in subsequent responses to your request contain information that is protected under the Privacy Act or covered by privileges. We felt it was our responsibility, where we could, to identify those documents which are covered by those protections so that you would be aware of the content of these documents and have this information available to you should you be asked to release these documents at a later date. In addition, we have numbered each document sequentially so that you or your staff may ask any questions that you have related to these documents or our response by referring to a specific page or document.

We appreciate the ability to provide this information to assist in your review of EAC research efforts.

Sincerely,

Donetta Davidson

Donetta Davidson
Chair

Enclosures

U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

May 16, 2007

The Honorable Zoe Lofgren
Chairwoman, Subcommittee on Elections
United States House of Representatives
1309 Longworth House Office Building
Washington, DC 20015

Via Facsimile 202-225-4434

RE: Letter of request dated May 15, 2007

Dear Congresswoman Lofgren:

I am writing to let you know we received your May 15th request for "all correspondence between the Election Assistance Commission and the Department of Justice, including any memos, emails, and other documents dating back to January 1, 2004." Immediately upon receiving your letter, staff began working to respond to your request.

In addition to this request, staff is also gathering the rest of the responsive information for your May 2 request, and we anticipate you will receive the remainder of these documents by COB May 18, 2007.

I believe the documents responsive to both requests will show that EAC's interactions with third parties, including the Department of Justice, have been appropriate and professional. I have great confidence in our staff, and we are eager to get this information to you as soon as possible.

Please be sure to let me know if you or your staff needs additional information or further clarification. Thank you for your questions and interest in EAC activities.

Sincerely,

Donetta Davidson

Donetta Davidson
Chair

Tel: (202) 566-3100 www.eac.gov Fax: (202) 566-1392
Toll free: 1 (866) 747-1471

ROBERT A. BRADY, PENNSYLVANIA
CHAIRMAN

VERNON J. EHLERS, MICHIGAN
RANKING MEMBER

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-2061
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May 15, 2007

The Honorable Donetta Davidson
Chair
U.S. Election Assistance Commission
1225 New York Avenue, N.W., Suite 1100
Washington, D.C. 20005

Dear Chair Davidson:

I have received four boxes of documents in response to my request for documents relating to actions of the Election Assistance Commission. My letter of May 2 requested emails, memos and other documents related to the data, content, and methodology of the voter identification and voter fraud studies. I also requested documents relating to the application of a variety of administrative laws. While I appreciate that the EAC has produced some of the requested documents, I want to make sure there is no misunderstanding about the Commission's continuing obligation to provide all the documentation requested.

I recognize the effort the EAC has put forth in meeting my request in a timely manner, but do not appreciate excuses about a small staff being the reason for not producing all the documents originally requested. Four staff members of the Committee on House Administration were able to read through the two boxes of emails sent by the Commission in several hours.

In our initial review of the documents by the EAC, it appears that the Department of Justice participated significantly in the development of reports and research by the Commission. What has been submitted at this point indicates a degree of cooperation and influence at such level that it might compromise the independent and non partisan nature of the EAC. I find this disconcerting because both agencies are currently under scrutiny for increased politicization. For this reason, I am adding to my initial request all correspondence between the Election Assistance Commission and the Department of Justice, including any memos, emails, and other documents dating back to January 1, 2004.

I request that you respond to this inquiry by close of business Wednesday, May 23, 2007. I also expect that the EAC will complete my April 23, 2007 request promptly as it is still incomplete. Recognizing that there have been problems with communication and execution within the EAC, subpoenas will not be sent for the remaining documents at this time. The Commission has informed the Committee on House Administration that the documents will all be delivered by Friday, May 18, 2007.

Sincerely,

Zoe Lofgren
Chair, Subcommittee on Elections

U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

May 14, 2007

Via Hand Delivery
DELIVERY #2

The Honorable Zoe Lofgren
Chairwoman, House Committee on House Administration
Subcommittee on Elections
1309 Longworth House Office Building
Washington, DC 20515

RE: Requested documents

Dear Congresswoman Lofgren:

Pursuant to your request, we are continuing to compile the documents that you have requested in your letter of April 23, 2007. Those documents primarily fell into two categories: 1) emails, memos and documents related to the data, content, and methodology of the voter identification or voting fraud and voter intimidation studies and 2) memos, emails and documents related to the application of several administrative laws to the EAC, specifically the Freedom of Information Act (FOIA), Administrative Procedures Act (APA), Paperwork Reduction Act (PRA), and Federal Advisory Committee Act (FACA). The documents that are provided today are the second delivery in our ongoing response to your request.

The documents provided today (numbered 5428 – 11984) represent 1) the files and documents of the project manager for the voting fraud and voter intimidation study; 2) emails, documents and files of other EAC staff relative to the voting fraud and voter intimidation study; and 3) documents responsive to your request concerning the application of the Paperwork Reduction Act to EAC. We are currently working to process and provide to you with communications and documents from other EAC employees relating to this study and to the voter identification study, as well as documents responsive to your request concerning the application of certain administrative laws to EAC. Those documents will be forthcoming in subsequent responses.

As I stated in our previous response, many of the documents that we provide today and which we will provide in subsequent responses to your request contain information that is protected under the Privacy Act or covered by privileges. We felt it was our responsibility, where we could, to identify those documents that are covered by those protections so that you would be aware of the content of these documents and have this information available to you should you be asked to release these documents at a later

date. In addition, we have numbered each document sequentially so that you or your staff may ask any questions that you have related to these documents or our response by referring to a specific page or document.

We appreciate the ability to provide this information to assist in your review of EAC research efforts. We will be providing additional responses to your request as quickly as we can process the documents and have them transmitted to your office.

Sincerely,

Donetta Davidson

Donetta Davidson
Chair

Enclosures

U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

May 9, 2007

The Honorable Zoe Lofgren
Chairwoman, House Committee on House Administration
Subcommittee on Elections
1309 Longworth House Office Building
Washington, DC 20515

Via Hand Delivery

RE: Requested documents

Dear Congresswoman Lofgren:

Pursuant to your request, we have been compiling the documents that you have requested in your letter of April 23, 2007. Those documents primarily fell into two categories: 1) emails, memos and documents related to the data, content, and methodology of the voter identification or voting fraud and voter intimidation studies and 2) memos, emails and documents related to the application of several administrative laws to the EAC, specifically the Freedom of Information Act (FOIA), Administrative Procedures Act (APA), Paperwork Reduction Act (PRA), and Federal Advisory Committee Act (FACA). The documents that are provided today are part of our ongoing response to your request.

As you will note from the large volume of documents that we provide today, the scope of your request is broad and will result in the production of tens of thousands of pages of documents. In order to respond to your request, our staff has been working diligently to search our records, including files (electronic and manual) and electronic mail for all employees of the U.S. Election Assistance Commission (EAC) – even files belonging to past Commissioners and staff. From those files, we have been working to identify the documents that are responsive to your request and print or copy those documents for production. As you can imagine with the small staff that we have, it has been an "all hands on deck" scenario to get through the documents that we produce today. I have made our response to you and other members of Congress an absolute priority for the EAC Commissioners and staff

Many of the documents that we provide today and which we will provide in subsequent responses to your request contain information that is protected under the Privacy Act or covered by privileges. We felt it was our responsibility, where we could, to identify those documents that are covered by those protections so that you would be aware of the content of these documents and have this information available to you should you be asked to release these documents at a later date. In addition, we have numbered each

document sequentially so that you or your staff may ask any questions that you have related to these documents or our response by referring to a specific page or document.

The documents provided today represent the communications of the project manager for the voting fraud and voter intimidation study with internal and external sources regarding the voting fraud and voter intimidation study. We are currently working to process and provide to you communications and documents from other EAC employees relating to this study and to the voter identification study. Those documents will be forthcoming in subsequent responses.

In addition, you have requested information relating to the application of administrative law provisions to the EAC. Each of the laws that you mentioned (FOIA, APA, PRA, and FACA) apply to EAC to some degree or another. Probably the most limited application is that of the rule making provisions of the Administrative Procedures Act. As you are aware, HAVA significantly limits the ability of the EAC to make rules or regulations impacting states and, in fact, establishes its own "administrative procedure," if you will, that is to be followed in developing guidance under Title III and Voluntary Voting System Guidelines. Since EAC has limited rulemaking authority, the application of the rule making provisions of the APA is quite limited to the one area in which EAC has specific rule making authority and that is to develop regulations under the National Voter Registration Act. Our subsequent document productions will include information relative to how EAC applies these administrative laws to its operations, including the issuance of notices in the Federal Register for public meetings; charters, bylaws, and meeting notices of our Federal Advisory Committees (EAC Standards Board, EAC Board of Advisors and Technical Guidelines Development Committee), and submissions and Federal Register publications that we have made under the Paperwork Reduction Act.

We appreciate the ability to provide this information to assist in your review of EAC research efforts. As has been stated above, we will be providing additional responses to your request as quickly as we can process the documents and have them transmitted to your office.

As a part of this submission, I am also requesting the opportunity to meet and discuss these matters with you at the earliest possible date, to personally answer any questions that you may have. I will call your office to follow up on this request.

Sincerely,

Donetta Davidson

Donetta Davidson
Chair

Enclosures

ROBERT A. BRADY, PENNSYLVANIA
CHAIRMAN

VERNON J. EHLERS, MICHIGAN
RANKING MEMBER

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-2061
www.house.gov/cha

May 2, 2007

The Honorable Donetta Davidson
Chair
U.S. Election Assistance Commission
1225 New York Avenue, N.W., Suite 1100
Washington, D.C. 20005

Dear Chair Davidson:

I have received your letter of April 30 responding to my request for documents relating to actions of the Election Assistance Commission. First, I have to say that I was rather startled by the assertion that you had not received my request before April 27, as it was both faxed and e-mailed to your offices on April 23. Considering your own reliance on fax transmission alone to convey your April 30 letter, I have to recommend that you replace your support staff if they failed to give you my Monday transmission before Friday.

Apart from these details of communication, I am writing to restate the subcommittee's desire to review the EAC documents outlined in my letter. The pendency of the Inspector General's review does not deter our interest. If, in fact, you are collecting the same materials to provide to the Inspector General, then it should simplify your document collection efforts for the subcommittee.

You expressed some confusion regarding the subcommittee's request for materials related to application of administrative law to the EAC's activities. We are seeking materials within the Commission's files, whether produced by the Commission or by others, that relate to the application of federal administrative laws to the Commission's proceedings generally, or to the Commission's action on these two specific projects. These materials will assist us in reviewing the Commission's understanding of its obligations under these laws.

I enclose another copy of my April 23 letter. Please provide copies of the materials requested therein to the subcommittee offices at 1309 Longworth House Office Building by close of business on Wednesday, May 9. Of course, since the Inspector General's report has not yet been completed, we will not expect to receive that yet, but we do ask that you forward it promptly upon its completion. If we do not receive the remaining materials by May 9, or some reasonable explanation of the delay and proposed schedule for transmission, I will be forced to seek subpoena authority from the full Committee.

Sincerely,

Zoe Lofgren

U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

April 30, 2007

Congresswoman Zoe Lofgren, Chair
House Administration Committee
Subcommittee on Elections
102 Cannon House Office Building
Washington, DC 20515

Via Facsimile Transmission ONLY
202-228-3336 – Member's Office
202-225-7664 – Committee Office

RE: Letter of request dated April 23, 2007

Dear Congresswoman Lofgren:

Thank you for your letter of April 23, 2007 and the opportunity to provide additional information about the research efforts being undertaken by the U.S. Election Assistance Commission. Your letter was received in this office on Friday, April 27, 2007 after 4:30 p.m., and it requests a significant volume of information – some regarding a process that is underway but is not yet complete.

The first request in your letter is for the report of the Inspector General on the review that EAC requested on April 16, 2007. That review is ongoing and has not yet been completed. Since this review is not complete, EAC has not been provided a report by the Inspector General. I have referred your letter to the Inspector General for his direct response concerning the status and timing of the ongoing review.

Second, your letter makes a request for all documents, emails, and memoranda related to the methodology of the Voter Identification and Voting Fraud and Voter Intimidation Studies. In large part, this is the same information that the Inspector General has requested concerning the ongoing review. We are currently gathering this information for the Inspector General. In anticipation of requests from Congress, EAC sought guidance and information from the Inspector General concerning responding to Congressional requests during the pendancy of an ongoing review. I have attached both our request and the Inspector General's response for your review. We will work with the Inspector General to provide you information responsive to your request in the most expeditious time frame possible.

Last, your letter requests documents, emails and memoranda related to the application of Federal Administrative Law to the EAC. We would appreciate some clarification of this request. It is not clear whether you are seeking opinions related to the applicability of these laws, requests made from others under these laws, or the impact of these laws on the two projects in question.

We did not receive your request via USPS until late Friday, April 27, 2007, and given the ongoing status of the Inspector General's review, and the need for additional information concerning portions of your request, EAC will not be able to respond in the timeframe which you have requested. We will continue to work on this and will be happy to discuss with you or your staff the needed clarifications as well as a revised timeframe for our response.

Thank you again for your continued interest in EAC and our programs. We look forward to hearing from you concerning this letter and our response.

Sincerely,

Donetta Davidson

Donetta Davidson
Chair

Enclosures (2)

Cc: Curtis Crider, Office of the Inspector General, EAC

April 16, 2007

MEMORANDUM

To: EAC Inspector General Curtis Crider
Fr: EAC Chair Donetta Davidson
Cc: Commissioners Rodriguez, Hillman and Hunter, Tom Wilkey, and Julie Hodgkins
RE: EAC requests review of contracting procedures

On Friday, April 13, each of my three colleagues – Rosemary Rodriguez, Gracia Hillman, and Caroline Hunter -- agreed with my recommendation that we issue the following formal request to the Commission's Office of Inspector General to review the circumstances surrounding two recent EAC research projects – vote fraud and voter intimidation and voter identification.

Background
The U.S. Election Assistance Commission (EAC) is an independent, bipartisan Commission created by the Help America Vote Act (HAVA) of 2002.

EAC develops guidance to meet HAVA requirements, adopts voluntary voting system guidelines, accredits voting system test laboratories, certifies voting systems and audits the use of HAVA funds. HAVA also directs EAC to maintain the national mail voter registration form developed in accordance with the National Voter Registration Act (NVRA) of 1993.

The Commission serves as a national clearinghouse and resource of information regarding election administration. It is under the Commission's clearinghouse role that research projects are conducted with the goal of providing information that will lead to improvements in election administration, as well as inform the public about how, where and when we vote.

The voter identification research was conducted by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics ("Contractor"). The contract, awarded in May 2005, required the Contractor to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches. Last month, the commission voted

unanimously not to adopt the report, citing concerns with its methodology, but voted to release all of the data provided by the Contractor.

The vote fraud and voter intimidation research was conducted by Tova Wang and Job Serebrov ("Consultants"). The contracts, awarded in September 2005, issued to these Consultants tasked them with defining the terms vote fraud and voter intimidation and providing recommendations how to conduct extensive research in the future on these topics. The contract stated that the Consultants were responsible for "creating a report summarizing the findings of this preliminary research effort and Working Group deliberations. This report should include any recommendations for future EAC research resulting from this effort."

Review Request

The actions taken by the Commission regarding both the voter identification and the vote fraud and voter intimidation research projects have been challenged. Specifically, Members of Congress, the media, and the public have suggested that political motivations may have been part of the Commission's decision making process regarding these two projects. Also, the Commission has been criticized for the amount of taxpayer dollars that were spent on these two projects, as well as how efficiently these projects were managed.

The Commission takes these allegations very seriously, and we request that you fully review the following issues and provide the Commission and the Congress with a report of your findings as soon as possible. The Commission stands ready to assist you in these efforts and will provide whatever information, including memos, emails and other documents you will need. Cooperating with your review will be the staff's top priority.

1. Current Commission policy regarding awarding and managing research contracts.
2. Issuance and management of the vote fraud and voter intimidation contract.
3. Circumstances surrounding the receipt of information from Consultants regarding the vote fraud and voter intimidation project.
4. Circumstances surrounding staff efforts to write a final report for Commission consideration.
5. Identification of staff members who assisted in the editing and collaboration of the final vote fraud and voter intimidation report for Commission consideration.
6. Staff and/or Commissioner collaboration with political entities or other federal agencies regarding the vote fraud and voter intimidation project.
7. Circumstances surrounding Commission discussion and deliberation of final adoption of *Election Crimes: An Initial Review and Recommendation for Further Study*.
8. Issuance and management of the voter identification contract.
9. Circumstances surrounding the receipt of information from Contractor regarding the voter identification report.
10. Identification of staff members who assisted in the editing, collaboration, and recommendation to the Commission regarding final adoption of the voter identification report.

11. Staff and/or Commissioner collaboration with political entities or other federal agencies regarding the voter identification project.
12. Circumstances surrounding Commission deliberation whether to adopt a final voter identification report.

For your information, I have attached statements and related correspondence from Members of Congress, and a statement issued by the Commission regarding the criticism.

It is our hope that your findings will instruct us how to move forward in a more efficient, effective and transparent manner. The Commission takes its mandates under HAVA very seriously, and this small Commission has an enormous amount of work to conduct, including testing and certifying voting equipment, providing guidance and assistance to election officials, and auditing the proper use of the $3.1 billion that was distributed under HAVA.

We look forward to your findings so that we may take the actions necessary to improve the way we conceive research projects, manage research contracts, and make decisions regarding the final release of data provided to the Commission from a third party.

U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL
1225 New York Ave. NW - Suite 1100
Washington, DC 20005

April 27, 2007

Memorandum

To: Donetta Davidson
Chair, U.S. Elections Commission

From: Curtis Crider
Inspector General

Subject: U.S. Election Assistance Commission Activities Pending the Office of Inspector General Investigation of the Voting Fraud and Voter Intimidation Report

In your letter of April 23, 2007, you requested my comments concerning several activities that the Election Assistance Commission (EAC) was considering to undertake pending our review of the Voting Fraud and Voter Intimidation Study and on related questions. My responses to your proposed activities and questions follow:

1. The EAC would like to prepare a summary of the differences between the draft report prepared by the consultants and the final report adopted by the EAC.

   Answer: We believe that such a summary will be helpful to our investigation. Please provide us with a copy of the summary of differences upon it is completion.

2. Would there be any prohibition against the Director of Communications speaking with EAC employees, consultants or working group members when questions arise from members of the press or under the Freedom of Information Act?

   Answer: We are not aware of any prohibition. However, we suggest that EAC not comment or limit its comments on this matter because of the ongoing investigation. Any FOIA requests should be promptly responded to stating that the matter is under investigation. Once the investigation is completed, appropriate information should be made available to the FOIA requester.

3. Would there be any prohibition against EAC briefing members of the EAC Standards Board and the EAC Board of Advisors.

   Answer: We are not aware of any prohibition. Our preference, however, would be that EAC allow the investigation to be completed before conducting any briefings.

4. Would there be any prohibition against gathering information related to this project in order to respond to inquiries that have been made by members of Congress?

Answer: We are not aware of any prohibition. As previously stated, our preference is that there are no public comments while the investigation is in process or that comments be limited. However, we appreciate the sensitivity of Congressional requests, EAC must decide how best to proceed in this matter. We ask that you share any proposed responses with us prior to their release and that you provide us with a copy of final responses and any attachments.

5. Would there be any prohibition against responding to an inquiry that the Commission has received from an attorney engaged by one of the consultants?

   Answer: It is the EAC's decision whether to respond to the attorney for the consultant. We prefer that the consultants not be released from the confidentiality clause of ther contracts until the OIG has completed its investigations.

We understand that EAC will want to respond to criticism of its handling of the Voter Fraud and Intimidation Study, and that management must ultimately decide how best to proceed. Our preference would be that you attempt to defer commenting until we have finished our investigation.

I appreciate you raising these matters to me before acting. Please feel free to contact me if you have any questions about this memorandum.

JUANITA MILLENDER-MCDONALD, CALIFORNIA
CHAIRWOMAN

VERNON J. EHLERS, MICHIGAN
RANKING MEMBER

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
(202) 225-2061
Washington, D.C. 20515-6157
www.house.gov/cha

April 23, 2007

Donetta L. Davidson
Chairwoman
United States Election Assistance Commission
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

Dear Chairwoman Davidson:

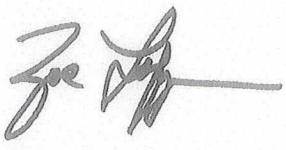
I have received your April 16, 2007 response to my request for documents and research related to pending and overdue reports currently being conducted by the Election Assistance Commission (EAC). Your response included various statements of work on previous and pending projects, work plans, and research tools utilized in conducting these projects, as well as notices and requests for public comment issued in compliance with the Paperwork Reduction Act. It also included a memorandum to the EAC Inspector General requesting a review of EAC contracting procedures, specifically as they relate to both the Voter Identification and the Voting Fraud and Voter Intimidation research projects. The request for review is a step forward, but it does not adequately address the concerns expressed in my original letter.

Further documentation is necessary for the Subcommittee on Elections of the Committee on House Administration to fully understand the EAC's actions on these issues. Recent accounts of the EAC's actions raise questions regarding how the Commission is discharging its duties and whether a lack of transparency and limited public input have undermined the Commission's key roles as both a national clearinghouse on election information and a federal agency.

Please provide the Subcommittee with a copy of the Inspector General report, plus all memos, emails, and other documents related to the data, content, or methodology, internal or external, of the Voter Identification and the Voting Fraud and Voter Intimidation research projects and the IG report. In addition, please provide any memos, emails, and other documents, internal or external, related to the application of federal administrative law to the EAC, including, but not limited to, the Freedom of Information Act, Administrative Procedures Act, Sunshine Act, Paperwork Reduction Act, and Federal Advisory Committee Act.

I request that you respond to these inquiries no later than close of business Monday, April 30, 2007. It is urgent that you provide these documents promptly, as the Subcommittee is reviewing whether to hold an oversight hearing on these matters in the near future. I look forward to your reply.

Sincerely,



Zoe Lofgren
Chair
Subcommittee on Elections

U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

April 16, 2007

Congresswoman Zoe Lofgren, Chair
House Administration Committee
Subcommittee on Elections
102 Cannon House Office Building
Washington, DC 20515

Via Hand Delivery

RE: EAC Research Efforts

Dear Congresswoman Lofgren:

Thank you for your letter of April 12, 2007 and the opportunity to provide valuable information about the research efforts being undertaken by the U.S. Election Assistance Commission. Your letter referenced four studies that have been or are being conducted by EAC through contracts and contracted employees. Below you will find a discussion of EAC's research program as well as responses concerning the two studies regarding which you have requested information.

The Commission serves as a national clearinghouse and resource of information regarding election administration. It is under the Commission's clearinghouse role that research projects are conducted with the goal of providing information that will lead to improvements in election administration, as well as inform the public about how, where and when we vote.

Many EAC studies are conducted via contracts with independent contractors or consultants and experts that serve as employees of the Commission. However, EAC, as a Federal agency, is the policy and decision making body. Consultants, contractors and employees do not make policy for EAC. Their recommendations are only one part of a deliberative process that precedes the final agency decision.

In keeping with this concept, EAC reviews and vets all draft products or recommendations delivered by its consultants, contractors and employees to determine if the product is accurate, readable, complete, and fulfills project requirements. This type of review has been conducted on all of our research projects and EAC will continue to assure that its research projects produce information that is accurate, reliable and supported by the underlying data. Specifically, a review of this nature was conducted regarding EAC's studies on voting fraud and voter intimidation as well as voter identification. A brief description of those projects follows:

Voter Identification Study

The voter identification research was conducted by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics ("Contractor"). The contract, awarded in May 2005, required the Contractor to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches. Last month, the commission voted unanimously not to adopt the report, citing concerns with its methodology, but voted to release all of the data provided by the Contractor.

Voting Fraud and Voter Intimidation Study

The vote fraud and voter intimidation research was conducted by Tova Wang and Job Serebrov ("consultants"). The contracts, awarded in September 2005, issued to these Consultants tasked them with defining the terms vote fraud and voter intimidation and providing recommendations how to conduct extensive research in the future on these topics. The contract stated that the Consultants were responsible for "creating a report summarizing the findings of this preliminary research effort and Working Group deliberations. This report should include any recommendations for future EAC research resulting from this effort." Following receipt and review of the consultants' work product, EAC developed its own report which was adopted by the Commission at a public meeting in December 2006.

EAC Requests Review of Contracting Procedures

On Friday, April 13, 2007, I proposed to my fellow commissioners that EAC formally request that our Inspector General conduct a review of our contracting procedures and in that it include a review of the processes and procedures that were involved in our voter identification study and our voting fraud and voter intimidation study. My colleagues each agreed with my recommendation and, today, I have formally transmitted that request to our Inspector General. For your convenience, I have attached a copy of the memorandum making that request and the statement that EAC has issued concerning this request. See Appendix "1."

Free Absentee Ballot Postage Study

Pursuant to Section 246 of the Help America Vote Act of 2002 (HAVA), EAC was directed to study and produce a report on the feasibility and advisability of a program that would provide absentee ballots that could be returned by the voter postage-free. HAVA directed that this report be delivered one year after the passage of HAVA, that is not later than October 29, 2003.

On the above referenced deadline set forth in HAVA, EAC Commissioners had not yet been appointed and confirmed to fill their positions and to form the agency that is now EAC. After the formation of EAC in December 2003, Congress provided an appropriation for FY 2004 in the amount of $1.2 million dollars, which did not include sufficient funding for even basic operational activities. EAC received operational funding, including some funding for research in its FY 2005 budget. Thus, in FY 2005, EAC developed and issued a request for proposals for a research contract to study this issue. One bidder responded to the request for proposals. That bidder's proposal was technically deficient. The request was ultimately withdrawn by the Commission due to the failure to receive any sufficient bids.

Because this research report was required by HAVA and the deadline for the completion of the project had passed, EAC issued a subsequent request for proposals in FY 2006. EAC received proposals and awarded a contract for the study of this issue. The statement of work for that project has been attached as Appendix "2" to this letter for your review and convenience. As you will see, the statement of work sets forth several requirements for the contractor, including conducting a survey of registered voters to gather information from them regarding their voting behavior and whether the implementation of a national program for free absentee ballot postage would change that behavior. The contractor was further asked to conduct a series of focus groups comprised of potential beneficiaries of free or reduced absentee ballot postage.

The EAC and its contractors are subject to the Paperwork Reduction Act (PRA) and thus all information collection instruments must be published prior to issuance to obtain public comment regarding the questions asked, the necessity of the collection, and the burden that will be imposed on respondents. The information collection must also ultimately be approved by OMB. EAC published the survey instrument and focus group discussion guides to be used as a part of this study in the Federal Register on November 14, 2006. See Federal Register, Vol. 71, No. 219, Page 66321. A copy of the Federal Register notice and request for comments is attached as Appendix "3" to this letter. The EAC received and addressed two public comments on proposed information collection. In keeping with the PRA, a second notice for comments was issued, in which comments were to be provided directly to the Office of Management and Budget (OMB). This notice was published in the Federal Register on January 23, 2007. See Federal Register, Vol. 72, No. 14, Page 2875. A copy of that notice is attached as Appendix "4" to this letter. In addition, for your convenience a copy of the actual survey instrument has been attached as Appendix "5" to this letter.

In keeping with the statement of work, the contractor has also developed discussion guides for the focus groups that it has planned involving senior citizens, disabled voters, and low income voters. These guides have been attached as Appendix "6" to this letter. This research project requires coordination with the United States Postal Service (USPS) as implementation of such a program would undoubtedly have a significant impact on that agency. Through that participation, USPS has suggested that additional focus groups be added to the original work plan for this study. The contractor communicated that

request to EAC and the proposal for additional working groups has been attached as Appendix "7" to this letter. EAC believes that these additional focus groups would be helpful for this research project and is working with the contracting officer on this contract to determine whether the contract can be amended to add these additional focus groups.

You will note from the attached work plan that this project has a current project completion date of November 1, 2007. See Appendix "8", Work Plan. Progress reports updating progress on the work plan are also attached as Appendix "8" to this letter. However, additional focus groups would require additional time to complete the proposed, expanded statement of work. See Appendix "7", Proposal for Adding Focus Groups to the Free/Reduced Postage for Absentee Ballots Research Project.

Military and Overseas Voting Study

Section 245 of HAVA directs EAC to study the risks and benefits of using the Internet to conduct voting. The only area in which this type of electronic technology has been used at all to administer voting is for military and overseas citizens. As such, EAC has focused on using that experience as instructive for the possibility of Internet voting on a larger scale.

This study was directed to be completed within 20 months of the passage of HAVA, or no later than June 30, 2004. Much like the Free Absentee Ballot Postage Study, the majority of time allotted in the original deadline for research passed prior to the existence of EAC and during the time of its initial budget which did not allow for research spending. In FY 2005, EAC requested the Technical Guidelines Development Committee (TGDC), the Federal advisory committee that researches and proposes voting system standards to EAC, to provide guidelines on security, core requirements and usability requirements for the use of the Internet in voting. The TGDC did not include these as a part of their recommendations for voting system guidelines. TGDC considered the possibility of using the Internet for voting too risky and further believed that any voting system, Internet-based or not, must conform to the standards established by EAC based upon their research and recommendation. EAC also approached NIST about developing standards for Internet voting outside of their work with the TGDC. At that time, NIST did not have the resources necessary to assign to such a project because of their work to support the TGDC in the development of Voluntary Voting System Guidelines (VVSG). However, NIST did not foreclose the possibility that they could assist EAC with this work after the VVSG and accompanying test scripts are completed.

EAC then conferred with the Federal Voting Assistance Program of the Department of Defense, which had worked on a substantial project aimed at establishing Internet voting for military members. In those conversations, we learned that there are many obstacles at the state and local level to implementing Internet-based voting. Based on this information, EAC determined that the best course of action was to find out what the current state of readiness and willingness is among state and local election jurisdictions to

implement Internet-based voting. EAC can only develop standards for an appropriate system if it knows what needs that system will have to serve and what obstacles it will have to overcome. A request for proposals was issued in FY 2006 and a contract was awarded.

A copy of the statement of work for this study has been attached as Appendix "9" to this letter. As you will see, that statement tasks the contractor with conducting case studies of election jurisdictions with experience in this area, conducting a survey of military and overseas voters, and a conducting a conference on Internet voting. The contractor has developed an outline for their case studies. This outline has been attached as Appendix "10" to this letter. In addition, the contractor has developed and distributed a survey instrument in keeping with the emergency provisions of the PRA. A copy of that survey instrument is attached as Appendix "11" to this letter. The conference is planned for August 2007 in New Orleans. The progress reports from the contract showing their progress on completing tasks as set forth in the statement of work are attached as Appendix "12" to this letter.

Thank you for your requests and your interest in election administration. I trust that the information that we have provided will give you a complete picture of the status of the pending research projects about which you inquired as well as valuable information concerning EAC's previous research projects regarding voting fraud and voter intimidation and voter identification. I look forward to working with you, as the Chair of our oversight committee, on this issue as well as many others that impact the administration of elections for Federal office. If you have further questions, please do not hesitate to contact me.

Sincerely,

Donetta Davidson

Donetta Davidson
Chair

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April 12, 2007

Chairwoman Donetta Davidson
United States Election Assistance Commission
1225 New York Avenue N.W., Suite 1100
Washington, DC 20005

Dear Chairwoman Davidson:

As Chairwoman of the Committee on House Administration Subcommittee on Elections, which has oversight over the Election Assistance Commission, I was alarmed at what appears to be an emerging pattern by the EAC to hold off on publicly releasing reports as well as modifying reports that are released. Two recent instances have brought to light the increased politicalization of the EAC and this lack of transparency.

First, the House Appropriations Subcommittee on Financial Services and General Government released a draft version of an EAC report on voter fraud and intimidation that shows significant changes were made to the findings of outside experts before the final report was released. The EAC released report "Election Crimes: An Initial Review and Recommendations for Future Study" does not accurately reflect the research in the original report "Voting Fraud and Voter Intimidation."

Second, in addition to this report on voter fraud and intimidation, the EAC recently released a report by The Eagleton Institute of Politics at Rutgers University on voter identification. Again, the EAC did not endorse the report, citing methodological concerns, and only released it after pressure from Congress.

The EAC is charged with conducting nonpartisan research and to advise policy makers. How are we to rely on advice if instead of full and accurate reporting, we are provided an inaccurate modified version which negates clear evidence to the contrary in the original research? I am outraged that the election process is being threatened by a lack of transparency and limited discussion.

In order to preempt any further problems with the release of reports from the EAC, I request all versions of the Absentee Ballot report and the Military and Overseas report, as well as any other overdue reports, including supporting documents and research, be provided to my office by close of business Monday, April 16, 2007. These reports are overdue and I want to ensure that the delay is no way related to what appears to be an ongoing problem of politcalization of the EAC.

Sincerely,

Zoe Lofgren
Member of Congress

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