

## **EAC Ex Parte Communications Policy**

**May 25, 2006**

### **Purpose**

This policy outlines the manner in which Commissioners of the Election Assistance Commission (EAC) will conduct meetings and other communications with individuals and organizations other than EAC staff or other federal government agencies when the individual or organization is engaged in a particular matter with the EAC. This policy plays an important role in protecting the fairness of the EAC's proceedings by assuring that EAC decisions are not influenced by off-the-record communications between decision makers and individuals or organizations that are interested in the decision. This policy further serves to help EAC and its staff avoid the appearance of impropriety and to ensure that all individuals or organizations are treated fairly and equitably by the Commission.

### **Ex Parte Communications**

No Commissioner or staff member with decision making authority shall communicate ex parte with any prohibited individual regarding a particular matter before the Commission. Ex parte communications are off the record or nonpublic communications. Meetings with Commissioners or decision making staff other than those noticed pursuant to the Government in the Sunshine Act (5

U.S.C. 552(b)) and those required as a part of the EAC certification, accreditation, audit or funding programs are considered to be off the record. A Commissioner or staff member with decision making authority includes any such individual whose official duties may require them to make a final, binding agency decision on a particular matter. The fact that such a formal decision may be administratively appealed is irrelevant. A prohibited individual is any individual representing an entity or industry which is regulated, certified, accredited, audited or otherwise subject to funding decisions made by EAC. Particular matters include but are not limited to audits, certification, accreditation, contracting, and other matters over which EAC has decision making authority. Particular matters are further defined in the following specific scenarios. In addition to the prohibited communications, individuals should seek to avoid any lengthy private communications with such prohibited individuals to avoid even the appearance of impropriety.

### **EAC Funding Decisions**

The Help America Vote Act of 2002 (HAVA) makes EAC responsible for issuing grants, making requirements payments to states, and auditing the use of funding distributed by EAC or other agencies under HAVA. Thus, a particular matter includes requests for grant

funding, requests for requirements payments, and audits of requirements payments or grant funding. A particular matter is pending when (1) the state or entity has a pending request for funding before the EAC, (2) the state or entity has been notified by EAC that it intends to conduct a special audit of the funds distributed to that state or entity, or (3) the state or entity has been notified by EAC's Inspector General that audit findings have been referred to EAC for resolution. Any communication with persons designated to represent a state or other entity funded by EAC regarding the particular matter or any subject matter that could impact the particular matter is prohibited until the specific matter before the Commission is finally resolved.

### **EAC Voting System Certification**

EAC is responsible for certifying voting systems and voting system components pursuant to Section 231 of HAVA. Voting system vendors submit their products for certification by EAC, which includes testing by an EAC accredited laboratory, review of the laboratory's test report by experts, and a final decision by EAC as to whether a voting system should be certified as meeting federal voting system standards or guidelines. A particular matter in this context is the past, current or future certification of a voting system, voting software or a voting system component or any subject matter that would affect or impact such certification. Because many manufacturers or vendors have product lines that include various voting systems and many versions of software, many vendors will be before the Commission nearly continuously. Thus, communications with a vendor over a particular matter with regard to voting system certification will be prohibited from the time when the entity first submits any of its voting systems or components for EAC certification and will continue until such time that the entity notifies EAC that it has no systems before EAC for certification and in the future will not seek EAC certification for any of its product lines, systems, software or components.

### **EAC Laboratory Accreditation**

EAC is responsible for accrediting testing laboratories that will be used to review and testing voting systems under the EAC certification program. See Section 231 of HAVA. A particular matter for purposes of accreditation occurs when the laboratory first seeks to be a part of the EAC certification process, when a laboratory's accreditation is updated or reviewed when new voting system guidelines are implemented, and from time to time when a review of the laboratory's previous accreditation is warranted. Communication with any individual representing a laboratory that desires to be accredited by EAC to test voting systems regarding the current or future accreditation of the laboratory or any subject matter that would impact or affect the accreditation is prohibited under this policy while the laboratory's application for accreditation is pending before EAC and at any time thereafter when a review of the laboratory's accreditation is ongoing.

### **Applicability**

The Ex Parte Communications policy is not applicable to meetings governed by the Sunshine Act, 5

U.S.C. 552b, as such meetings are required to be noticed and open to the public, subject to the exceptions of that law. Furthermore, this policy is not applicable to official actions or hearings conducted by the Commission or its decision making staff as required by EAC's certification and accreditation programs.

### **Disclosure**

If a Commissioner or staff member with decision making authority inadvertently communicates with a prohibited person regarding a particular matter, the Commissioner or staff member shall disclose the communication in writing to the Commission, including the date, time, place, and subject matter of the communication and such disclosure shall be made a part of the official record of the particular matter.