

## **PROPOSED NOTICE AND PUBLIC COMMENT POLICY**

### **I. PURPOSE**

The purpose of this policy is to provide effective notice for a period of public comment on all policies being considered for adoption by the United States Election Assistance Commission (EAC), which are not subject to notice and comment under any federal statute. From time to time, EAC issues advisories, manuals, procedures, regulations and rules, which impact outside parties. Some of these policies and rules must be adopted after a period of public comment pursuant to the Administrative Procedures Act (APA) or other statutes, such as the Help America Vote Act (HAVA) or the National Voter Registration Act (NVRA). Other policies do not require such public participation; however, EAC is committed to make all of its policy making activities open and transparent.

EAC believes that public involvement in the policy process is the best way to develop sound policy and encourage public understanding and participation in agency activities. As such, EAC desires to require notice and comment for all of its advisories, manuals, procedures, regulations and rules that may impact outside parties. To that end, this policy requires EAC to provide the public an opportunity to comment on any proposed policy or rule of general applicability (those impacting outside parties), even when such public comment is not otherwise required by law.

This policy further outlines the roles, responsibilities and procedures for this process to assure that the public has effective notice and the ability to submit timely and meaningful comment on proposed EAC policies and rules.

### **II. DEFINITIONS**

- A. “Outside Party” means any other government entity, corporation, non-profit association, or individual other than EAC. Outside Party shall not include Federal government executive branch or independent agencies.
- B. “Policy of general applicability” is a policy that applies to all relevant stakeholders. It is not a particular matter involving a single party that addresses a specific case or controversy, such as the resolution of one state’s audit, or interpretations issued under the EAC’s Testing and Certification and Laboratory Accreditation Programs. Matters of general applicability include the following:
  - Program manuals adopted by EAC that impact outside parties, such as the testing and certification program manual, the laboratory

accreditation manual, and grant manuals regarding any of the EAC distributed or managed grant programs.

- Guidance (other than that developed by EAC regarding Sections 301 – 303 of HAVA), advisories, and advisory opinions related to the implementation or administration of HAVA or the National Voter Registration Act (NVRA).
- Other regulations or policies concerning EAC administrative actions that impact outside parties.

C. “Proposed policy or rule”. Any policy, advisory, manual, procedure, regulation or rule covered hereunder that the Commission has voted affirmatively to post for public comment.

### III. ROLES AND RESPONSIBILITIES

A. Responsible Program Director. The Responsible Program Director is the EAC staff person who is generally responsible for the subject area addressed in a proposed policy or rule. The Responsible Program Director shall be responsible for preparing notices and assuring that proposed policies and rules for public comment are posted in a timely manner. In addition, the Responsible Program Director shall be responsible for collecting, analyzing and recommending a disposition on all comments received during the comment period. The Responsible Program Director shall produce the written summary of all comments received, as described above, within 14 days of the close of the comment period. The Responsible Program Director will regularly update the commissioners, executive director, chief operating officer, general counsel and all other appropriate EAC staff on the volume and types of comments that are received during the public comment period.

When a policy or rule is proposed by a Commissioner, the Special Assistant assigned to that Commissioner shall assume all responsibilities of the Responsible Program Director and will regularly coordinate and share information with the executive director, general counsel, chief operating officer and the program director generally responsible for the subject area addressed in the proposed policy.

B. Executive Director. The Executive Director shall assign a Responsible Program Director when such action is required. The Executive Director may approve a public comment period of between 15 and 29 days, under limited circumstances and when good cause is demonstrated. The Executive Director may approve a waiver for publishing notice in the Federal Register under limited circumstances and when good cause is demonstrated. The Executive Director may grant an additional reasonable period of time beyond the required 14-day period for the Responsible Program Director to produce a written summary report of all comments received.

C. General Counsel. The Office of the General Counsel shall provide counsel upon request to the Responsible Program Director, the Executive Director, or any Commissioner regarding the proposed policy or rule, posting of the document for effective notice and comment, review and disposition of any comment received, and or any interpretation of this policy.

#### IV. APPLICABILITY

Under this policy, any advisory, manual, procedure, regulation and rule of general applicability, which impacts outside parties (i.e. is not strictly limited to the internal operations of EAC), must be posted for notice and public comment. This policy applies even when neither the APA nor HAVA or NVRA require that a proposed policy or rule is subject to notice and public comment prior to adoption. For example, the APA requires that final rules of general applicability are published to provide notice to the public, but does not require that the agency take or receive comments on that rule. In this example, EAC's manual on its testing and certification program would not be required to be posted for notice and public comment by the APA. However, under this policy, a manual, which would have an impact on outside parties, must be posted for notice and public comment.

This policy does not apply to circumstances wherein statutes such as APA or HAVA require notice and public comment prior to adoption of the guidance, regulation, rule, or policy statement. For example, the APA requires that regulations promulgated pursuant to the NVRA are posted for notice and public comment. Likewise, HAVA requires that guidance developed regarding Sections 301-303 of HAVA, as well as the Voluntary Voting System Guidelines, are subject to notice and public comment.

#### V. EFFECTIVE AND SUFFICIENT NOTICE

A. Comment Period. At a minimum, EAC will provide a period of public comment of no less than 30 days on all policies or rules of general applicability. The Responsible Program Director at his/her discretion may extend the period for public comment. The comment period on any policy or rule of general applicability may not exceed 180 days unless so extended by vote of the Commission when good cause is demonstrated for extending the comment period. Considerations for extension shall include, but are not limited to the content of the proposed policy or rule, the complexity of the proposed policy or rule, and intervening circumstances during the comment period.

EAC recognizes that there may be good cause for the comment period to be less than 30 days so that the Commission can respond to a time sensitive matter in a timely manner. The Responsible Program Director must request such an exception in writing to the Executive Director, justifying the reason for requesting that the comment period be less than 30 days. The Executive Director may grant such an exception when good cause is demonstrated for reducing the public comment period and must do so in writing. Under no circumstance shall the

period of public comment be less than 15 days. EAC acknowledges that such exemptions will be rare occurrences.

B. Notice to the Public. In order to ensure that members of the public are apprised of EAC's publication of a proposed policy and solicitation for comments on the proposed policy, EAC will use the following methods of publication and notice to the public:

- Publishing a notice in the Federal Register notifying the public of the proposed policy or rule and soliciting comments by a date certain; and
- Publishing the proposed rule or policy on the EAC Web site and soliciting comments by a date certain; and
- Sending notice to EAC stakeholders, members of Congress and interested members of the media through a weekly email newsletter.

If the Responsible Program Director determines that publishing notice in the Federal Register will result in a comment period of less than 30 days, then he/she must request in writing to the Executive Director a waiver of publication of the notice in the Federal Register, demonstrating good cause for such a waiver. The Executive Director may grant such an exception when good cause is demonstrated and must do so in writing.

The Responsible Program Director shall prepare notice of the proposed policy or rule and the solicitation for comments, which shall include a summary of the proposed action, and cause it to be published in the means identified above. Included in this responsibility is the duty to analyze and assign a reasonable period for accepting comments within the parameters established by this policy.

C. Equal Ability to Comment. Under this policy, no proposed policy or rule shall be released to any outside party prior to the time that it is posted for public comment. If it is determined that a proposed policy was released to a outside party prior to the beginning of the public comment period, the comment period shall be extended by 30 days in order to allow all members of the public to have equal ability to provide comment.

## VI. COLLECTING AND RECEIVING PUBLIC COMMENTS

For all proposed policies and rules, EAC shall accept comments by email, fax, or in hard copy. However, EAC shall encourage members of the public to provide comments through an on-line portal on the EAC website or through an EAC established centralized comment submission program. Comments, regardless of the means of transmission, must be made available to the public as soon as practicable after they are received.

## VII. CONSIDERATION OF COMMENTS

The Responsible Program Director must timely read and consider each and every comment submitted during the comment period. In addition, the Responsible Program Director shall recommend a disposition for all comments. In the final consideration of the proposed policy or rule, the Responsible Program Director shall provide a written summary of all comments received, indicating which of those comments should be accepted, rejected, or tabled for future consideration. The Responsible Program Director shall produce the written summary of all comments received, as described above, within 14 days of the close of the comment period. The Responsible Program Director may request an extended period of a reasonable length of time to complete the summary report. The request shall be submitted in writing to the

Executive Director. The Executive Director may grant such an extension when good cause is demonstrated and must do so in writing.

## VIII. ADOPTION OF A RULE OR POLICY OF GENERAL APPLICABILITY

No proposed rule or policy of general applicability shall be adopted by vote of the EAC unless:

- The proposed rule or policy has been posted for public comment in accordance with this policy; and
- All comments submitted in response to the proposed policy have been reviewed and considered; and
- A vote of three or more Commissioners approves the proposed policy and any changes that are recommended by the Responsible Program Director after review and consideration of the comments.