

## **THE TECHNICAL GUIDELINES DEVELOPMENT COMMITTEE**

The Technical Guidelines Development Committee was established under the Help America Vote Act of 2002 (Pub. L. No. 107-252) and is governed by the Federal Advisory Committee Act (FACA), which sets forth procedural requirements for establishment of advisory committees.

### The Role of the Committee

Under the FACA, the Committee may be advisory only. The Committee has no “operational” functions, such as making or implementing Government decisions. When in doubt about the propriety of a particular Committee activity, members should ask the Committee’s Designated Federal Officer (DFO), Commissioner Donetta Davidson.

The Committee’s advisory duties are determined by statute which provides that the general purpose of the Committee is to assist the Executive Director of the Election Assistance Commission in the development of voluntary voting system guidelines (see HAVA § 221, 231).

HAVA further requires the Committee to publish in the Federal Register any guidelines on voluntary voting systems that are recommended by the Commission at the time that the Commission publishes the finally adopted VVSG.

### The Role of the Members

All members are appointed by and serve at the pleasure of the Commission and the Director of the National Institute of Standards and Technology.

The Committee may not advise Congress directly, or engage in grassroots lobbying activities because these activities are outside the scope of the charter, and may implicate other prohibitions against grassroots lobbying that apply to Federal agencies and employees in general. Of course, this does not affect any Committee member’s activities in other capacities, such as a private citizen.

This Committee includes two types of members: those who serve in an individual capacity as subject matters experts, and those who serve in a representative capacity on behalf of a particular organization. The determination of the capacity in which a member serves is made by the Commission, which will inform each member as to his or her particular capacity.

Members who serve in an individual, expert capacity are Special Government Employees (SGEs) under 18 U.S.C. § 208, and are subject to Federal conflict of interest statutes and rules. As such, they are prohibited from participating in particular

matters that may have a direct and predictable effect on their financial interest or on those of a spouse, minor child, or general partner.

SGEs also may not be Registered Agents under the Foreign Agents Registration Act (22 U.S.C. § 611 et seq.). The responsibility for determining whether any particular member is required to register as a foreign agent under this statute lies with the individual and not the Commission.

Members who serve in a representative capacity are not subject to the conflict of interest statutes, but must still adhere to rules designed to prevent using a public position for private gain, including abuse of Government affiliations, resources, and information.

Advice on standards of conduct matters for both SGEs and representatives will be provided by the Election Assistance Commission.

Members of the TGDC, whether SGEs or representatives, do not represent the EAC and may not refer to themselves in such capacity. They may not represent the TGDC individually. The TGDC acts and speaks through resolutions voted on and passed by a majority of the TGDC members.

### Meetings of the Committee

The Committee shall not act in the absence of a quorum which is defined as a simple majority of the members of the Committee not having a conflict of interest in the matter being considered by the Committee, except that, if the number of the members on the Committee is even, half will suffice.

All Committee meetings must be called by the Designated Federal officer, announced to the public in advance, and be open to the public. While limited exceptions to the open meeting requirement exist, they must be based on applicable law. Closed meetings must be approved in advance by the Election Assistance Commission.

Meetings should allow a reasonable opportunity for public comments. The public may also file written statements with the Committee at any time.

All materials made available to the Committee, prepared for the Committee, or prepared by members of the Committee, as well as minutes and transcripts of meetings, will be available to the public in a reading room format (except that those materials that would qualify for withholding under the exemptions to the Freedom of Information Act shall be removed before materials are made to the public).

Meetings may be held in person, via videoconference or conference call, so long as the public is afforded contemporaneous access to the deliberations.

A meeting does not occur when Committee members communicate on purely logistical or administrative matters, such as holding a conference call with the DFO to schedule a meeting.

### Subcommittees

Consistent with the FACA, the Election Assistance Commission will create any subcommittees that may be necessary to accomplish the Committee's function.

Subcommittees which do not function independently of the Committee are not required to be separately chartered, but are subject to prior written approval of the Commission before convening.

Independent subcommittees, or subcommittees that contemplate using non-members, will have to be looked at individually to determine whether they need to be separately chartered to comply with the FACA.

Subcommittees reports, findings, and recommendations developed during subcommittee meetings must be forwarded to the full Committee, which must actually deliberate on these materials at a meeting that complies with the FACA prior to advising the EAC based on the subcommittee's work.

### Administrative Matters

Administrative support for the Committee is provided by the Election Assistance Commission.

Under the Help America Vote Act, the National Institute of Standards and Technology will provide technical assistance to the Commission.

Members are not compensated for their services, but travel (including per diem in lieu of subsistence) may be paid upon request. All Government-funded travel must be at the Government's request and must involve the provision of a direct service to the Government, such as convening to advise Government officials on Government matters. Reimbursement is set at the rates that apply to Federal employees under the Federal Travel Regulations.

Election Assistance Commission attorneys provide legal advice to the Commission, including the DFO. With the exception of standards of conduct issues, they cannot serve as legal advisors to Committee members.

Questions should be directed to the Committee's DFO. If the DFO cannot answer them, that person will consult with Commission attorneys and respond to the Committee member.