



**U.S. ELECTION ASSISTANCE COMMISSION
1335 East West Highway – Suite 4300
Silver Spring, MD 20910**

MEMORANDUM

TO: Commissioners McCormick, Hovland, Hicks and Palmer

FROM: Donald Palmer, Commissioner

THROUGH: Clifford Tatum
General Counsel

DATE: October 15, 2019

RE: Adoption of 2019 EAC Succession Plan

Background

With vacancies in leadership scheduled for October 23, 2019, it is vitally important to have interim or acting leadership for continuity of EAC operations. There is the high possibility of concurrent vacancies, occurring at the same time, in the positions of Executive Director and General Counsel.

The 2015 Organizational Management Policy Statement passed by the Commission details the division of roles and responsibilities of Commissioners and the Executive Director. Part III of the policy details a succession plan under the organizational structure at that time that would be followed in situations where there was an Executive Director vacancy when there were no Commissioners. While instructive in the development of a continuity plan, there is no succession plan approved by the Commission for the current situation where the EAC has a quorum of Commissioners and a vacancy in the Executive Director and General Counsel positions.

Order of Succession Approved by the Commission

With the potential pending vacancies of Executive Director and General Counsel, an order of succession is necessary so that the responsibilities of the Executive Director of the agency may be carried out until an individual can be appointed by the Commission to serve as Interim Director or to a term as Executive Director. The Office of Legal Counsel (OLC) in an informal opinion documented by the EAC's General Counsel and shared with the Commissioners on August 20, 2019, advised the EAC of the necessity for a

succession plan.¹ National Security Presidential Directive 51 was directly referenced in a previous line of succession plan, developed and implemented by then Acting Executive Director Mark Robbins on January 3, 2012. Homeland Security Federal Continuity Directive (FCD) I (February, 2008) also states that an agency "is responsible for establishing, promulgating, and maintaining orders of succession to key positions." As a minimum, orders of succession must establish an order of succession for the position of agency head to ensure a designated official is available to serve as acting Organization Head until an official is appointed (FCD 1). These orders of succession must also comply with the Vacancies Reform Act of 1998, as amended (5 U.S.C. § 3345-3349d). Within each order of succession, organizations must include a minimum of three positions (rather than names) permitted to succeed to the identified leadership position.

The EAC order of succession developed previously by then Acting Executive Director Robbins, named the Chief Operating Officer (COO) as the next in line as the designated agency head. The COO is the same position listed as the successor to the Executive Director and General Counsel in the 2015 Organizational Management Policy document. During that time, the EAC's COO served in this line of succession, carrying out the duties of the EAC Executive Director. However, at this time, the EAC does not have a COO and the position is currently vacant. With the importance of the security of our systems and networks, the Information and Technology Department is led by the Chief Information Officer (CIO) position, a statutory required position for federal agencies. The Director of Testing and Certification leads arguably the most important division of the EAC and serves a primary function of HAVA. Accordingly, it is in the best interest of the agency for the Commission to establish the following line of succession.

The line of succession will be as follows:

1. Executive Director (Vacancy Expected October 23, 2019)
2. General Counsel (Vacancy Expected October 23, 2019)
3. Chief Operating Officer (Vacancy Expected to Continue through October 23, 2019)
4. Chief Information and Security Officer
5. Director of Research
6. Director of Testing and Certification²

Additional Explanation of Chief Operating Officer (COO)

This succession plan is adopted to reflect the organization and its structure as of October 15, 2019. The position of Chief Operating Officer (COO) is not currently filled by an individual and is vacant. However, it is intent of the Commission that the position of Chief Operating Officer (COO) will be filled by the Commission, and that individual will assume the duties of Acting Executive Director until a new Executive Director is

¹ National Security Presidential Directive 51

² As per FCD-1, Orders of Succession must include an individual who is geographically dispersed, when feasible.

approved to a term of four years. In the interim, the succession plan will operate with existing employees and agency structure.