



U.S. ELECTION ASSISTANCE COMMISSION
1201 NEW YORK AVENUE, N.W., SUITE 300
WASHINGTON, D.C. 20005

MEMORANDUM TO THE U.S. ELECTION ASSISTANCE COMMISSION
STANDARDS BOARD AND BOARD OF ADVISORS

From: Mark A. Robbins *Mark A. Robbins*
General Counsel and Acting Executive Director

Date: January 25, 2012

Re: EAC FACA Board Activity Suspension

The U.S. Election Assistance Commission (EAC) Standards Board and Board of Advisors were created by Part 2 of the Help America Vote Act (HAVA) of 2002 (P.L. 107-252; 42 U.S.C. §15341). Both are subject to provisions of the Federal Advisory Committee Act (FACA) of 1972 (Pub. L. 92-463; 5 U.S.C. Appendix 2).

Boards and commissions subject to the provisions of FACA must have a Designated Federal Official (DFO) in order to conduct official business, at both the full committee and subcommittee level. It is the policy of the EAC (adopted on September 12 and certified September 15, 2008) that those positions be designated by the chair, a fact overlooked in the purported designations of DFO replacements in December by retiring Commissioner Bresso and me. The last two remaining commissioners resigned in December, 2011. With no commissioners, there is no commission chair to appoint DFOs. And absent a quorum of commissioners, there are no means by which to change this established policy of appointing/replacing the DFOs.

It appears unlikely that the Senate will confirm new commissioners in 2012.

HAVA provides in Sec. 215 (a)(2) that “[t]he Standards Board and the Board of Advisors shall each hold a meeting of its members (A) not less frequently than once every year for purposes of voting on the voluntary voting system guidelines [VVSG] referred to it under section 222; (B) in the case of the Standards Board, not less frequently than once every 2 years for purposes of selecting the Executive Board; and (C) at such other times as it considers appropriate for purposes of conducting such other business as it considered appropriate consistent with this title.”

With no commissioners in place, there will be no VVSG referred to the boards for consideration and a vote. With regard to the Standards Board, the present Executive Board was elected at the last meeting in February, 2011. By law, elections are not required again until February, 2013. In

addition, even if there were a means by which to replace the DFOs, with the EAC unable to consider policy issues, there would be little of substance for the Boards to consider. As the EAC works to meet its basic statutory responsibilities under significant budget reductions and the prospect of elimination, it would make little sense to spend money convening boards unable to engage in policy work. Finally, the Executive Director position is vacant and both boards are responsible for recommending candidates to the EAC for consideration. But until a new quorum is able to identify the skills and background it desires in a new Executive Director, identifying potential candidates would be premature.

Therefore, consistent with the legal requirements in HAVA and FACA, I formally request that the EAC Standards Board and Board of Advisors refrain from all official business until further notice and that no expense be incurred to which EAC will be liable.

Present members of Standards Board and Board of Advisors remain members until the expiration of their present terms. EAC staff remains available to update members on issues of personal interest or concern, and will certainly provide information on any progress in replacing the commissioners. Please do not "Reply to All" on this communication. If you have any questions or comments, please contact me directly. Of course, members are free to contact one another, as long as they are not engaging in official business.

Your service is greatly appreciated and we look forward to the arrival of new commissioners and the resumption of the boards' activities.