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**U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001**

Sent Via Electronic Transmission

November 4, 2022

Greetings:

This letter is in response to your Freedom of Information Act request (FOIA No. 20-00028) wherein you requested the following:

“A copy of the Questions For the Record (QFR) and agency QFR responses to Congress responding to QFRs during calendar years 2017, 2018, 2019 and 2020 to date, for the Election Assistance Commission. These records are likely found in the EAC office that handles legislative affairs/congressional relations.”

Records responsive to your request are attached. No responsive records have been withheld or redacted pursuant to 5 U.S.C. 552(b).

This letter completes the response to your request. If you interpret any portion of this response as an adverse action, you may appeal this action to the Election Assistance Commission. Your appeal must be in writing and sent to the address set forth below. Your appeal must be postmarked or electronically transmitted within 90 days from the date of the response to your request. Please include your reasons for reconsideration and attach a copy of this and subsequent EAC responses.

U.S. Election Assistance Commission
FOIA Appeals
633 3rd Street NW, Suite 200
Washington, DC 20001

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

Camden Kelliher

Camden Kelliher, Associate Counsel
U.S. Election Assistance Commission
ckelliher@eac.gov

Senate Committee on Rules and Administration
Election Security Preparations: Federal and Vendor Perspectives
July 11, 2018
Questions for the record
Commissioner Christy McCormick

Senator Wicker

Under the Help America Vote Act, the Election Assistance Commission was tasked with developing federal guidelines for local jurisdictions to assist with election security.

- 1) Last year, the Election Assistance Commission developed updated Voluntary Voting System Guidelines, also known as, VVSG2.0. When developing these guidelines, what factors did the commission take into consideration when dealing with different localities? Or, asked another way, what different factors, if any, did the commission consider between rural and urban voting districts?
- 2) How is the Election Assistance Commission working with states to leverage federal resources as they update their systems?
- 3) FOLLOW-UP: Can you commit to working with local and state officials in rural states to help them access federal resources for modernizing their election infrastructure and securing voter data?

Senator Udall

- 1) Post-election audits have been found to be one of the best tools available to ensure that if systems have been compromised, votes cast have been counted accurately. What is your position on the need for these audits? How many states currently conduct these audits?
- 2) In states that are either fully or partially utilizing Direct Recording Electronic devices – or “black box” voting machines – is the \$380 million in HAVA funding that was awarded enough to allow those states to replace that existing equipment with voter-verifiable paper ballot technology like what is used in New Mexico? If not, how much additional funding is needed?
- 3) In last month's Rules Committee hearing to get the state and local perspective on these issues, Missouri Secretary of State Jay Ashcroft, stated that, “The evidence indicates that voter fraud is an exponentially greater threat than hacking of election equipment.” Do you agree with his statement? If so, what evidence backs up this claim?

Senator Warner

- 1) States now have \$380 million in grants to improve their election infrastructure. At the same time, it can be difficult – even for large enterprises – to evaluate the marketing claims of cybersecurity companies and choose products and services that best meet their needs.

What resources do state election officials have to evaluate cybersecurity product and service vendors?

Would it be helpful for DHS or the EAC to provide a clearinghouse of information, with vetting of vendors?

Is this a function that's being successfully served by the so-called 'cyber navigators' and cyber liaisons?

Is EAC requiring states to spend the \$380M on specific cybersecurity improvements? Is it recommending that states prioritize specific improvements?

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Commissioner Thomas Hicks

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Senator Cortez Masto

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- 3) Do you think any changes need to occur in order to make certification more accessible and widespread

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- 1) Last year, the Election Assistance Commission developed updated Voluntary Voting System Guidelines, also known as, VVSG 2.0. When developing these guidelines, what factors did the Commission take into consideration when dealing with different localities? Or, asked another way, what different factors, if any, did the Commission consider between rural and urban voting districts?***

The Voluntary Voting System Guidelines (VVSG) are established standards consisting of a set of specifications and requirements against which voting systems are tested. The specifications and requirements provide factors that focus on basic functionality, accessibility, and security capabilities, which are relevant to all jurisdictions regardless of size or location. The physical location of where a voting system may be deployed is of no consequence in whether a voting system meets the minimum standards of the VVSG. As such, whether a system is used in a rural or urban voting district also plays no part in the certification of a voting system. The EAC does, however, develop the VVSG with input from public working groups in order to facilitate input from all who wish to participate, including those in both rural and urban voting districts.

- 2) How is the Election Assistance Commission working with states to leverage federal resources as they update their systems?***

The EAC has worked to help states leverage federal resources as they update their systems through its work in support of the recently appropriated \$380 million in HAVA Funds, as well as through the EAC's ongoing mission to provide a robust national clearinghouse of election administration information that promotes the effective administration of federal elections.

As states and territories work to update their systems using the recently appropriated HAVA funds, the EAC has continued to fulfill its role of administering the funds and providing information that ensures states and territories spend the funds within the boundaries established by law. Following this most recent appropriation, the EAC posted answers to Frequently Asked Questions on its website to clarify potential uses of the HAVA funds. In addition, the Commission's grants division conducted several webcasts and teleconference calls with the states to further discuss potential uses for the federal funds. EAC staff has also continuously engaged in one-on-one telephone calls with states and counties seeking answers to specific questions. In addition, because the Commission recognizes that states and territories often find their best new ideas from exchanges with their peers across the nation, the EAC is in the process of publicly sharing the narrative and grant budgets received from each HAVA grant

recipient in hopes that the peer review will assist jurisdictions as they work to fine-tune or identify new projects and activities that will enhance their own election security.

These grant-specific efforts complement the Commission's ongoing efforts to work directly with states to answer questions and provided information about topics such as best practices on how to update election systems and requirements that must be met regarding accessibility, security and other vital topics.

Beyond the Commission's service as the nation's foremost clearinghouse for election administration information, the EAC also serves on the Election Infrastructure Subsector Government Coordinating Council (EIS-GCC), including on its executive committee, established as part of the Department of Homeland Security's (DHS) effort to establish federal elections as part of the nation's critical infrastructure. Through this role, the EAC helps craft and distribute resources that guide election officials working to upgrade the security of their systems. In fact, with the deadline for all states to submit brief security and election improvement plans related to the \$380 million in HAVA Fund appropriation, the EAC is planning to soon launch an extensive outreach campaign highlighting best practices in the use of these funds. The EAC has also worked with DHS to advise county officials to communicate with their state IT counterparts, who can provide guidance and information about what direct assistance the state provides for local leaders. These efforts help increase cyber resilience within each election jurisdiction, state, and the nation as a whole.

3) *FOLLOW-UP: Can you commit to working with local and state officials in rural states to help them access federal resources for modernizing their election infrastructure and securing voter data?*

Yes, the EAC is committed to continuing its work with officials in both rural and urban jurisdictions to assist with securing voting systems. The EAC provides election officials with timely information and best practices that comport with their population and size.

Senator Udall

1) *Post-election audits have been found to be one of the best tools available to ensure that if systems have been compromised, votes cast have been counted accurately. What is your position on the need for these audits? How many states currently conduct these audits?*

The EAC recognizes the importance of post-election audits to confirm that voting systems are tabulating votes properly and accurately. This is a viewpoint that is widely shared among state and local election officials. The EAC works to provide opportunities for state and local election leaders to discuss audits – both about the value of these activities and the specifics of various audit methods. The Commission has also created audit-related resources and programming to assist election leaders, including:

- “Six Tips for Conducting Election Audits from the EAC” – This resource was created in collaboration with local election officials who helped the Commission develop a series of helpful tips for election management. These tips and recommended best practices

about how to run efficient and effective elections are then distributed and published on the EAC's website.

- “Risk Limiting Audits – Practical Application” – This recently released white paper was authored by a member of the EAC's staff who is one of the nation's most respected authorities on the topic.
- The EAC has conducted auditing workshops at the state level to provide states with information about various types of audits. Just this month, we presented on this topic in a Virginia jurisdiction that is exploring the possibility of implementing risk limiting audits.

- 2) ***In states that are either fully or partially utilizing Direct Recording Electronic devices – or “black box” voting machines – is the \$380 million in HAVA funding that was awarded enough to allow those states to replace that existing equipment with voter-verifiable paper ballot technology like what is used in New Mexico? If not, how much additional funding is needed?***

The \$380 million in newly appropriated HAVA funds is not enough to replace existing voting systems with voter-verified paper ballot voting systems. With regard to the amount of funding it would take to replace systems in each state, that question is best answered by polling the states; some public estimates have put the funding amount needed to be between \$500 million and \$1 billion.

- 3) ***In last month's Rules Committee hearing to get the state and local perspective on these issues, Missouri Secretary of State Jay Ashcroft, stated that, “The evidence indicates that voter fraud is an exponentially greater threat than hacking of election equipment.” Do you agree with his statement? If so, what evidence backs up this claim?***

The EAC is not in a position to expand upon Secretary Ashcroft's comments. However, any interference that could potentially disrupt voter confidence and election outcomes, whether from nation-state adversaries or domestic illegal activity, is something election officials face regularly. Election officials across the nation know that they can't pick and choose the threats they face. They must prepare for every challenge that could impact the integrity of elections, including issues such as those named in this question. It is the EAC's perspective that the nation should work to protect itself against all threats to the integrity of our elections.

Senator Warner

- 1) ***States now have \$380 million in grants to improve their election infrastructure. At the same time, it can be difficult – even for large enterprises – to evaluate the marketing claims of cybersecurity companies and choose products and services that best meet their needs.***

What resources do state election officials have to evaluate cybersecurity product and service vendors?

The Department of Homeland Security offers several free services to assist states and local election officials wishing to assess their security vulnerabilities. The EAC has assisted DHS in

distributing information regarding cyber protections through the EIS-GCC, and before the EIS-GCC was formally chartered, the EAC gathered various vendors and non-profit organizations to create a matrix of services available to election officials. This document was posted with other resources on the EAC website and will be updated through activity of an EIS-GCC working group, which the EAC is co-chairing. Additionally, state election officials are engaging with their Chief State Information Officers to assist with threat assessments and protections.

The EIS-GCC and the Sector Specific Coordinating Council (SCC) continue to work collaboratively to communicate the protections provided under the umbrella of the Critical Infrastructure designation. Through this process, we believe resources to support this critical element of security are now more readily identifiable and available to election officials. We also are committed to working with our partners to identify and add additional resources moving forward.

Would it be helpful for DHS or the EAC to provide a clearinghouse of information, with vetting of vendors?

One of the EAC's statutory mandates is to serve as the nation's clearinghouse of election administration information. This includes information regarding election systems and the vendors that build and provide them. The nation has thousands of semi-autonomous election jurisdictions, and this clearinghouse function helps them learn from one another instead of continually "reinventing the wheel" for each new issue. The EAC firmly believes that this charge is as important and helpful today as it was when the agency was established in 2002. As such, we are discussing with DHS, the EIS-GCC, and the SCC about how to support election officials in vetting vendors who propose to offer cyber security services to the industry.

Is this a function that's being successfully served by the so-called 'cyber navigators' and cyber liaisons?

It is our general understanding that cyber navigators and liaisons are proposed technical personnel at the state and local level who have specialized Information Technology expertise that can assist an election official with technical support and the vetting of contracts. These are ad hoc solutions developed by some states, using HAVA Fund resources.

Is EAC requiring states to spend the \$380M on specific cybersecurity improvements? Is it recommending that states prioritize specific improvements?

Congress appropriated the \$380M as grants under Section 101 of the Help America Vote Act, and, as such, the EAC is required to follow the statutory language regarding allowable uses contained in section 101. Section 101 does not require that states spend funds on cybersecurity improvements only. At the same time, the EAC is also aware of the Congressional statements regarding preferred uses for the funds. We have provided grant recipients with the report language of the 2018 Omnibus Appropriations Act. In that language, Congress advised the states how it envisioned the funds would be spent, including that states should prioritize their spending to improve and enhance the security of their election processes.

Senator Cortez Masto

1) How long is the average time it takes to certify a vendor?

It is important to note that under the Help America Vote Act, the EAC certifies voting systems as conforming to the Voluntary Voting System Guidelines. The EAC does not certify vendors. Under the Certification Program, a manufacturer of a voting system is required to register with the EAC prior to participation; however, this registration is not a certification of the vendor. The registration provides the EAC with needed information about the vendor and requires the manufacturer to agree to the requirements of the Certification Program.

On average, it takes the EAC approximately eight to 12 months to certify a newly submitted voting system. This amount of time depends on whether a system is being submitted to the EAC for an initial certification or for an upgrade. If the system has already been certified and the vendor is making an upgrade or revising a component, it may take as little as a few weeks or as much as six months to upgrade or change.

2) How many vendors receive certification and how many vendors are not certified?

Currently, there are 18 vendors registered with the EAC as voting system manufacturers. Of these 18 vendors, six have voting systems that are certified under VVSG 1.0.

3) Do you think any changes need to occur in order to make certification more accessible and widespread

The EAC's certification program is readily accessible to any vendor that has completed the manufacturing of a voting system and is registered with the EAC. While the certification program is and should remain accessible, the certification standards and testing processes must remain robust to ensure that the EAC is helping the nation administer its elections with systems that are secure, accessible, and functional. To this end, the ability of a system to make it through the certification process is directly related to how the system is built, its functionality, and whether it meets the minimum standards of the VVSG. The latest iteration of the VVSG 2.0 has been drafted to allow for the most up-to-date and latest trends in technology to be tested against minimum standards. Unfortunately, VVSG 2.0 has not been adopted at this time due to a loss of quorum on the Commission. Once a quorum is reestablished, the Commission will be in a position to adopt the new standards, which may precipitate the entry of new manufacturers into the market place.



One Hundred Sixteenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

March 1, 2019

Mr. Thomas Hicks
Commissioner
U.S. Election Assistance Commission
1335 East-West Highway
Suite 4300
Silver Spring, MD 20910

Dear Commissioner Hicks:

I am writing to thank you for appearing before the Committee on Homeland Security hearing entitled "Defending Our Democracy: Building Partnerships to Protect America's Elections," on Wednesday, February 13, 2019. I appreciate the effort taken to present testimony and answer our questions.

While many questions were asked during the hearing, the Committee has additional questions for you and look forward to your response. Please forward your responses to the Committee, attention Nicholas Johnson, Clerk, at H2-120 Ford House Office Building, by no later than Friday, March 15, 2019.

Once again, thank you for your appearance before the Committee.

Sincerely,

A handwritten signature in blue ink that reads "Bennie G. Thompson".

BENNIE G. THOMPSON
Chairman

Enclosure

Questions from Chairman Bennie G. Thompson

1. **Question:** In response to questioning from Congresswoman Clarke, you testified that it is possible to audit a Direct Recording Electronic (DRE) voting machine to determine if the system has been hacked. Yet that appears inconsistent with the findings of research performed by the National Institute of Standards and Technology (NIST) at the request of the EAC.
 - a. Is there new research that suggests it is possible to audit DREs?
 - b. What is the source of that information?
 - c. Should this new research override NIST's findings?
2. **Question:** You testified that you had little concern regarding the risk of corruption of voting systems through the supply chain because of the EAC Testing and Certification program. But the EAC Testing and Certification program which lacks Full Formal Verification (FFV) or full source code review. Moreover, the EAC Testing and Certification Program does not evaluate voter-registration systems, e-pollbooks, election night reporting systems and other critical components that run elections.
 - a. Can you elaborate on how the EAC Testing and Certification Program is capable of detecting supply chain corruption in voting systems without FFV?
 - b. Please explain how the EAC Testing and Certification Program is capable of detecting potential corruption by vendors servicing and programming systems that have already been certified?
 - c. Please explain how the EAC Testing and Certification program is capable of protecting voter-registration databases, election night reporting systems and e-pollbooks from supply chain corruption?

Questions from The Honorable Sheila Jackson Lee

3. **Question:** Are we taking a failsafe approach to determining which election systems or processes are critical to the successful conduct of a public election?
4. **Question:** Would you consider Statewide Centralized Voter Registration Databases a critical system to the administration and conduct of any public election?
5. **Question:** What failsafe measures are in place to assure that if the voter registration database is compromised and thereby make data records untrustworthy; or rendered unavailable for early voting or on election day the casting of ballots will continue?
6. **Question:** How many states have plans in place to hold or continue an election should their voter registration databases become compromised?
7. **Question:** How many states and jurisdictions within each state use electronic poll books?
8. **Question:** Are there instances when electronic poll books have failed to operate as intended?
9. **Question:** What recovery plan is in place should a polling location's electronic poll books fail or for periods of time not function?
10. **Question:** How well does same-day voter registration during early voting and on election day create meet failsafe objectives for the successful conduct of a public election?
11. **Question:** Are you providing any guidance on security and wireless non-voting system technology?
12. **Question:** Do election administrators plan for 100% voter participation during early voting or on election day? If not, why not?
13. **Question:** Are there best practices that should be used to determine the number of ballots and ballot marking technology, or voting machine that should be provided to support voting?
14. **Question:** Are there best practices to address when a natural or manmade event makes a polling location unavailable for voting?
15. **Question:** How does allowing voters to vote at locations other than at a single voting location impact the ability of election services to serve voters in a county or state?

Questions from The Honorable Dina Titus

16. **Question:** In my home state of Nevada there have been thousands of attempts by various actors to breach our voter registration database. Fortunately, our state and local election officials have managed to thwart every single one of these attacks. They have utilized Albert sensors to identify suspicious IP addresses and known malware signatures and alert the appropriate authorities. How important is it that each state deploy these Election-system sensors?
17. **Question:** Acknowledging the importance of coordinating Federal, State, and Local election security efforts, what kind of barriers exist that slow or prevent the Multi-State Information Sharing and Analysis Center from coordinating with local and state IT personnel to inform them about the types of attacks that occur and where they came from so local officials can better prepare for future attacks?
18. **Question:** What sort of obstacles have you experienced when trying to share sensitive information about imminent threats with state and local election officials?
19. **Question:** H.R. 1 aims to create channels for interagency collaboration by, among other things, requiring DHS, EAC, the Intelligence community, the State Department, and other Federal Partners to develop a comprehensive national strategy to protect our elections and our democratic institutions, perhaps through broad initiatives around media literacy or studying the effects of influence campaigns. Who is responsible for convening and coordinating interagency efforts to secure elections, and to what extent is there leadership from the White House?

Questions from The Honorable Yvette Clarke

20. **Question:** Last year, the FBI uncovered that a Russian oligarch, with close ties to President Putin, had acquired an ownership interest in a vendor which hosted statewide election data for Maryland.^[1] Until the FBI alerted them, state election authorities were unaware of the vendor's ties to Russia. Even if no tampering occurred, this raises important questions about foreign ownership of firms providing election-related services. To the best of your knowledge, is the federal government undertaking any efforts, other than the CFIUS process, to assess potential existing foreign ownership of firms that produce voting machines or provide other election-related services? If so, please describe these efforts. If not, do you believe foreign actors may seek to invest in this sector with the intent of interfering in our elections?

Questions from The Honorable Michael McCaul

21. **Question:** Voting machine challenges remain a chronic problem. How can local officials who are the center of gravity for running and securing elections ensure electric voting machines are secure?
22. **Question:** What incentives are in place for election equipment companies to improve their security?

^[1] <https://www.baltimoresun.com/news/maryland/politics/bs-md-election-russia-20180713-story.html>



U.S. ELECTION ASSISTANCE COMMISSION

1335 EAST-WEST HIGHWAY, SUITE 4300
SILVER SPRING, MD 20910

March 15, 2019

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives
1309 Longworth House Office Building
Washington, DC 20515

Dear Chairman Thompson,

On behalf of Commissioner Hicks and the EAC, please find responses to the follow-up questions stemming from the Committee on Homeland Security's February 13, 2019 hearing entitled "Defending Our Democracy: Building Partnerships to protect America's Elections."

Commissioner Hicks and the agency thank you and the Committee for holding the hearing and providing the EAC an opportunity to participate.

Kind regards,

A handwritten signature in blue ink, appearing to read "CDT", followed by a long horizontal flourish.

Clifford D. Tatum
General Counsel

Attachments

House Committee on Homeland Security
“Defending our Democracy: Building Partnerships to Protect America’s Elections”
Follow Up Questions for the Record
Hearing Date: February 12, 2019
Commissioner Thomas Hicks, Commissioner
United States Election Assistance Commission (EAC)

Questions from Chairman Bennie G. Thompson

1. Question: In response to questioning from Congresswoman Clarke, you testified that it is possible to audit a Direct Recording Electronic (DRE) voting machine to determine if the system has been hacked. Yet that appears inconsistent with the findings of research performed by the National Institute of Standards and Technology (NIST) at the request of the EAC.

All voting systems certified by the U.S. Election Assistance Commission (EAC) to meet the Voluntary Voting System Guidelines (VVSG) are required to have redundant memory. All voting systems, including Direct Recording Electronic (DRE) voting machines, are required to have two, separate sources for memory. A comparison audit of these two separate sources of memory, including a DRE’s internal memory that stores voting results, could identify discrepancies, and thus reveal that a system had been compromised.

With that stated, because both sources of memory for DREs without VVPATs are electronic, it is fathomable that a sophisticated attack could alter both sources of memory to make them identical and cause alterations to the data to be undetected. The EAC recognizes the possibility of this threat is real, which is why the VVSG 2.0 has Principles and Guidelines requiring software independence. At the moment, paper is the best way to audit a voting system, but all systems utilizing paper must comport with HAVA’s mandate for all voters to be able to cast their ballot privately and independently.

a. Is there new research that suggests it is possible to audit DREs?

The EAC is not aware of new research to this point, however the Commission is aware that jurisdictions have in the past conducted parallel audits with DREs to ensure votes are being tallied accurately.

b. What is the source of that information?

Vendors have identified this process, and the EAC is aware that the University of Connecticut's Center for Voting Technology Research has numerous post-election audit reports that utilize such data.

c. Should this new research override NIST's findings?

No. This research should not be depicted as contrary to the findings of NIST. In order to meet the national standard set by the Voluntary Voting System Guidelines (VVSG), all tabulators, including DREs, are required to have redundant memory that can be independently verified in order to meet the national standard set by Voluntary Voting System Guidelines (VVSG). However, it is also feasible that such a system could be compromised via a significant attack that would alter both sources of electronic data. This is why the VVSG 2.0 recommends software independence. It is also why election offices customarily follow the principle known as "Defense in Depth" by building in multiple layers of security to prevent such an attack from happening, assess damage created by such an attack and mitigate the fallout if a system was compromised.

2. Question: You testified that you had little concern regarding the risk of corruption of voting systems through the supply chain because of the EAC Testing and Certification program. But the EAC Testing and Certification program which lacks Full Formal Verification (FFV) or full source code review. Moreover, the EAC Testing and Certification Program does not evaluate voter-registration systems, e-poll books, election night reporting systems and other critical components that run elections.

When the Help America Vote Act of 2002 established the U.S. Election Assistance Commission, it also created the EAC's Testing & Certification Program to certify, decertify and recertify voting system hardware and software, as well as accredit test laboratories. The Testing & Certification Program has a very specific mandate that defines its work as helping to develop guidelines for, and certifying, voting equipment. This mandate does not include voter registration systems, e-poll books and election night reporting systems.

To the question of risk management in the supply chains of systems, the EAC test labs review the source code, hardware and software components of all voting systems tested under the EAC's Testing and Certification Program. The EAC maintains an ongoing Quality Monitoring Program to identify and correct issues in the field. Additional details on these programs are included below.

a. Can you elaborate on how the EAC Testing and Certification Program is capable of detecting supply chain corruption in voting systems without FFV?

The EAC's Testing and Certification Program conducts a full review of vendor-developed hardware, software and source code for every system it certifies. Also required

by the VVSG is a technical data package (TDP) that includes an approved parts list and/or the bill of materials documentation.

After a voting system is certified, there is a process for ongoing validation and verification through the Quality Monitoring Program. This is an audit and analysis of issues reported from the field, issues discovered by the vendors from their internal testing, and quality audits that are performed on the voting system manufacturers. Also, as manufacturers have hardware that reaches the end of its useful life, they are required to submit engineering change orders to update the approved parts list and/or bill of materials. In accordance with the system certification, these engineering change orders must be approved by the EAC before the vendor can implement the new parts into their manufacturing process.

That being said, the EAC's Testing and Certification Program cannot mitigate all supply chain threats. As with all security, including cybersecurity, there is not one mechanism that can thwart all threats. This is why the election community should focus on building resiliency and security through the principle of "Defense in Depth."

The EAC's Testing and Certification Program does, however, provide built-in layers of security for supporting the methodology of "Defense in Depth" for mitigating the supply chain threats for EAC-certified voting systems via the mechanisms previously described. The EAC also recommends and assists jurisdictions in working with federal partners so they can benefit from the "whole of government" approach to securing our nation's election systems.

For example, the EAC has played an instrumental role in providing opportunities for state and local election officials, as well as election vendors and other key stakeholders, to interact with Department of Homeland Security (DHS) officials following the designation of elections as part of the nation's critical infrastructure. The Commission led the establishment of the Government Coordinating Council for the Election Infrastructure Subsector (GCC) and the Sector Coordinating Council (SCC). Both councils were functioning within one year of the critical infrastructure designation. DHS has said that the GCC was formed faster than any other similar critical infrastructure sector council to date.

Since then, the GCC has launched an Information Sharing and Analysis Center (ISACs) that allows election officials to receive timely notifications of potential threats, real-time monitoring of malicious activity on their networks and access to cybersecurity experts. Such working groups are exemplary proof-points of how local, state and federal

governments can work together towards the shared goal of protecting our nation's election systems.

b. Please explain how the EAC Testing and Certification Program is capable of detecting potential corruption by vendors servicing and programming systems that have already been certified?

The EAC's Testing and Certification Program cannot mitigate all supply chain threats; not even for threats to the one system of the elections process it oversees, which is the voting systems. As with all security, including cybersecurity, there is not one mechanism that can thwart all threats, which is why election officials should focus on building resiliency and security through the principle of "Defense in Depth." The EAC's Testing and Certification Program does, however, provide built-in layers of depth for mitigating the supply chain threats for EAC-certified voting system via the mechanisms detailed below.

All voting systems tested under the EAC's Testing and Certification Program go through a full review of all vendor developed source code. The software and hardware, as certified, has been validated and verified to be programmed for its intended use. Also required by the VVSG is a technical data package (TDP) that includes an approved parts list and/or the bill of materials documentation.

Additionally, after a voting system is certified, there is a process for ongoing validation and verification through the Quality Monitoring Program. This is an audit and analysis of issues reported from the field, issues discovered by the vendors from their internal testing, and quality audits that are performed on the voting system manufacturers. Also, as manufacturers have hardware that becomes end of life, they are required to submit engineering change orders to update the approved parts list and/or bill of materials. In accordance with the system certification, these engineering change orders must be approved by the EAC before the vendor can implement the new parts into their manufacturing process.

c. Please explain how the EAC Testing and Certification program is capable of protecting voter-registration databases, election night reporting systems and e-pollbooks from supply chain corruption?

These particular systems are outside of the scope of the EAC's Testing and Certification program as detailed in the Help America Vote Act. It should be noted that a number of

states have independent certification programs for electronic poll books and provide their own certification testing requirements for e-poll books and voting systems. In addition, states and local election agencies have resources to protect voter registration databases and other technology, including servers. For example, voter registration databases are periodically audited by state or independent experts.

Questions from The Honorable Sheila Jackson Lee

3. Question: Are we taking a failsafe approach to determining which election systems or processes are critical to the successful conduct of a public election?

State and local election officials would likely tell you that each of their election systems and processes play a critical role in the administration of successful elections, which is why they invest time and resources into contingency planning and establishing practices that ensure eligible voters have the ability to successfully cast their ballot. For example, the availability of provisional ballots at the polls is the ultimate failsafe step that election officials offer on Election Day to ensure that eligible voters impacted by unforeseen circumstances or issues are able to cast their ballots and have them counted. In addition, election officials often have contingency plans in place that include roving technicians who are able to quickly identify and resolve issues with voting equipment or provide replacement voting systems if there is a failure. Another example of state and local election leaders creating failsafe processes is the usage of audits to verify election results and confirm that election systems functioned properly to produce an accurate result.

4. Question: Would you consider Statewide Centralized Voter Registration Databases a critical system to the administration and conduct of any public election?

Yes. Voter registration databases play a critical role in the administration of elections. State and local election leaders secure these systems by implementing controls to maintain confidentiality, integrity, and availability of the system and its data. Each election office has its own procedures and requirements for how these systems are managed, but the EAC does provide best practices regarding these systems.

5. Question: What failsafe measures are in place to assure that if the voter registration database is compromised and thereby make data records untrustworthy; or rendered unavailable for early voting or on election day the casting of ballots will continue?

The availability of provisional ballots at the polling place is a key failsafe measure to ensure that voters have the ability to participate in an election should voter registration databases not be available for any reason. In addition, jurisdictions frequently conduct a backup of their voter registration database so, if a problem detected, the administrator is able to retrieve the backups to a specific date and time to review and began remediation if necessary.

6. Question: How many states have plans in place to hold or continue an election should their voter registration databases become compromised?

State and local election leaders across the nation have contingency plans in place for events that could impact Election Day, including a compromised voter registration database. The availability of provisional ballots at the polls is a safeguard that ensures an election can still take place under these circumstances. In addition, election jurisdictions typically have a backup of their voter registration list at the local level, and many election officials provide paper backups at polling places or election offices.

7. Question: How many states and jurisdictions within each state use electronic poll books?

According to the 2016 EAC's Election Administration and Voting Survey (EAVS), from 2012 to 2016, there was a significant increase in the use of electronic poll books nationwide. The number of in-person voters checked in with e-poll books more than doubled during this time span, increasing 110 percent from 19.7 million to 41.4 million voters. The EAVS also found that 32 states, the District of Columbia, and U.S. Virgin Islands reported using e-poll books in at least one jurisdiction in the 2016 election. Five states used e-poll books statewide.

8. Question: Are there instances when electronic poll books have failed to operate as intended?

The EAC is aware of some specific instances reported in the media, but the Commission does not track such data related to electronic poll books. State and local election administrators are better positioned to provide detailed responses to this question.

9. Question: What recovery plan is in place should a polling location's electronic poll books fail or for periods of time not function?

Typically, as part of election officials' ongoing contingency planning efforts, jurisdictions using electronic poll books prepare a paper backup system in the event of an issue with the electronic poll books. Some jurisdictions may send the paper backup to the polling place with the e-poll books, while others send them only if needed. The issuance of provisional ballots is one way that election officials ensure that voters have the ability to cast their ballot when electronic poll books fail. State and local election administrators develop and implement their own recovery plans and are better positioned to provide detailed responses to this question.

10. Question: How well does same-day voter registration during early voting and on Election Day create meet failsafe objectives for the successful conduct of a public election?

Same-day voter registration is a policy choice made by the states. Its potential impact on the successful administration of an election is a question better posed to the election officials charged with carrying out elections.

11. Question: Are you providing any guidance on security and wireless non-voting system technology?

The EAC, often in conjunction with DHS, provides election officials training on election technology and security. In that training, the EAC highlights the best practice of disconnecting all portions of the voting system from the Internet. Further, that training highlights best practices for securing systems that are networked, such as two-factor authentication, implementing integrity checks such as digital signatures and hashing, as well as the utilization of encryption.

In addition, the EAC has issued best practices and checklists for securing networked systems, such as election night reporting systems, as well as how to protect data that is on network systems. These resources include the EAC's Checklist for Securing Voter Registration Data and other handbooks, playbooks, and best practices documents.

12. Question: Do election administrators plan for 100% voter participation during early voting or on Election Day? If not, why not?

Election administrators forecast turnout across advance voting sites, by mail, and at polling locations. This forecasted mix allows election administrators to ensure proper resources are applied. Overall, election administrators plan to ensure that each and every voter is provided the ability to cast a ballot. In addition, states have laws and regulations to guide the number of pre-printed ballots required for election day, and many states also have in-house or polling place ballot on demand systems to provide additional ballots as needed.

13. Question: Are there best practices that should be used to determine the number of ballots and ballot marking technology, or voting machine that should be provided to support voting?

State election offices often create guidance and procedures for local jurisdictions to follow. The EAC provides tools that can be used as part of this process, most notably the EAC's Election Administration and Voting Survey interactive portal that allows jurisdictions to compare their own election data with that of jurisdictions with similar characteristics. In addition, there are online tools available to assist election officials seeking to identify the number of voting systems and check-in stations they need to mitigate the chance of lines.

14. Question: Are there best practices to address when a natural or manmade event makes a polling location unavailable for voting?

Yes. Contingency planning is a key function of election administration. Election officials must prepare for the unexpected and have plans in place to conduct elections when disaster strikes. The EAC is committed to helping election officials prepare for everything from wildfires and hurricanes to terrorist threats and electricity outages. In fact, the Commission has launched a new initiative to more rigorously engage election officials who can help to shape the Commission's more robust suite of services and resources for election administrators who face natural or manmade disasters.

15. Question: How does allowing voters to vote at locations other than at a single voting location impact the ability of election services to serve voters in a county or state?

The impact of these procedures is different in the states and jurisdictions that may offer these services, and, therefore, the state election offices would be the best source to answer this question.

Questions from The Honorable Dina Titus

16. Question: In my home state of Nevada there have been thousands of attempts by various actors to breach our voter registration database. Fortunately, our state and local election officials have managed to thwart every single one of these attacks. They have utilized Albert sensors to identify suspicious IP addresses and known malware signatures and alert the appropriate authorities. How important is it that each state deploy these Election-system sensors?

Every state and local election official has the duty to securely protect their election systems. Nevada's election officials have availed themselves to many security-focused services provided by the DHS. The EAC recommends that all states use the federal resources available—including those provided by the DHS and those that might be funded as part of the \$380 million in HAVA Funds passed last year by Congress and administered by the EAC—to address election security threats.

17. Question: Acknowledging the importance of coordinating Federal, State, and Local election security efforts, what kind of barriers exist that slow or prevent the Multi-State Information Sharing and Analysis Center from coordinating with local and state IT personnel to inform them about the types of attacks that occur and where they came from so local officials can better prepare for future attacks?

Because DHS manages the Election Infrastructure Information Sharing and Analysis Center (EI-ISAC), this question would best be answered by DHS.

18. Question: What sort of obstacles have you experienced when trying to share sensitive information about imminent threats with state and local election officials?

For the most part, the EAC has not experienced obstacles when charged with sharing information about imminent threats with state and local election officials. This is something the EAC did even ahead of the 2016 election and prior to DHS's decision to designation elections as part of the nation's critical infrastructure. That said, the delay in issuance of security clearances for the EAC Commissioners remains an issue that hopefully will be resolved quickly to allow the EAC to receive and share sensitive information when necessary.

19. Question: H.R. 1 aims to create channels for interagency collaboration by, among other things, requiring DHS, EAC, the Intelligence community, the State Department, and other Federal Partners to develop a comprehensive national strategy to protect our elections and our democratic institutions, perhaps through broad initiatives around media literacy or studying the effects of influence campaigns. Who is responsible for convening and coordinating interagency efforts to secure elections, and to what extent is there leadership from the White House?

The DHS Government Coordinating Council (GCC), of which the EAC Commissioners are members, is the primary body to share information related to securing elections. Aside from that body, under the Help America Vote Act, the EAC is the only federal agency authorized to assist election officials with all aspects of elections, including security.

Questions from The Honorable Yvette Clarke

20. Question: Last year, the FBI uncovered that a Russian oligarch, with close ties to President Putin, had acquired an ownership interest in a vendor which hosted statewide election data for Maryland. Until the FBI alerted them, state election authorities were unaware of the vendor's ties to Russia. Even if no tampering occurred, this raises important questions about foreign ownership of firms providing election-related services. To the best of your knowledge, is the federal government undertaking any efforts, other than the CFIUS process, to assess potential existing foreign ownership of firms that produce voting machines or provide other election-related services? If so, please describe these efforts. If not, do you believe foreign actors may seek to invest in this sector with the intent of interfering in our elections?

The EAC agrees that the question of foreign ownership is an important one. As such, foreign interference in elections should always be treated as a credible threat. That's why the Commission's Testing and Certification Program provides built-in layers of security and quality assurance on voting system manufacturers, including a registration process that requires disclosure of ownership and ongoing quality monitoring audits. Since the EAC cannot mitigate all threats from its registered voting system manufacturers, it recommends that election officials focus on building resiliency and security through the principle of "Defense in Depth" and by taking advantage of resources offered by federal partners.

As a clearinghouse of information on best practices in election administration, the EAC has also provided officials with real-life examples of how to mitigate threats potentially posed by foreign ownership. For example, the EAC has posted security language from a Request for Proposal requiring voting equipment vendors, and their parent and holding companies, to be based in the United States. Our office, in conjunction with the Department of Homeland Security (DHS), has also offered election officials training on election technology and security, including best practices for contracting and the selection of vendors.

Questions from The Honorable Michael McCaul

21. Question: Voting machine challenges remain a chronic problem. How can local officials who are the center of gravity for running and securing elections ensure electric voting machines are secure?

The goal of every election official is to ensure not only voting machines, but the entire election system, is secure. Security has always been at the heart of what election officials do. Each state and jurisdiction has measures in place to ensure security in all phases of the election process. Every jurisdiction is different. This is one of the great strengths of our election system – that there is no one central point of access that could render the system vulnerable to a massive attack.

Since the EAC's inception, our HAVA-mandated Testing & Certification Program has been a critical first step in the process of maintaining the reliability and security of the voting systems used in our nation's elections. The Commission also produces guidelines and checklists, posts Requests for Proposals, elevates best practices and administers an IT Management course to help election officials take a holistic approach to securing their election systems. Through our partnership with the National Institute of Standards and Technology (NIST), the EAC has also maintained the Voluntary Voting System Guidelines (VVSG), which sets the national standard for voting equipment around the country.

However, as stated above, the EAC is not the only security solution for election officials. As secure voting systems must have many layers of security and resiliency built into every component, election officials must also have a "Defense in Depth" in terms of partnerships and resources they can draw from to secure their systems.

22. Question: What incentives are in place for election equipment companies to improve their security?

The best incentive for election equipment companies to improve security is in response to a requirement by their customers, state and local election officials who administer elections. The EAC produces guidelines and checklists, posts online sample Requests for

Proposals, elevates best practices, and administers an IT management course to help election officials take a holistic approach to securing their election systems, including making sure best practices are required of their contractors and vendors in addition to their own election staff.

Another incentive for election equipment vendors is the EAC's Testing and Certification Program. In order for a voting system vendor to have the ability to submit a voting system to be tested and certified by the EAC, it must first become a registered manufacturer. This requires disclosure of ownership, as well as ongoing quality monitoring audits. The Testing and Certification Program also oversees the Voluntary Voting System Guidelines (VVSG), which the EAC maintains with our partners at NIST. The VVSG are a set of standards against which voting systems can be tested to determine if the systems meet those standards. Some factors examined under these tests include functionality, accessibility, accuracy, auditability and security capabilities. These principles, and the best practices disseminated as part of the EAC's Clearinghouse, function help set and maintain the standard for voting equipment around the country.

Senate Committee on Rules and Administration
Oversight of the U.S. Election Assistance Commission
May 15, 2019
Questions for the Record
Commissioner Christy McCormick

Chairman Roy Blunt

Information Sharing

- Please provide an update on efforts to ensure that state and local elections officials have the timely, actionable information necessary to secure election systems in this country.
- What efforts are being made to improve the levels of communication and increase information sharing between election officials and federal agencies?

Voluntary Voting System Guidelines (VVSG) 2.0

- How will the high-level principles and guidelines be translated into requirements?
- Will voter-verified auditable paper trails be included in the requirements? If not, why?
- Will hand-marked paper ballots be included in the requirements? If not, why?
- What role should the Commissioners have in approving the specific requirements for the voluntary voting system guidelines?
- Has the EAC General Counsel completed its opinion as to whether or not the detailed requirements may be separated from the principles and guidelines and whether or not the requirements need Commission approval? If yes, what is that opinion?
- What happens if the Commission is unable to agree on whether or not to separate the guidelines and the requirements?
- If the principles and guidelines are separated from the requirements, would staff have the authority to set or change requirements for the types of election systems that meet certain guidelines without Commission approval?
- The 90 day public comment period for version two of the guidelines ends in two weeks. Do you have a sense of the types of comments being submitted and whether there are any recurring concerns being expressed?

- What is the process and plan to address the comments received and what will that process look like?

EAC Staffing and Resources

- There has been a great deal of press in the recent weeks about staffing at the EAC, especially within the testing and certification mission area. What is being done to ensure that testing and certification has more than one employee?
- The press also raised concerns about the management of the agency. Do you share those concerns and if not, why?
- Please describe the plan and process for appointment or reappointment of the General Counsel and Executive Director.

General Questions

- Is the EAC prepared for the next election?
- What should this Committee know about EAC's preparedness?

Senator Amy Klobuchar

Internet Connectivity of Voting Machines

During the Senate Rules Committee oversight hearing, Senator King asked whether voting machines that support Internet connectivity can be certified by the EAC. After you received a note from staff, you indicated that the current Voluntary Voting System Guidelines do not allow for internet connectivity. VVSG 1.1, section 6, Telecommunications Requirements, addresses the various types of physical and software components that voting machines may use when transporting data across local-area networks (LANs) or wide-area networks (WANs). The text of this section appears to clearly contemplate devices that support network connectivity, and the fact that election data may be sent over public telecommunications networks.

For example, section 6.1 concludes:

"Most importantly, security services must restrict access to local election system components from public resources, and these services must also restrict access to voting system data while it is in transit through public networks."

VVSG 2.0 is still under development. However, the VVSG Cybersecurity Working Group's wiki¹, hosted by NIST, lists "Internet Connectivity" as an "Open Area" under "VVSG 2.0 Draft Requirements."

¹ https://collaborate.nist.gov/voting/bin/view/Voting/CyberSecurity#Open_Areas, archived on May 22, 2019 as <https://archive.is/6KDOP>.

- Can you clarify whether a voting machine that is **capable** of internet connectivity can be certified today under VVSG 1.0 or 1.1?
- Given what you have heard from internal and external cybersecurity experts, does the EAC intend to update the VVSG 2.0 to impose a complete ban on wireless communication, and on any wired or wireless communication over public telecommunications networks?

Hiring of the Director of Testing and Certification

During the Senate and House oversight hearings you were asked about the process by which Mr. Lovato was hired for the role of Director of Testing and Certification, and how many other persons applied. In your response to Chair Lofgren, you referred to the former Acting-Director of Testing and Certification, Mr. Ryan Macias, who recently resigned from the Election Assistance Commission:

“...and yes, the job was posted. They received many applications. I believe Mr. Macias was one of the applicants as well. Obviously, he did not get the job, and Mr. Lovato did get the job.”

- Before Mr. Macias provided his resignation to the Commission, was he notified that he would not be given the job of Director, or that someone else would be getting the job? If so, when was he notified? Please include any documentation of the notification.
- Please provide the Committee with further details regarding your statement that the EAC received “many applications” for the position of Director of Testing and Certification, including:
 - When the job posting was made public
 - How many applications the EAC received
 - How many interviews were conducted and who participated in the interview process
 - Whether or not Jerome Lavato applied and if so, when
- Does the EAC perform any pre-hiring conflict of interest checks? If so, explain how this process works.

Appointment of an Executive Director

During Chairwoman McCormick’s testimony before the Senate Committee on Rules and Administration, she stated the Commission was waiting for a legal opinion on Section 204 of HAVA as to whether or not the search for a new Executive Director could begin before the current Executive Director’s term expires in November. During the Chairwoman’s testimony before the House Committee on Administration, Commissioner McCormick definitively stated that under HAVA, the EAC could not begin the search process for a new director until November when Mr. Newby’s term ends.

- Have you been provided a summary of the legal assessment and the conclusion that Chairwoman McCormick referenced in her testimony? If so, please provide it to the Committee along with your responses to the questions below.
- According to your understanding of HAVA, can the Commission hold a vote *now* to declare a vacancy and/or direct the Standards Board and the Board of Advisors to begin a search in anticipation of the end of Mr. Newby's term in November?
- If the Commission deadlocks on extending Mr. Newby's term and/or whether or not to begin a search for a new executive director, what happens? Please provide any legal analysis you have received regarding this question.
- Do you support starting the search as early as possible to ensure that there is enough time to select qualified agency leaders before the election year?
- During both the Senate and House hearings, concern was raised regarding Director Newby's leadership of the Commission. Concerns relate to current behavior including but not limited to low staff morale and Mr. Newby's judgement². Members of Congress have also raised concerns related to Mr. Newby's actions in state government prior to serving on the EAC. Do you have confidence in Mr. Newby's ability to lead the organization? Please provide details to support your answer.
- During the Senate hearing Senator King raised concern over the fact that a 2018 OPM report on the management and operations of the Commission was not shared with Commissioners in a timely manner. What steps are you taking to ensure that Commissioners are engaging in proper management of the Executive Director and the Commission?
- Should congress consider legislative changes to HAVA in order to address the authority of the Executive Director, and to improve how the Commission functions? If so, please provide detailed suggestions and justifications.

Certifying America's Voting Machines

Part of the E-A-C's mission is to develop standards for voting equipment, and those standards are then used to certify the machines that are used in our elections. You are in the process of updating the standards – the Voluntary Voting Systems Guidelines – and will soon vote on the high-level principles that will guide the development of the technical certification requirements. The guidelines have not been updated in years, and every voting machine certified by the E-A-C has been certified against a standard that was developed in 2005.

- Before you vote on the V-V-S-G 2.0, would you support a policy that allows E-A-C technical staff to work with outside experts to update the technical certification

² For example, many have expressed concern regarding Director Newby's decision to approve controversial voter registration forms, resulting in multiple lawsuits and an injunction from the U.S. Court of Appeals for the District of Columbia.

requirements without requiring a full commissioner vote on every change? Please provide an explanation for your answer.

- What steps should the EAC take to ensure that once VVSG 2.0 is finalized, machines will be tested against the new standard?

Senator Tom Udall

Private vendors play a huge role in providing the voting systems used in districts around the country, but I am concerned with so many vendors providing unique services to election officials that it becomes an enormous task to ensure each one is operating with a security as a top priority.

- How much insight does the EAC have into the security practices of the private vendors that supply and manage election infrastructure for voting districts across the United States?
- What more could the EAC do to take advantage of its clearinghouse function and give election officials the best information it can about the vendors they are purchasing equipment from?

Senator Angus S. King, Jr.

Computer security experts have established and maintained that wireless modems, even analog modems, connect to the internet. This is because today's telephone communication networks use the public Internet partially or in full when transmitting data. See, for example, <https://www.nytimes.com/2018/02/21/magazine/the-myth-of-the-hacker-proof-voting-machine.html>. This means that both the transmitted data and the machines themselves are vulnerable to hacking via the modems. According to computer security experts, the modems can be used as a vector to hack back into the voting machines themselves or into the election management system that receives the results. Such actions can compromise the machines and malign actors can install malicious software capable of manipulating results—and even erasing evidence that data had been tampered with. EAC currently allows the certification of voting machines configured with wireless modems. The EAC has certified the Hart Verity 2.2, 2.2.1, and 2.2.2 election systems configured with wireless modems; that is three separate certifications of equipment with wireless modems. The other major vendors of elections equipment, ES&S and Dominion, also sell and deploy wireless modem-enabled systems, but the vendors have not, to my knowledge, submitted those systems for federal certification. At the May 15th Senate Rules Committee hearing, Chair McCormick testified that *EAC does not certify voting equipment that can connect to the Internet.*

- Please clarify this statement in light of the fact that EAC permits certification of and has certified voting equipment with wireless modems that connect to telecommunication infrastructure including the public internet.
- Please advise on what basis did EAC conclude that wireless modems don't connect voting equipment to the internet? Please cite your sources.
- The most recent activity around vendors providing wireless modem systems occurred around the early 2017 statewide procurement process in Michigan. Michigan quite literally required vendors to include wireless modems in their submitted configurations. What advice, consultation, or communication did the state of Michigan request from EAC regarding wireless modem systems? What advice, consultation, or communication have other state governments requested from EAC regarding wireless modem systems?

At present, the proposed version of VVSG 2.0 does not include a ban on the use of wireless modems or Internet connectivity. There has been a significant public request for the EAC to include such a ban, generating thousands of responses to the EAC during the public comment period, urging it to include a prohibition on wireless modems and Internet connectivity in the next version of the VVSG.

- How many public comments has the EAC received requesting a ban on the use of wireless modems and Internet connectivity in the VVSG 2.0?
- Does the EAC expect to include a ban on wireless modems and Internet connectivity in VVSG 2.0? If not, why not?

Senator Catherine Cortez Masto

On page 50 of Volume I, Special Counsel Mueller writes, "In addition to targeting individuals involved in the Clinton Campaign, GRU officials' targeted individuals and entities involved in the administration of the elections. Victims included U.S. state and local entities, such as state boards of elections, secretaries of state, and county governments, as well as individuals who worked for those entities. The GRU also targeted private technology firms responsible for manufacturing and administering election-related software and hardware, such as voter registration software and electronic polling stations."

- What specific steps is the EAC taking to help safeguard the variety of state and local entities, including individuals involved in election administration, from foreign interference in U.S. elections?

- What specific steps is the EAC taking to help safeguard private technology firms responsible for manufacturing and administering election-related software and hardware from foreign interference in U.S. elections?
- Do you think that state and local governments, the federal government, and private technology firms are prepared for the 2020 presidential election, when it is highly likely that Russia could try to interfere again?

Just this month, Florida Governor Ron DeSantis said that in 2015, Russian hackers had a successful “intrusion” into the voting registration files of two Florida counties. As you know Voluntary Voting System Guidelines only apply to voting systems, not to voter registration systems or poll books.

- Do you think that broader guidelines are necessary in order to improve security for other aspects of the election process?
- Are we leaving critical components of our election system without the protection needed by focusing EAC’s guidelines on voting machines and not voter registration files?

The National Association of State Election Directors recently sent a letter to the EAC expressing their support for the updated version of the Voluntary Voting System Guidelines, or VVSG 2.0. They also noted their support for the proposed structure in which the high-level “Principles and Guidelines” require EAC commissioner approval, while the technical requirements can be updated regularly by qualified EAC technical staff. They believe this proposed structure is an important remedy to the cumbersome and slow process of updating the Voluntary Voting Systems Guidelines.

- Do you agree with that proposed structure? Why or why not?
- Would the technical components of the guidelines be able to keep up with changing technology at an acceptable rate if every change to them must be approved by the EAC commissioners?
- Are you concerned about what would happen if the EAC once again loses its quorum?

Officials in Nevada tell me that many of the security systems they need to install to ensure the security of their voting systems are costly, requiring not just an upfront cost but monthly maintenance fees.

- Given the pervasiveness of ongoing threats to our election systems, do you believe Congress should do more to help states and localities address these long-term costs?

- How are you helping states make investments in their voting systems when they are concerned about the long-term costs of upkeep?

Recent press reports have described the culture at the EAC as having “very low staff morale.” State election officials have expressed frustration over staff shortages at the EAC, saying that it is impacting their cooperation with the Commission.

- Can you describe the current staffing level at the EAC?
- How are vacancies impacting the EAC’s ability to fulfill its election security responsibilities?

Senate Committee on Rules and Administration
Oversight of the U.S. Election Assistance Commission
May 15, 2019
Questions for the Record
Commissioner Thomas Hicks

Chairman Roy Blunt

Information Sharing

- Please provide an update on efforts to ensure that state and local elections officials have the timely, actionable information necessary to secure election systems in this country.
- What efforts are being made to improve the levels of communication and increase information sharing between election officials and federal agencies?

Voluntary Voting System Guidelines (VVSG) 2.0

- How will the high-level principles and guidelines be translated into requirements?
- Will voter-verified auditable paper trails be included in the requirements? If not, why?
- Will hand-marked paper ballots be included in the requirements? If not, why?
- What role should the Commissioners have in approving the specific requirements for the voluntary voting system guidelines?
- Has the EAC General Counsel completed its opinion as to whether or not the detailed requirements may be separated from the principles and guidelines and whether or not the requirements need Commission approval? If yes, what is that opinion?
- What happens if the Commission is unable to agree on whether or not to separate the guidelines and the requirements?
- If the principles and guidelines are separated from the requirements, would staff have the authority to set or change requirements for the types of election systems that meet certain guidelines without Commission approval?
- The 90 day public comment period for version two of the guidelines ends in two weeks. Do you have a sense of the types of comments being submitted and whether there are any recurring concerns being expressed?

- What is the process and plan to address the comments received and what will that process look like?

EAC Staffing and Resources

- There has been a great deal of press in the recent weeks about staffing at the EAC, especially within the testing and certification mission area. What is being done to ensure that testing and certification has more than one employee?
- The press also raised concerns about the management of the agency. Do you share those concerns and if not, why?
- Please describe the plan and process for appointment or reappointment of the General Counsel and Executive Director.

General Questions

- Is the EAC prepared for the next election?
- What should this Committee know about EAC's preparedness?

Senator Amy Klobuchar

Appointment of an Executive Director

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- During the Senate hearing Senator King raised concern over the fact that a 2018 OPM report on the management and operations of the Commission was not shared with Commissioners in a timely manner. What steps are you taking to ensure that Commissioners are engaging in proper management of the Executive Director and the Commission?
- Should congress consider legislative changes to HAVA in order to address the authority of the Executive Director, and to improve how the Commission functions? If so, please provide detailed suggestions and justifications.

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Senate Committee on Rules and Administration
Oversight of the U.S. Election Assistance Commission
May 15, 2019
Questions for the Record
Commission Benjamin W. Hovland

Chairman Roy Blunt

Information Sharing

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- In your view, what can be improved about how the Commission operates?
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Senate Committee on Rules and Administration
Oversight of the U.S. Election Assistance Commission
May 15, 2019
Questions for the Record
Commissioner Donald L. Palmer

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U.S. ELECTION ASSISTANCE COMMISSION
1335 EAST-WEST HIGHWAY, SUITE 4300
SILVER SPRING, MD 20910

June 14, 2019

Senator Roy Blunt
Chairman
Senate Committee on Rules and Administration
United States Senate
Russell Senate Office Building
Room 205
Washington, D.C. 20510

Dear Chairman Blunt,

Thank you for the opportunity to appear before members of the Senate Committee on Rules Administration for the U.S. Election Assistance Commission (EAC)'s oversight hearing on May 15. We appreciated the opportunity to address how the Commission is fulfilling its mission to support election administrators and the voters they serve, and we respectfully submit for the record the following responses to the Committee's follow-up questions.

This letter addresses each of the questions posed by members of the Committee, including inquiries addressed to specific Commissioners. The answers reflect the Commissioners' collective responses. The only exceptions are when the response answers a question posed to specific Commissioners or as otherwise noted.

Questions Submitted by Chairman Roy Blunt

Please provide an update on efforts to ensure that state and local elections officials have the timely, actionable information necessary to secure election systems in this country.

Federal law enforcement and intelligence officials regularly remind us that the cyber threats election administrators faced in 2016 and 2018 remain today and are likely to intensify in the months and years ahead. As the only federal agency solely devoted to supporting election administrators and the voters they serve, the U.S. Election Assistance Commission takes seriously the fact that voter confidence is enhanced when we adequately prepare for, and respond to, challenges such as election misinformation campaigns, persistent attempts to breach election systems and voting registration databases, and other real threats. This is the touchstone that guides our election security work.

As the Commissioners have previously testified, the EAC plays a leading role on the Elections Critical Infrastructure Government Coordinating Council (GCC), and Chairwoman McCormick currently serves on that council's executive board. As part of our role on the GCC, we actively participate in regular conference calls that include the Department of Homeland Security (DHS),

as well as local and state election official members of the GCC. These calls focus on communications protocols and the continued development of sector coordinating security plans. In addition, we develop activities for all state and local jurisdictions to participate in, efforts that strengthen the groundwork that was developed in 2016 and further enhanced in 2018. The EAC also works with DHS and the Sector Coordinating Council (SCC) that is comprised of election equipment manufacturers and vendors.

As we understand, our federal partner, DHS, continues to deploy network security monitors to states and local jurisdictions, and election administrators at all levels are continuing to take advantage of the security examinations and evaluations offered by DHS. For example, during public events throughout the nation, we promote participation in the Elections Infrastructure-Information Sharing and Analysis Center (EI-ISAC). We receive updates regarding DHS activities during our regular GCC executive committee call, and these conversations typically include discussions about how to share security information with the state and local jurisdictions after federal intelligence agencies make it available to share.

In addition, we know from state plans, expenditure reports and recent updates obtained from the EAC grants department that the states are spending these funds on items that will directly improve election security. As testified, at least 90 percent of the funds have been devoted to technological and cybersecurity improvements, the purchase of new voting equipment, and improvements to voter registration systems.

Beyond the GCC and SCC, and the administration of newly-appropriated Help America Vote Act (HAVA) funds, the Commission has taken a multifaceted approach to helping state and local election officials strengthen their election security. This work includes testing and federally certifying voting systems, providing hands-on security and post-election audit trainings across the country, producing security-focused resources, disseminating security best practices information and checklists to state and local election officials, as well as hosting widely attended forums that feature security experts as speakers.

The following list details some other activities the EAC has completed to strengthen election security and resiliency:

Trainings

- Developed and conducted tabletop exercises for hundreds of local election officials in three states and regions, and participated in the “National Tabletop the Vote” at DHS;
- Conducted more than a dozen Election Officials as IT Manager trainings to hundreds of election officials in nine states;
- Provided two regional Election and Cyber Security Awareness Trainings to state legislators and a similar presentation to election official organizations, including the National Association of State Election Directors (NASSED), Election Center and the International Association for Government Officials; and
- Provided post-election audit training across five states.

Resources and Guidance

The EAC has produced and posted to its website the following original resources and guidance related to election security:

- Starting Point: U.S. Election Systems as Critical Infrastructure (White Paper)
- Election Security video and accompanying training materials
- Glossary – IT Terms Managing Election Technology
- Glossary – Common Cybersecurity Terminology
- American Elections: Understanding Cybersecurity
- Incident Response Best Practices
- Risk-Limiting Audits – Practical Application (White Paper)
- 10 things you should know about maintaining your aging voting technology
- 10 things you should know about purchasing new voting equipment
- Checklist for Securing Voter Registration Data
- Checklist for Securing Election Night Reporting Systems
- Quick Tips on Alternative Voting Methods
- Videos of DHS and ODNI election security presentations at EAC-hosted events
- Provided, upon request, specific election security bulletins to election officials from U.S. federal agencies focused on security and law enforcement, including the Federal Bureau of Investigation (FBI), DHS, and the Office of the Director of National Intelligence (ODNI)
- Posted online election security presentations from election offices in Colorado and Maryland
- Posted online all HAVA Funds state narratives containing details about how states plan to spend their newly appropriated HAVA Funds, including specifics about spending on security enhancements
- An October 2018 #Countdown18 Blog Series titled “Securing the Vote” featured how states are investing funds to improve election security, sharing best practices and “lessons learned”
- Established an “Election Security Preparedness” page on www.eac.gov to house election security information produced by the EAC and other federal partners, such as DHS

Events

- Hosted ODNI and DHS for an election security discussion at the EAC Board of Advisors meeting in Salt Lake City, UT on April 24, 2019
- October 2018 Election Readiness Summit, featuring security and intelligence speakers (event was live streamed and video recording was posted online following the event)
- EAC Public Forum: An Election Security Conversation with U.S. Election Officials, a public forum meeting in Miami on April 18, 2018
- Hosted ODNI and DHS for an election security discussion at the EAC Standards Board meeting in Memphis, TN on April 11, 2018
- January 2018 Election Summit ahead of the 2018 Midterm Election, featuring a panel on election security and a keynote address from DHS (event was live streamed and video recording was posted online following the event)
- October 2017 Cybersecurity Roundtable (event was live streamed and video recording was posted online following the event)

- Participation in the 2018 Election Security roundtable
- Presented at events hosted by NASED, National Association of Counties (NACo), National Association of Secretaries of State (NASS), iGo, The Carter Center, and other leading election-focused organizations
- Three separate formation meetings, in Albany, NY, Washington, D.C., and Atlanta, GA to form the DHS Government Coordinating Council.
- Leadership and co-host of the DHS Sector Coordinating Council in the elections subsector.

Federal Testimony and Commentary

- Chairwoman Christy McCormick testimony before the House Committee on Oversight and Reform's Subcommittee on National Security, "Securing U.S. Election Infrastructure and Protecting Political Discourse," May 22, 2019
- "Securing the Accuracy and Efficiency of Elections" – Chairwoman Christy McCormick, *The Washington Times*, March 3, 2019
- Commissioner Hicks testified before the House Committee on Homeland Security, "Defending Our Democracy: Building Partnerships to Protect America's Elections," February 13, 2019
- Commissioners Christy McCormick and Thomas Hicks testify before the Senate Rules and Administration Committee, "Election Security Preparedness: Federal and Vendor Perspective," July 11, 2018
- "Maintaining vigilance against election hackers" – Commissioner Matthew Masterson opinion article, *The Washington Times*, July 26, 2017
- "EAC Commissioner underscores importance of congressional support for election assistance" – Commissioner Thomas Hicks, *The Hill*, January 26, 2017
- Commissioner Thomas Hicks testimony before the House Committee on Oversight and Reform, September 28, 2016

The EAC's participation in critical infrastructure activities and its own security work was a direct result of the personal involvement and direction of the EAC's most senior staff, as well as the efforts of the Commission's talented team of professionals. The EAC does not have full-time employees devoted to these new components of providing election security support. In fact, the EAC's Inspector General highlighted this staffing issue as a Significant Management Challenge in 2018. At this time, existing staff, in conjunction with their other full-time responsibilities, have been tasked with interacting with the agency's external partners to identify resources and materials that might be useful for our election official stakeholders. With additional resources, the EAC would have the opportunity to fund additional election security activities within its Election Technology Program.

What efforts are being made to improve the levels of communication and increase information sharing between election officials and federal agencies?

The EAC's early role in establishing an election security task force, which became the Government Coordinating Council, and also in helping establish the Sector Coordinating Council has provided a strong foundation for information sharing between election officials and the federal agencies that are able to provide election security assistance. The Commission's ongoing

participation in these bodies, including as a member of the GCC's Executive Committee, has made these groups more effective and has ensured the proposed solutions and assistance coming from the federal government are responsive to real security needs we see in the field. The GCC and SCC continuously meet in regularly scheduled calls and DHS is continuing its efforts to share timely information when it is available. In order to allow state election officials and EAC Commissioners and staff to review vital security information that it disseminates, the DHS is continuing to process security clearances. DHS can provide information on how many state election official clearances it has issued. The EAC Commissioners and staff have received interim secret-level clearances and DHS is currently working on finalizing those clearances.

It's not enough, however, to simply participate in these councils. We have proactively created opportunities for election officials to hear directly from the EAC, the Department of Homeland Security, the Office of the Director of National Intelligence, the Federal Bureau of Investigation, the Justice Department, and other federal partners who play a role in supporting election security work. The EAC's unique convening power and ability to interface between election administrators and federal entities makes the Commission a key leader in national efforts to protect the vote. We continuously seek new opportunities to share resources, convene experts and election officials, relay best practices to the election community, and share actionable intelligence when asked to do so. For example, during events across the nation, we promote participation in the EI-ISAC.

How will the high-level Principles and Guidelines be translated into Requirements?

Under the process mandated by the Help America Vote Act of 2002, technical experts at the National Institute of Standards and Technology (NIST) and members of the Technical Guidelines Development Committee (TGDC) were involved in the initial development of the high-level Principles and Guidelines. They are also intricately involved in developing the technical requirements that will accompany the Principles and Guidelines. NIST has established several public working groups comprised of a broad array of industry experts and stakeholders who provide input to the development of the requirements. These groups include election advocates, election technology experts, accessibility professionals, and others. The requirements will also be reviewed for clarity and functionality by voting system manufacturers and EAC laboratory experts.

Will voter-verified auditable paper trails be included in the Requirements? If not, why?

The public comment period has just concluded and the Executive Director will work with staff to evaluate comments. The Executive Director will present Commissioners with recommended revisions and the Commissioners will deliberate what to include in the final VVSG 2.0. It would be premature to answer this question ahead of those deliberations and without the full benefit of considering feedback collected during the public comment period. The Commissioners are committed to a transparent and thorough deliberation regarding those comments and the path forward toward a vote on the VVSG 2.0.

Will hand-marked paper ballots be included in the requirements? If not, why?

The public comment period has just concluded and the Executive Director will work with staff to evaluate comments. The Executive Director will present Commissioners with recommended revisions and the Commissioners will deliberate what to include in the final VVSG 2.0. It would be premature to answer this question ahead of those deliberations and without the full benefit of considering feedback collected during the public comment period. The Commissioners are committed to a transparent and thorough deliberation regarding those comments and the path forward toward a vote on the VVSG 2.0.

What role should the Commissioners have in approving the specific requirements for the Voluntary Voting System Guidelines?

This is a question that will be answered as part of the Commissioners' deliberations to finalize the VVSG 2.0 in totality, including the Principles and Guidelines, the technical requirements, the test assertions, and the EAC policies to maintain the VVSG 2.0 in its entirety. According to HAVA, the Commissioners do play a vital role in the development of requirements, the process for continued maintenance, and updates to the requirements.

Has the EAC General Counsel completed its opinion as to whether or not the detailed requirements may be separated from the Principles and Guidelines and whether or not the Requirements need Commission approval? If yes, what is that opinion?

The EAC's General Counsel has not completed his review of the process and does not have an official opinion to share at this time. When the General Counsel provides his written legal opinion to the Commissioners, we will consider it as we begin to deliberate the adoption of VVSG 2.0 in its entirety.

What happens if the Commission is unable to agree on whether or not to separate the guidelines and the requirements?

The technical requirements are currently being developed by NIST, in coordination with the public working groups, and these requirements will be reviewed by the Technical Guidelines Development Committee (TGDC). Voting system manufacturers have indicated that they cannot begin building systems to the VVSG 2.0 Principles and Guidelines until technical requirements are completed. With that in mind, if the Commission is unable to agree to separate the technical requirements from the Principles and Guidelines, that would not delay the manufacturers from developing new systems.

If the Principles and Guidelines are separated from the Requirements, would staff have the authority to set or change requirements for the types of election systems that meet certain guidelines without Commissioner approval?

The answer to this question will be deliberated by the Commission after we receive the General Counsel's legal opinion on the matter and addressed as the Commission determines the manner

and method in which the Principles and Guidelines will be finalized and how technical requirements will be updated or modified thereafter.

The 90-day public comment period for version two of the guidelines ends in two weeks. Do you have a sense of the types of comments being submitted and whether there are any recurring concerns being expressed?

Following the Commissioners' unanimous decision to extend the public comment period by seven calendar days to allow the public ample opportunity to participate, the 90-day public comment period ended on June 7, 2019. The staff is now assessing the comments that were collected and will provide a recommendation for the Executive Director's review prior to his recommendation to the Commissioners. In general, most of the comments support VVSG 2.0. The Commission received approximately 40 comments that provide in-depth remarks regarding specific aspects of Principles and Guidelines, and thousands of comments generated by website petition platforms that have generated a repeat message to ban wireless functionality and require an auditable paper record.

What is the process and plan to address the comments received and what will that process look like?

All comments will be reviewed by staff and the Executive Director to determine their relevance to the VVSG Principles and Guidelines in general and their compliance with the provisions of HAVA. The relevant comments will be reviewed to determine whether any propose substantive changes or modifications to any of the Principles and Guidelines. Any proposed changes will be highlighted by the staff and presented by the Executive Director for Commissioner consideration.

There has been a great deal of press in the recent weeks about staffing at the EAC, especially within the testing and certification mission area. What is being done to ensure that testing and certification has more than one employee?

We are pleased to report that the Commission's Testing and Certification team has been restored to three employees, including its new Director, Jerome Lovato. Shortly after a new leader was selected for the department, we moved to fill two other vacancies on the Testing and Certification team. The EAC has hired two new individuals who started on May 28 and have a combined 26 years of experience in voting system certification. Election system testing campaigns and other services provided by that department are continuing without interruption.

Ideally, with adequate funding, the goal is to build the department to a team of six Testing and Certification staff, which was the staffing level for the department in 2010. This will ensure timely and thorough consideration of submitted election systems, as well as allow the Commission to provide additional critical infrastructure support to state and local election administrators who are seeking additional training and resources in areas such as election security and post-election audits.

The press also raised concerns about the management of the agency. Do you share those concerns and if not, why?

The Commissioners are aware of the press report regarding management of the EAC. It is not appropriate to discuss personnel matters on the record and in a public setting, including as it relates to our thoughts regarding any particular member of our management staff. Unfortunately, because personnel matters are not discussed in a public forum, the public is left with biased or incomplete information that doesn't accurately reflect the great work that the agency has provided to its constituents. The EAC has a talented and engaged staff, evidenced by work produced and shared in the 2018 EAC Annual Report that we included with our initial testimony. Further, the EAC continues to demonstrate its ability to recruit highly-regarded and skilled employees as demonstrated by the Commission's ability to rapidly restore the staffing levels in the Testing and Certification Department just last month.

Please describe the plan and process for appointment or reappointment of the General Counsel and Executive Director.

The Commission will follow a process consistent with HAVA should a vacancy in these positions occur.

Is the EAC prepared for the next election?

Yes. The agency is continuing to move forward with its preparation for the 2020 election cycle, recognizing our mission is to support states and counties in the local administration of elections and preparing for any event that may potentially disrupt an election. As resources are made available, there are additional activities that the Commission has in the queue to provide valuable new assistance to state and local election officials.

What should this Committee know about EAC's preparedness?

The EAC will continue to meet the requirements of HAVA and meet the needs of election administrators in improving the voting experience and preparing for any contingency. However, without additional resources, it will be a formidable task to expand our footprint to provide the additional support our constituents are looking for. As an example, with additional FY20 resources, the Commission would offer the following:

- **Develop and complete a Cybersecurity and Technology Initiative overhaul at a cost of \$578,000.**

Last year, the EAC hired a Chief Information Officer (CIO) to oversee technology and security at the agency. The CIO performed an in-depth analysis of technology and security, identifying areas where the agency can modernize, consolidate, and strengthen security while improving services to provide an immediate positive impact to the agency. Given the EAC's critical role in election security, it is important that we maintain a positive image in the realm of cybersecurity in the public's eye. This is especially important because a breach that

receives media coverage may negatively impact our reputation and has the potential to place an immediate perceived threat on national election integrity.

An increase of \$578,000 to fund the development of a modernized Information Technology Infrastructure, VoIP system, hardware, software, cyclical replacements, cloud initiatives, and a new cybersecurity program at the Commission will substantially enhance the EAC's information technology security posture.

- **Develop and complete an EAC Communications Initiative projected to cost \$710,000.**

New Resources and Training

This initiative would allow the existing staff to work with outside experts and contract writers to prepare a suite of training materials that could be combined into training manuals or parceled out for more specialized trainings. Using the Commission's attached wheel of "Election Administrator Competencies" as our guiding principle, the training materials would touch on as many aspects of election administration as possible, but certainly would include best practices, checklists, and guidance pertaining to the following topics:

- Election Security
- Procuring Election Technology and Voting Systems
- Recruiting Poll Workers
- Disaster Preparedness and Recovery
- Using Election Data to Improve the Voter Experience
- Accessibility

In addition to using these materials for trainings across the nation, the EAC would add the updated materials to its website ahead of 2020.

This communications initiative would include a series of five regional trainings ahead of the 2020 Presidential Election. The EAC would offer two-day, regionally-based "2020 Election Bootcamp" events that feature hands-on training rooted in the new materials above. The events would be a mix of panels, trainers, keynote speakers, and hands-on exercises offered for election administrators. Ideally, these events would take place starting one year out from the 2020 Presidential Election and be completed no later than midway through the second quarter of 2020. Potential sites for these trainings include:

- Washington (Northwest)
- New Mexico (Southwest)
- Missouri (Midwest)
- Florida (Southeast)
- Washington, D.C. (Northeast)

In addition to serving as an incredible learning opportunity for election officials, these conferences would provide the EAC with regional platforms to conduct media outreach,

place opinion pieces, conduct editorial board meetings, and highlight HAVA grant-supported efforts across the nation ahead of 2020.

Combatting Disinformation

To fight potential disinformation on social media, with additional funding, the EAC would be able to increase its role as a trusted source of election information and increase voter confidence. The EAC would invest in paid media placements ahead of the 2020 Presidential Election. These regional print ads, radio news releases or ads, as well as national online ad buys, could link back to “trusted source” resources for voters or provide public service information about how voters can make sure they are able to fully participate in the 2020 Presidential Election, including how to serve as a poll worker. This effort would serve as a complement to our regional trainings efforts by specifically targeting voters across the nation and elevating the profile of the EAC’s broad spectrum of offerings for them (i.e., up-to-date election calendars, “Voting Rights” cards, portals to contact local election officials).

In an era where misinformation campaigns carried out on social media and by more traditional means have the potential to negatively impact elections, the EAC understands better than any other agency the need for election officials to be the most trusted source of election information. At the federal level, Vote.gov has the opportunity to be a one-stop, federal trusted source for voters and the EAC can provide leadership to ensure this is the case.

Serving as a trusted source for voters is an essential responsibility that the Commission carries out and one that it hopes to enhance by partnering with other federal entities that provide election information. In an effort to streamline information sharing and provide voters with improved access to accurate election information and a broader array of voting resources, the EAC plans to partner closely with the administrators of Vote.gov. Currently, Vote.gov's website and the EAC's www.eac.gov website are managed and updated by independent webmasters. When real-time edits are made on the EAC's websites, it is imperative that these same changes be reflected on Vote.gov. By linking the two sites and streamlining updates, the EAC can ensure that voters always have access to the most recent versions of important forms and resources. Looking ahead, we hope to leverage this relationship to improve the quality and expand the amount of information available on Vote.gov.

➤ Enhance the Research Initiatives at a cost of \$538,000.

Section 241 of HAVA allows the EAC to periodically conduct and make available public studies regarding prescribed election administration issues. EAC’s ability to meet this requirement is significantly constrained due to insufficient funding for research personnel and contract mechanisms. Currently, there is one staff member conducting original research that produces best practices for election officials nationwide. This constraint limits the magnitude of up-to-date information the agency can feasibly produce, internally, in a timely manner. Personnel constraints limit the EAC's ability to efficiently serve as a clearinghouse of election information.

The EAC proposes three additional staff that will help produce the following items:

- Security-related best practices for statewide voter databases and other forms of election technology in 2020 and beyond
- Best practices to secure the vote-tabulation machines used to cast and tally votes
- Best practices to mitigate the risks of vulnerable public-facing elections websites and the exploitation of backend databases behind web servers used by election officials
- A primer on advanced voting that includes the most current best practices on implementation
- Best practices to ensure effective and efficient voter list maintenance
- Best practices to design ballots used in elections for public office, including paper ballots and electronic or digital ballots, to minimize confusion and user errors
- Best practices to improve voting access for individuals with disabilities during elections for Federal office

Furthermore, there are several reports with content that need to be revisited and revised for use and applicability. The following HAVA reports should be updated:

- Effective Designs for the Administration of Federal Elections (Ballot Design) (2007)
- Improving State Voter Registration Databases (2009)

The information that we have shared with you is the tip of the iceberg as it relates to all of the EAC's activities that are conducted on a daily, weekly and monthly basis. The election wheel that we referenced earlier is the driving factor of all programs that the EAC endeavors to develop and share with election officials around the nation. Developing products for election officials to navigate these topics is our primary goal.

➤ **Double the size of the Testing and Certification staff at a cost of \$350,000.**

Doubling the existing staff to six staff members focused on the Testing and Certification and the Election Technology and Security programs would allow for increased output from the Test and Certification division in certifying voting systems and cyber security support.

Questions from Senator Amy Klobuchar

Question Addressed to Chairwoman McCormick: Can you clarify whether a voting machine that is capable of internet connectivity can be certified today under VVSG 1.0 or 1.1?

As I stated on the record during the hearing, internet connectivity is a complicated subject. Currently, with VVSG 1.0, public and private network connection is allowed. However, as the note passed to me from staff during the hearing was attempting to clarify, the technical requirements associated to operating a modem in a voting system are so stringent that no voting system has been certified to operate in a capacity where voters cast, and systems count, votes through an internet connection. Jurisdictions that use EAC-certified systems with modems only use modems to transmit unofficial election results. No EAC-certified voting system connects to the internet to allow a voter to access and cast a ballot.

Question Addressed to Chairwoman McCormick: Given what you have heard from internal and external cybersecurity experts, does the EAC intend to update the VVSG 2.0 to impose a complete ban on wireless communication, and on any wired or wireless communication over public telecommunications networks?

The public comment period has just concluded. Those comments will be reviewed by staff and the Executive Director in the light of the provisions of HAVA, and the Executive Director will make a recommendation to the Commissioners. My fellow Commissioners and I will then deliberate what to include in the final VVSG 2.0. It would be premature to answer this question ahead of those deliberations and without the full benefit of considering feedback collected during the public comment period. We are committed to a transparent and thorough process regarding those comments and recommendations as we deliberate the path forward toward a vote on the VVSG 2.0.

Question Addressed to Chairwoman McCormick: Before Mr. Macias provided his resignation to the Commission, was he notified that he would not be given the job of Director, or that someone else would be getting the job? If so, when was he notified? Please include any documentation of the notification.

While Commissioners are not involved in personnel matters, it is my understanding that Mr. Macias received no notification about any selection or non-selection for the Director position prior to his resignation. I also understand that a decision had not been made prior to his resignation.

Question Addressed to Chairwoman McCormick: Please provide the Committee with further details regarding your statement that the EAC received “many applications” for the position of Director of Testing and Certification, including:

- **When the job posting was made public**
The job was posted to USAJobs on March 6, 2019.
- **How many applications the EAC received**
I was informed that 20 applications were received.
- **How many interviews were conducted and who participated in the interview process**
As I understand it, no formal interviews were conducted, but conversations with internal candidates transpired prior to a final decision.
- **Whether or not Jerome Lovato applied and if so, when**
Mr. Lovato applied to the position on March 7, 2019.

Question Addressed to Chairwoman McCormick: Does the EAC perform any pre-hiring conflict of interest checks? If so, explain how this process works.

The EAC is covered by the Ethics in Government Act and the Code of Ethical Conduct administered by the Office of Government Ethics. As the Commission receives resumes and applications for employment, it identifies potential employees and looks at a candidate's past employers to determine if there are any potential conflicts of interest. If so, potential conflicts are reviewed by Human Resources and our Designated Agency Ethics Official to determine whether the EAC can facilitate employment based on required ethical standards. If potential conflicts are identified, our Designated Agency Ethics Official seeks expertise from the Office of Government Ethics when necessary.

Have you been provided a summary of the legal assessment and the conclusion that Chairwoman McCormick referenced in her testimony? If so, please provide it to the Committee along with your responses to the questions below.

No. The Commissioners have not yet received a formal legal assessment from the EAC's General Counsel.

According to your understanding of HAVA, can the Commission hold a vote *now* to declare a vacancy and/or direct the Standards Board and the Board of Advisors to begin a search in anticipation of the end of Mr. Newby's term in November?

Per section 204 of the Help American Vote Act, when a vacancy exists, the advisory boards appoint search committees to recommend at least three names for consideration by the Commission.

If the Commission deadlocks on extending Mr. Newby's term and/or whether or not to begin a search for a new Executive Director, what happens? Please provide any legal analysis you have received regarding this question.

No legal analysis has been received at this time.

Do you support starting the search as early as possible to ensure that there is enough time to select qualified agency leaders before the election year?

While we appreciate the nature of this question and the Senator's concern regarding the matter, we intend to follow a process consistent with HAVA at the appropriate time and we respectfully note that a response to this question would in effect require deliberation and a consensus of the Commissioners on how to proceed. Additionally, individual answers to this question would effectively be a tally vote or a straw poll of the Commissioners' positions on this matter and as such, we are not conducting deliberations, or making a public statement on this matter at this time.

During both the Senate and House hearings, concern was raised regarding Director Newby's leadership of the Commission. Concerns relate to current behavior including but not limited to low staff morale and Mr. Newby's judgement. Members of Congress have also raised concerns related to Mr. Newby's actions in state government prior to serving on the EAC. Do you have confidence in Mr. Newby's ability to lead the organization? Please provide details to support your answer.

While we appreciate the nature of this question and the Senator's concern regarding the matter, we intend to follow a process consistent with HAVA at the appropriate time. Additionally, as mentioned above, we do not believe it is appropriate to discuss personnel matters on the record and in a public setting, including as it relates to our thoughts regarding any particular member of our management staff. Finally, individual answers to this question would effectively be a tally vote or a straw poll of the Commissioners positions on this matter and as such, we are not conducting deliberations, or making a public statement on this matter at this time.

We can collectively say, however, that when Mr. Newby joined the Commission, there were serious Congressional efforts to shutter the EAC, a reality that left many of our longtime employees questioning the external commitment to the Commission's mission and made employee recruitment difficult. The Commission's budget was painfully small, less than half what it had been a decade before, and Congress had not appropriated new HAVA funding in years. These were some of the challenges our new Executive Director faced when he was hired.

As recently as February 2017, a front page article in USA Today talked of a bill in Congress to eliminate the EAC. Two years later, leaders in the House and Senate, from both parties, are supporting not only the continuation of the EAC, but investments to restore its potential. Each of the 23 staff members at the EAC takes great pride for their role in helping drive this turnaround regarding the outlook of the EAC, and the supervisor of all day to day staff activities is the Executive Director.

Commissioner McCormick and Palmer would like to more specifically answer the question with the following: We have full confidence in Mr. Newby's administration of the agency as the executive director. We believe the attacks against him are politically motivated. We continue to look to his leadership as we approach the November 2019 elections, the presidential primary season in early 2020, the Presidential Election Year, and the necessary recommendation that will be required to successfully finalize and implement VVSG 2.0, including a new set of voluntary standards and technical requirements for the next generation of voting systems.

Mr. Newby, a local election administrator, was appointed by a unanimous bipartisan vote of the Commissioners after a nationwide search by the agency and the recommendation process initiated with the EAC advisory committees. Since the quorum was initially re-established in 2015 and Mr. Newby's hire, there have been few complaints and no significant risks or major management issues identified by the Inspector General in her Annual Reports to the Congress that would indicate a problem with his management skills or other evidence of a hostile work environment. This is a change from past issues of discrimination and retaliation that plagued the agency and resulted in a number of substantiated allegations of discrimination in hiring or the workplace that ultimately the agency was required to settle with claimants.

No news headline can erase the fact that the Commission has rebounded during the last four years to reestablish itself as a leader and trusted government source for election officials and voters. This includes the period from March 2018 to February 2019 when there wasn't a quorum of Commissioners. Now with the EAC on the other side of this transformation, members of Congress are confirming that attempts to close the agency have been set aside and that the EAC has found a new sense of purpose. We have managed to recruit and retain a talented staff of new experts, including communications professionals, accomplished researchers, and a skilled technical team. In fact, the EAC has upgraded the talent level across the agency over the last three years and is reinstituting operational norms and professional development services that largely fell by the wayside when a quorum of Commissioners was initially lost and the agency's funding was slashed.

The EAC's recent Annual Reports detail the Commission's accomplishments during this transformation, seeing the agency earn external support that has been echoed by a growing number of Congressional leaders, including Chairman Blunt, who remarked in February that the EAC "has now found a new mission and it's an important one" and that he looks forward to "working with the commission as they do everything they can to help give state and local election officials the kind of help they need from the federal government to do their job." This transformation happened under the current Executive Director, demonstrating his ability to fulfill his responsibilities.

During the Senate hearing, Senator King raised concern over the fact that a 2018 OPM report on the management and operations of the Commission was not shared with Commissioners in a timely manner. What steps are you taking to ensure that Commissioners are engaging in proper management of the Executive Director and the Commission?

It is important to note that as the management team undertook the OPM evaluation at the direction of the Commissioners pursuant to the 2015 Organizational Management Policy Statement adopted by the Commission on February 24, 2015, upon the reconstitution of a Commissioner quorum, after more than four years without a quorum. Commissioners McCormick and Hicks were aware that the study was proceeding and were generally aware of the steps taken to align the office and staff, as well as to implement recommendations offered by the study. The Commissioners were aware that the Executive Director expanded OPM's scope of work to include an organizational assessment that would help inform agency strategic decisions.

In fact, on February 12, 2018, during the study, the Commissioners considered and adopted a strategic plan and an organization chart that included input from the Executive Director and staff. Specific actions, including the hiring of a CIO and the elimination of positions to repurpose funds, were reviewed with the Commissioners weeks before actions were taken. All Commissioners, after the quorum was restored in February 2019, received the Executive Summary of the report.

Should Congress consider legislative changes to HAVA in order to address the authority of the Executive Director, and to improve how the Commission functions? If so, please provide detailed suggestions and justifications.

There are several HAVA-related updates that could be considered to ensure improved operations of the Commission, but we are hesitant to suggest that Congress should legislate the operations of an agency as it relates to personnel and the delegation of authorities. As has been noted, there are provisions that limit the pay levels of executive management, including the Commissioners, and these provisions place pay ceilings upon staff-level employees who could be paid much higher salaries for similar positions in other federal government agencies.

Question Addressed to Vice Chair Hovland and Commissioner Palmer: In your view, what can be improved about how the Commission operates?

Restoration of a quorum was an essential step toward strengthening the ability of the EAC to provide the best possible support to state and local election leaders and the voters they serve. It also lays bare the fact that our Commission is stretched to the limit with regard to resources.

For example, in many instances, there is a lack of redundancy within the staff, meaning when a staff member is on vacation or ill, there is not a back-up employee who is able to fulfill their responsibilities. We feel this most in areas such as grant administration, finance, and the General Counsel's office, which each only have one full-time employee. In addition, many on the staff are satisfying the requirements of their own job description while also carrying out duties that would typically lie beyond their responsibility, such as our Testing and Certification team working on critical infrastructure tasks.

To address many of the challenges our Commission faces, we would benefit from additional resources. At a minimum, we need a **\$4,801,000** increase to our FY19 budget, which would bring the Commission's total operating budget to **\$12,701,000** in FY20 after our required NIST transfer. The Commission would use those additional funds to initiate the following:

Item	Description	Amount
Cyber Assistance Unit	Allow the EAC to hire election and cybersecurity experts to assist jurisdictions with risk-management, resiliency and other technical support, offsetting expenses that each state would otherwise incur	\$1,000,000
Grants Management & Auditing	Ensure the EAC has adequate staff to process funds, advise states, and assist with financial reporting and auditing, should Congress	\$1,000,000

	decide to provide additional HAVA funds to the states	
Communications Initiative	Prepare materials on as many aspects of election administration as possible, to be used at regional trainings across the nation and to update the Commission's website	\$710,000
Cybersecurity and Technology Initiative	Develop a modernized Information Technology Infrastructure, VoIP system, hardware, software, cyclical replacements, cloud initiatives and a new cybersecurity program at the Commission	\$578,000
Enhance Research Capabilities	Producing new resources for election officials on topics including best practices for securing statewide voter registration databases and vote-tabulation machines, ensuring effective voter list maintenance, and designing ballots	\$538,000
Grow the Testing and Certification and Election Technology and Security Programs	Double the existing team to six staff members focused on election system testing and certification and providing enhanced election security services to states	\$350,000
Strengthen EAC operations, internal controls, records management and Controlled Unclassified Information compliance	Hire staff dedicated to these duties in order to function effectively and increase our value to election officials	\$345,000
IT security services and policy planning initiatives	Increased IT security for the EAC's own systems and to ensure compliance with required federal security mandates	\$280,000
TOTAL:		\$4,801,000

In addition to the items listed above, the EAC is actively seeking to move its office facilities to a new location, and we are working to coordinate this effort with appropriators and the General

Services Administration (GSA). Ideally, we will be in our new space well ahead of the 2020 Presidential Election, but that will depend on Congressional appropriations. Our current space in Silver Spring, Maryland provides inadequate square footage for our staff to operate, constrains our ability to expand our team, and lacks the dedicated space we need to efficiently and cost-effectively hold meetings and public hearings. We also lack access to a SCIF to receive certain sensitive classified information. The estimated cost of this move is **at least \$2.4 million**, which the President has allocated in his budget over two years.

In order to make this move, and all initiatives listed above, possible, the EAC would need its total budget to be **\$15,101,000** in FY20 after our required NIST transfer.

This amount still represents \$2,858,000 less than the **\$17,959,000** the Commission received in FY2010 when the agency last had a full slate of Commissioners. Ultimately, our hope is that the Commission's funding will be restored at least to this level.

With funding restored to our FY2010 level, the EAC could deepen our bench of expertise with five cyber navigators devoted to assisting states, additional grants management and auditing support, doubling the size of our current research team and adding additional members to our Testing and Certification team. This additional capacity would allow the Commission to produce additional materials, and provide a higher level of support, for state and local election officials and elevate the EAC's presence around the country with more regional conferences and trainings.

Question Addressed to Vice Chair Hovland: You take over as Chair of the Commission in 2020. What will your priorities be for the agency when you become Chair?

The Commissioner acting as Chair changes by vote each February. However, regardless of who is Chair, the EAC has a galvanized goal ahead of the Presidential Election, seeking to sustain the successful efforts currently underway at the EAC and, assuming an increase in funding, the following initiatives:

Establishing an Elections Cyber Assistance Unit – Funding for such an initiative would allow the EAC to hire election and cybersecurity experts to provide assistance with risk-management, resiliency, and other technical support to the jurisdictions across the country. This would enable the EAC to spread its resources across all 50 States, D.C., and the four U.S. territories conducting Federal Elections, saving significant costs at the state and local levels by providing federal assistance to offset expenses that each state would otherwise incur.

Strengthening Access to Election Information from "Trusted Sources" – In an era where misinformation campaigns carried out on social media, and by more traditional means, have the potential to negatively impact elections, the EAC understands better than any other agency the need for election officials to be the most trusted source of election information. In addition to working with our partners at DHS and other agencies to educate the public about the need to seek out accurate information about elections from trusted sources, the EAC hopes to take this effort one step further by streamlining online election information provided by the federal government.

Vote.gov has the opportunity to be a one-stop, federal trusted source for voters, and the EAC can provide leadership to ensure this is the case. In an effort to streamline information sharing and provide voters with improved access to accurate election information and a broader array of voting resources, the EAC plans to partner closely with the administrators of Vote.gov.

Currently, Vote.gov's website and the EAC's www.eac.gov website are managed and updated by independent webmasters. When real-time edits are made on the EAC's websites, it is imperative that these same changes be reflected on Vote.gov. By linking the two sites and streamlining updates, the EAC can ensure that voters always have access to the most recent versions of important forms and resources. Looking ahead, we hope to leverage this relationship to improve the quality and expand the amount of information available on Vote.gov.

Expanding Resources and Providing Widespread Access to Training: EAC training materials and resources are used by election officials across the nation, but we hope to expand these resources in the coming year. We have asked for a funding increase that would allow existing staff to work with outside experts and contract writers to prepare a suite of training materials that could be combined into one training manual or parceled out for more specialized trainings. Using the election wheel as our guiding principle, the training materials would touch on as many aspects of election administration as possible, but certainly would include best practices, checklists, and guidance pertaining to the following topics:

- Election Security
- Procuring Election Technology and Voting Systems
- Recruiting Poll Workers
- Disaster Preparedness and Recovery
- Using Election Data to Improve the Voter Experience
- Accessibility

In addition to using these materials for trainings across the nation, the EAC would use the updated materials to update its website ahead of 2020.

This initiative would also support a series of five regional trainings ahead of the 2020 Presidential Election. The EAC would offer two-day, regionally-based “2020 Election Bootcamp” events that feature hands-on training rooted in the new materials above. The events would be a mix of panels, trainers, keynote speakers, and hands-on exercises offered for election administrators. Ideally, these events would take place starting one year out from the 2020 Presidential Election and be completed no later than midway through the second quarter of 2020.

Potential sites for these trainings include:

- Washington (Northwest)
- New Mexico (Southwest)
- Missouri (Midwest)
- Florida (Southeast)
- Washington, D.C. (Northeast)

In addition to serving as an incredible learning opportunity for election officials, these conferences would provide the EAC with regional platforms to conduct media outreach, place opinion pieces, conduct editorial board meetings, and highlight HAVA grant-supported efforts across the nation ahead of 2020.

Before you vote on the VVSG 2.0, would you support a policy that allows EAC technical staff to work with outside experts to update the technical certification requirements without requiring a full Commissioner vote on every change? Please provide an explanation for your answer.

While we appreciate the nature of this question and the Committee's concern regarding the matter, we respectfully note that a response to this question would in effect require deliberation and a consensus of the Commissioners on how to proceed. Additionally, individual answers to this question would effectively be a tally vote or a straw poll on where the Commissioners are on this matter and as such, we are not in a position to conduct deliberations, or make a public statement on this matter at this time.

It is important to note that HAVA provides that any modifications to the existing VVSG or new guidelines follow the statutory process. With that being said, this type of policy would have to provide clear parameters on the types of updates that would be proposed for review. There are three types of updates identified by technical staff: typographical errors/omissions, references to external standards, and new requirements. There is a possibility that the first two could be updated by technical staff while keeping the Commissioners and stakeholders informed. New requirements, however, may require a full Commission vote after being properly vetted by EAC technical staff in consultation with the voting system experts at NIST. The above described process would be similar to how requirements are presently drafted.

What steps should the EAC take to ensure that once the VVSG 2.0 is finalized, machines will be tested against the new standard?

It is important to note that once the Principles and Guidelines and Technical Requirements are finalized, they are published and vendors may begin developing to those standards. Previously certified systems would not necessarily be tested to the new standards, unless a vendor submits that system for testing under the new standards. As is customary in standards development, older standards are generally sunset, so that after a certain period of time or certain changes are made to a voting system, all newly created voting systems or modifications to existing voting systems would have to meet the new standard. This process requires deliberation and a consensus of the Commissioners on how to proceed.

Questions from Senator Tom Udall

How much insight does the EAC have into the security practices of the private vendors that supply and manage election infrastructure for voting districts across the United States?

Through our work with the SCC, the EAC has increased visibility into the security practices and approaches used by election vendors, but HAVA does not give us jurisdiction over the company's security policies, so there is no formal procedure for monitoring these activities. That said, the EAC's Testing and Certification team has met security personnel from several manufacturers and has also received high-level overviews of the security practices in place.

What more could the EAC do to take advantage of its clearinghouse function and give election officials the best information it can about the vendors they are purchasing equipment from?

The EAC serves as the national clearinghouse by collecting and distributing information on election administration, work that includes a robust online repository of information about election systems and the vendors that produce them. In order to enhance the clearinghouse function regarding voting equipment vendors, with additional resources, the EAC can develop more rigorous evaluation metrics and establish an annual auditing program to provide greater oversight and transparency, as well as promote compliance and integrity ensuring a well-informed election administration community.

As a follow-up answer to a question Senator Udall asked Commissioner Hicks at the May 15th hearing regarding audits, Commissioner Hicks would like to add the following:

All voting systems certified by the EAC to meet the VVSG are required to have redundant memory. All voting systems, including Direct Recording Electronic (DRE) voting machines, are required to have two, separate sources for memory. A comparison audit of these two separate sources of memory, including a DRE's internal memory that stores voting results, could identify discrepancies, and thus reveal that a system had been compromised.

With that stated, because both sources of memory for DREs without VVPATs are electronic, it is fathomable that a sophisticated attack could alter both sources of memory to make them identical and cause alterations to the data to be undetected. The EAC recognizes the possibility of this threat is real, which is why the VVSG 2.0 has Principles and Guidelines requiring software independence. At the moment, paper is the best way to audit a voting system, but all systems utilizing paper must comport with HAVA's mandate for all voters to be able to cast their ballot privately and independently.

Questions from Senator Angus S. King, Jr.

At the May 15th Senate Rules Committee hearing, Chair McCormick testified that EAC does not certify voting equipment that can connect to the Internet. Please clarify this statement in light of the fact that EAC permits certification of and has certified voting

equipment with wireless modems that connect to telecommunication infrastructure including the public internet.

Internet connectivity is a complicated subject. Currently, with VVSG 1.0, public and private network connection is allowed. However, as the note passed to Chairwoman McCormick from staff during the hearing was attempting to clarify, the technical requirements associated to operating a modem in a voting system are so stringent that no voting system has been certified to operate in a capacity where voters cast, and systems count, votes through an internet connection.

As I understand it, there is a position that systems that contain a modem could be used to transmit vote totals to the tabulation center through a public or private network and may invariably connect to some form or level of the internet or communication channel. While technically that is correct, jurisdictions that use EAC-certified systems with modems only use modems to transmit unofficial election results. No EAC-certified voting system connects to the internet to allow a voter to access and cast a ballot.

Please advise on what basis did EAC conclude that wireless modems don't connect voting equipment to the internet? Please cite your sources.

Both voting system test laboratories have confirmed that they have not tested any EAC-certified voting system that allows a voter to access and cast a ballot (or tabulation of a ballot) via internet connection.

The most recent activity around vendors providing wireless modem systems occurred around the early 2017 statewide procurement process in Michigan. Michigan quite literally required vendors to include wireless modems in their submitted configurations. What advice, consultation, or communication did the state of Michigan request from EAC regarding wireless modem systems? What advice, consultation, or communication have other state governments requested from EAC regarding wireless modem systems?

Ultimately, states are charged with setting their own voting system standards and laws guiding which equipment voters will use on Election Day. In this instance, to our knowledge, Michigan did not request information from the EAC regarding wireless modems, and we have not received such a request for any other state or territory.

Does the EAC expect to include a ban on wireless modems and Internet connectivity in VVSG 2.0? If not, why not?

The public comment period has just concluded and the Executive Director will work with staff to evaluate comments. The Executive Director will present Commissioners with recommended revisions and the Commissioners will deliberate what to include in the final VVSG 2.0. It would be premature to answer this question ahead of those deliberations and without the full benefit of considering feedback collected during the public comment period. The Commissioners are committed to a transparent and thorough deliberation regarding those comments and the path forward toward a vote on the VVSG 2.0.

Questions from Senator Catherine Cortez Masto

What specific steps is the EAC taking to help safeguard the variety of state and local entities, including individuals involved in election administration, from foreign interference in U.S. elections?

The following list details some other activities the EAC has completed to help state and local election administrators strengthen election security and resiliency:

Trainings

- Developed and conducted tabletop exercises for hundreds of local election officials in three states and regions, and participated in the “National Tabletop the Vote” at DHS;
- Conducted more than a dozen Election Officials as IT Manager trainings to hundreds of election officials across the country;
- Provided two regional Election and Cyber Security Awareness Trainings to State Legislators and a similar presentation to election official organizations, such as NASED, Election Center, the International Association for Government Officials; and
- Provided post-election audit training across five states.

Resources and Guidance

The EAC has produced and posted to its website the following original resources and guidance related to election security:

- Starting Point: U.S. Election Systems as Critical Infrastructure (White Paper)
- Election Security video and accompanying training materials
- Glossary – IT Terms Managing Election Technology
- Glossary – Common Cybersecurity Terminology
- American Elections: Understanding Cybersecurity
- Incident Response Best Practices
- Risk-Limiting Audits – Practical Application (White Paper)
- 10 things you should know about maintaining your aging voting technology
- 10 things you should know about purchasing new voting equipment
- Checklist for Securing Voter Registration Data
- Checklist for Securing Election Night Reporting Systems
- Quick Tips on Alternative Voting Methods
- Videos of DHS and ODNI election security presentations at EAC-hosted events
- Provided, upon request, specific election security bulletins to election officials from U.S. federal agencies focused on security and law enforcement, including the FBI, DHS and ODNI
- Posted online election security presentations from election offices in Colorado and Maryland
- Posted online all HAVA Funds state narratives containing details about how states plan to spend their newly appropriated HAVA Funds, including specifics about spending on security enhancements

- An October 2018 #Countdown18 Blog Series titled “Securing the Vote” featured how states are investing funds to improve election security, sharing best practices and “lessons learned”
- Established an “Election Security Preparedness” page on www.eac.gov to house election security information produced by the EAC and other federal partners, such as DHS

Events

- Hosted ODNI and DHS for an election security discussion at the EAC Board of Advisors meeting in Salt Lake City, UT on April 24, 2019
- October 2018 Election Readiness Summit, featuring security and intelligence speakers (event was live streamed and video recording was posted online following the event)
- EAC Public Forum: An Election Security Conversation with U.S. Election Officials, a public forum meeting in Miami on April 18, 2018
- Hosted ODNI and DHS for an election security discussion at the EAC Standards Board meeting in Memphis, TN on April 11, 2018
- January 2018 Election Summit ahead of the 2018 Midterm Election, featuring a panel on election security and a keynote address from DHS (event was live streamed and video recording was posted online following the event)
- Participation in the 2018 Election Security roundtable
- October 2017 Cybersecurity Roundtable (event was live streamed and video recording was posted online following the event)
- Presented at events hosted by NASED, National Association of Counties (NACo), National Association of Secretaries of State (NASS), iGo, The Carter Center, and other leading election-focused organizations
- Three separate formation meetings, in Albany, NY, Washington, D.C., and Atlanta, GA to form the DHS Government Coordinating Council.
- Leadership and co-host of the DHS Sector Coordinating Council in the elections subsector.

Federal Testimony and Commentary

- Chairwoman Christy McCormick testimony before the House Committee on Oversight and Reform’s Subcommittee on National Security, “Securing U.S. Election Infrastructure and Protecting Political Discourse,” May 22, 2019
- “Securing the Accuracy and Efficiency of Elections” – Chairwoman Christy McCormick, *The Washington Times*, March 3, 2019
- Commissioner Hicks testified before the House Committee on Homeland Security, “Defending Our Democracy: Building Partnerships to Protect America’s Elections,” February 13, 2019
- Commissioners Christy McCormick and Thomas Hicks testify before the Senate Rules and Administration Committee, “Election Security Preparedness: Federal and Vendor Perspective,” July 11, 2018
- “Maintaining vigilance against election hackers” – Commissioner Matthew Masterson opinion article, *The Washington Times*, July 26, 2017

- “EAC Commissioner underscores importance of congressional support for election assistance” – Commissioner Thomas Hicks, *The Hill*, January 26, 2017
- Commissioner Thomas Hicks testimony before the House Committee on Oversight and Reform, September 28, 2016

What specific steps is the EAC taking to help safeguard private technology firms responsible for manufacturing and administering election-related software and hardware from foreign interference in U.S. elections?

The EAC is working with our Federal intelligence partners, i.e., DHS, FBI and ODNI, to provide information to election stakeholders regarding communication protocols and security measures that can be taken to protect election systems. The EAC has significant representation on the GCC and participates in in-person meetings and conference calls with the SCC to discuss protocols and the development of sector security plans to protect information sharing between the states and the federal agencies that are able to provide election security assistance and solutions.

Do you think that state and local governments, the federal government, and private technology firms are prepared for the 2020 presidential election, when it is highly likely that Russia could try to interfere again?

Yes. After intelligence briefings from ODNI and DHS on potential threats, states are making concerted efforts to analyze and strengthen their systems against known and unknown attacks. With the help of DHS and other independent security agencies, states are much farther along in preparation for the new security environment than they are given credit for. States are also involved in the training of personnel at every level to be prepared for and respond to any potential scenario. The use of the \$380 million has been earmarked by most states to upgrade the security of their networks, registration and voting systems. These actions indicate that states are preparing for 2020 as they did in 2018.

Just this month, Florida Governor Ron DeSantis said that in 2015, Russian hackers had a successful “intrusion” into the voting registration files of two Florida counties. As you know Voluntary Voting System Guidelines only apply to voting systems, not to voter registration systems or poll books. Do you think that broader guidelines are necessary in order to improve security for other aspects of the election process?

Under HAVA, the EAC is only responsible for the development of voluntary voting system guidelines. A change to existing law to expand the development of guidelines, testing, and certification to electronic poll books and voting registration systems should be considered by Congress. Regarding voter registration systems, there are many different configurations for computer systems, and it would be difficult to suggest a standard voluntary guideline that all systems should adhere to. Currently, there are several technical standards that technology companies build their products to, i.e. IEEE, the ISO/IEC standards, NIST Security Framework, etc. This would require a whole of government approach to determine what standards should look like for a computer network.

Are we leaving critical components of our election system without the protection needed by focusing EAC's guidelines on voting machines and not voter registration files?

As currently defined by HAVA, the VVSG are specifically for voting systems. However, we do recognize the importance of having secure voter registrations systems and support efforts to this end. While the EAC has produced, and will continue to produce, best practices and other guidance related to securing voter registration systems, Congress would have to pass new legislation to include these as part of the Commission's mandated Testing and Certification program.

The National Association of State Election Directors recently sent a letter to the EAC expressing their support for the updated version of the Voluntary Voting System Guidelines, or VVSG 2.0. They also noted their support for the proposed structure in which the high-level "Principles and Guidelines" require EAC Commissioner approval, while the technical requirements can be updated regularly by qualified EAC technical staff. They believe this proposed structure is an important remedy to the cumbersome and slow process of updating the Voluntary Voting Systems Guidelines. Do you agree with that proposed structure? Why or why not?

While we appreciate the nature of this question and the committees concern regarding the matter, we respectfully note that a response to this question would in effect require deliberation and a consensus of the Commissioners on how to proceed. Additionally, individual answers to this question would effectively be a tally vote or a straw poll on where the Commissioners are on this matter and as such, we are not in a position to conduct deliberations, or make a public statement on this matter at this time.

With that being said, HAVA lays out the process for developing guidelines and standards, so the process has followed the statutory process from beginning to end.

Would the technical components of the guidelines be able to keep up with changing technology at an acceptable rate if every change to them must be approved by the EAC commissioners?

This is a complicated question and one that is relevant on the heels of the agency's lack of a quorum. That said, a quorum has been restored and the Senate has demonstrated and stated its commitment to providing the agency what it needs to accomplish its mission. Our hope is that should the EAC again lack a quorum, this would be remedied without undue delay.

The general thought is that as technology changes, so should voting system standards. However, there is a concern that if vendors make changes to systems as a result of standards or technology changing, the first question becomes whether there is a market to support that change, or is the market requesting that change? If the technology changes, but states and jurisdictions do not have the funding to purchase the latest systems created to the latest technology, nothing has been accomplished. Unlike general technology, the election industry and market are not driven by changing components and technologies.

We intend that the guidelines as currently drafted will be able to keep up with changing technology. Any requirements under the guidelines that may need to be modified or added to address new voting technology should be properly vetted by EAC technical staff and NIST including a role to be played by the Commissioners.

Are you concerned about what would happen if the EAC once again loses its quorum?

Yes, we are concerned about maintaining an EAC quorum. We are pleased that a quorum has been restored, and the Senate has demonstrated and stated its commitment to providing the agency what it needs to accomplish its mission moving forward. Our hope is that should the EAC lack a quorum in the future, it would be remedied without undue delay.

There are many aspects of the EAC operations that require a quorum beyond the VVSG. However, as it relates to the VVSG, the EAC's Testing and Certification program has previously moved forward in the absence of quorum and would continue without interruption should we lose our current quorum. Manufacturers would still be able to submit and have systems certified to the most recent version of the VVSG. With regard to potential updates to the VVSG, HAVA mandates the process for those actions and the EAC would be bound to follow the law moving forward.

Given the pervasiveness of ongoing threats to our election systems, do you believe Congress should do more to help states and localities address these long-term costs?

State and local election leaders often face tough choices when it comes to how they will allocate their limited resources. Last year, when Congress appropriated \$380 million in HAVA funds to improve the administration of elections, election leaders from across the nation welcomed and appreciated the funding. Many have also expressed a desire for Congress to appropriate additional funds that could be used to supplement incremental improvements funded by the FY19 grants and to sustain efforts jumpstarted by the infusion of resources, such as the ongoing expense associated with hiring new IT or election security personnel. In the past, funding to improve election administration has been a partnership between states, localities and the federal government. Should Congress decide to appropriate additional funds to the states, the EAC stands ready to administer this money and to support states as they seek to invest it in improving elections.

How are you helping states make investments in their voting systems when they are concerned about the long-term costs of upkeep?

The EAC has consistently made its Testing and Certification staff available to discuss best practices for election administrators who are writing RFPs for new election systems or considering new systems. We have also issued guidance about how election officials can address issues that stem from aging election equipment. In addition, our Grants staff speaks regularly with grantees about appropriate uses for HAVA funds and things to consider when investing that money in ways that will require future expenditures or cycle-of-life considerations. We will continue to provide these services that assist election officials as they decide how to allocate their funds.

Can you describe the current staffing level at the EAC?

We currently have 23 staff members at the EAC, including the Inspector General and her deputy. There are four Commissioners.

How are vacancies impacting the EAC's ability to fulfill its election security responsibilities?

The EAC doesn't have any vacancy from a previous incumbent in an election security role, but the EAC does have a need to increase staff within its Testing and Certification staff from the current level of 3, as discussed earlier. Additional staff would assist in the EAC's overall clearinghouse role and work with DHS to provide additional security guidance.

However, as explained in our hearing, and further demonstrated by the attached EAC "Election Administrator Competencies" Wheel, security is only one slice of a very complicated landscape for election administrators, and the EAC's role is to address and support all of these areas.

Although elections occur nearly every week in our country, there is no doubt that the 2020 Federal Election cycle is well underway. This is an important time for America and a critical moment for the EAC. The EAC is committed to a steady approach towards 2020, but the Commission recognizes the immense resources it needs to fully meet its mission. We thank the Committee for its interest in the EAC, and we look forward to the opportunity to discuss any of these items with members of the committee.

Sincerely,



Christy A. McCormick
Chairwoman
U.S. Election Assistance Commission



Ben Hovland
Vice Chair
U.S. Election Assistance Commission

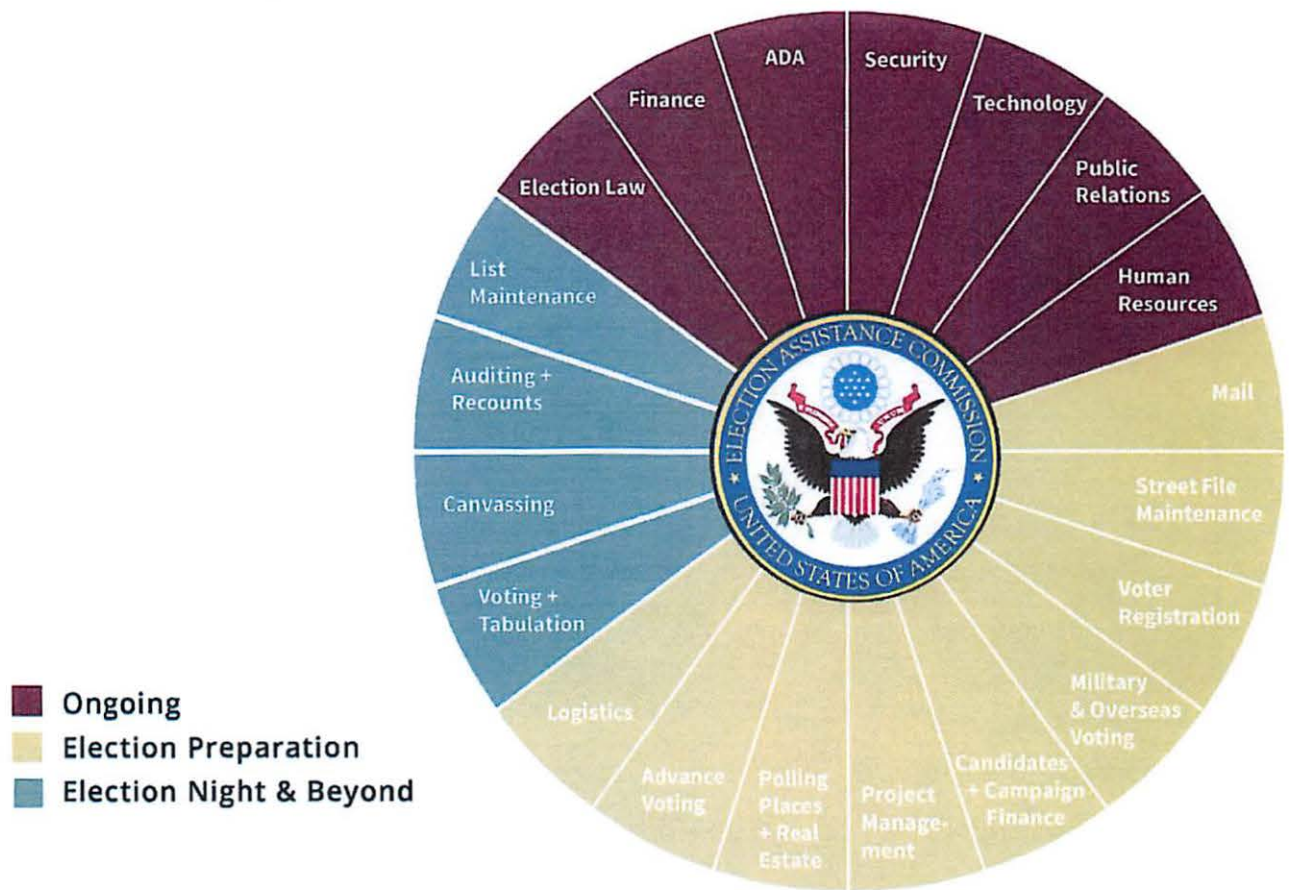


Thomas Hicks
Commissioner
U.S. Election Assistance Commission

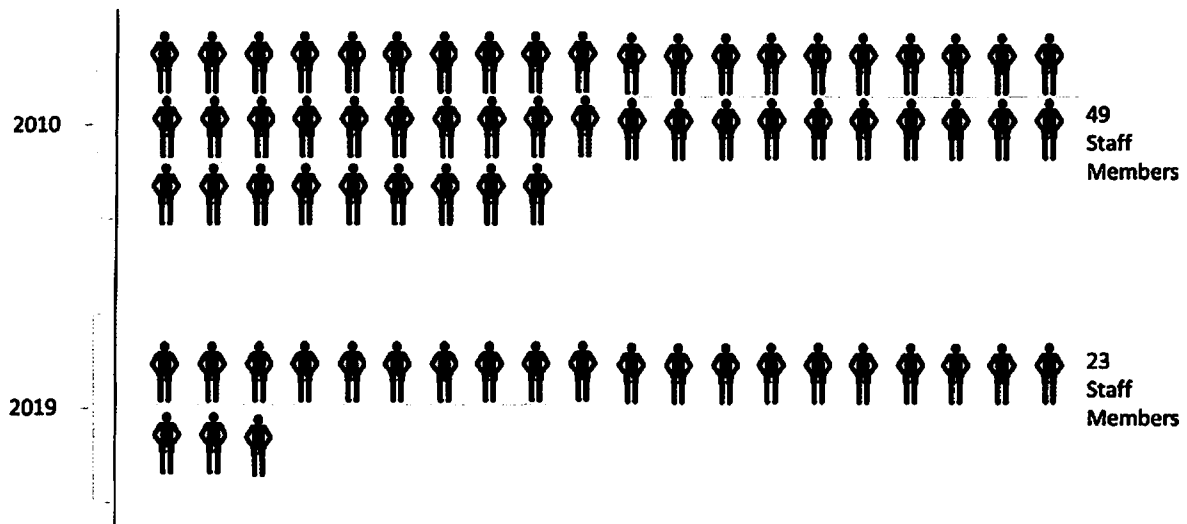


Donald Palmer
Commissioner
U.S. Election Assistance Commission

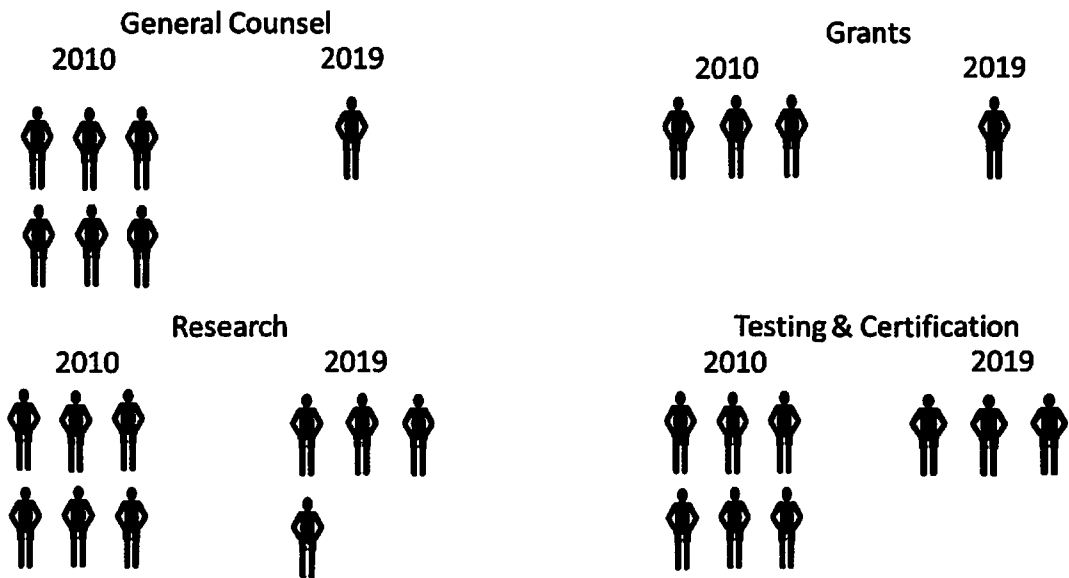
Election Administrator Competencies



EAC Staff in 2010 vs. 2019



Key EAC Teams Are Reduced Challenging the Ability to Meet HAVA Requirements



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June 14, 2019

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Dear Chairwoman McCormick, Vice Chair Hovland, Commissioner Hicks, and
Commissioner Palmer:

Thank you for appearing before the Committee on House Administration on May
21, 2019, at the hearing titled "Oversight of the Election Assistance Commission."

Attached, please find written questions for the record. In preparing your answers
please address your response to the Majority or Minority consistent with who submitted
the question, and include the text of the question with your response.

Please provide written responses by **Friday, July 12, 2019** to Sean Jones,
Legislative Clerk, in Room 1309 of the Longworth House Office Building and
electronically to sean.jones@mail.house.gov.

If you have any questions concerning this matter, please feel free to contact the
Committee at (202) 225-2061. Thank you for your attention to this matter and I look
forward to your prompt response.

Sincerely,



Zoe Lofgren
Chairperson

Questions for the Record

Committee on House Administration Hearing

“Oversight of the Election Assistance Commission”

May 21, 2019

The Hon. Christy McCormick, Commissioner and Chairwoman, Election Assistance Commission

The Hon. Benjamin Hovland, Commissioner and Vice Chair, Election Assistance Commission

The Hon. Don Palmer, Commissioner, Election Assistance Commission

The Hon. Thomas Hicks, Commissioner, Election Assistance Commission

States and Election Administration

Question 1: EAC staff have done an excellent job with the timely distribution of \$380 million in newly-appropriated HAVA funds. Please describe any ongoing efforts from the agency to guide states as they consider how to spend their remaining funds.

Question 2: The EAC’s Testing and Certification team successfully provided risk-limiting audit assistance and training in five states in 2018. Are there future plans to continue and expand these trainings?

Question 3: Data collected from the Election Administration and Voting Survey (EAVS) is important for improving and understanding election administration. In the EAC’s most recent Annual Report, the agency mentions updating the EAVS Data Interactive, a visualization tool that allows for comparison of jurisdictions that will very likely be an asset to election officials.

- a. Are there any other products the EAC anticipates creating from the EAVS data?
- b. What are your insights on the most valuable way to share EAVS data with election officials and the public to influence decision-making and increase confidence in the electoral process?

Question 4: The EAC has done admirable targeted work to ensure that voters with disabilities have meaningful access to vote with privacy and independence.

- a. What are the primary obstacles you have encountered in ensuring that voters with disabilities can access the franchise?

- b. What have you encountered as best practices to combat these obstacles?

Question 5: Both the 2018 and 2019 EAC Standards Board Meetings had important panels on Elections and Disaster Recovery. Does the EAC plan to offer any additional formal products on the impact of natural disasters on elections? In what forms?

National Clearinghouse Functions

The Help America Vote Act states that the EAC, “shall serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of federal elections.”

Question 6: If provided additional resources, what additional activities would you be interested in using this clearinghouse function for?

Question 7: Is there a potential to save local officials money, perhaps by reducing redundancies and sharing best practices?

Personnel

Question 8: Under the EAC’s Organizational Management Policy Statement dated February 24, 2015, the succession plan for the agency head only contemplates succession when all Commissioners seats are vacant.

- a. What is the succession plan for the executive director during a vacancy when all Commissioners seats are full?
- b. When there is only a quorum of Commissioners?
- c. When there is no quorum of Commissioners?
- d. What is the succession plan for the general counsel in each of those same circumstances?
- e. Please share the policy adopted by the Commission outlining this succession.

Question 9: HAVA Section 204(a)(3)(B) clearly states that “the Commission shall consider the nominees recommended by the Standards Board and the Board of Advisors in appointing the Executive Director.” It does not require that the individual selected actually be among those names; it solely requires that they be considered. This text therefore contemplates an alternate method to select an executive director. The search committees of the advisory boards are thus detailed as one approved method for finding an executive director, but are not the only approved method, and an alternate search method is nowhere expressly prohibited. Further, as a generally accepted legal principle, the requirement of one method, absent more, does not prohibit the usage of any alternative methods. In Chairwoman McCormick’s testimony, she suggested, incorrectly, that the only available means to initiate a

search for the executive director is the approach using the search committees of the advisory boards once a vacancy occurs.

- a. Given that there is no prohibition on an alternate search, what is your plan to begin undertaking an alternate formal search, or adopting a policy for there to be an informal search?
- b. On what date will you begin this search?

Question 10: Commissioners indicated that the interpretation of the EAC succession plan and the availability of holdover status for staff under HAVA and your internal policies will be conducted by your general counsel. Your general counsel position will also arrive at a vacancy this November. This is a conflict of interest, given that your general counsel's interpretation of his ability to hold over will impact his potentially continued employment.

- a. Please explain how you will deconflict this issue and arrive at an appropriate and credible interpretation regarding your succession plan.

Question 11: In the order in which they were originally ranked, please share the complete list of names suggested to you by the Board of Advisors and the Standards Board, respectively, for consideration for executive director when you last considered candidates for that position.

Question 12: On what date did your current executive director's term begin? On what date is a vacancy scheduled to occur for your executive director position?

Question 13: On what date did your current general counsel's term begin? On what date is a vacancy scheduled to occur for your general counsel position?

Question 14: Expediency requires you to start this executive director search now, and HAVA does not expressly prohibit such search before a vacancy exists.

- a. Can you commit to beginning a search process for the executive directorship?

Question 15: Your charge as Commissioners is to be stewards of the agency; does knowingly leaving the executive director position vacant during the 2020 election constitute good stewardship?

Question 16: Please detail, step by step, the process for announcing and filling the position of Director of Testing and Certification.

- a. Please share the job posting.
- b. On what date did you publicly post the position?
- c. On what date did you hire the candidate?
- d. How many people applied?
- e. How many people did you interview?
- f. Did Mr. Jerome Lovato apply for this position?
- g. Please describe the circumstances under which Mr. Lovato was awarded this position.

Question 17: On the evening of May 14, 2019, one day before the Senate Rules hearing and less than a week after hiring Mr. Lovato, you announced two new additions to the Testing and Certification staff.

- a. Please describe your process for selecting those individuals.
- b. Please share the job posting.
- c. Was there an open and transparent application process?
- d. On what date were the positions announced?
- e. On what date were they filled?
- f. Did the time between the announcement of a vacancy and your filling of the vacancy allow for finding and vetting the most qualified candidates?
- g. How many people applied?
- h. How many people did you interview?
- i. By whom were these hires made?
- j. Did the Commissioners weigh in on these decisions at all?

Question 18: Chairwoman McCormick said she “believes” there is a SCIF available to Mr. Jerome Lovato in Colorado, and that it would be to Colorado’s state standards.

- a. Please confirm the location of the SCIF.
- b. How far it is from Mr. Lovato’s primary place of work?
- c. Please detail how it meets all federal government standards.

Question 19: Chairwoman McCormick also noted Mr. Lovato will travel back and forth between Colorado and the EAC’s office in Silver Spring.

- a. At whose expense will Mr. Lovato be travelling back and forth?
- b. What is the estimated weekly cost of this travel?
- c. How frequently will he be travelling?
- d. What percentage of time do you expect Mr. Lovato to be at the EAC headquarters? What percentage in Colorado?
- e. Would hiring an individual who resides in or near Silver Spring, Maryland, demand fewer agency resources?

- f. Please list all other individuals in the agency who have a duty station other than Silver Spring, Maryland.
- g. At whose expense do those individuals travel to Silver Spring?
- h. Please share the cost of travel annually covered by the agency for each individual, respectively, whose duty station is not Silver Spring, Maryland.

Question 20: Commissioner Palmer stated that there is an “ethics officer and the general counsel.”

- a. Who is your ethics officer?
- b. What are his or her qualifications?

Question 21: Commissioner Palmer mentioned that, while employed at the EAC, Ms. Jessica Bowers will not deal with the voting machine vendor from which she came. That vendor is one of the three largest in the nation.

- a. How will this be operationalized?
- b. How sustainable is this solution?
- c. How long will this firewall exist?
- d. Does this firewall ultimately create a circumstance where the vendors Ms. Bowers works with are treated differently than her former employer, by virtue of her working with some vendors, but not that one?
- e. Who will work with the vendor that is Ms. Bowers’ former employer?
- f. Will that employee or those employees be firewalled from Ms. Bowers?

Question 22: Please answer the following regarding an apparent conflict of interest.

- a. Was the agency’s ethics officer consulted before hiring Ms. Jessica Bowers to your Testing and Certification Team?
- b. Please provide the Committee your conflict-of-interest analysis regarding hiring a former vendor employee to oversee vendors.

Question 23: Please provide a list of all staff, consultants, or any other person paid any amount hired during Executive Director Brian Newby’s tenure at the EAC. Please provide all of the following for each individual:

- a. Title
- b. Job Description
- c. Date of hire
- d. Date of end of service
- e. Duty station from where they conducted their work
- f. Total annual salary or, if not salaried, total payment for services

- g. Any other position, and place such position was held, while also working for the EAC

Question 24: During the hearing, Commissioner Hicks and Chairwoman McCormick indicated they had not read the Annual Employee Survey covering 2017 and released in April 2018, or its accompanying comparison report. We request that all Commissioners familiarize themselves with this survey and comparison report, which are available on the EAC's website here: <https://www.eac.gov/about/human-resources/>.

- a. When was the Annual Employee Survey released in April 2018 conducted (from what date to what date)?
- b. When was it released to the Commissioners?
- c. Why has the report been delayed covering employee satisfaction for 2018?
- d. When is the next Annual Employee Survey to be conducted and released?
- e. Please provide the results of a contemporary employee survey to the Committee before October of this year.

Question 25: What are all of the complaints that have come to your Inspector General? Please provide a complete list including the content of the complaint, the date, and any other relevant information for each complaint.

Agency Cybersecurity

Question 26: In November 2016, an incident occurred where hackers were able to penetrate the agency's technology infrastructure

- a. In response, what impact assessments, if any were conducted by outside entities? By inside entities? Please name which entities.
- b. If conducted, please share the dates those assessments were conducted.
- c. If conducted, on what date were those assessments shared with the Commissioners?

Election Technology and Testing and Certification

Question 27: Please answer the following regarding Testing and Certification.

- a. What are the professional credentials of each member of the Testing and Certification team?
- b. Does the Testing and Certification team have the bandwidth or substantive experience to look at election hacking from a technological standpoint, considering machine software or hardware?

Question 28: Commissioners were asked about an election technology division and seemed supportive of it alongside the Testing and Certification program under the EAC's Information Technology Department. On Page 8 of the EAC's 2018-2022 Strategic Plan, dated February 12, 2018, there is a department listed under Information Technology called Election Technology.

- a. Pursuant to your unanimous adoption of this plan, why has your executive director not moved to implement this division since this strategic plan was published?
- b. When do you intend for this division to be implemented?

Voluntary Voting System Guidelines (VVSG)

Question 29: To what evolved challenges do the Guidelines respond?

Question 30: Can you describe the process of engaging stakeholders, including the election advocacy community, the National Institute of Standards and Technology, the Technical Guidelines Development Committee, and others?

Question 31: What cooperation from the election community, if any, would assist you in this information collection effort?

Questions for the Record from House Administration Minority

Question 1: What is the likelihood of the EAC starting an Elections Cyber Assistance Unit? Is this similar to what my home state of Illinois is doing?

- a. What resources do you all need to get something like that up and running ahead of the 2020 Elections?

Question 2: Can you tell us about the Commission's role in assisting states with post-election audits? What services do you already provide in this area?

Question 3: Can you tell us about your 2009 funding and staff levels versus today's funding and staff levels?

Question 4: What is the EAC's most pressing staff need at this time?

Question 5: When it comes to DREs without a VVPAT, what is the current status of use of those machines in the United States?

- a. Should we encourage jurisdictions to move away from the DRE machines without a voter-verified paper audit trail?



U.S. ELECTION ASSISTANCE COMMISSION

1335 EAST-WEST HIGHWAY, SUITE 4300
SILVER SPRING, MD 20910

July 12, 2019

Representative Zoe Lofgren
Chairperson
United States House of Representatives
Committee on House Administration
1309 Longworth House Office Building
Washington, DC 20515

Dear Chairperson Lofgren,

Thank you for the opportunity to appear before members of the Committee on House Administration for the U.S. Election Assistance Commission (EAC)'s oversight hearing on May 21, 2019. We appreciated the opportunity to address how the Commission is fulfilling its mission to support election administrators and the voters they serve, and we respectfully submit for the record the following responses to the Committee's follow-up questions.

The following document and its attachments address each of the questions posed by members of the Committee. The answers reflect the Commissioners' collective responses.

Sincerely,

Christy A. McCormick
Chairwoman
U.S. Election Assistance Commission

Ben Hovland
Vice Chair
U.S. Election Assistance Commission

Thomas Hicks
Commissioner
U.S. Election Assistance Commission

Donald Palmer
Commissioner
U.S. Election Assistance Commission



Questions for the Record

Committee on House Administration Hearing

“Oversight of the Election Assistance Commission”

May 21, 2019

The Hon. Christy McCormick
Commissioner and Chairwoman, U.S. Election Assistance Commission

The Hon. Benjamin Hovland
Commissioner and Vice Chair, U.S. Election Assistance Commission

The Hon. Donald Palmer
Commissioner, U.S. Election Assistance Commission

The Hon. Thomas Hicks
Commissioner, U.S. Election Assistance Commission

States and Election Administration

Question 1: EAC staff have done an excellent job with the timely distribution of \$380 million in newly-appropriated HAVA funds. Please describe any ongoing efforts from the agency to guide states as they consider how to spend their remaining funds.

Following the allocation of \$380 million in newly-appropriated HAVA Funds, the U.S. Election Assistance Commission (EAC) worked to efficiently and responsibly award these grants that were authorized under Title 1 Section 101 of HAVA. The funds were made available approximately seven months prior to the 2018 Midterm Elections, and eligible states and territories (hereafter referred to as the “States”) could technically begin spending funds once they received their notice of grant award on April 17, 2018. States began collecting their grant money as soon as seven days later, less than 30 days after the 2018 Consolidated Appropriations Act was signed into law.

As documented in the first column of **Attachment A**, approximately 60 percent of States reached out to the EAC for assistance with at least one issue related to the 2018 HAVA Funds, including allowable costs, policy questions, pre-approval requests, and state appropriation process issues. While this column shows the States engaged the EAC about specific issues, the chart also lays bare the fact that the EAC didn’t wait for States to reach out for guidance.

The EAC was proactive in its approach to offering States assistance in receiving and appropriately spending 2018 HAVA Funds. All States received pre-award notices, budget and narrative guidance, access to EAC webinars, phone and email consultations, and the EAC performed multiple reviews of each State's budget and plan. Through these interactions, States were given the opportunity to pose questions in real-time and ensure their plans contained only expenses allowable under Title 1 Section 101. The EAC's Grants team also answered inquiries, proactively provided guidance to anticipated questions, and reviewed proposals. Since these were the first new appropriations for HAVA grants since FY2010, many of the state-level contacts working on how to spend these funds had never received HAVA grants before, creating a knowledge gap that the EAC's team ably worked to close.

The EAC's response to incoming inquiries complemented its proactive approach to sharing knowledge about the HAVA Funds and HAVA's direction about how States can use these vital resources. One-on-one phone consultations and email exchanges with state administrators not only allowed the EAC to provide guidance on specific issues, but also informed the EAC about most frequently asked questions and what resources would be best to share with all stakeholders to ensure successful administration of the grants. In a very few instances, the EAC provided formal letters when state election officials requested assistance in describing how federal funds are appropriated and the allowable use of the funds to state assembly members or local election officials.

Perhaps one of the most impactful resources the EAC provided was its work to ensure States had full access to other State plans, documents that could inform spending choices, especially in cases when States were considering like-minded types of approaches. These plans were published on the EAC's website, where they remain today, so that each State could learn what other States were doing and share expertise and technical support. The EAC took this effort a step further by connecting States that were exploring similar approaches so that these States could share information.

Lastly, the Grants team spent a considerable amount of time brokering EAC knowledge and best practices across the States. For example, the EAC worked with California to ensure mutual aid compacts are created so that mobile voting vehicles can be deployed across the state in times of localized disasters, such as the 2018 California wildfires.

The EAC's work moving forward will be informed by details contained within each state's submitted security plan and budget. The plans received significant input and support from stakeholders at the local, state and national levels, making them a strong barometer of the kind of assistance States will need in the coming years. For example, by requiring each state and territory to submit a plan for election security and providing a flexible set of seven budget categories and six budget line items, the EAC created a 5-year national roadmap for how States plan to secure and modernize election infrastructure.

The Grants team's review of feedback from States about the grant-making process and receipt of the funds has both highlighted how the funds will be deployed given each State's unique situation (age of equipment, security already in place, status of statewide data systems, etc.) and showed where additional resources will be needed in the future. While EAC only has 3-4 months of official expenditure data, which is reasonable

considering the funds became available just months before the 2018 Midterm Election, we do have robust plan narratives that have been condensed and included in the 2018 Annual Expenditure Report (see **Attachment B**). Through our more recent conversations with the 55 states and territories that received these funds, we also believe that as of April 30, 2019, states have spent at least \$108.14 million, or 29 percent, of the \$380 million in grant funds. This represents a 262 percent increase in spending from the last reported spending levels on September 30, 2018. In addition, a straight-line spending projection based on expenditures through the end of last month suggests that states and territories will spend approximately \$324 million, or 85 percent, of the funds prior to the 2020 Presidential Election.

While distribution of the new HAVA Funds has concluded, there are ongoing efforts from the Grants team related to reviewing and revising funding notices in consultation with internal and external stakeholders, including state and local election officials associations, election experts and others who will assist the agency in providing proactive support to state and local jurisdictions for future funding. These stakeholders will also provide technical assistance associated with the development and updates of the required plans and budgets. This includes sharing ideas and best practices from state-to-state, providing written feedback on every plan submitted by states, and making technical assistance available to support effective state administration of funds, including how to make sub-grants, how to track employee time, rules for equipment acquisition and other elements of effective management of federal funds.

Question 2: The EAC's Testing and Certification team successfully provided risk-limiting audit assistance and training in five states in 2018. Are there future plans to continue and expand these trainings?

Yes. The EAC is committed to providing States with technical expertise and assistance, especially ahead of the 2020 Presidential Election. The EAC's Director of Testing and Certification, Jerome Lovato, is one of the nation's most respected experts on risk-limiting audits. At the EAC, he has conducted trainings on this topic and authored a white paper that state and local election leaders can access to learn more about how risk-limiting audits work. Moving forward, the EAC does plan to offer additional trainings and to incorporate this work into large-scale gatherings, such as our planned January 2020 Election Year Summit.

Question 3: Data collected from the Election Administration and Voting Survey (EAVS) is important for improving and understanding election administration. In the EAC's most recent Annual Report, the agency mentions updating the EAVS Data Interactive, a visualization tool that allows for comparison of jurisdictions that will very likely be an asset to election officials.

a. Are there any other products the EAC anticipates creating from the EAVS data?

The EAC uses the state-by-state data collected through the EAVS to conduct secondary quantitative analysis on a select group of variables for a more in-depth

look into data outcomes. The results of these secondary analyses are published as EAVS Deep Dives, a series of white papers on a variety of subjects. The EAC will begin to publish these resources in the coming months.

The EAC also implements a primary qualitative data collection research effort that results in Topic Briefs. These short papers explore the practices and perspectives of a select group of state and local election officials and cover a variety of topics. EAVS data will be used to complement the mainly qualitative methodology incorporating a mixed methodology when applicable.

In addition, the EAC will produce EAVS Data Briefs, one-page summaries for each state and territory surveyed, that provide a graphical snapshot of data outcomes for the following:

- Voter Registration: Total Registered Voters, Registration Forms Received, Confirmation Notifications Sent, Registration Forms by Source
- UOCAVA: Ballots transmitted, counted and rejected by population (i.e. uniformed services, non-military overseas, other)
- Provisional Ballots: Counted in Full, Counted in Part, Rejected, Other
- Turnout by Method: Absentee, Provisional, Early Vote Center, Vote By Mail, UOCAVA

Analysis of EAVS data also allows the EAC to identify gaps and areas where states and localities may be able to benefit from targeted and more specified EAC training opportunities.

b. What are your insights on the most valuable way to share EAVS data with election officials and the public to influence decision-making and increase confidence in the electoral process?

The online availability of the EAVS comprehensive report is a valuable and readily accessible way for election officials to review key findings from the analysis of EAVS data. While key findings highlight nationwide outcomes, the EAVS report identifies state-by-state outcomes in appendices, and the EAC ensures that the data tables listing states' data are also available online. This allows states to conduct comparative analyses with peers for on any number of variables. The EAVS data interactive provides users visiting the EAC website the opportunity to explore election administration data and, with additional resources, the EAC plans to enhance the user experience with this tool.

Another valuable way to share EAVS data is through our Election Data Summits, the most recent of which was held this year on June 27, 2019. Over the years, the

Summits have been open to the general public and provide an opportunity for election officials, election data enthusiasts and stakeholders to come together to discuss how use EAVS data and other data sources to improve election administration processes and related decision making. The Election Data Summit is livestreamed to maximize access for the broadest possible audience interested in learning more about the EAVS. In addition to hosting our own summit, EAC Commissioners and staff travel to state and local election association meetings and other stakeholder events to expand the audience of EAC resources, including the EAVS.

Question 4: The EAC has done admirable targeted work to ensure that voters with disabilities have meaningful access to vote with privacy and independence.

a. What are the primary obstacles you have encountered in ensuring that voters with disabilities can access the franchise?

Voting accessibility has long been a priority for the EAC, as well as for the election officials and voters we serve. The EAC was established in 2002 as part of the Help America Vote Act (HAVA), legislation which built upon the disability protections enshrined in the Americans with Disabilities Act (ADA) by outlining a clear mandate to ensure Americans with disabilities be given the same opportunity to vote freely and independently as other voters. It was the first time Congress set forth such a measure and it is one we must not ignore.

Nearly one-sixth of the total U.S. electorate has one of a broad range of disabilities, including mobility, communicative, physical and cognitive impairments. This ever-growing population of voters may also face educational, cultural and political barriers that could make participating in elections even more difficult. It is imperative that these men and women have a seat at the table as election officials make critical decisions about how they run elections.

Unfortunately, the primary obstacle encountered by voters with disabilities is the inability to cast a ballot with ease in a private and independent manner. Much work remains to be done in this area.

We recognize that election officials with limited manpower and budgets may often feel they face a broad range of challenges, including security, that are sometimes in tension with the responsibility to provide accessible elections. The EAC works to help election officials navigate these obstacles through the distribution of resources, best practices, and federal funds.

For example, last year after Congress allocated \$380 million in funds for states and territories to improve the administration of elections for Federal office, each State began to determine how they would spend these federal dollars. Improvements to election security and technology, as well as upgrades to voter registration systems, were at the top of most lists. The EAC's resources and guidance continue to help States to understand

their legal obligation to make sure these improvements are in sync with the obligation to ensure every voter can cast a ballot privately and independently.

This kind of guidance reflects the fact that the EAC serves as a trusted federal partner in the work to identify procedures and practices that have a proven record of serving the needs of all voters. The EAC also connects election officials with accessibility experts and advocacy groups that stand ready to assist in the effort to help Americans vote.

Beyond the EAC's convening power and our administration of federal funding, the Commission uses its voluntary testing and certification of election systems, its creation of resources such as voting rights cards in Braille and large print, and its effort to identify and lift up innovative approaches and best practices to serve American voters who need assistance at the polls. The EAC has also contributed funds to develop new innovations, such as Prime III, which includes a remote ballot marking system, to expand accessibility for voters with disabilities.

b. What have you encountered as best practices to combat these obstacles?

As EAC Commissioners travel the country and meet with election officials, there are innovative best practices that assist voters with disabilities seen at many stops along the way. We strive to highlight these successful efforts so that election officials may replicate these activities across the U.S.

This year will mark the Commission's fourth annual national competition for best practices in Election Administration. Over the years, the Clearinghouse Awards have been dubbed the "Clearies" for short. This effort offers a great stage to celebrate and share best practices cultivated by election offices. A major theme of the Clearies is its focus on voting accessibility and serving voters with disabilities. In fact, one of the Clearie award categories is devoted exclusively to showcasing best practices in improving accessibility for voters with disabilities. In this competition, we receive a wide variety of outstanding entries and share these programs with the elections community. The Clearies play an important role in furthering the EAC's responsibilities under HAVA. Under that Act, the EAC serves as a clearinghouse for election administration information.

The EAC, along with various advocacy organizations, strives to empower voters with disabilities and election officials to continually improve the rights of a private and independent vote. The Commission has many accomplishments in helping voters with disabilities and election officials. However, much work remains to be done to reach the promise of HAVA and recognizing results-driven best practices is a crucial step in this process.

Question 5: Both the 2018 and 2019 EAC Standards Board Meetings had important panels on Elections and Disaster Recovery. Does the EAC plan to offer any additional formal products on the impact of natural disasters on elections? In what forms?

Natural and man-made disasters have the potential to throw elections into chaos, destroying infrastructure, displacing voters and potentially rendering the impacted system more vulnerable to security threats. In the wake of recent and catastrophic hurricanes, wildfires, floods, and volcanic eruptions, election stabilization and recovery in the aftermath of such events has unfortunately become a timely topic for election officials across the country.

The EAC has hosted discussions about Disaster Preparedness & Recovery, including at its 2018 and 2019 Standards Board Meetings, and has a bank of contingency planning resources on our website. However, the consequences of recent events, such as Hurricane Maria in Puerto Rico and Camp Fire in California, have laid bare the need for the EAC to focus additional resources on helping state and local election officials recover from disaster and prepare for potential future events.

Since the formation of this initiative in November 2018, the EAC has made site visits to election offices in Bay County, Florida and San Juan, Puerto Rico. During these visits, we toured the election offices, interviewed election officials on work being conducted to recover their systems, and have since released a series of videos on topics discussed during those conversations, including emergency preparedness, purchasing new equipment after old equipment was damaged, how election officials ensured displaced voters could still cast ballots, partnerships election offices have found particularly helpful as they rebuild and cybersecurity measures undertaken by these offices.

In March 2019, the EAC formed a Disaster Preparedness & Recovery Working Group (DP&RWG) comprised of election officials with hands-on experience successfully administering elections following natural or man-made disasters. The Working Group met for its initial meeting on April 10, 2019 prior to the EAC Standards Board meeting. In April 2019, during the EAC's annual Standards Board and Board of Advisors meetings, these EAC advisory boards also established committees to explore lessons learned and best practices gleaned from disaster preparedness and recovery within the election community. In addition, the EAC hopes to mobilize a Government Coordinating Council Working Group to assist with a national DP&R project.

Moving forward, the EAC will work with each of these entities to open lines of communication between other federal agencies and election officials; create dynamic resources that cull the knowledge of election officials who have had to rebuild their systems after severe natural and man-made disasters; and, establish additional avenues of support to expedite recovery when a disaster occurs. The EAC plans to expand its website with new resources stemming from this work, potentially including planning templates, best practices, original research reporting, and agency recommendations for improvement regarding disaster response and recovery in relation to election administration and voter participation.

It is important to note that all staff working on the Disaster Preparedness & Recovery initiative each have other, full-time jobs in addition to their work on this issue. It is our

hope that, with additional funding, we can hire additional staff to support this initiative and partner with contractors who can provide specialized training and expertise.

National Clearinghouse Functions

The Help America Vote Act states that the EAC, “shall serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of federal elections.”

Question 6: If provided additional resources, what additional activities would you be interested in using this clearinghouse function for?

With additional resources, the EAC would enhance its current support for state and local election officials and invest in the following initiatives:

- **Develop and complete an EAC Communications Initiative projected to cost \$710,000.**

New Resources and Training

This initiative would allow the existing staff to work with outside experts and contract writers to prepare a suite of training materials that could be combined into training manuals or parceled out for more specialized trainings. Using the Commission’s “Election Administrator Competencies” Wheel (**Attachment C**) as our guiding principle, the training materials would touch on as many aspects of election administration as possible, but certainly would include best practices, checklists, and guidance pertaining to the following topics:

- Election Security
- Procuring Election Technology and Voting Systems
- Recruiting Poll Workers
- Disaster Preparedness and Recovery
- Using Election Data to Improve the Voter Experience
- Accessibility

In addition to using these materials for trainings across the nation, the EAC would add the updated materials to its website ahead of 2020.

This communications initiative would include a series of five regional trainings ahead of the 2020 Presidential Election. The EAC would offer two-day, regionally-based “2020 Election Bootcamp” events that feature hands-on training rooted in the new materials above. The events would be a mix of panels, trainers, keynote speakers, and hands-on exercises offered for election administrators. Ideally, these events would take place starting one year out from the 2020 Presidential Election and be completed no later than midway through the second quarter of 2020. Potential sites for these trainings include:

- Washington (Northwest)
- New Mexico (Southwest)

- Missouri (Midwest)
- Florida (Southeast)
- Washington, D.C. (Northeast)

In addition to serving as an incredible learning opportunity for election officials, these conferences would provide the EAC with regional platforms to conduct media outreach, place opinion pieces, conduct editorial board meetings, and highlight HAVA grant-supported efforts across the nation ahead of 2020.

Combatting Disinformation

To fight potential disinformation on social media, with additional funding, the EAC would be able to increase its role as a trusted source of election information and increase voter confidence. The EAC would invest in paid media placements ahead of the 2020 Presidential Election. These regional print ads, radio news releases or ads, as well as national online ad buys, could link back to “trusted source” resources for voters or provide public service information about how voters can make sure they are able to fully participate in the 2020 Presidential Election, including how to serve as a poll worker. This effort would serve as a complement to our regional trainings efforts by specifically targeting voters across the nation and elevating the profile of the EAC’s broad spectrum of offerings for them (i.e., up-to-date election calendars, “Voting Rights” cards, and portals to contact local election officials).

In an era where misinformation campaigns carried out on social media and by more traditional means have the potential to negatively impact elections, the EAC understands better than any other agency the need for election officials to be the most trusted source of election information. At the federal level, Vote.gov has the opportunity to be a one-stop, trusted federal source for voters and the EAC can provide leadership to ensure this is the case.

Serving as a trusted source for voters is an essential responsibility that the Commission carries out and one that it hopes to enhance by partnering with other federal entities that provide election information. In an effort to streamline information sharing and provide voters with improved access to accurate election information and a broader array of voting resources, the EAC plans to partner closely with the administrators of Vote.gov. Currently, Vote.gov's website and the EAC's www.eac.gov website are managed and updated by independent webmasters. When real-time edits are made on the EAC's websites, it is imperative that these same changes be reflected on Vote.gov. By linking the two sites and streamlining updates, the EAC can ensure that voters always have access to the most recent versions of important forms and resources. Looking ahead, we hope to leverage this relationship to improve the quality and expand the amount of information available on Vote.gov.

➤ **Enhance the Research Initiatives at a cost of \$538,000.**

Section 241 of HAVA allows the EAC to periodically conduct and make available public studies regarding prescribed election administration issues. EAC’s ability to meet this requirement is significantly constrained due to insufficient funding for research personnel

and contract mechanisms. Currently, there is one staff member conducting original research that produces best practices for election officials nationwide. This constraint limits the magnitude of up-to-date information the agency can feasibly produce, internally, in a timely manner. Personnel constraints limit the EAC's ability to efficiently serve as a clearinghouse of election information.

The EAC proposes three additional staff that will help produce the following items:

- Security-related best practices for statewide voter databases and other forms of election technology in 2020 and beyond
- Best practices to secure the vote-tabulation machines used to cast and tally votes
- Best practices to mitigate the risks of vulnerable public-facing elections websites and the exploitation of backend databases behind web servers used by election officials
- A primer on advanced voting that includes the most current best practices on implementation
- Best practices to ensure effective and efficient voter list maintenance
- Best practices to design ballots used in elections for public office, including paper ballots and electronic or digital ballots, to minimize confusion and user errors
- Best practices to improve voting access for individuals with disabilities during elections for Federal office

Furthermore, there are several reports with content that need to be revisited and revised for use and applicability. The following HAVA reports should be updated:

- Effective Designs for the Administration of Federal Elections (Ballot Design) (2007)
- Improving State Voter Registration Databases (2009)

The information that we have shared with you is the tip of the iceberg as it relates to all of the EAC's activities that are conducted on a daily, weekly and monthly basis. The EAC's "Election Administration Competency" Wheel is the driving factor of all programs that the EAC endeavors to develop and share with election officials around the nation. Developing products for election officials to navigate these topics is our primary goal.

➤ **Double the size of the Testing and Certification staff at a cost of \$350,000.**

Doubling the existing staff to six staff members focused on the Testing and Certification and the Election Technology and Security programs would allow for increased output in certifying voting systems and cybersecurity support.

Question 7: Is there a potential to save local officials money, perhaps by reducing redundancies and sharing best practices?

Yes. Perhaps one of the greatest values of the EAC's Clearinghouse function is its ability to share best practices and other resources across election jurisdictions, information that helps States to identify efficient and effective ways to serve voters. From sample RFPs and detailed plans regarding how states are investing federal funds to best practice case studies on issues

ranging from election accessibility and poll worker recruitment to election security and technology, the EAC's wealth of election administration information supports election officials as they make decisions about the best way to invest their limited resources.

In addition, should additional funds become available, the EAC is working to provide even more hands-on assistance that can help jurisdictions stretch their funds. For example, if the Commission's funding were restored to the FY2010 level, the EAC could deepen its bench of expertise with five cyber experts devoted to assisting States, additional grants management and auditing support, doubling the size of our current research team and adding additional members to our Testing and Certification team. This additional capacity would allow the Commission to produce additional materials, provide a higher level of support for state and local election officials, and elevate the EAC's presence around the country with more regional conferences and trainings. This would also help states that are struggling to afford cyber assistance.

Personnel

Question 8: Under the EAC's Organizational Management Policy Statement dated February 24, 2015, the succession plan for the agency head only contemplates succession when all Commissioners seats are vacant.

- a. What is the succession plan for the executive director during a vacancy when all Commissioners seats are full?**
HAVA Section 205 (a)(3)(C) provides that if a vacancy exists in the position of the Executive Director, the General Counsel of the Commission shall serve as the acting Executive Director until the Commission appoints a new Executive Director.
- b. When there is only a quorum of Commissioners?**
HAVA Section 205 (a)(3)(C) states that if a vacancy exists in the position of the Executive Director, the General Counsel of the Commission shall serve as the acting Executive Director until the Commission appoints a new Executive Director.
- c. When there is no quorum of Commissioners?**
The 2015 Policy Statement document referenced establishes a succession plan in the event there are no Commissioners. The succession begins with the General Counsel, followed by, in order, the Chief Operating Officer, Chief Financial Officer, Communications & Clearinghouse Director, Voting Systems Certification Director, Election Administration Research & Programs Director, and Grants Administrator.
- d. What is the succession plan for the general counsel in each of those same circumstances?**
HAVA does not provide a succession plan for General Counsel. HAVA Section 204(a)(4) allows for the Commission to appoint a General Counsel. In cases where there is no quorum and no General Counsel, the Executive Director could

appoint someone to serve in an acting role until a quorum is re-established and a General Counsel could be appointed by the Commission.

- e. **Please share the policy adopted by the Commission outlining this succession.**
As mentioned, HAVA does not provide a succession plan for General Counsel.

Question 9: HAVA Section 204(a)(3)(B) clearly states that “the Commission shall consider the nominees recommended by the Standards Board and the Board of Advisors in appointing the Executive Director.” It does not require that the individual selected actually be among those names; it solely requires that they be considered. This text therefore contemplates an alternate method to select an executive director. The search committees of the advisory boards are thus detailed as one approved method for finding an executive director, but are not the only approved method, and an alternate search method is nowhere expressly prohibited. Further, as a generally accepted legal principle, the requirement of one method, absent more, does not prohibit the usage of any alternative methods. In Chairwoman McCormick’s testimony, she suggested, incorrectly, that the only available means to initiate a search for the executive director is the approach using the search committees of the advisory boards once a vacancy occurs.

Historically, the EAC has posted an Executive Director vacancy announcement that results in resumes being submitted for consideration. Upon a vacancy announcement, the advisory boards subsequently formed search committees to review and vet the resumes received through the EAC employment process. The advisory board search committees then reviewed most, if not all of the resumes, ranked and rated the same, and submitted recommendations for the Commissioners to consider. The advisory boards have not operated in any other fashion related to vacancies.

In fact as the Boards are advisory to the EAC, it is not contemplated by the Statute that the Boards would conduct an alternative process for seeking an Executive Director especially in light of the fact that there currently is not a vacancy. Importantly, the Boards cannot act beyond the established procedural requirements of the agency as they are advisory, only. The premise of an alternative process, as stated in the question, overlooks the relevant preceding section of HAVA, 204(a)(3)(A) that says “When a vacancy exists in the position of the Executive Director, the Standards Board and the Board of Advisors shall each appoint a search committee to recommend at least three nominees for the position.”

As noted, upon the announcement of a vacancy, the boards then establish search committees, not before. Creating an early candidate list would not only suggest that the nominees that came from the boards may not be properly considered, but there would be no expediency achieved in filling the position because HAVA mandates that these committees be appointed when a vacancy occurs and recommend at least three nominees.

- a. **Given that there is no prohibition on an alternate search, what is your plan to begin undertaking an alternate formal search, or adopting a policy for there to be an informal search?**

The Commission plans to follow the requirements set forth in HAVA. We recognize the Committee Members' concerns about the potential timing of the expiration of the current Executive Director and General Counsel terms. We believe that the Commission may be well served to develop a policy that allows for a determination if the incumbent Executive Director and/or General Counsel are interested in being retained for an additional term, as described in HAVA, and to ascertain if other parties are interested in the positions a few months prior to the expiration of a term. This would allow the Commissioners to know if they should anticipate a vacancy and to make a more fully formed decision if a vacancy were to occur. Given the requirements of agency policy making (**See Attachment D**) and our lack of counsel that would not be conflicted, it appears that adopting such a policy ahead of the end of the current Executive Director and General Counsel terms may not be possible. We are committed to considering a related policy in this area.

b. On what date will you begin this search?

Any search will be conducted in a manner consistent with the provisions of HAVA, Section 204(a)(3).

Question 10: Commissioners indicated that the interpretation of the EAC succession plan and the availability of holdover status for staff under HAVA and your internal policies will be conducted by your general counsel. Your general counsel position will also arrive at a vacancy this November. This is a conflict of interest, given that your general counsel's interpretation of his ability to hold over will impact his potentially continued employment.

While there was a brief discussion by one Commissioner about consulting with the General Counsel on the formation of a search committee, the Commissioners did not discuss this item in the manner portrayed in the question. The Commissioners are not anticipating a legal opinion from the General Counsel in this regard. However, agency staff has sought the input of federal personnel authorities on this issue and, once information is received, the Commission will be in a better position to respond.

a. Please explain how you will deconflict this issue and arrive at an appropriate and credible interpretation regarding your succession plan.

As previously stated, the Commissioners are not anticipating a legal opinion directly from the General Counsel in this regard, but will be considering information from relevant federal personnel authorities regarding these particular issues.

Question 11: In the order in which they were originally ranked, please share the complete list of names suggested to you by the Board of Advisors and the Standards Board, respectively, for consideration for executive director when you last considered candidates for that position.

Please note that the previous ranking of names conducted by the advisor boards was conducted in response to resumes submitted in response to a vacancy announcement, so we are unable to share the names of the individuals who were not selected for the position as a matter of privacy.

Question 12: On what date did your current executive director's term begin? On what date is a vacancy scheduled to occur for your executive director position?

On October 22, 2015, the EAC's Commissioners voted to appoint Brian Newby as the EAC Executive Director for a four-year term. The agency has sought the input from relevant federal personnel authorities regarding the beginning and ending dates of the terms for Executive Director Newby and General Counsel Tatum.

Question 13: On what date did your current general counsel's term begin? On what date is a vacancy scheduled to occur for your general counsel position?

On October 22, 2015, the EAC's Commissioners voted to appoint Clifford Tatum as the EAC General Counsel for a four year term. The agency has sought the input from relevant federal personnel authorities regarding the beginning and ending dates of the terms for Executive Director Newby and General Counsel Tatum.

Question 14: Expediency requires you to start this executive director search now, and HAVA does not expressly prohibit such search before a vacancy exists.

a. Can you commit to beginning a search process for the executive directorship?

While we appreciate the nature of this question, we intend to follow a process consistent with HAVA at the appropriate time, and we respectfully note that a response to this question would in effect require deliberation and a consensus of the Commissioners on how to proceed. As such, we are not conducting deliberations or making a public statement on this matter at this time. In the event of a vacancy, the agency is prepared to proceed with a candidate search process.

Question 15: Your charge as Commissioners is to be stewards of the agency; does knowingly leaving the executive director position vacant during the 2020 election constitute good stewardship?

Each Commissioner plans to continue to uphold the Oath of Office, consistent with their responsibilities detailed in HAVA, that they took when beginning their service as Commissioner. All positions identified in HAVA—Commissioners, Executive Director, General Counsel, and Inspector General—are filled at this time.

Question 16: Please detail, step by step, the process for announcing and filling the position of Director of Testing and Certification.

a. Please share the job posting.

See **Attachment E** or visit this link:

<https://www.usajobs.gov/GetJob/ViewDetails/526497300>

b. On what date did you publicly post the position?

March 6, 2019

c. On what date did you hire the candidate?

The candidate was hired on May 8, 2019, and he assumed the position on May 12, 2019.

d. How many people applied?

20 applications were received and reviewed by the EAC's OHR and Executive Director.

e. How many people did you interview?

One internal candidate was interviewed for this position. No external candidates were interviewed.

f. Did Mr. Jerome Lovato apply for this position?

Yes.

g. Please describe the circumstances under which Mr. Lovato was awarded this position.

Following a successful interview and Mr. Lovato's continued interest in the position, he was offered and accepted the position to lead the EAC's Testing and Certification Program.

Question 17: On the evening of May 14, 2019, one day before the Senate Rules hearing and less than a week after hiring Mr. Lovato, you announced two new additions to the Testing and Certification staff.

a. Please describe your process for selecting those individuals.

EAC utilizes a variety of merit-based staffing methods to fill positions. Recruiting is carried out by OHR and qualification assessments are generally conducted directly by the operating units where permissible under applicable statutes, regulations, and policies. As an excepted service agency, the EAC does not use OPM registers of ranked qualified candidates for appointment to the civil service.

These methods are supplemented by other staffing tools, such as paid advertising, flexible entry salaries, trial periods, recruitment and retention payments, and flexible pay increases associated with promotion. These methods are intended to attract higher-quality candidates, speed up the recruiting and examining

processes, increase the effectiveness of the trial period review process, and increase the retention of good performers.

As an excepted service agency, the EAC is statutorily exempt from the hiring and classification mandates of Title 5 in the U.S. Code that govern appointments in the competitive service¹. This special authority allows EAC to use a streamlined hiring process, consistent with the merit system principles of 5USC 2301(b), rather than hiring through the traditional competitive process. In fact, HAVA 204(a)(5) states that “Subject to rules prescribed by the Commission, the Executive Director may appoint and fix the pay of such additional personnel as the Executive Director considers appropriate.”

The agency may, but is not required to, post vacancies on USAJOBS; however, the majority of recruitment actions to fill vacancies are advertised to allow fair and open competition. EAC announcements will generally be open for the period of time and to the widest audience necessary to provide an adequate number and diverse pool of candidates from which a selection can be made. Vacancy announcements are prepared and posted by OHR in consultation with the requesting office.

Once the vacancy announcement closes, it is determined which candidates meet the minimum qualification requirements for the position vacancy. The selection process that follows is designed to determine which of the minimally qualified candidates are best capable for the vacant position. The assessment methods may consist of panel assessments, peer reviews, interviews, work samples, or other valid methodologies deemed appropriate for the position being filled. Hiring supervisors, with OHR approval, determine which type of assessment method will be used to assess applicants.

As we receive resumes and applications for employment, we identify potential employees and look at past employers to determine if there are any potential conflicts of interest. If so, generally we discuss what the potential conflicts could be and determine whether or not we can facilitate employment based on ethical standards. If potential conflicts are identified, our Designated Agency Ethics Official reviews the issues and when necessary, seeks expertise from the Office of Government Ethics.

The Office of Human Resources (OHR) posted this position on USAJOBS.gov from November 19 to November 27, 2018 and again on April 12 to April 28, 2019. Between November 19 and November 27, 2018, we received 35 applications for the position. Between April 12 and April 28, 2019, we received 41 applications for the position, for a total of 76 applicants for the position. The Office of Human Resources and the Executive Director reviewed the applications to identify those who were qualified. This entire list was provided to Mr. Lovato for his consideration.

¹ See 52 U.S.C. §20924(a)(6)

Two candidates were deemed to be “best qualified” and OHR conducted interviews with these candidates together with the Director of Testing and Certification. OHR then conducted reference checks via telephone call and initiated the process to verify their matriculation from the Universities they attended.

- b. **Please share the job posting.**
See **Attachment F** or visit this post:
<https://www.usajobs.gov/GetJob/ViewDetails/507322500>
- c. **Was there an open and transparent application process?**
Yes.
- d. **On what date were the positions announced?**
The position was announced twice, November 19 to November 27, 2018 and again on April 12 to April 28, 2019.
- e. **On what date were they filled?**
Paul Aumayr assumed the position on 5/28/2019.
Jessica Bowers assumed the position on 5/30/2019.
- f. **Did the time between the announcement of a vacancy and your filling of the vacancy allow for finding and vetting the most qualified candidates?**
The time elapsed between the first time the announcement closed to selection of candidates was 5.5 months, and the time elapsed between the second time the announcement closed to selection of candidates was one month. This time frame was sufficient and allowed for us to find and vet the most qualified candidates.
- g. **How many people applied?**
Between November 19 and November 27, 2018, we received 35 applications for the position. Between April 12 and April 28, 2019, we received 41 applications for the position.
- h. **How many people did you interview?**
Mr. Lovato and the Office of Human Resources interviewed two candidates.
- i. **By whom were these hires made?**
These hires were determined by the Director of Testing and Certification and approved by the Executive Director.
- j. **Did the Commissioners weigh in on these decisions at all?**
No, Commissioners are not involved in the process of hiring personnel.

Question 18: Chairwoman McCormick said she “believes” there is a SCIF available to Mr. Jerome Lovato in Colorado, and that it would be to Colorado’s state standards.

a. Please confirm the location of the SCIF.

The EAC has discussed this issue with the Department of Homeland Security (DHS), and DHS will direct Mr. Lovato to an appropriate SCIF near his location if a need arises. This is the same process DHS undertakes for other members of the EAC, including Commissioners, as the EAC's current location in Silver Spring does not have a SCIF.

b. How far it is from Mr. Lovato's primary place of work?

This would be determined at the time of an event, but a federal facility is in the metropolitan area where Mr. Lovato works.

c. Please detail how it meets all federal government standards.

DHS understands and verifies SCIF requirements. The EAC therefore has confidence that the facility DHS chooses at a particular time will meet those requirements.

Question 19: Chairwoman McCormick also noted Mr. Lovato will travel back and forth between Colorado and the EAC's office in Silver Spring.

a. At whose expense will Mr. Lovato be travelling back and forth?

When Mr. Lovato travels on EAC business, his travel expenses are paid by the EAC.

b. What is the estimated weekly cost of this travel?

Mr. Lovato is not traveling to the EAC on a weekly basis. As a point of reference, since Mr. Lovato began his new role, he has traveled twice in two months to the Silver Spring office. Mr. Lovato is not the first Testing and Certification employee with a duty station outside of the Washington D.C. area. Previously, the EAC had two technical reviewers who worked outside of the area and traveled to the EAC occasionally. In addition, over the years, the EAC has had other employees in other departments with duty stations outside of the EAC.

c. How frequently will he be travelling?

Mr. Lovato travels frequently for EAC-related business, such as attending and presenting at conferences and conducting trainings. Mr. Lovato travels to the EAC office in Silver Spring when he has other meetings in Washington, DC, and he is available to travel to the EAC on an as-needed basis. Mr. Lovato regularly participates in staff meetings and other discussions via conference call or video.

d. What percentage of time do you expect Mr. Lovato to be at the EAC headquarters? What percentage in Colorado?

As stated, Mr. Lovato has an intense travel schedule beyond Washington, DC and away from his duty station in Colorado. The nature of the position requires that he go where he is needed when he is needed. That said, the Commission anticipates that Mr. Lovato will spend approximately 65 percent of his time in Colorado and 35 percent of his time out in the field directly serving election officials and other stakeholders, including time in Washington, DC.

- e. **Would hiring an individual who resides in or near Silver Spring, Maryland, demand fewer agency resources?**
Perhaps. However, the EAC serves stakeholder across the country, and any such analysis is, at best, complicated. The EAC offices are space-constrained, and the EAC has requested funds to move to larger, more ADA accessible space.
- f. **Please list all other individuals in the agency who have a duty station other than Silver Spring, Maryland.**
Margaret Ollove – Brooklyn/Cattaraugus, NY
Christy McCormick – Williamsburg, VA
Donald Palmer – St. Johns, FL
Jessica Bowers – Aurora, CO
- g. **At whose expense do those individuals travel to Silver Spring?**
When individuals travel on EAC business, travel expenses are paid by the EAC.
- h. **Please share the cost of travel annually covered by the agency for each individual, respectively, whose duty station is not Silver Spring, Maryland.**
In Fiscal Year 2018, the cost of travel covered by the agency in this regard was \$0, and, similarly, for the first half of Fiscal Year 2019. The EAC had employees with duty stations outside of the Washington area in the past, during Fiscal Year 2017 and earlier, and can research this information if it is deemed useful.

Question 20: Commissioner Palmer stated that there is an “ethics officer and the general counsel.”

- a. **Who is your ethics officer?**
The General Counsel, Clifford Tatum, is the EAC’s Designated Agency Ethics Official.
- b. **What are his or her qualifications?**
The General Counsel has been designated as the Agency Ethics Officer. He has participated in and continues to receive training conducted by the Office of Government Ethics. This training addresses substantive topics for ethical considerations and focuses on developing analytical skills required for identifying and resolving potential ethical issues, as well as training regarding the Agency Ethics Official’s responsibilities related to training staff to identify and resolve potential ethical issues on a daily basis.

Question 21: Commissioner Palmer mentioned that, while employed at the EAC, Ms. Jessica Bowers will not deal with the voting machine vendor from which she came. That vendor is one of the three largest in the nation.

- a. **How will this be operationalized?**
Ms. Bowers is only assigned projects that are not associated with her previous employer. She and her supervisor have been briefed by the EAC Ethics Officer,

and she understands her role and responsibilities as it relates to interacting with her former employer. Pursuant to Subpart E of the Ethics Code, the EAC is taking steps to ensure that Ms. Bowers avoids an appearance of loss of impartiality in the performance of her duties and are ensuring that she will not participate in a particular matter involving specific parties.

b. How sustainable is this solution?

This is a very sustainable solution since the Testing and Certification team is working on a wealth of other projects that do not include her former employer.

c. How long will this firewall exist?

The EAC Ethics Officer is reviewing this to provide guidance, but likely, the period will have a limited number of years and will be conducted in accordance with Section 2635.501 and 502 of the code of Ethics.

d. Does this firewall ultimately create a circumstance where the vendors Ms. Bowers works with are treated differently than her former employer, by virtue of her working with some vendors, but not that one?

No. Ms. Bowers clearly understands the code of ethics and is a committed public servant, as evidenced by her service in the U.S. Air Force and her performance to date at the EAC.

e. Who will work with the vendor that is Ms. Bowers' former employer?

The Testing and Certification program employs two senior election technology specialists. The Testing and Certification Director serves as the primary backup for both Senior Election Technology Specialists.

f. Will that employee or those employees be firewalled from Ms. Bowers?

The EAC is fortunate to have an employee of the caliber of Ms. Bowers and is utilizing discretion upon the certification issues she manages. However, she is a valued employee and will contribute in all ways expected of other EAC employees.

Question 22: Please answer the following regarding an apparent conflict of interest.

a. Was the agency's ethics officer consulted before hiring Ms. Jessica Bowers to your Testing and Certification Team?

The Agency Ethics Officer was consulted prior to Ms. Bowers joining the EAC team.

b. Please provide the Committee your conflict-of-interest analysis regarding hiring a former vendor employee to oversee vendors.

We reviewed the relevant sections of the Code of Ethics, specifically Subpart E (Impartiality in Performing Official Duties), as well as Sections 2635.501 (overview) and 2635.502 (Personal and business relationships). These sections relate to avoiding appearances of loss of impartiality and address covered relationships and permissible activities and specific matters.

Question 23: Please provide a list of all staff, consultants, or any other person paid any amount hired during Executive Director Brian Newby's tenure at the EAC. Please provide all of the following for each individual:

- a. Title
- b. Job Description
- c. Date of hire
- d. Date of end of service
- e. Duty station from where they conducted their work
- f. Total annual salary or, if not salaried, total payment for services
- g. Any other position, and place such position was held, while also working for the EAC

See Attachment G.

Question 24: During the hearing, Commissioner Hicks and Chairwoman McCormick indicated they had not read the Annual Employee Survey covering 2017 and released in April 2018, or its accompanying comparison report. We request that all Commissioners familiarize themselves with this survey and comparison report, which are available on the EAC's website here: <https://www.eac.gov/about/human-resources/>.

- a. **When was the Annual Employee Survey released in April 2018 conducted (from what date to what date)?**
The survey was conducted from the end of January through March 16, 2018.
- b. **When was it released to the Commissioners?**
The survey results were reviewed by all EAC staff in the spring of 2018 and the results were posted on the EAC's website for general release at that time.
- c. **Why has the report been delayed covering employee satisfaction for 2018?**
The Commission's 2018 employee survey was scheduled to be administered in January and February of 2019, but this year's government shutdown delayed the start of the survey.
- d. **When is the next Annual Employee Survey to be conducted and released?**
As mentioned, the survey was to have been conducted in January and February 2019, but the government shutdown impacted those plans. The survey is now expected to be completed this fall.
- e. **Please provide the results of a contemporary employee survey to the Committee before October of this year.**
The operational impact of the government shutdown cannot be minimized, and the employee engagement survey will be implemented as planned. Results likely will not be processed and available to the agency before October of this year.

Question 25: What are all of the complaints that have come to your Inspector General? Please provide a complete list including the content of the complaint, the date, and any other relevant information for each complaint.

The EAC's Inspector General is an independent entity whose work is conducted without review or oversight by the EAC. She receives complaints and addresses each correspondence as she wishes. Therefore this question must be directed to her via separate correspondence.

Agency Cybersecurity

Question 26: In November 2016, an incident occurred where hackers were able to penetrate the agency's technology infrastructure

- a. **In response, what impact assessments, if any were conducted by outside entities? By inside entities? Please name which entities.**

In November 2016, a single webserver database was illegally accessed by a single suspect. This incident continues to be the subject of an FBI criminal investigation. As a point of record, hackers did not penetrate the EAC's technology infrastructure. The EAC has been told that the FBI believes the incident to be that of an individual criminal, not a nation-state effort. The suspect is believed to be responsible for more than 25 government and university incidents.

Since this incident the EAC has implemented numerous safeguards:

- Upon notification of the incident by the FBI—which occurred within a week of the incident—the EAC immediately removed the compromised server from the network, eliminating the hacker's potential to compromise EAC systems.
- Immediately following the incident, all servers and desktops were patched.
- Immediately following the incident, firewall configuration changes were made, via GSA, to close ports and to monitor traffic and eliminate unauthorized access.
- An Enterprise password reset was initiated for all staff and systems.
- An incident response policy was developed.
- The EAC hired a Chief Information Officer with an extensive cybersecurity background to oversee cybersecurity and IT.
- A full compromise assessment was performed on the EAC network, including all desktops.
- The EAC implemented dual-factor authentication and mandatory use of PIV cards for authentication.
- The EAC procured FireEye's Network and Security Suite.
- Since email is the most vulnerable vector for cyber-attacks as it is the highest volume data ingress point for the EAC, the CIO implemented a

real time cloud based advanced threat protection solution. The EAC implemented a fully featured secure email gateway that leads the industry in identifying, isolating, and immediately stopping URL, impersonation, and attachment-based attacks, before they can potentially enter the EAC's network. The added security layer also scans all outgoing traffic for advanced threats, spam and viruses by using a confluence of intelligence-led context and detection plug-ins, malicious URLs are detected and attachments and URLs are analyzed against a comprehensive cross-matrix of operating systems, applications and web browsers. FireEye collects extensive threat intelligence on adversaries, through firsthand breach investigations and millions of sensors.

- The EAC has drafted an Enterprise Risk Strategy and Business Impact Analysis.
- The EAC continues to review GSA SOC reports and document that proper controls are in place on their network, as GSA manages the EAC's Wide Area Network.
- Beyond developing and practicing an Incident Response plan, the EAC continuously manages cyber risk by monitoring the risk environment as well as reviewing IT budgets, new technologies and services, security spending, and policies that have security implications.

b. If conducted, please share the dates those assessments were conducted.

The EAC worked with DHS to conduct an assessment in January 2017. Upon her hiring in the fall of 2018, our new Chief Information Officer began an overall assessment of the EAC's technology, as well as an assessment to review the incident and DHS's findings was conducted in 2019.

c. If conducted, on what date were those assessments shared with the Commissioners?

The decision to conduct an assessment by DHS came after considerable discussion between the Executive Director and each Commissioner in January 2017. The agency did not receive a draft report from DHS until more than a year later, but DHS's shared their initial findings in January 2017 and communicated to the Commissioners at that time. The second assessment's findings are in draft form and have just been delivered to the agency, so a review with the Commissioners will be forthcoming.

Election Technology and Testing and Certification

Question 27: Please answer the following regarding Testing and Certification.

a. What are the professional credentials of each member of the Testing and Certification team?

Jerome Lovato

Mr. Lovato has over 10 years of experience working in technological capacities with the state of Colorado. Prior to joining the EAC in 2016, his positions included Voting Systems Certification Lead and Risk-Limiting Audit Project Manager, and he has tested and piloted numerous voting systems for various entities. His education includes a bachelor's degree in Electrical Engineering from the University of Colorado at Denver. Mr. Lovato is extremely well-regarded nationally, and he is considered one of the leading post-election audit experts in the country.

Paul Aumayr

Mr. Aumayr comes to the EAC with over 15 years of elections experience at the Maryland State Board of Elections, where he has been involved in every aspect of voting system testing and certification. Most recently, as Voting System Director for the past eight years, he managed operations for Maryland's uniform voting system and electronic pollbooks, and chaired the voting system evaluation committee to appraise and select the state's voting system. Prior to that, he served as the Voting System Manager and in that capacity, authored the state's "Conducting the Election Guide." Mr. Aumayr has more than 10 years of IT experience; and has advised myriad stakeholders including, but not limited to, election officials, academics, voting system and other vendors, candidates and office holders, security and other IT experts as well as the voting public. He holds a bachelor's degree in Engineering, with Honors, in Computer and Electronic Engineering from The University of Brighton, UK. Paul is a Microsoft Certified Systems Engineer and Project Management Professional.

Jessica Bowers

Ms. Bowers joins the EAC with over 11 years of voting systems experience. She has held various roles including Director of Certification Compliance, in addition to several senior software developer positions in various organizations. She has a wide array of technical, leadership, and management experience, including over 18 years of software development and product support experience. Ms. Bowers has made regular presentations to senior and executive state and federal government officials on voting system security, accessibility and conformance to state election laws and rules, and is actively involved in VVSG working groups. She has earned a Bachelor of Science in Information Technology from the University of Phoenix, and is a Certified Scrum Master.

- b. Does the Testing and Certification team have the bandwidth or substantive experience to look at election hacking from a technological standpoint, considering machine software or hardware?**

This is a broad question that could encompass any number of responsibilities and activities. However, it is fair to say that the EAC does not have the tools or bandwidth to perform in-depth forensic analysis of any type of election hacking. This is beyond the scope of the agency's duties and responsibilities.

Question 28: Commissioners were asked about an election technology division and seemed supportive of it alongside the Testing and Certification program under the EAC's Information Technology Department. On Page 8 of the EAC's 2018-2022 Strategic Plan, dated February 12, 2018, there is a department listed under Information Technology called Election Technology.

The responsibilities of the Testing and Certification Program include project management of the voting system testing process. The staff members serve as technical reviewers of voting system technical documentation packages (TDPs), test plans, test reports, root cause analysis, among other things, and interpret that data in order to ensure the voting systems meet the certification requirements. The staff interacts with the voting system vendors and manufacturers, the test laboratories, and state election officials.

The Testing and Certification staff is involved in developing voting systems and election technology guidelines, requirements, test assertions, best practices, and white papers. Team members also serve as lead auditors under International Standards Organization (ISO) 17025 and ISO 9001. They maintain and monitor the quality of the Voting System Test Laboratories (VSTLs) and the registered manufacturers who submit voting systems for testing and certification.

However, with the expanded role of the EAC's Testing and Certification Program, this same staff has absorbed the Election Technology Program duties. Additionally, the Election Technology Program duties have been formalized as part of the Testing and Certification Program. These duties are assigned to the new Director of Testing and Certification, and were reflected in the announcement that was posted for that vacancy. The announcement for that position also added the duties of EAC lead on critical infrastructure, as well as election technology and cybersecurity, and the requirement to obtain a Secret security clearance.

In order to fulfill all of the new duties that have been assigned to the Testing and Certification Program, under the Director of Testing and Certification, an optimal total number of personnel is six, including three full-time staff working on voting system certification and two full-time staff working on Election Technology and Security Programs, in addition to the Director who will oversee the department. The EAC would also like to expand the number of testing laboratories it utilizes—currently two are in use and the EAC believes three is the optimal number of labs certified at this time.

- a. **Pursuant to your unanimous adoption of this plan, why has your executive director not moved to implement this division since this strategic plan was published?**

The organization chart on Page 8 does not represent such a Division. The organization chart represents an internal IT function within the agency.

- b. **When do you intend for this division to be implemented?**

Although many activities have been underway, as explained above, the organization chart on Page 8 does not represent such a Division. The organization chart represents an internal IT function within the agency.

Voluntary Voting System Guidelines (VVSG)

Question 29: To what evolved challenges do the Guidelines respond?

The VVSG, as updated in March 2015 (Version 1.1), was a natural evolution of the previous version. The version that the Commissioners recently voted to publish in the Federal Register to receive public comment (VVSG 2.0) is intended to allow for further strengthening of security while ensuring the accessibility requirements of HAVA. This approach was advocated by NIST and supported by the EAC Technical Guidelines Development Committee.

The underlying principles of accessibility, security, accuracy, reliability, and privacy remain, but have been enhanced to incorporate years of research and have been structured to align with other industry standards. Some of the changes involve an approach to software independence (paper backups), auditable records, voter information protection, unique identifiers for Risk Limiting Audits, interoperability, multifactor authentication, encryption, and new system integrity requirements.

Additional areas of change address overall transparency, potential use of commercially available over the counter hardware, assurance of compliance with Section 508 Web Content Accessibility Guidelines and usability across all modes of presentation (visual, audio enhanced video) and interaction (touch, tactile, non-manual).

Question 30: Can you describe the process of engaging stakeholders, including the election advocacy community, the National Institute of Standards and Technology, the Technical Guidelines Development Committee, and others?

By way of background, the VVSG have historically consisted of Principles, Guidelines and Requirements against which voting systems can be tested to determine if the systems meet required standards. Our goal is to bring technological gains in security and other factors to the voters. Some additional factors examined under these tests include functionality, accessibility, accuracy, and auditability. HAVA mandates that EAC develop and maintain these requirements, as well as test and certify voting systems. These guidelines are voluntary, and states may decide to adopt them entirely or in part.

The structure of the new VVSG reflects modifications proposed by the EAC's Technical Guidelines Development Committee (TGDC), which is chaired by the director of the National Institute of Standards and Technology and is comprised of election officials, voting system manufacturers, disability experts, cybersecurity experts, technology experts, and other key election stakeholders. In addition, the modifications were informed by a robust set of working groups organized by NIST to provide specialized feedback on many of these same topics. The new guidelines are a high level set of principles that will be supplemented by accompanying documents that detail specific requirements for how

systems can meet the new guidelines and obtain certification. The supplemental documents will also detail assertions for how the accredited test laboratories will validate that a system complies with those requirements.

Last year, the TGDC, as well as the EAC's Board of Advisors and Standards Board, recommended adoption of the proposed VVSG 2.0 Principles and Guidelines. Unfortunately, when one of the Commissioners left the EAC, we lost our quorum and were not able to vote to move the new guidelines forward. That changed earlier this year when the Senate confirmed two new EAC Commissioners. In February, after Commissioner Palmer and Commissioner Hovland were confirmed, our first official act was to unanimously vote to publish the VVSG 2.0 Principles and Guidelines in the Federal Register for a 90-day public comment period. At that time, we also announced our intention to hold public hearings to gather feedback on the proposed principles and guidelines. Our first public hearing took place on April 10 in Memphis, and we held our second public meeting in Salt Lake City on April 23. On May 20, we held our third hearing at our office in Silver Spring. The public comment period on the VVSG 2.0 Principles and Guidelines concluded on June 7, 2019, following a one-week extension to provide time for all parties to submit their comments for consideration.

Question 31: What cooperation from the election community, if any, would assist you in this information collection effort?

The EAC is working with NIST and its advisory boards in this effort.

Questions for the Record from House Administration Minority

Question 1: What is the likelihood of the EAC starting an Elections Cyber Assistance Unit? Is this similar to what my home state of Illinois is doing?

a. What resources do you all need to get something like that up and running ahead of the 2020 Elections?

Certainly, this initiative is inspired by the work in Illinois. The EAC is committed to expanding its election cyber support efforts. For example, if the Commission's funding were restored to the FY2010 level, the EAC could deepen its bench of expertise with five cyber navigators devoted to assisting States, additional grants management and auditing support, doubling the size of our current research team and adding additional members to our Testing and Certification team. This additional capacity would allow the Commission to produce additional materials, and provide a higher level of support, for state and local election officials and elevate the EAC's presence around the country with more regional conferences and trainings. This would help States that are struggling to afford cyber assistance.

Question 2: Can you tell us about the Commission's role in assisting states with post-election audits? What services do you already provide in this area?

As with all aspects of election administration, the state and local jurisdictions operate elections in accordance with federal and state law. The EAC does not operate elections nor actively get involved in any specific aspect of election administration conducted by local election administrators.

However, the EAC does develop materials that focus on leading best practices within election administration, including post-election audits. The EAC developed a white paper outlining the various facets of post-election audits, including risk-limiting audits, and has participated in state workshops related to risk-limiting audits. The EAC would like to expand this support to providing training for all post-election audits, but the Commission currently does not have sufficient staff capacity to expand this effort. Part of the EAC's suggested expansion of its budget within the Testing and Certification division, proposed to appropriations staff, would double the number of persons in this division and allow for more staff guidance in this area.

Question 3: Can you tell us about your 2009 funding and staff levels versus today's funding and staff levels?

When Commissioners Ben Hovland and Donald Palmer were confirmed by the Senate in early January, the EAC had a full slate of Commissioners for the first time since 2010, when the EAC had 49 employees. This drop in staff is commensurate with an approximate 50 percent decrease in the EAC's annual budget since 2010. The EAC faces the 2020 election cycle with greater expectations and challenges than it has had in years, but its budget does not reflect this urgency.

Attachment H shows the budget decline at the EAC, the headcount difference between 2010 and now, and the major areas where staff has been reduced through attrition. Other positions, such as assistants for the Commissioners, a Chief Operations Officer, and additional grants and clearinghouse staff, have been unfilled for years. In fact, as part of an outside study and recommendations from the Office of Personnel Management, the EAC eliminated two filled positions, with some of those duties absorbed by existing employees and the remainder to be performed by a second attorney.

Question 4: What is the EAC's most pressing staff need at this time?

Restoration of a quorum was an essential step toward strengthening the ability of the EAC to provide the best possible support to state and local election leaders and the voters they serve. It also lays bare the fact that our Commission is stretched to the limit with regard to resources.

For example, in many instances, there is a lack of redundancy within the staff, meaning when a staff member is on vacation or ill, there is not a back-up employee who is able to fulfill their responsibilities. We feel this most in areas such as grant administration, finance, and the General Counsel's office, which each only have one full-time employee. In addition, many on the staff are satisfying the requirements of their own job description while also carrying out duties that

would typically lie beyond their responsibility, such as our Testing and Certification team working on critical infrastructure tasks. This is the most pressing issue we face today, particularly in light of other priorities. Answering these QFRs, and those from the Senate, have consumed extensive resources that top over 300 hours in the past two months, resulting in real and opportunity costs that have diverted scarce resources from addressing the EAC's mission.

Question 5: When it comes to DREs without a VVPAT, what is the current status of use of those machines in the United States?

- a. Should we encourage jurisdictions to move away from the DRE machines without a voter-verified paper audit trail?**

According to the 2018 Election Administration and Voting Survey, DREs with VVPATs were used in 38.9 percent of states, and DREs without VVPATs were used in 29.6 percent of states. States where more than half of jurisdictions used DREs without VVPATs are Delaware, Georgia, Indiana, Kentucky, Louisiana, Mississippi, New Jersey, Pennsylvania, South Carolina, and Tennessee. Less than two percent of jurisdictions reported using only DREs without VVPATs in the 2018 general elections without any other type of equipment, and no states or local jurisdictions reported using punch card or lever machines.

The percentage of states that use paperless DREs in 2020 will be significantly less due to states purchasing and implementing new voting systems this year.

The EAC agrees that having a voter-verifiable paper audit trail is the best way to audit a voting system. However, the EAC does not take a position on the types of voting equipment that a jurisdiction decides to purchase.

Attachment A

2018 HAVA Security Grants - EAC Engagement Tracker

STATE	Federal Funds Awarded per State FFR	States that Reached to EAC for Assistance (See color key below)	Pre-Award Notice to Grantees, Congress, Stakeholders	Create/Send Instructions-- budget and narrative guidance	T.A. Webinars to State Election Directors--3 Live Webinars	Plan/Budget Review, Staff Write ups, Initial Report	Feedback--Security Plan & budget	Email-Phone Consultations on Needed Revisions to Plans	Second round of Plan and Budget Review	Number of 1:1 Phone Consultations April - Sept. 30, 2018	State Budget neg. / Intervention to safeguard Funds	GSA SAM Account Support	Email Technical Assistance # of Issues	Federal Financial Reports Training	Review of Annual Report and Feedback	Feedback to States on FFR/Narrative submissions
ALABAMA	\$6,160,393		X	X	X	X	X	X	X	2		18	1	X	X	X
ALASKA	\$3,000,000		X	X		X	X			1		2	1	X	X	X
AMERICAN SAMOA	\$600,000		X	X	X	X	X	X	X			16	2	X	X	X
ARIZONA	\$7,463,675		X	X		X	X			3		4	4	X	X	X
ARKANSAS	\$4,475,015		X	X		X	X					23	2	X	X	X
CALIFORNIA	\$34,558,874		X	X	X	X	X			4		2	6	X	X	X
COLORADO	\$6,342,979		X	X	X	X	X	X	X	4	X	9	8	X	X	X
CONNECTICUT	\$5,120,554		X	X		X	X	X	X			52	2	X	X	X
DELAWARE	\$3,000,000		X	X		X	X	X	X	3		13		X	X	X
DC	\$3,000,000		X	X	X	X	X			2		4	2	X	X	X
FLORIDA	\$19,187,003		X	X	X	X	X			4	X	-	5	X	X	X
GEORGIA	\$10,305,783		X	X	X	X	X			1		-	3	X	X	X
GUAM	\$600,000		X	X		X	X					36	2	X	X	X
HAWAII	\$3,134,080		X	X		X	X	X	X		X	6		X	X	X
IDAHO	\$3,229,896		X	X		X	X	X	X		X	2		X	X	X
ILLINOIS	\$13,232,290		X	X		X	X	X	X		X	-		X	X	X
INDIANA	\$7,595,088		X	X	X	X	X	X	X	2		24		X	X	X
IOWA	\$4,608,084		X	X	X	X	X	X	X			12	4	X	X	X
KANSAS	\$4,383,595		X	X		X	X					17		X	X	X
KENTUCKY	\$5,773,423		X	X		X	X	X	X			6		X	X	X
LOUISIANA	\$5,889,487		X	X		X	X					2		X	X	X
MAINE	\$3,130,979		X	X	X	X	X	X	X	2		2	3	X	X	X
MARYLAND	\$7,063,699		X	X	X	X	X					1	2	X	X	X
MASSACHUSETTS	\$7,890,854		X	X	X	X	X		X			1	2	X	X	X
MICHIGAN	\$10,706,992		X	X	X	X	X		X	2	X	1	1	X	X	X
MINNESOTA	\$6,595,610		X	X		X	X			5	X	3	4	X	X	X
MISSISSIPPI	\$4,483,541		X	X		X	X		X		X	20		X	X	X
MISSOURI	\$7,230,625		X	X		X	X					1		X	X	X
MONTANA	\$3,000,000		X	X		X	X				X	1	2	X	X	X
NEBRASKA	\$3,496,936		X	X		X	X					2		X	X	X
NEVADA	\$4,277,723		X	X		X	X	X	X	2		-	1	X	X	X
NEW HAMPSHIRE	\$3,102,253		X	X	X	X	X			4	X	1		X	X	X
NEW JERSEY	\$9,757,450		X	X		X	X	X	X	4	X	2	3	X	X	X
NEW MEXICO	\$3,699,470		X	X		X	X	X	X			4		X	X	X
NEW YORK	\$19,483,647		X	X	X	X	X	X	X	3	X	1	4	X	X	X
NORTH CAROLINA	\$10,373,237		X	X		X	X	X	X			6		X	X	X
NORTH DAKOTA	\$3,000,000		X	X		X	X					16		X	X	X
OHIO	\$12,186,021		X	X		X	X		X	1	X	2	2	X	X	X
OKLAHOMA	\$5,196,017		X	X	X	X	X					24	3	X	X	X
OREGON	\$5,362,981		X	X		X	X					1		X	X	X
PENNSYLVANIA	\$13,476,156		X	X	X	X	X			2		1	3	X	X	X
PUERTO RICO	\$3,676,962		X	X	X	X	X			1			5	X	X	X
RHODE ISLAND	\$3,000,000		X	X		X	X	X	X			38+		X	X	X
SOUTH CAROLINA	\$6,040,794		X	X		X	X	X	X			1		X	X	X
SOUTH DAKOTA	\$3,000,000		X	X		X	X	X	X			1		X	X	X
TENNESSEE	\$7,565,418		X	X	X	X	X	X	X	1		3		X	X	X
TEXAS	\$23,252,604		X	X	X	X	X	X	X	1		1	3	X	X	X
UTAH	\$4,111,052		X	X		X	X	X	X			36		X	X	X
VERMONT	\$3,000,000		X	X	X	X	X			1		-		X	X	X
VIRGIN ISLANDS	\$600,000		X	X		X	X			1		26	2	X	X	X
VIRGINIA	\$9,080,731		X	X		X	X				X	-		X	X	X
WASHINGTON	\$7,907,768		X	X		X	X			1		-		X	X	X
WEST VIRGINIA	\$3,611,943		X	X	X	X	X			3	X	10	2	X	X	X
WISCONSIN	\$6,978,318		X	X	X	X	X	X	X	2	X	14	3	X	X	X
WYOMING	\$3,000,000		X	X		X	X	X	X			4		X	X	X
	\$380,000,000		X	X		X	X	X	X					X	X	X

Color Chart

	Allowable Costs		Policy Qs/OMB Circulars		Pre-approval Requests		State Appropriation Process
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Attachment B

THE U.S. ELECTION ASSISTANCE COMMISSION



GRANT EXPENDITURE REPORT FISCAL YEAR 2018

April 4, 2019

Overview

The U.S. Election Assistance Commission (EAC) was created by Congress in 2002 to improve the administration of elections for federal offices through funding, guidance and policy development under the Help America Vote Act of 2002 (HAVA).

HAVA provides funding to state and local election districts to support upgrading systems for casting votes, registering voters in statewide voter registration databases, providing provisional voting options, and implementing other improvements to the administration of federal elections, such as training for election officials and poll workers, polling place accessibility improvements, and disseminating information on how and where to vote.

Through September 30, 2018, a total of \$3,628,946,231¹ in federal funds has been awarded to 50 states, the District of Columbia and four U.S. territories (American Samoa, the Commonwealth of Puerto Rico, Guam and the United States Virgin Islands) hereinafter referred to as the “States.” This total includes \$380 million appropriated by Congress in 2018 to support equipment purchases and security enhancements to election systems. This 2018 appropriation was the first time since FY10 that the federal government made resources available through HAVA to support federal election improvements to the administration of federal elections.

States have reported total expenditures of \$3,400,037,361, or 85 percent of total federal funds and accrued interest, available under Sections 101, 102 and 251 of HAVA. This total includes \$30,881,027 in spending associated with the 2018 awards, which took place between April 17 and September 30, 2018 in the run-up to the 2018 election. Chart 4 shows total funds expended excluding the 2018 HAVA Funds.

¹ This includes \$300.3 million in Section 102 funds that were appropriated for the replacement of punch card or lever voting machines in 30 eligible states and \$380 million appropriated in 2018 under Section 101 of HAVA.

HAVA SECTION 101 Funds

In 2003, EAC disbursed \$349,182,267 to states under Section 101 of HAVA for activities to improve the administration of federal elections (see Table 1). **As of September 30, 2018, States reported total expenditures of \$359,725,678, which reflects expenditures of federal funds and accumulated interest over the course of the award.** Twenty-seven (27) States have spent all of the Section 101 funds and interest and another fourteen (14) States have spent at least 90 percent of the funds. Table 1 provides a full accounting of expenditures by States.

State	Funds Received	Interest Earned	Expenditures	Balance
ALABAMA	\$4,989,605	\$362,297	\$4,821,432	\$530,471
ALASKA	5,000,000	766,742	5,452,122	314,620
AMERICAN SAMOA	1,000,000	66,224	1,000,000	66,224
ARIZONA	5,451,369	1,010,134	2,095,600	4,365,903
ARKANSAS	3,593,165	226,288	3,819,453	0
CALIFORNIA	26,804,708	2,688,888	27,282,272	2,211,324
COLORADO	4,860,306	1,056,513	5,902,689	14,130
CONNECTICUT	5,000,000	682,868	5,682,868	0
DELAWARE	5,000,000	472,080	5,467,766	4,314
DIST. OF COLUMBIA	5,000,000	408,108	5,000,000	408,108
FLORIDA	14,447,580	1,843,679	14,183,307	2,107,953
GEORGIA	7,816,328	698,741	7,816,328	698,741
GUAM	1,000,000	12,773	1,012,773	0
HAWAII	5,000,000	1,369,777	1,687,087	4,682,690
IDAHO	5,000,000	1,807,418	6,807,418	0
ILLINOIS	11,129,030	1,264,381	12,102,242	291,169
INDIANA	6,230,481	938,781	7,196,262	0
IOWA	5,000,000	684,225	5,449,329	234,896
KANSAS	5,000,000	1,310,653	2,916,433	3,394,220
KENTUCKY	4,699,196	1,024,965	4,699,196	1,024,965
LOUISIANA	4,911,421	935,421	5,846,842	0
MAINE	5,000,000	611,679	5,606,021	5,658
MARYLAND	5,636,731	551,709	5,544,137	644,303
MASSACHUSETTS	6,590,381	904,363	7,494,744	0

Table 1 Cont. Section 101 HAVA Funds as of September 30, 2018

State	Total Section 101 Funds Received	Interest Earned	Expenditures	Balance
MICHIGAN	\$ 9,207,323	\$ 1,662,608	\$9,884,787	\$985,145
MINNESOTA	5,313,786	64,724	5,378,510	0
MISSISSIPPI	3,673,384	443,500	4,116,884	0
MISSOURI	5,875,170	954,107	6,829,277	0
MONTANA	5,000,000	396,018	5,201,133	194,885
NEBRASKA	5,000,000	998,292	5,998,292	0
NEVADA	5,000,000	452,843	5,452,843	0
NEW HAMPSHIRE	5,000,000	1,193,153	2,460,200	3,732,953
NEW JERSEY	8,141,208	650,000	8,167,547	623,661
NEW MEXICO	5,000,000	292,244	5,292,244	0
NEW YORK	16,494,325	3,669,945	15,847,784	4,316,486
NORTH CAROLINA	7,887,740	719,637	9,495,453	0
NORTH DAKOTA	5,000,000	63,997	5,063,997	0
OHIO	10,384,931	426,837	10,811,768	0
OKLAHOMA	5,000,000	353,656	5,353,656	0
OREGON	4,203,776	59,199	4,262,975	0
PENNSYLVANIA	11,323,168	1,301,492	12,624,660	0
PUERTO RICO	3,151,144	324,191	3,467,760	7,575
RHODE ISLAND	5,000,000	140,275	5,140,275	0
SOUTH CAROLINA	4,652,412	886,692	5,300,905	238,198
SOUTH DAKOTA	5,000,000	2,385,195	4,796,646	2,588,549
TENNESSEE	6,004,507	1,047,014	6,279,290	772,232
TEXAS	17,206,595	3,727,371	18,469,359	2,464,607
UTAH	3,090,943	560,156	3,651,099	0
VERMONT	5,000,000	580,051	5,580,051	0
VIRGIN ISLANDS	1,000,000	21,806	1,000,000	21,806
VIRGINIA	7,105,890	1,130,578	7,637,378	599,090
WASHINGTON	6,098,449	259,047	6,357,496	0
WEST VIRGINIA	2,977,057	104,747	3,081,804	0
WISCONSIN	5,694,036	1,796,103	6,426,085	1,064,055
WYOMING	5,000,000	1,628,931	5,409,203	1,219,728
TOTAL*	348,646,145	49,993,116	359,725,678	39,913,583
*Reflects a deobligation of \$536,122 as a result of an audit finding. Total awarded was <u>349,182,267</u> .				

In March of 2018, the Congress provided an additional \$380,000,000 through the Omnibus Appropriations Act of 2018. The EAC awarded these funds to the 50 states, the District of Columbia and four U.S. Territories (American Samoa, Guam, Puerto Rico and the U.S. Virgin Islands) eligible to receive them through a formula described in Sections 101 and 104 of the Help America Vote Act of 2002 (P.L. 107-252) (HAVA). To access the funds, States provided a budget and a state narrative for how the funds were to be used.

While States could technically begin spending funds once they received their notice of grant award on April 17, 2018, most States waited until funds had been transferred to their state election account and many States had to first get state legislative approval before spending funds.

As a result, the expenditures for this initiative for the period ending September 30, 2018 are limited in scope (See Table 2 below). Further detail on the activities undertaken by each state and territory with the new funds prior to September 30, 2018 can be found beginning on page 10.

<u>State</u>	<u>Funds Received</u>	<u>Interest Earned</u>	<u>Expenditures</u>	<u>Balance</u>
ALABAMA	\$6,160,393	\$0	\$0	\$6,160,393
ALASKA	\$3,000,000	10,578	\$0	3,010,578
AMERICAN SAMOA*	\$600,000			600,000
ARIZONA*	\$7,463,675			7,463,675
ARKANSAS	\$4,475,015	25,459	\$4,475,015	25,459
CALIFORNIA	\$34,558,874	\$0	\$0	34,558,874
COLORADO	\$6,342,979	21,358	\$20,337	6,344,000
CONNECTICUT	\$5,120,554	19,512	\$1,200	5,138,866
DELAWARE	\$3,000,000	0	\$0	3,000,000
DIST. OF COLUMBIA	\$3,000,000	14,350	\$399,400	2,614,950
FLORIDA	\$19,187,003	\$0	\$14,659,908	4,527,095
GEORGIA	\$10,305,783	\$0	\$0	10,305,783
GUAM	\$600,000	269	\$3,276	596,993
HAWAII	\$3,134,080	\$0	\$0	3,134,080
IDAHO	\$3,229,896	14,376	\$498,689	2,745,583
ILLINOIS	\$13,232,290	57,266	\$9,402	13,280,154
INDIANA	\$7,595,088	29,819	\$218,953	7,405,954
IOWA	\$4,608,084	7,200	\$194,179	4,421,104
KANSAS*	\$4,383,595			4,383,595
KENTUCKY	\$5,773,423	23,722	\$626,554	5,170,592
LOUISIANA	\$5,889,487	11,726	\$0	5,901,213
MAINE	\$3,130,979	\$0	\$0	3,130,979
MARYLAND	\$7,063,699	3,380	\$1,565	7,065,514

MASSACHUSETTS	\$7,890,854	36,111	\$1,057,216	6,869,749
MICHIGAN	\$10,706,992	54,033	\$0	10,761,025
MINNESOTA	\$6,595,610	36,883	\$0	6,632,493
MISSISSIPPI	\$4,483,541	11,096	\$241,851	4,252,786
MISSOURI	\$7,230,625	31,582	\$224,922	7,037,285
MONTANA	\$3,000,000	16,980	\$0	3,016,980
NEBRASKA	\$3,496,936	19,112	\$23,207	3,492,841
NEVADA	\$4,277,723	\$0	\$13,554	4,264,169
NEW HAMPSHIRE	\$3,102,253	643	\$129,426	2,973,470
NEW JERSEY	\$9,757,450	\$0	\$909	9,756,541
NEW MEXICO	\$3,699,470	9,868	\$807,496	2,901,841
NEW YORK	\$19,483,647	\$0	\$1,702,376	17,781,271
NORTH CAROLINA	10,373,237	\$0	\$0	10,373,237
NORTH DAKOTA	\$3,000,000	1,282	\$0	3,001,282
OHIO	\$12,186,021	54,878	\$129,589	12,111,310
OKLAHOMA	\$5,196,017	19,028	\$0	5,215,045
OREGON	\$5,362,981	39,704	\$2,290	5,400,395
PENNSYLVANIA	\$13,476,156	24,077	\$0	13,500,233
PUERTO RICO	\$3,676,962	\$0	\$0	3,676,962
RHODE ISLAND	\$3,000,000	\$0	\$584,127	2,415,873
SOUTH CAROLINA	\$6,040,794	7,886	\$0	6,048,680
SOUTH DAKOTA	\$3,000,000	30,649	\$0	3,030,649
TENNESSEE	\$7,565,418	0	\$0	7,565,418
TEXAS	\$23,252,604	123,240	\$219,447	23,156,396
UTAH	\$4,111,052	\$0	\$0	\$4,111,052
VERMONT	\$3,000,000	\$30,823	\$843,912	\$2,186,911
VIRGIN ISLANDS	\$600,000	\$0	\$18,775	\$581,225
VIRGINIA	\$9,080,731	\$0	\$0	\$9,080,731
WASHINGTON	\$7,907,768	\$40,504	\$512,533	\$7,435,739
WEST VIRGINIA	\$3,611,943	\$32,157	\$3,611,943	\$32,157
WISCONSIN	\$6,978,318	\$37,118	\$180,090	\$6,835,346
WYOMING	\$3,000,000	\$10,059	\$0	\$3,010,059
TOTAL	\$380,000,000	\$906,728	\$31,412,144	349,494,584

HAVA SECTION 251 Funds

Section 251 funds, known as Requirements Payments, were distributed to States using a formula found in HAVA that is based on a percentage equal to the quotient of the voting age population of each State and the total voting age population of all States. States are required to deposit Section 251 money in interest bearing state election accounts and the funds are available until expended.

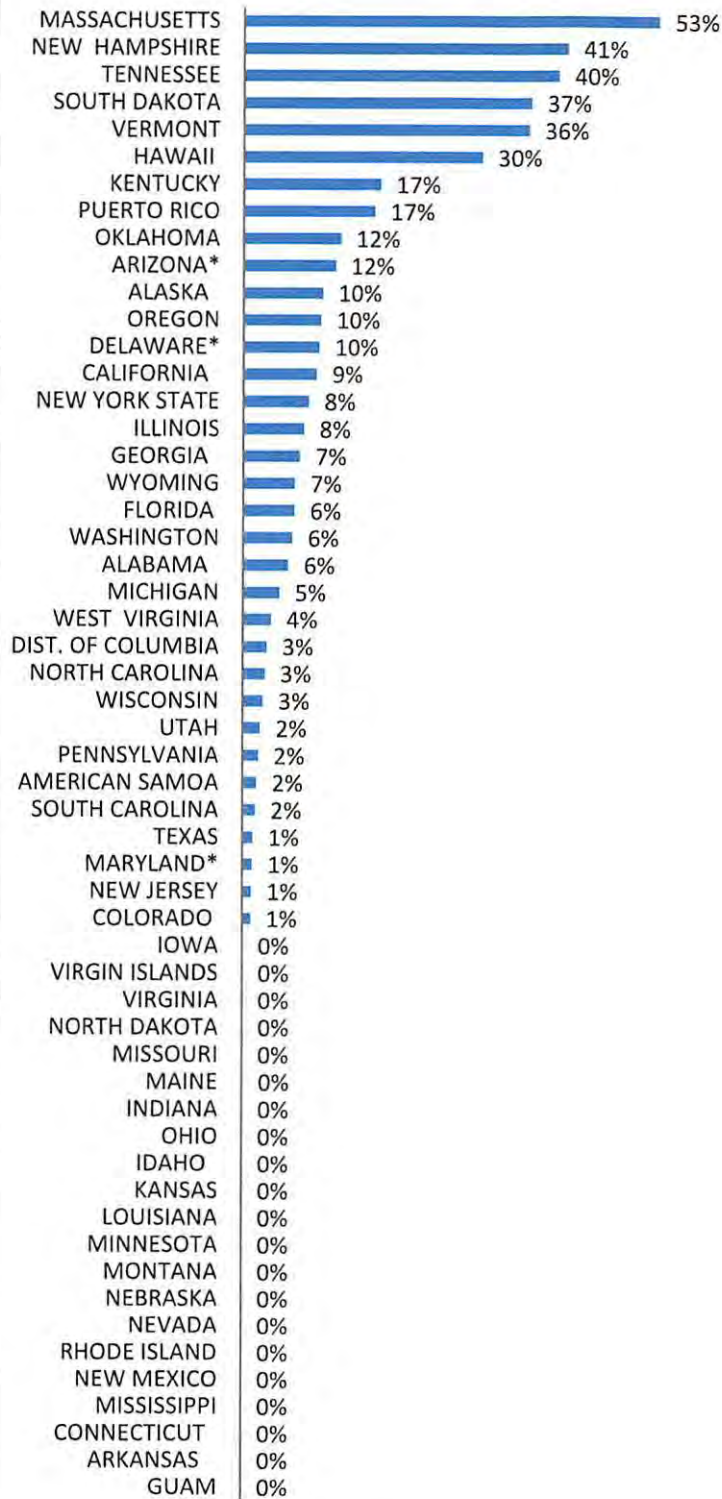
As of the September 30, 2018, twenty-eight (28) States reported using 100 percent² of their HAVA Requirements Payment funds (including interest) and another 14 states reported using 90 percent or more of their funds and interest. States reported cumulative expenditures of \$2,698,508,681 (See Table 3).

State	Total Section 251 Funds Received	Interest Earned	Total Expenditures	Balance of Funds and Interest
ALABAMA	\$40,227,863	\$2,369,451	\$40,436,616	\$2,160,698
ALASKA	\$13,021,803	\$2,650,959	\$13,843,301	\$1,829,461
AMERICAN SAMOA	\$2,490,652	\$292,118	\$2,782,770	\$0
ARIZONA	\$45,516,688	\$4,353,350	\$47,508,539	\$2,361,498
ARKANSAS	\$24,233,666	\$2,542,154	\$26,775,820	\$0
CALIFORNIA	\$296,305,593	\$44,631,006	\$303,422,823	\$37,513,776
COLORADO	\$38,767,048	\$4,719,210	\$42,972,582	\$513,677
CONNECTICUT	\$31,095,158	\$4,392,980	\$35,488,138	\$0
DELAWARE	\$13,021,803	\$1,930,256	\$13,004,721	\$1,947,338
DISTRICT OF COLUMBIA	\$13,028,257	\$1,922,983	\$14,746,048	\$205,191
FLORIDA	\$148,633,048	\$24,310,937	\$162,028,349	\$10,915,636
GEORGIA	\$72,641,827	\$761,687	\$67,906,200	\$5,497,314
GUAM	\$2,319,361	\$48,049	\$2,367,410	\$0
HAWAII	\$13,028,257	\$977,446	\$12,499,108	\$1,506,595
IDAHO	\$13,021,803	\$1,267,652	\$14,289,455	\$0
ILLINOIS	\$110,593,988	\$9,297,474	\$118,549,567	\$1,341,896
INDIANA	\$54,440,282	\$2,280,602	\$56,676,561	\$44,322
IOWA	\$26,645,880	\$1,464,690	\$28,083,331	\$27,240
KANSAS	\$24,033,426	\$2,222,954	\$30,853,941	\$0
KENTUCKY	\$36,901,642	\$4,794,078	\$34,404,580	\$7,291,139

² States that have over 99% of funds and interest spent are counted as 100% expended for purposes of this report. Actual funds remaining are shown for each state on the chart.

State	Total Section 251 Funds Received	Interest Earned	Total Expenditures	Balance of Funds and Interest
LOUISIANA	\$39,350,512	\$3,552,964	\$42,903,476	\$0
MAINE	\$13,021,803	\$1,522,719	\$14,537,278	\$7,244
MARYLAND	\$47,663,156	\$3,888,041	\$51,527,784	\$23,413
MASSACHUSETTS	\$58,589,549	\$11,498,511	\$28,222,757	\$41,865,303
MICHIGAN	\$88,535,685	\$7,641,697	\$92,435,575	\$3,741,807
MINNESOTA	\$43,962,194	\$3,758,390	\$47,501,444	\$0
MISSISSIPPI	\$25,152,465	\$1,588,892	\$26,741,357	\$0
MISSOURI	\$50,394,880	\$4,255,352	\$54,177,399	\$472,833
MONTANA	\$13,028,257	\$618,633	\$13,979,996	\$0
NEBRASKA	\$15,442,405	\$1,046,168	\$16,488,573	\$0
NEVADA	\$18,155,632	\$1,272,294	\$19,427,926	\$0
NEW HAMPSHIRE	\$13,021,803	\$2,292,595	\$10,173,179	\$5,141,219
NEW JERSEY	\$76,360,392	\$5,808,946	\$81,696,605	\$472,733
NEW MEXICO	\$15,599,671	\$271,854	\$15,871,525	\$0
NEW YORK	\$172,076,865	\$33,085,355	\$193,587,917	\$11,574,303
NORTH CAROLINA	\$73,421,775	\$7,370,242	\$77,418,650	\$3,373,367
NORTH DAKOTA	\$13,028,257	\$1,355,754	\$14,258,148	\$125,863
OHIO	\$102,069,874	\$6,307,853	\$108,377,697	\$0
OKLAHOMA	\$30,200,723	\$4,101,437	\$29,420,654	\$4,881,506
OREGON	\$31,243,106	\$3,988,360	\$31,243,105	\$3,988,360
PENNSYLVANIA	\$112,821,809	\$16,861,352	\$126,737,641	\$2,945,520
PUERTO RICO	\$5,868,252	\$222,622	\$4,503,921	\$1,586,952
RHODE ISLAND	\$13,021,803	\$485,182	\$13,506,985	\$0
SOUTH CAROLINA	\$36,384,617	\$910,483	\$37,121,805	\$173,295
SOUTH DAKOTA	\$13,028,257	\$5,107,330	\$11,373,403	\$6,762,184
TENNESSEE	\$51,877,745	\$6,914,050	\$32,108,378	\$26,683,417
TEXAS	\$180,251,805	\$12,381,621	\$192,633,426	\$0
UTAH	\$18,481,440	\$705,044	\$18,549,134	\$637,350
VERMONT	\$12,453,257	\$2,673,691	\$7,604,787	\$7,522,161
VIRGIN ISLANDS	\$2,319,361	\$2,179	\$2,319,361	\$2,179
VIRGINIA	\$64,449,288	\$9,562,569	\$74,011,857	\$0
WASHINGTON	\$52,995,253	\$6,550,527	\$56,052,533	\$3,493,247
WEST VIRGINIA	\$17,184,961	\$1,183,796	\$17,520,296	\$848,461
WISCONSIN	\$48,296,088	\$3,566,337	\$51,862,425	\$0
WYOMING	\$13,028,257	\$1,079,409	\$13,971,822	\$135,843
Total	\$2,602,749,240	290,662,283	2,698,508,681	194,464,562

Remaining HAVA Funds as of September 30, 2018 (Excluding New 2018 Grants)



State Plans and Expenditures of 2018 HAVA Funds

Reported Spending as of September 30, 2018		
Category	Amount	Percentage of Total Spent
Cybersecurity	18,283,414	58.2%
Voting Equipment	\$10,658,794	33.9%
Voter Registration System	2,107,074	6.7%
Other	312,093	1.0%
Election Auditing	19,881	0.1%
Communication	27,747	0.1%
Total	\$31,409,003	100%

As noted earlier, on Friday, March 23, 2018, President Donald J. Trump signed the Consolidated Appropriations Act of 2018 into law. The Act included \$380 million in Help America Vote Act (HAVA) funds to improve the administration of elections for Federal office, including to enhance election technology and to make election security improvements, marking the first new appropriation for HAVA funds since FY2010.

The funding provided states with additional resources to secure and improve election systems. States could begin spending funds once they received their notice of grant award on April 17, 2018. However, most states waited until funds were transferred to their state election accounts and many states had to get state legislative approval before spending funds.

States and territories eligible to receive the funds were required to provide a budget and state narrative for how they would be used. The EAC published the narratives and budgets for 48 out of 55 eligible states and territories public on August 21, 2018. Seven remaining states and territories were granted extensions and had their budgets and narratives into the EAC by mid-September 2018. By September 20, 2018, 100 percent of funds had been disbursed to states.

According to these narratives and budgets, the vast majority of states and territories plan to spend their allotted funds within the next two or three years. Each funding recipient was required to file a standard Federal Financial Report and updated program narrative to the EAC by December 31, 2018.

The following is a summary of how states were able to utilize the 2018 HAVA Funds within the first six months of them being made available, based on these Progress and Financial Reports:

- **Alabama** expects to expend the \$6.1 million the state received in 2018 HAVA funds, and the required state match of \$308,020, in FY2019 to make upgrades to and replace voting equipment, mitigate cyber vulnerabilities, establish post-election auditing protocols statewide, continue the provision of the computerized statewide voter registration list for the entire state.
- **Alaska** plans to use its \$3.15 million to replace the state's 20-year old voting system.
- **American Samoa** used a portion of its HAVA funding to repair and restore equipment and election offices damaged during Tropical Cyclone Gita so they would be functional ahead of the 2018 election. Going forward, the territory is planning a complete upgrade of its voter registration system, continuing to provide special needs services to voters with disabilities and increasing its voter outreach efforts.
- **Arizona** funded a comprehensive security assessment of its election systems and provided training to help each of the state's fifteen counties understand the different types of existing

security threats and what support is available. Long-term, the state plans to award election security sub-grants to counties and create an election security position within the Secretary of State's office.

- **Arkansas** established cost-sharing agreements with the counties to replace aging voting equipment. New acquisitions ensure that a paper trail for ballots cast is present in all Arkansas counties and almost 70 percent of Arkansas voters voted on the newly integrated election equipment system in the 2018 Midterm Election. Of the initial \$4,724,225 in funds available through HAVA, Arkansas had only \$44,305 in funds remaining.
- **California** is funding cybersecurity support and training, polling place accessibility, election auditing and vote center implementation through FY2021 at the county level. The state is also using funds to make security enhancements to its centralized voter registration system and personnel costs.
- **Colorado** will use its 2018 HAVA Funds to enhance technology and security in the state's election process, including improving risk-limiting audits and other audits of election-related systems in 2019 and beyond. From April 17, 2018 to September 30, 2018, Colorado expended \$211,124.82 (including \$109,899.80 in 2018 HAVA Funds and earned interest) on Colorado Voting Systems (COVS) training that was necessary to implement a ballot level comparison Risk-Limiting Audit (RLA). An additional \$99,064 was used for Election Preparedness for Infrastructure and Cybersecurity (EPIC) tabletop exercises with county election and IT officials.
- **Connecticut** is purchasing voting equipment, making security enhancements to address cyber vulnerabilities, improving post-election audits and voter registration systems and management, enhancing security training for election officials and improving voting accessibility.
- **Delaware** plans to purchase new voting equipment, including a new voting system with a voter verifiable paper audit trail, an absentee system and an Election Management/Voter Registration system which will move elections from the state's aging mainframe.
- **Florida** plans to use the \$19,187,003 the state received in 2018 HAVA funds for three primary projects. \$15,450,000 will be used to establish an online grant program for 67 county supervisors of elections to enhance election security. \$1,987,003 will be used to establish an online grant program for county supervisors of elections to improve voting accessibility. The remaining \$1,750,000 will be earmarked by the Florida Department of State to implement security enhancements to the state voter registration system, contract a team of cybersecurity specialists to provide support to the state and county supervisor of elections offices, and to fund a voter education campaign to educate voters on how to get ready to register and vote in an election. As of September 30, 2018, \$95,688.91 had already been expended.
- **Georgia** plans to increase election security, simplicity and accessibility by purchasing secure voting devices that produce a voter-verifiable paper ballot. The state will also provide an online sample ballot for all voters, improve its voter registration database, conduct election auditing and testing, and purchase ALBERT sensors, cybersecurity services and new e-poll books.
- **Guam** will use its funds to replace and upgrade voting equipment, perform election auditing, make improvements to its voter registration system, upgrade cybersecurity equipment and provide training.
- **Hawaii** will be utilizing its \$3.1 million in funds to enhance the election cybersecurity infrastructure and update equipment related to the statewide voter registration system, voting equipment and vote counting system. As of September 30, 2018, \$4,310.56 was used to establish telecommunications and network services at Counting and Control Centers during the 2018 Elections and an additional \$77,486.93 was used to hire an Election Information Specialist responsible for enhancing accessibility to elections for voters with disabilities and additional staff to perform duties required to administer elections for federal office.

- **Idaho** plans to use its new HAVA appropriation to hire staff, award sub-grants to voting districts, secure new voting equipment, perform election auditing, acquire a new voter registration system, make cybersecurity improvements and software updates, and provide staff trainings. Thus far, the state has expended \$513,064.10 of both federal funds and interest for acquiring software to deploy security patches across the state network, initial voter registration system upgrades and personnel.
- **Illinois** will use its funding for a cybersecurity information sharing program, hiring a Cyber Navigator/Advisor, providing cybersecurity resources for local election authorities and implementing a statewide network to provide centralized monitoring, mitigation and security services. Thus far, the State Board of Elections has used the funds for relevant equipment and software, Electronic Registration Information Center (ERIC) Association dues and relevant conference and information sharing costs.
- **Indiana** helped counties implement multi-factor authentication systems for accessing voting equipment and conducted cybersecurity training for all county officials during the state's annual election administrators conference. Going forward, the state plans to acquire additional election technology, implement e-poll book vendor network security enhancements, deploy auditable voting systems and perform election night reporting security enhancements.
- **Iowa** conducted cybersecurity training seminars for county auditors and staff and participated in a pilot program for a self-assessment cybersecurity tool. The Secretary of State's Office also implemented two-factor authentication for access to the statewide voter registration system, purchased additional security protections for the state's election night reporting system and partnered with the Department of Homeland Security to conduct two tabletop exercises. Finally, Iowa was able to purchase additional security protections for the state's election night reporting system.
- **Kansas** will use its funds to ensure every voting machine has a voter verifiable paper audit trail, conduct post-election audits after every election, improve the security of the statewide voter registration system, increase cybersecurity efforts at all levels of election administration and create, maintain and train local election officials on a comprehensive security communications plan.
- **Kentucky** used some of its funds during the FY2018 reporting period to acquire Trustwave, cloud-based and managed security services designed to protect data and reduce security risk. The State Board of Elections is in the process of working with Trustwave to install and set up the equipment.
- **Louisiana** will use 2018 HAVA funds and the state match for a new electronic voting system.
- **Maine** plans to upgrade its voting equipment and Central Voter Registration (CVR) system hardware and software, implement election night reporting, cybersecurity software improvements, monitoring and training, and improve ballot security and online training.
- **Maryland** will replace and upgrade voting equipment, perform election audits, upgrade voter registration system servers and software in off-election years and enhance system monitoring activities, mitigating cyber vulnerabilities, refining an incident management plan and providing training. Thus far, the state has spent \$1,302 of its allocated federal funds on statewide tabletop exercises and \$176,139.50 of its state match on Voted Ballot Audits following the 2018 Primary Elections and implementing two-factor authentication and enhancing its virtual private network (VPN) security monitoring.
- **Massachusetts** made network security upgrades for its voter registration system, hired a network security engineer and conducted security training for election staff. The Secretary of State's Office also plans to use funds to acquire new voting equipment, upgrade the state's voter registration system and improve the cybersecurity of its election system.

- **Michigan** is focusing on cybersecurity, information and physical security and providing funding and resources statewide to allow for the completion of detailed election system security assessments at the state, county and local level.
- **Minnesota** is using \$6,925,391 in 2018 HAVA Funds and required state match to strengthen, secure and modernize Minnesota's Statewide Voter Registration System (SVRS); assess the state's data sharing and post-election review/audit process; improve secure information sharing with counties; enhance website security and accessibility and recruit and train election officials. The Secretary of State's Office will also use funds to invest in cybersecurity and information technology upgrades, expand absentee and mail-voting for voters with disabilities and provide sub-grants to local jurisdictions for improved election security and accessibility.
- **Mississippi** is using its funds to upgrade its Statewide Elections Management System, addressing cyber vulnerabilities, implementing post-election auditing and funding certain permissible county expenditures.
- **Missouri** spent most of its allocated 2018 HAVA Funds to implement cybersecurity enhancements that protect against attempts to penetrate the Missouri Centralized Voter Registration System. In September, the state also hosted the National Election Security Summit attended by federal, state and local election authorities to discuss practical ways to mitigate threats and vulnerabilities.
- **Montana** is replacing its statewide voter registration system and funding a 50 percent cost match with counties to purchase new voting equipment. They are also undertaking a major cybersecurity upgrade and hiring election and voter security IT personnel.
- **Nebraska** is using 2018 HAVA Funds to replace voting equipment, implement security upgrades and system enhancements to its voter registration system, install and maintain ALBERT sensors and perform cybersecurity scans and testing. The state is also using this federal funding to train election division staff and county election officials, provide resources for voters with disabilities and put additional security measures in place for election night reporting.
- **Nevada** will use the funds to upgrade voting equipment, provide sub-grants to jurisdictions, evaluate the state's cyber vulnerabilities, expand upon current election auditing practices and procedures, increase voter outreach and training.
- **New Hampshire** is enhancing election technology and making security improvements, improving voting systems and technology, educating voters, training election officials and election workers and improving access for voters with disabilities.
- **New Jersey** plans to make improvements to its cyber and physical security, voter registration system, voting equipment, election auditing, Americans with Disabilities Act compliance and training for election officials. Thus far, the state has expended its 2018 HAVA Funds on a Department of Homeland Security-administered tabletop security training session for county election officials.
- **New Mexico** hired a full-time IT security and compliance administrator whose responsibilities include implementing additional security practices to safeguard sensitive data and election systems and protect against cyber vulnerabilities. The state also purchased scan tabulation systems that feature ballot image capture and audit capabilities.
- **New York** spent approximately \$1.7 million in 2018 on several security initiatives, including a contract with Grant Thornton to conduct a uniform comprehensive risk assessment of every county board of elections. As of September 30, 2018, 22 of 58 assessments were complete. The state contracted another security firm to provide intrusion detection and log monitoring services for all county boards of elections. Additionally, 712 state and county election officials and election vendors have attended security awareness training and all county board of elections officials have attended at least one cybersecurity tabletop exercise training.

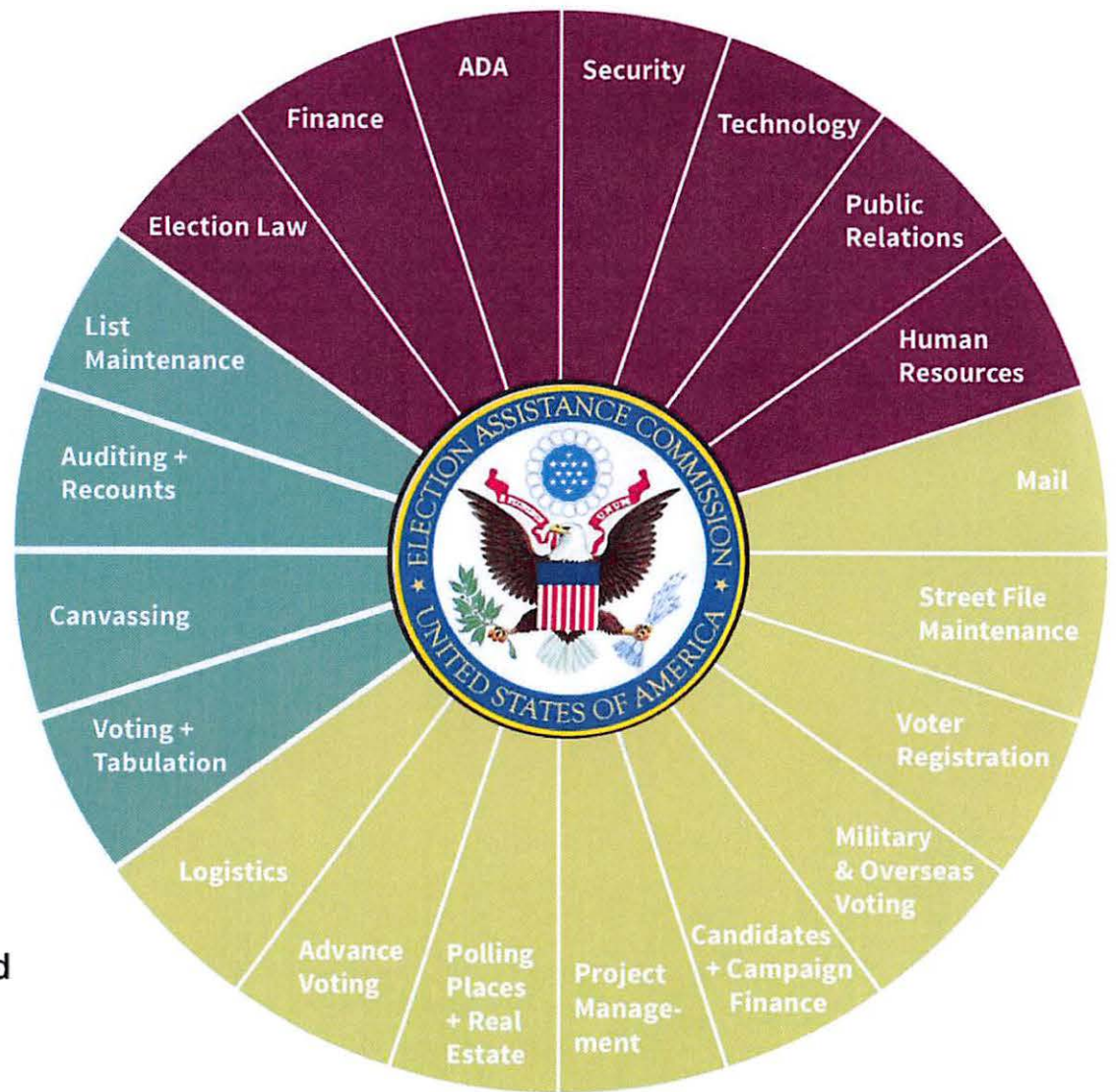
- **North Carolina** plans to use its 2018 HAVA funds to modernize their statewide elections information management system, perform election auditing, undergo security assessments, hire a Chief Information Security Officer and implement a Cyber Advisory Panel.
- **North Dakota** is spending its entire 2018 HAVA award and required five percent state match on procuring a paper-based, HAVA-compliant voting system.
- **Ohio** is using its funds to make enhancements to its statewide voter registration system database, provide enhanced cybersecurity for election email accounts, conduct tabletop exercises and training, launch an IT and email support pilot project and conduct post-election audits through 2020.
- **Oklahoma** is purchasing e-poll books and document scanners for local election offices, upgrading its online voter registration system by 2020, providing training for county and state election boards, and ensuring there is a robust plan in place for cyber and physical security.
- **Oregon** is making improvements to the Oregon Elections System for Tracking and Reporting, securing state and local election systems and increasing IT security capacity and voter registration efficiency. The state also plans to build a feature so voters can track their ballot at all stages of the election process, provide public access to campaign finance reports and expand capacity and public visibility.
- **Pennsylvania** is replacing aging voting equipment that is reaching the end of its usable life with new equipment that has a voter verifiable paper audit trail.
- **Puerto Rico** plans to use its 2018 HAVA funds to enhance election cybersecurity and network infrastructure and upgrade Election Day voter registration.
- **Rhode Island** purchased a platform for the Centralized Voter Registration system that encrypts all data within it. The state also purchased another system that monitors for and protects the Centralized Voter Registration System from ransomware. In addition, the state purchased a system that provides real-time analysis of security threats, sends alerts if issues are detected and quarantines devices if there is abnormal activity.
- **South Carolina** is using its \$6 million in 2018 HAVA Funds to harden its security posture and enhance the resilience of its elections.
- **South Dakota** is replacing aging voting equipment, including ballot marking devices and ballot tabulators purchased in 2005, and making cybersecurity upgrades to the statewide voter registration file and election night reporting page.
- **Tennessee** is providing sub-grants to assist counties in the purchase of approved voting systems, making improvements to its voter registration system and providing cybersecurity scans and training for each county election commission office.
- **Texas** worked with its Voter Registration system vendor in 2018 to make security updates to its system, including integration of a standalone portal and data encryption. The state also acquired cybersecurity training and made it available free of charge to all 254 counties in advance of the 2018 election. Prior to the 2018 election, 150 officials attended the training.
- **The U.S. Virgin Islands** is conducting a risk assessment and upgrades to its voting equipment, updating its voter registration system, developing and implementing a cybersecurity plan, and providing cyber risk management training for Board of Elections leadership, staff and vendors.
- **Utah** will purchase new voting equipment, replace the state's voter registration database and implement additional security measures and training for both counties and the state.
- **Vermont** used its 2018 HAVA Funds to replace and upgrade voting equipment, implement post-election audits, mitigate cyber vulnerabilities and provide required cybersecurity training for all town and city clerks in the spring of 2018, prior to the 2018 Midterm Elections. Of the initial \$3,150,000 available through federal appropriations, the required state match and interest, as of September 30, 2018, Vermont had expended \$843,912.28.

- **Virginia** is securing the Department of Elections' infrastructure and developing and implementing security and continuity of operations plans.
- **Washington** has implemented advanced firewall protection for the state's centralized election system and installed an advanced threat detection and prevention appliance. The state also acquired a database storage device on the Voter Registration system that has back-up and recovery capabilities. All equipment and software, with the exception of the database storage device, was in place prior to the 2018 Midterm Election. The state also held cybersecurity training for election officials that is a precursor for a cybersecurity training program individually tailored for each county in the state.
- **Washington, D.C.** has used \$399,400 of its funds to purchase new voting equipment and hire additional staff to increase the number of early voting centers across the District of Columbia, to train election officials and to produce voter education materials. The District of Columbia plans to use its remaining 2018 HAVA Funds to acquire additional equipment, increase maintenance and support, hire a full time cybersecurity expert, hire and train additional poll workers, continue voter education and outreach, and invest in technology to improve all aspects of voter registration and election administration.
- **West Virginia** used its 2018 HAVA funds to establish a grant program available for counties to be awarded funding for election equipment, physical security, cybersecurity and e-poll books.
- **Wisconsin** will address the immediate security needs of the state such as purchasing software, implementing additional security measures to protect the statewide voter registration system, creating federally funded staff positions and hiring additional IT developers. Wisconsin will also collect feedback from local election officials, voters and election partners to determine long-term election security needs.
- **Wyoming** will use the 2018 HAVA funds to replace outdated voting equipment originally purchased in 2005 and enhance the state and county cybersecurity infrastructure.

Attachment C

Election Administrator Competencies

- Ongoing
- Election Preparation
- Election Night & Beyond



Attachment D

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.

Attachment E

Director, Voting System Testing and Certification

Election Assistance Commission

Open & closing dates

🕒 03/06/2019 to 03/20/2019

Pay scale & grade

AD 00

Appointment type

Permanent

Service

Excepted

Salary

\$96,970 to \$125,967 per year

Work schedule

Full-Time

Locations

1 vacancy in the following location:

Silver Spring, MD

Relocation expenses reimbursed

No

Telework eligible

Yes as determined by agency policy

This job is open to

**Federal employees - Competitive service**

Current or former competitive service federal employees.

**Federal employees - Excepted service**

Current excepted service federal employees.

**The public**

U.S. citizens, nationals or those who owe allegiance to the U.S.

Announcement number

EAC-10441371-19-CB

Control number

526497300

Duties

Summary

The purpose of EAC's national voting system certification program is to independently verify that voting systems applying to the EAC program comply with the functional capabilities, accessibility, and security requirements necessary to ensure the integrity and reliability of the voting system, as established in the Voluntary Voting System Guidelines. The incumbent of this position is a first line supervisor for the Voting System Testing and Certification (VST&C) Division.

Responsibilities

Major duties and responsibilities include directing efforts toward accrediting independent test laboratories, testing and certifying voting systems, maintaining technical standards, and oversight of guidelines.

- Develops EAC policy, quality management system, and standard operating procedures for the Voting System Testing and Certification (VST&C) program and Division.

- Works with the National Institute of Standards and Technology (NIST) National Voluntary Laboratory Accreditation Program (NVLAP), regarding laboratory accreditation for laboratories seeking accreditation to test voting systems under the EAC program. Under HAVA, NVLAP does the initial laboratory assessment and makes recommendation to the EAC, through the Director of NIST on the accreditation of candidate laboratories.
- Performs full range of supervisory activities for Division personnel (i.e., current FTE, technical reviewers and new hires).
- Establishes, implements and evaluates budget, working jointly with EAC's Executive Director to establish priorities for the VST&C Division.
- Manages voting system testing and certification efforts, including supervising contract staff, technical reviewers, and consultants. Oversees testing of voting systems developed by registered manufacturers to determine whether the systems provide required basic functionality, accessibility, and security capabilities.
- Serves as EAC lead/co-lead on critical infrastructure issues. Serves as EAC lead for development efforts on Voluntary Voting System Guidelines and development of requirements for testing at the laboratories.
- Develops blogs, white papers and other informational material for stakeholders on election technology and cybersecurity.
- Serves as the lead auditor on voting system test laboratory audits.
- Leads the Election Official IT Training Program.
- Represents the EAC and VST&C Program at stakeholder meetings and conferences.
- Performs other duties as assigned.

Travel Required

25% or less - You may be expected to travel for this position.

Supervisory status

Yes

Promotion Potential

None

Job family (Series)**0301 Miscellaneous Administration And Program**

(<https://www.usajobs.gov/Search/?=0301>)

Requirements**Conditions Of Employment**

Candidates must be a US Citizen.

Candidates must meet all qualifications prior to the closing date of this announcement.

Qualifications

- Ability to understand, interpret and utilize industry standards, and apply them to election technologies. General understanding of industry standards for cybersecurity, accessibility, and usability.
- Thorough knowledge and understanding of the EAC mission, goals and objectives, programs, and functions to identify significant testing and certification issues. Related knowledge of Federal and State election laws and procedures.
- Knowledge of information gathering and analysis techniques to gather, analyze, summarize, and report on voting system related data.
- Ability to conduct and oversee complex studies or reviews.
- Comprehensive knowledge of and skill in applying analytical methodologies and practices as it pertains to existing, new, and emerging voting systems.
- Skill in legal and technical writing that addresses the complexities of the voting system testing and certification environment.

Education

None.

Additional information

You must submit all required information by the closing date. If materials are not received, your application will be evaluated solely on the information available and you may not receive full consideration or may not be considered eligible. The materials you send with your application will not be returned. Send only those materials needed to evaluate your application.

If you use public transportation, part of your transportation costs may be subsidized. Our human resources office can provide additional information on how this program operates.

How You Will Be Evaluated

Once the application process is complete, a review of your resume/application will be made to ensure you meet the qualifications and job requirements for this position. Please follow all instructions carefully. Your qualifications will be evaluated on the basis of your level of knowledge, skills, abilities, and/or competencies.

Technical Competencies:

- Ability to understand, interpret and utilize industry standards, and apply them to election technologies. General understanding of industry standards for cybersecurity, accessibility, and usability.
- Thorough knowledge and understanding of the EAC mission, goals and objectives, programs, and functions to identify significant testing and certification issues. Related knowledge of Federal and State election laws and procedures.
- Knowledge of information gathering and analysis techniques to gather, analyze, summarize, and report on voting system related data.
- Ability to conduct and oversee complex studies or reviews.
- Comprehensive knowledge of and skill in applying analytical methodologies and practices as it pertains to existing, new, and emerging voting systems.

- Skill in legal and technical writing that addresses the complexities of the voting system testing and certification environment.

Leadership Competencies:

- Skill in leading staff to interact as a team, focused on cooperating with one another and with the entire EAC staff to accomplish team goals and initiatives. Ability to plan, assign, and appraise work products to assure high levels of performance.
- Skill in consensus building and conflict management to effectively resolve conflicts.
- Knowledge of the tools available to facilitate managing the work and skill in applying that knowledge to such responsibilities as maintaining records, assuring adequate resources, supplies, and equipment to accomplish the work, identifying and implementing ways to improve effectiveness and efficiency, formulating budget requests, and similar managerial functions.
- Knowledge of basic human resource management programs, rules, policies, and procedures to effectively carry out supervisory responsibilities such as interviewing and recommending selections, developing performance standards and appraising subordinate performance, identifying training needs and arranging for appropriate training for staff, resolving grievances and complaints, and effectively managing disciplinary issues.

Background checks and security clearance**Security clearance**Secret<https://www.usajobs.gov/Help/faq/job-announcement/security-clearances/>**Drug test required**

No

Required Documents

Required documents include a resume and the supporting documents as described in the "How to Apply Instructions" section of this announcement.

If you are relying on your education to meet qualification requirements:

Education must be accredited by an accrediting institution recognized by the U.S. Department of Education in order for it to be credited towards qualifications. Therefore, provide only the attendance and/or degrees from [schools accredited by accrediting institutions recognized by the U.S. Department of Education](http://www.ed.gov/adms/finaid/accred/) (<http://www.ed.gov/adms/finaid/accred/>).

Failure to provide all of the required information as stated in this vacancy announcement may result in an ineligible rating or may affect the overall rating.

Benefits

<https://www.opm.gov/retirement-services/newprospective-employees/>

How to Apply

You must submit your application so that it will be received by the closing date of the announcement.

Your application package must be received by the closing date of the announcement and must include the following:

A resume or an Optional Application for Federal Employment (OF 612) or any other format. Although we do not require a specific format, certain information is required to determine if you are qualified;

For current or former federal employees with reinstatement eligibility, you must submit a copy of your last Notification of Personnel Action (SF50) showing your position, title, series, grade and eligibility;

A copy of your most recent performance appraisal. If you do not have a recent performance appraisal, please explain why you do not have one.

ALL APPLICATION MATERIALS MUST BE SENT TO: resumes@eac.gov
(<mailto:resumes@eac.gov>)

Agency contact information Corliss Jackson**Phone**

202-853-4780
(tel:202-853-4780)

Email

Resumes@eac.gov
(<mailto:Resumes@eac.gov>)

[Learn more about this agency](#)
(#agency-modal-trigger)

Address

US Election Assistance Commission
1335 East West Hwy
Suite 4300
Silver Spring, MD 20910
US

The United States Election Assistance Commission (EAC) was established by the Help America Vote Act of 2002 (HAVA). The agency is charged with developing guidance to meet HAVA requirements, adopting voluntary voting system guidelines, accrediting testing laboratories, certifying voting systems, maintaining the national mail voter registration form, auditing the use of HAVA funds, and serving as a national clearinghouse of information about election administration. Four

commissioners, appointed by the president and confirmed by the U.S. Senate, are responsible for setting policy and assuring the mission of the EAC is carried out.

Next steps

Your application materials will be reviewed and if an interview is deemed appropriate, you will be contacted with further information.

Fair & Transparent

The Federal hiring process is setup to be fair and transparent. Please read the following guidance.

Equal Employment Opportunity Policy

The United States Government does not discriminate in employment on the basis of race, color, religion, sex (including pregnancy And gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, retaliation, parental status, military service, or other non-merit factor.

- [Equal Employment Opportunity \(EEO\) for federal employees & job applicants](http://www.eeoc.gov/eeoc/internal_eeo/index.cfm)
(http://www.eeoc.gov/eeoc/internal_eeo/index.cfm)

Reasonable Accommodation Policy

Federal agencies must provide reasonable accommodation to applicants with disabilities where appropriate. Applicants requiring reasonable accommodation for any part of the application process should follow the instructions in the job opportunity announcement. For any part of the remaining hiring process, applicants should contact the hiring agency directly. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

A reasonable accommodation is any change in the workplace or the way things are customarily done that provides an equal employment opportunity to an individual with a disability. Under the Rehabilitation Act of 1973 the Equal Employment Opportunity Commission (EEOC) must provide reasonable accommodations:

- An applicant with a disability needs an accommodation to have an equal opportunity to apply for a job.
- An employee with a disability needs an accommodation to perform the essential job duties or to gain access to the workplace.
- An employee with a disability needs an accommodation to receive equal access to benefits, such as details, training, and office-sponsored events.
- [Disability Employment - Reasonable Accommodations](https://www.opm.gov/policy-data-oversight/disability-employment/reasonable-accommodations/)
(<https://www.opm.gov/policy-data-oversight/disability-employment/reasonable-accommodations/>)
- [How to contact an agency](https://www.usajobs.gov/Help/how-to/application/agency/contact/)
(<https://www.usajobs.gov/Help/how-to/application/agency/contact/>)

Legal and regulatory guidance

[Financial suitability](https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/financial-suitability/)

(<https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/financial-suitability/>)

[Privacy Act](https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/privacy-act/)

(<https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/privacy-act/>)

[Selective Service](https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/selective-service/)

(<https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/selective-service/>)

[Social security number request](https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/social-security-number/)

(<https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/social-security-number/>)

[Signature & False statements](https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/signature-false-statements/)

(<https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/signature-false-statements/>)

[New employee probationary period](https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/probationary-period/)

(<https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/probationary-period/>)

Attachment F

Election Technology Specialist

Election Assistance Commission

Open & closing dates

🕒 04/12/2019 to 04/28/2019

Pay scale & grade

AD 00

Appointment type

Permanent - Excepted Service

Service

Excepted

Salary

\$56,233 to \$106,012 per year

Work schedule

Full-Time

Locations

1 vacancy in the following location:

Silver Spring, MD

Relocation expenses reimbursed

No

Telework eligible

Yes as determined by agency policy

This job is open to

**The public**

U.S. citizens, nationals or those who owe allegiance to the U.S.

Announcement number

EAC-10275125-18-CB

Control number

507322500

Duties

Summary

Please read the "Responsibilities" section and click on "Learn more about this agency."

Responsibilities**Key Requirements:**

- Ability to serve as technical and policy advisor to key officials pertaining to the overall Voting System Testing and Certification Program and guidelines.
- Must have expertise of election technology policies practices and processes.
- Must be proficient in the security risks and threat profiles applicable to election technologies.
- Expertise in interpreting and translating technical documentation and other communications to a multitude of audiences.

Major Duties:

The Election Technology Specialist may serve as a Project Manager for test campaigns, as an Auditor for Quality Management Systems and Quality Assurance audits as well as a liaison for general election technology issues. As the Project Manager, incumbent is responsible for the management of many independent projects, such as a voting system test application, manufacturer registration, or voting system test laboratory application. The incumbent will also assist in the development and review of new or updated Voluntary Voting System Guidelines. The incumbent may be trained for the capacity to act as a lead auditor for quality management systems and quality assurance audits to international, technical, and industry standards.

The incumbent is expected to have an in-depth knowledge of election technology policies, practices, and processes in order to facilitate communication amongst all stakeholders, including security experts, election officials, academics, politicians, general public, etc. The incumbent must be adaptable to ever changing

technologies in order to improve the process and programs of the Testing and Certification Division. The incumbent should also be proficient in the security risks and threat profiles applicable to election technologies.

Travel Required

Occasional travel - 25%

Supervisory status

No

Promotion Potential

00

Job family (Series)**0301 Miscellaneous Administration And Program**

(<https://www.usajobs.gov/Search/?j=0301>)

Requirements

Conditions Of Employment

- Candidates must meet all qualifications prior to the closing date of this announcement.
- Candidates must be a US Citizen.
- **Candidates must be available to travel 25% of the time.**
- *Accreditation as a Lead Auditor for an international or other industry recognized standard for quality management systems may be required to be obtained within 12 months of hire.*

Qualifications**Specialized Experience:**

Candidates must have expertise working with Voting Systems and Programs and be knowledgeable of election technology policies, practices and processes to facilitate communication among stakeholders, security experts, election officials, politicians and others.

Education

This job does not have an education qualification requirement.

Additional information**Benefits:**

Tele-work / telecommuting may be made available after an established waiting period.

If you use public transportation, part of your transportation costs may be subsidized. Our human resources office can provide additional information on how this program is run.

You must submit all required information by the closing date. If materials are not received, your application will be evaluated solely on the information available and you may not receive full consideration or may not be considered eligible.

The materials you send with your application will not be returned.

Send only those materials needed to evaluate your application. Please do not place your application in a notebook or binder.

How You Will Be Evaluated

Once the application process is complete, a review of your resume/application will be made to ensure you meet the qualification and job requirements for this position. Please follow all instructions carefully. Your qualifications will be evaluated on the basis of your level of knowledge, skills, abilities, and/or competencies.

Technical Competencies:

- In-depth technical knowledge of project management practices and the skillset to apply them to an array of election technology and/or other IT projects.
- Familiar with Federal voting system standards and comfortable with discussing standards in public forums.
- Expertise in interpreting and translating technical documentation and other communications to a multitude of audiences, and aptitude for translating technical information into policy or legal communications.
- General knowledge and understanding of information security principles and standards to election technologies.
- Proficiency in international and/or other industry standards for quality assurance and quality management systems, including configuration management.

Background checks and security clearance**Security clearance**

Not Required

(<https://www.usajobs.gov/Help/faq/job-announcement/security-clearances/>)

Drug test required

No

Required Documents

Resume and supporting documents.

Benefits

<https://www.opm.gov/healthcare-insurance/healthcare/>

How to Apply

You must submit your application so that it will be received by the closing date of the announcement.

Your application package must include the following:

A resume or an Optional Application for Federal Employment (OF 612) or any other format. Although we do not require a specific format, certain information is required to determine if you are qualified;

If you are a current or former federal employee with reinstatement eligibility, you must submit a copy of your last Notification of Personnel Action (SF50) showing your position, title, series, grade and eligibility;

A copy of your most recent performance appraisal. If you do not have a recent performance appraisal, please explain why.

All APPLICATION MATERIALS MUST BE SENT TO: resumes@eac.gov
(<mailto:resumes@eac.gov>)

Agency contact information

 Corliss Jackson

Phone

[202-853-4780](tel:202-853-4780)
(<tel:202-853-4780>)

Email

Resumes@eac.gov
(<mailto:Resumes@eac.gov>)

[Learn more about this agency.](#)
([#agency-modal-trigger](#))

Address

US Election Assistance Commission
1335 East West Hwy
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Next steps

Please read the "How You Will be Evaluated" section.

Fair & Transparent

The Federal hiring process is setup to be fair and transparent. Please read the following guidance.

Equal Employment Opportunity Policy

The United States Government does not discriminate in employment on the basis of race, color, religion, sex (including pregnancy And gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, retaliation, parental status, military service, or other non-merit factor.

- [Equal Employment Opportunity \(EEO\) for federal employees & job applicants](http://www.eeoc.gov/eeoc/internal_eeo/index.cfm)
(http://www.eeoc.gov/eeoc/internal_eeo/index.cfm)

Reasonable Accommodation Policy

Federal agencies must provide reasonable accommodation to applicants with disabilities where appropriate. Applicants requiring reasonable accommodation for any part of the application process should follow the instructions in the job opportunity announcement. For any part of the remaining hiring process, applicants should contact the hiring agency directly. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

A reasonable accommodation is any change in the workplace or the way things are customarily done that provides an equal employment opportunity to an individual with a disability. Under the Rehabilitation Act of 1973 the Equal Employment Opportunity Commission (EEOC) must provide reasonable accommodations:

- An applicant with a disability needs an accommodation to have an equal opportunity to apply for a job.
- An employee with a disability needs an accommodation to perform the essential job duties or to gain access to the workplace.
- An employee with a disability needs an accommodation to receive equal access to benefits, such as details, training, and office-sponsored events.

- [Disability Employment - Reasonable Accommodations](#)

[\(https://www.gpm.gov/policy-data-oversight/disability-employment/reasonable-accommodations/\)](https://www.gpm.gov/policy-data-oversight/disability-employment/reasonable-accommodations/)

- [How to contact an agency](#)
[\(https://www.usajobs.gov/Help/how-to/application/agency/contact/\)](https://www.usajobs.gov/Help/how-to/application/agency/contact/)

Legal and regulatory guidance

[Financial suitability](#)

[\(https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/financial-suitability/\)](https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/financial-suitability/)

[Privacy Act](#)

[\(https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/privacy-act/\)](https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/privacy-act/)

[Selective Service](#)

[\(https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/selective-service/\)](https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/selective-service/)

[Social security number request](#)

[\(https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/social-security-number/\)](https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/social-security-number/)

[Signature & False statements](#)

[\(https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/signature-false-statements/\)](https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/signature-false-statements/)

[New employee probationary period](#)

[\(https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/probationary-period/\)](https://www.usajobs.gov/Help/working-in-government/fair-and-transparent/probationary-period/)

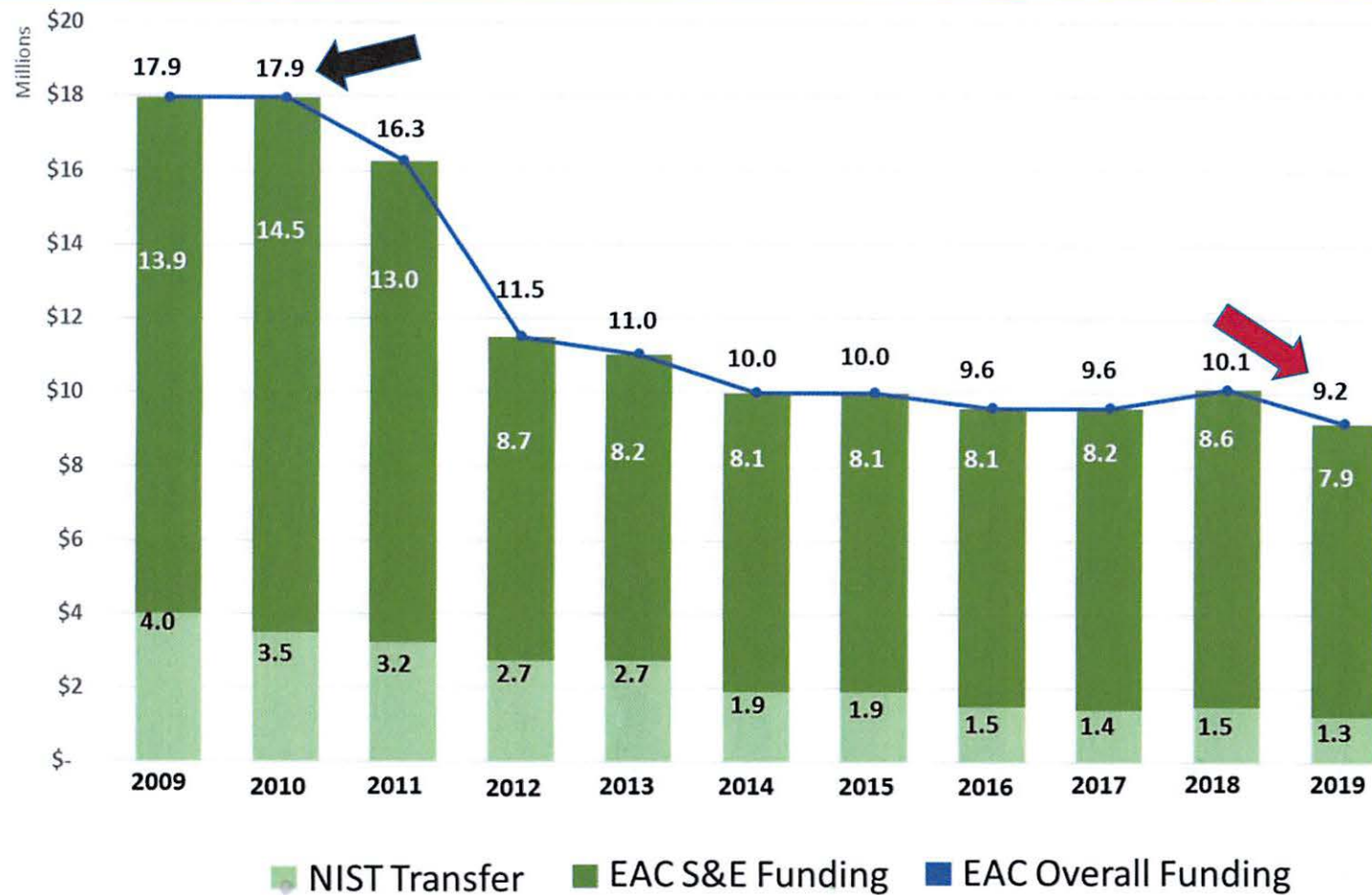
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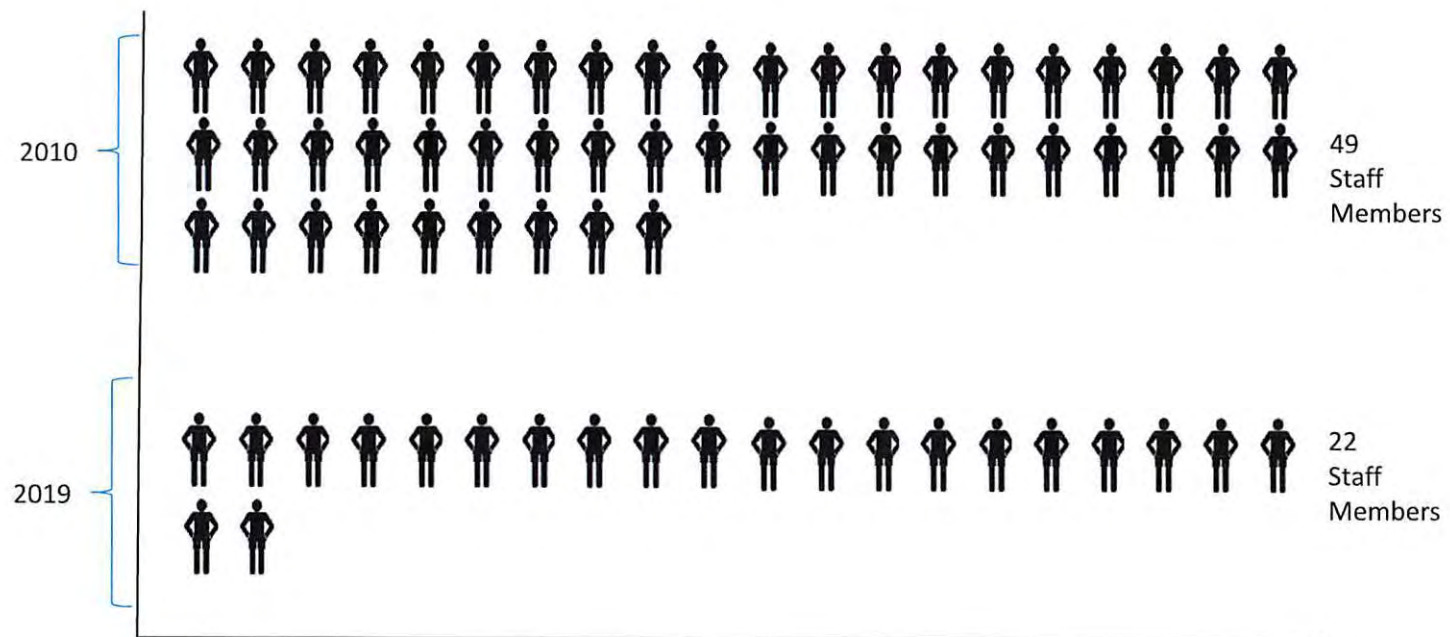
Name	Title	Job Description	Date of hire	End Date	Duty station from where they conducted their work	TOTAL AMOUNT PAID	Any other position, and place such position was held, while also working for the EAC
Ann Jackson	Consultant/Contractor	Administrative Assistant	11/19/2016	5/1/2018	Silver Spring, MD	\$22,397	unknown
Bernard Powell	Consultant/Contractor	IT Specialist	12/17/2016	12/31/16	Silver Spring, MD	\$2,198	unknown
Naseem Hasan	Consultant/Contractor	IT Specialist	1/14/2017	12/30/2017	Silver Spring, MD	\$55,307	unknown
Margaret Hood	Consultant/Contractor	Grants Management Specialist	4/14/2018	5/4/2019	Silver Spring, MD	\$88,730	unknown
Steve Uyak	Consultant/Contractor	IT Specialist	4/30/2018	2/28/2019	Silver Spring, MD	\$81,763	unknown
Sheila Banks	Consultant/Contractor	HR Specialist	5/12/2018	5/4/2019	Silver Spring & Vacaville, CA	\$23,726	unknown
Annette Lafferty	Consultant/Contractor	Financial Specialist	7/7/2018	9/29/2018	Silver Spring, MD	\$9,919	unknown
Cynthia Hoffman	Consultant/Contractor	Communications Specialist	9/22/2018	5/4/2019	Silver Spring, MD	\$30,788	unknown
Sean Greene	Consultant/Contractor	Research Program Specialist	9/22/2018	3/30/2019	Silver Spring, MD	\$14,025	unknown
Lida Anderson	Consultant/Contractor	Administrative Assistant	10/13/2018	5/4/2019	Silver Spring, MD	\$47,622	unknown
Pam Price	Consultant/Contractor	Administrative Assistant	2/9/2019	2/23/2019	Silver Spring, MD	\$2,259	unknown
Jeneene Niblett	Consultant/Contractor	Administrative Assistant	11/3/2019	5/7/2019	Silver Spring, MD	\$22,724	unknown
Name	Title	Job Description	Date of hire	End Date	Duty station from where they conducted their work	Total Annual Salary	Any other position, and place such position was held, while also working for the EAC
Patricia Layfield	Inspector General	Inspector General	2/22/2016	N/A	Silver Spring, MD	\$156,000	
Simona Jones	Digital Communications & Media Specialist	Website Management & Social Media	10/17/2016	N/A	Silver Spring, MD	\$81,165	
Ashley Williams	Financial Manager	Financial Manager	1/9/2017	N/A	Silver Spring, MD	\$99,171	
Bob Sweeney	Staff Associate	Staff Associate/Research Program Specialist	1/9/2017	N/A	Silver Spring, MD	\$78,459	
Brenda Soder	Director of Communications	Communications and Public Affairs	1/9/2017	N/A	Silver Spring, MD	\$150,803	
Jerome Lovato	Director, Voting Systems Certification	Director, Voting Systems Certification	9/5/2017	N/A	Centennial, CO	\$119,700	
Natalie Longwell	Writer / Editor	Communications and Public Affairs	9/5/2017	N/A	Silver Spring, MD	\$91,356	
David Kuennen	Senior Research Program Specialist	Senior Research Program Specialist	10/16/2017	N/A	Silver Spring, MD	\$99,904	
Corliss Jackson	HR Director	HR Director	4/16/2018	N/A	Silver Spring, MD	\$132,817	CEO, Freedom International Inc.
Mona Harrington	CIO/CISO	CIO/CISO	9/17/2018	N/A	Silver Spring, MD	\$147,542	
Nichelle Williams	Director of Research	Director of Research	11/26/2018	N/A	Silver Spring, MD	\$99,908	
Steve Uyak	IT Specialist	IT Specialist	2/19/2019	N/A	Silver Spring, MD	\$96,000	
Paul Aumayr	Senior Election Technology Specialist	Senior Election Technology Specialist	5/28/2019	N/A	Silver Spring, MD	\$95,000	
Jessica Bowers	Senior Election Technology Specialist	Senior Election Technology Specialist	5/30/2019	N/A	Aurora, CO	\$106,012	
Ryan Macias	Acting Director-Testing and Certification	Senior Election Technology Specialist	5/2/2016	5/17/2019	Silver Spring, MD	\$112,000	Owner/PresidentRSM Election Solutions
Sean Greene	Director of Research	Research Program Specialist/Dir of Research	6/13/2016	6/8/2018	Silver Spring, MD	\$123,406	
Mark Listes	Director of Policy	Director of Policy	8/22/2016	12/14/2019	Silver Spring, MD	\$114,586	
Brandes Daniel J	Computer Engineer	Computer Engineer	11/14/2016	9/30/2017	Silver Spring, MD	\$80,000	
Sam Jones	Staff Associate	Staff Associate	1/9/2017	7/14/2017	Silver Spring, MD	\$75,000	
Antoine Wilson	IT Specialist	IT Specialist	1/12/2017	5/27/2018	Silver Spring, MD	\$65,000	
Mia Forgy	Assistant Inspector General	Assistant Inspector General	5/13/2019	N/A	Silver Spring, MD	\$125,005	
Name	Title	Job Description	Date of hire	End Date	Duty station from where they conducted their work	TOTAL AMOUNT PAID	Any other position, and place such position was held, while also working for the EAC
Sarah Litton	Public Affairs Specialist	Part-Time Employee	10/30/2016	1/31/2017	Silver Spring, MD	\$1,170	
Kimberly Leon	Law Clerk	Part-Time Employee	6/3/2017	9/1/2017	Silver Spring, MD	\$8,440	
Mofetoluwa Obadina	Law Clerk	Part-Time Employee	6/3/2017	9/1/2017	Silver Spring, MD	\$8,440	
Aaron Yi	Law Clerk	Part-Time Employee	6/3/2017	9/1/2017	Silver Spring, MD	\$8,440	
Donald Palmer	Senior Advisor	Part-Time Employee	1/8/2018	2/4/2019	Silver Spring, MD	\$73,946	Bipartisan Policy Center

Attachment H

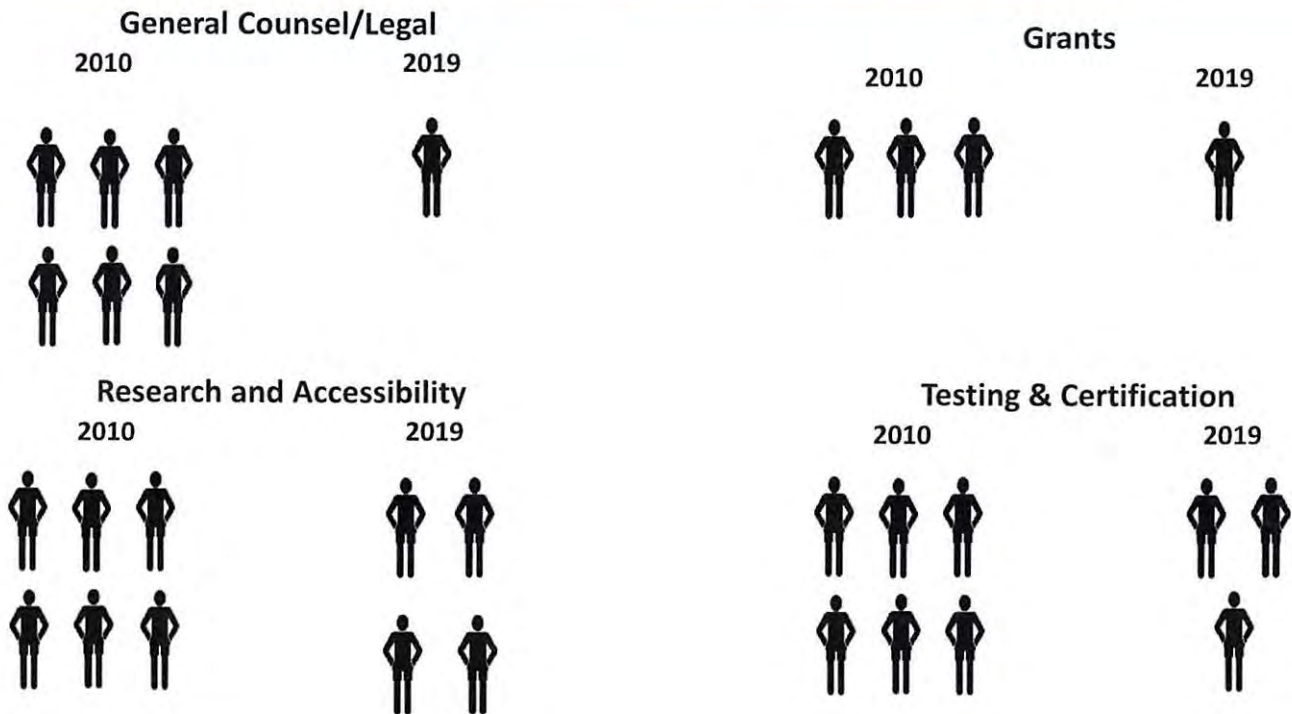
EAC Budget, 2010 vs. 2019



EAC Staff, 2010 vs. 2019



Key EAC Teams Are Reduced



The following positions in the agency are unfilled:

- Chief Operating Officer
- Procurement Specialist
- Commissioners' Special Assistants

ZOE LOFGREN, CALIFORNIA
CHAIRPERSON

JAMIE RASKIN, MARYLAND
VICE CHAIRPERSON

SUSAN DAVIS, CALIFORNIA
G.K. BUTTERFIELD, NORTH CAROLINA
MARCIA FUDGE, OHIO
PETE AGUILAR, CALIFORNIA

JAMIE FLEET, STAFF DIRECTOR

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE ADMINISTRATION

1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-2061
<https://cha.house.gov>

RODNEY DAVIS, ILLINOIS
RANKING MINORITY MEMBER

MARK WALKER, NORTH CAROLINA
BARRY LOUDERMILK, GEORGIA

ONE HUNDRED SIXTEENTH CONGRESS

JEN DAULBY, MINORITY STAFF DIRECTOR

July 18, 2019

Christy McCormick
Chairwoman
U.S. Election Assistance Commission
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

Thomas Hicks
Commissioner
U.S. Election Assistance Commission
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

Benjamin Hovland
Vice Chair
U.S. Election Assistance Commission
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

Donald Palmer
Commissioner
U.S. Election Assistance Commission
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

Dear Chairwoman McCormick, Vice Chair Hovland, Commissioner Hicks, and
Commissioner Palmer:

Thank you for your responses to my letter dated June 14, 2019 following your
appearance before the Committee on House Administration on May 21, 2019, at the
hearing titled "Oversight of the Election Assistance Commission."

Attached, please find my follow-up questions based on your responses.

Please provide written responses by **Tuesday, August 12, 2019** to Sean
Jones, Legislative Clerk, in Room 1309 of the Longworth House Office Building and
electronically to sean.jones@mail.house.gov.

If you have any questions concerning this matter, please feel free to contact
the Committee at (202) 225-2061. Thank you for your attention to this matter and I
look forward to your prompt response.

Sincerely,



Zoe Lofgren
Chairperson

Question 8. Your answers to Parts a. and b. are nonresponsive, as there is no HAVA Section 205(a)(3)(C). Please clarify.

We believe you may have been referring to HAVA Section 204(a)(3)(C). If this is the case, you note that the General Counsel will serve as Acting Director in the event of a vacancy in the Executive Director position. While your QFR answers reflect that you are unsure of the dates of expiration of the terms of both your Executive Director and General Counsel, it appears that their concomitant appointment suggests their terms will expire simultaneously, such that the General Counsel could not take over as Acting Executive Director. As you noted, your 2015 Policy Statement *only* refers to a succession plan when there are no Commissioners. We would like to understand the succession plan in other circumstances.

- a. If there are four Commissioners, and a vacancy arises in the Executive Director position, and there is a deadlock among the Commissioners, what is the succession plan, title by title? Who would make the decision about who becomes the Executive Director?
- b. If there are four Commissioners, and a vacancy arises in the General Counsel position, and there is a deadlock among the Commissioners, what is the succession plan, title by title? Who would make the decision about who becomes the General Counsel?
- c. If there are four Commissioners, and vacancy arises in both the Executive Director position and the General Counsel position, and there is a deadlock, what is the succession plan, title by title?
- d. What document or authority is the source for each of the aforementioned succession plans?
- e. Given the high number of unfilled positions at the EAC, should a vacancy in both the Executive Director and General Counsel position arise, as of today, what is the name of the individual who would then fill the Acting Executive Director title, and what is that person's current title?

Your answer to Part c. is similarly nonresponsive. You answer with your 2015 Policy Statement document, which establishes a succession plan if there are "no Commissioners."

- f. Per the question, please provide the succession plan when there is no *quorum* of Commissioners.
- g. Please provide the source for this succession plan.

In Part d., you state that, in the event there were no quorum of Commissioners and no General Counsel, the Executive Director can appoint a General Counsel.

- h. With a specific citation, under what authority would the Executive Director appoint an Acting General Counsel?

- i. If there *is* a quorum and no General Counsel, and no agreement among Commissioners on the appropriate candidate to serve as General Counsel, are you suggesting the authority to choose an Acting General Counsel would similarly fall to the Executive Director?
- j. Under what specific authority?

In Part e., you note HAVA does not provide for a succession plan for the General Counsel.

- k. You have some authority to develop, or oversee the development of, internal personnel policy. Can you commit to developing a succession plan for the General Counsel?

Question 9. This question relies on statutory requirements under HAVA, which Commissioners initially pointed to as barring them from starting an executive search process prior to the announcement of a vacancy.

As you note, the EAC's practice has "historically" been to post a vacancy announcement and then have the advisory boards begin their search process, but given the circumstances, we were pleased to see that you agree that the EAC should create a policy that would make preliminary inquiries "a few months" prior to a potential vacancy to determine if the incumbent Executive Director and/or General Counsel are interested in being retained for an additional term, and to ascertain if other parties are interested.

You did refer to your concern that this "may not be possible" for two reasons: your Notice and Comment Policy and the conflict with your current General Counsel. First, your Notice and Public Comment Policy states "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." Per the Notice and Public Comment Policy, the definition of a "policy of general applicability" addresses issues such as program manuals for testing and certification, and guidance on implementation or administration of HAVA or NVRA—the personnel matter of establishing an informal inquiry to discern the potential intentions of your incumbent Executive Director and General Counsel, and the interest of outside parties in those positions, are not of the same type of matter contemplated in the "policy of general applicability." Neither do those informal inquiries fall under the definition of "proposed policy or rule," as defined in the Notice and Public Comment Policy, as such rule is simply "Any policy, advisory, manual, procedure, regulation or rule covered hereunder that the Commission has voted affirmatively to post for public comment." Pursuant to the second part of the definition, the Commission would have to affirmatively vote to post the informal inquiry for public comment, and is not required to do so. Thus, your policy obligations to provide notice and comment would not be present in this

instance, and the policy's own definitions suggest you may proceed with the inquiries you mention, and may even set up preliminary efforts to begin collecting candidates for consideration in the event of a vacancy. We additionally reference your own conclusion, per Question 8 Part d., that when there is no quorum of Commissioners and no General Counsel, the Executive Director can appoint a General Counsel. This circumstance is not addressed in HAVA, and is not addressed in your 2015 Policy Statement either, yet to our knowledge, the policy you reference was not subject to Notice and Comment. Your conclusion about this authority of the Executive Director, absent a Notice and Comment period per your policy, further suggests Notice and Comment is not required of personnel matters.

To your second concern, while we agree your General Counsel is conflicted out of this consideration, it is our understanding you have recently hired a second attorney. This attorney would not be conflicted out and would be available to serve should any legal questions arise concerning this preliminary inquiry a few months before the potential vacancy escalates into a crisis.

Finally, while the above demonstrates how a preliminary search satisfies your policy obligations, we agree it is important to address your statutory obligations as well. Per Sec. 204(a)(3)(A), HAVA requires the advisory boards to begin a search "When a vacancy exists." Additionally, HAVA does not expressly preclude the Commission or the Advisory Boards from beginning such a process immediately, perhaps even at your direction. (As you note, the Boards are merely advisory and are bound by the advisory boards' statutory mandates in HAVA, so regardless of whether the advisory boards started an informal or formal search immediately at your direction or at the House's request, they would still be bound by statute to "each appoint a search committee to recommend at least three nominees for the position" when a vacancy exists, in addition to any preliminary action they had already taken.) Thus, it is absolutely possible to meet your statutory obligations with respect to the Standards Board and Board of Advisors while also directing a formal or informal search to begin immediately.

- a. Having resolved your concerns regarding the EAC's Notice and Public Comment Policy obligations, your legal advisor capacity, and your statutory obligations through the above, can you commit to begin making the inquiries you mention in your QFR responses (specifically inquiring "if the incumbent Executive Director and/or General Counsel are interested in being retained for an additional term, as described in HAVA, and to ascertain if other parties are interested in the positions") by August 12, 2019, which is within "a few months" of any potential vacancies in November 2019?

Question 10. In your answer to this question regarding the availability of holdover status for staff, you note you "do not anticipate a legal opinion from [your] General Counsel," likely because he would be conflicted out on this question. It is our

understanding that you just hired a new attorney who would not be conflicted out of providing a legal opinion on this question. We request that you allow this non-conflicted counsel to handle this question, which should allow you to proceed on this critical issue.

- a. Can you commit to having a legal opinion on this matter provided by your new counsel by August 12, 2019?

In your answer to Question 10, you reference questions you have asked to “federal personnel authorities.”

- b. Who are these authorities?
- c. What is their authority to answer this question?
- d. What specific questions did you ask them?
- e. When do you anticipate this answer?
- f. Given the term expiration likely in November, we request that you submit the answers from the “federal personnel authorities” by August 12, 2019, to provide ample time for planning in the event of a transition.

Question 11. We appreciate your privacy concerns.

- g. Please provide the total number of individual candidates whose names were ranked by the each of the respective boards, the Board of Advisors and the Standards Board.
- h. For each list, please note what rank your current Executive Director was on each of those lists.
- i. Please note if your current Executive Director did or did not appear on each of the respective lists.

Question 12. In your answer, you reference questions you have asked to “federal personnel authorities.”

- a. Who are these authorities?
- b. What is their authority to answer this question?
- c. What specific questions did you ask them?
- d. When do you anticipate this answer?
- e. Given the term expiration likely in November, we request that you submit the answers from the “federal personnel authorities” by August 12, 2019 to allow for planning.

Question 13. In your answer, you reference questions you have asked to “federal personnel authorities.”

- a. Who are these authorities?
- b. What is their authority to answer this question?
- c. What specific questions did you ask them?

- d. When do you anticipate this answer?
- e. Given the term expiration likely in November, we request that you submit the answers from the “federal personnel authorities” by August 12, 2019 to allow for planning.

Question 14. Given the analysis provided in Question 8, and the Commission’s interest in beginning preliminary inquiries so as to avoid an inopportune vacancy in November, it would be appropriate for the Commission to begin the “require[d] deliberation and a consensus of the Commissioners on how to proceed.”

- a. Can you commit to arriving at a consensus on how to proceed by August 12, 2019, allowing sufficient time to begin an informal or formal search process?

Question 17. In your discussion of the hiring process for Election Technology Specialists as additions to the Testing and Certification staff, you note you received a total of 76 applications, and interviewed exactly 2 candidates.

- a. Were Paul Aumayr and Jessica Bowers among those 76 candidates who applied for this specific position?
- b. On what date did the interview occur for Paul Aumayr?
- c. On what date did you offer him the position?
- d. On what date did you publicly announce he had been hired?
- e. On what date did the interview occur for Jessica Bowers?
- f. On what date did you offer her the position?
- g. On what date did you publicly announce she had been hired?
- h. On what basis did you decide to interview only 2 out of 76 candidates?
- i. Is the EAC committed to considering and hiring a diverse pool of candidates? If yes, how did you incorporate this commitment in your hiring process for these openings?
- j. If you do have a diversity policy or plan, please share it.

Overall, for the Director of Testing and Certification and the two open Testing and Certification positions, you received 96 total applications, and the EAC interviewed only three people (one internal) and hired exactly those three people.

- k. This does not suggest a robust process. Please explain.
- l. How does this process overall meet diversity best practices in hiring?

Question 19. In Part g, you note that “when individuals travel on EAC business, travel expenses are paid by the EAC,” yet in Part h you note that for Fiscal Year 2018 and the first half of Fiscal Year 2019, “the cost of travel covered by the agency in this regard was \$0.” These two facts do not seem compatible unless no employee with a duty station outside of Silver Spring, Maryland travelled to EAC headquarters on EAC business in that entire time period.

- a. Are the five individuals with duty stations outside of Silver Spring, Maryland reimbursed by the EAC when they travel to and from the Silver Spring office for EAC business?
- b. Does the \$0 figure for the period of Fiscal Year 2018 and the first half of Fiscal Year 2019 indicate that there has been no travel for any of the individuals with a duty station outside of Silver Spring, Maryland to and from EAC headquarters for EAC business in that entire time period?
- c. If not, please explain the \$0 figure.

In Part f, you note two Commissioners and three employees have duty stations away from EAC headquarters in Silver Spring, Maryland, which raises concerns about how much of taxpayer money is being used to accommodate travel between duty stations and agency headquarters when the agency is avowedly struggling with its current funding levels.

- d. When Chairwoman McCormick travels to Silver Spring, Maryland from her duty station in Williamsburg, Virginia and back, has the EAC ever reimbursed her for this travel?
- e. If not, at whose expense does this travel occur?
- f. Since her duty station was established in Williamsburg, Virginia, how much in total has the EAC covered or reimbursed Chairwoman McCormick for travel between Silver Spring, Maryland and her duty station in Williamsburg, VA?
- g. Since establishing her duty station in Williamsburg, Virginia, how many times would you estimate Chairwoman McCormick has actually been present at EAC headquarters?
- h. When Commissioner Palmer travels to Silver Spring, Maryland from St. Johns, Florida and back, has the EAC ever reimbursed him for this travel?
- i. If not, at whose expense does this travel occur?
- j. Since his duty station was established in St. Johns, Florida, how much has the EAC covered or reimbursed Commissioner Palmer for travel between Silver Spring and his duty station in St. John's Florida?
- k. Since establishing his duty station in St. Johns, Florida, how many times would you estimate Commissioner Palmer has actually been present at EAC headquarters?
- l. Please provide the total the EAC has spent on each of the following respective individuals travelling between their duty station and Silver Spring, Maryland:
 - a. Margaret Ollove
 - b. Jessica Bowers
 - c. Jerome Lovato
- m. On what grounds were certain individuals allowed to establish their duty stations a far distance from the EAC's headquarters?

- n. Is there an internal policy on the establishment of duty stations away from EAC's headquarters? If so, please share.
- o. Who signed off on the establishment of these duty stations?
- p. Under what authority did the individual signing off on these duty stations sign off on the distant duty stations?
- q. Are travel costs for distant duty stations automatically paid, or are they reviewed and approved by someone? Who is that individual?

Question 23. In Attachment G of your responses, Current Commissioner Donald Palmer is listed as an individual hired during Executive Director Brian Newby's tenure at the EAC. Donald Palmer was paid \$73,946 for part-time work at the EAC.

- a. What work was Mr. Palmer then doing for the EAC? Please provide a detailed list of deliverables and major accomplishments in this part-time role.
- b. Please provide Mr. Palmer's contract, or multiple contracts, for the period of his employment with the EAC as a part-time employee, and as a Commissioner.
- c. Besides the Bipartisan Policy Center, what additional clients if any did Mr. Palmer work for during his time as a part-time employee with the EAC?

Other part-time employees you noted in Attachment G were paid in the range of \$1,170 to \$8,440, and had assignments that lasted for about three months, while not working for any other employers.

- a. Please explain the choice to retain Mr. Palmer for over a year as a part-time employee, as compared to other short-term part-time employees.
- b. Please explain the relative pay disparity between Mr. Palmer and other part-time employees (as even accounting for the fact that Mr. Palmer worked a longer period, his rate of pay seems significantly higher).
- c. Please provide your conflict of interest assessment for Mr. Palmer maintaining employment at the Bipartisan Policy Center while also being paid by the EAC.
- d. What work was Mr. Palmer doing with the Bipartisan Policy Center?

Mr. Palmer's nomination to the EAC is noted as received in the Senate on July 18, 2018. Attachment G notes that Mr. Palmer was in the employ of the EAC at this time, having served as a part-time employee from January 1, 2018, to February 4, 2019. In fact, Mr. Palmer's part-time work appears to have ended on February 4, 2019, more than a month after he was *confirmed* to become a Commissioner by the Senate on January 2, 2019. Thus, it seems that while Mr. Palmer was awaiting confirmation (for a position in which he would have the power to extend the term of the current Executive Director), and even after he was confirmed, he was being paid by the same Executive Director, via the EAC, for part-time employment. This raises at least the appearance of impropriety, if not impropriety itself.

- e. Who approved Mr. Palmer's part-time employment contract?
- f. How was his pay decided?
- g. Who approved his pay?
- h. At any time, was there any internal deliberation or discussion about the propriety of these multiple roles for Mr. Palmer—as part-time employee, nominee, and then confirmed appointee?
- i. If they did occur, please describe the content of the discussions, and between what parties did they occur?

As you are aware, the Committee is concerned about the possibility of a vacancy in the Executive Director position when Mr. Brian Newby's term expires some time in November 2019. As you correctly noted during the EAC's Oversight Hearing, HAVA Sec. 204(a)(2) provides that "An Executive Director may serve for a longer period only if reappointed for an additional term or terms by a vote of the Commission."

Commissioner Palmer will serve as an important vote in the decision of whether to continue your existing Executive Director's term. Yet Commissioner Palmer was hired to the EAC by the current Executive Director, and received at least \$73, 946 from the agency during the current Executive Director's term, raising questions about the appearance of a quid pro quo and a conflict of interest with regard to voting on Mr. Newby's continuance.

- j. Does Commissioner Palmer have an ethics waiver to vote on continuing Mr. Newby's tenure as Executive Director since he was being paid by Mr. Newby as a part-time employee while Mr. Newby was Executive Director?
- k. Should he recuse himself from this vote?
- l. Please provide the Committee with a formal ethics opinion on this question by August 12, 2019.

We appreciate the agency's willingness to be forthcoming about its personnel decisions. Per Question 23, the Committee requested information on "all staff, consultants, or any other person paid any amount during Executive Director Brian Newby's tenure at the EAC." Responding to our question, you noted in Attachment G that Mr. Palmer's employment with the EAC as a part-time employee ran from January 1, 2018, to February 4, 2019. Yet in an e-mail from Cristy McCormick to Andrew Kossack dated July 30, 2017 and recommending that "we consider hiring Don Palmer to oversee/consultant [sic] on the data project," of the Presidential Advisory Commission on Election Integrity (or the "Kobach Commission") Ms. McCormick referenced that Mr. Palmer is "currently working on an NVRA project for the EAC as a contractor." Mr. Newby was appointed in November 2015, so the contract referenced here by Ms. McCormick would have been awarded during Mr. Newby's tenure. Yet this contractor position was not reflected in your answers to the Committee.

- m. Please provide clarity on the dates of Mr. Palmer's employment with the EAC.

- n. Ms. McCormick referred to Mr. Palmer as an EAC consultant as of July 2017. Please provide his contract for this specific position.
- o. Please provide clarity on whether Mr. Palmer was initially a consultant, and subsequently hired as a part-time employee. If so, please provide the total amount paid for his initial consultancy distinct from the \$73,946 you mentioned in Attachment G.
- p. What were Mr. Palmer's major deliverables and accomplishment during his consultancy?
- q. In that email, Ms. McCormick refers to Mr. Palmer as "a believer in the cause" while referring him to work in elections oversight. Please explain Ms. McCormick's statement.

Additional Questions.

Supplemental Question 1. Committee on House Administration staff have twice privately requested a copy of the OPM Report referenced during the Committee's Oversight hearing. EAC staff has not provided a copy to this Committee and has not responded to either of the two requests.

- a. Please provide a copy of the OPM report with your answers to these questions.

Supplemental Question 2. On July 14, 2019 the AP reported that voting machines provided by two of the three major vendors (ES&S and Hart) run on dated versions of Microsoft Windows. On January 14, 2020—the 10-year anniversary of the release of Windows 7—Microsoft will stop supporting security updates for Windows 7. That Microsoft will cease support is not a new revelation. As early as 2012 it was well known that in 2020 Microsoft would stop supporting security patches for Windows 7. The AP story also reported that the EAC has recently certified voting machines that run on Windows 7 (as recently as the spring of 2019) and will not have security updates from Microsoft within 6 months of certification.

- a. Does the EAC certification process evaluate the underlying software the machine runs on? If so, how?
- b. Does the EAC de-certify machines that run on Windows (or other operating systems) when the parent company ceases to put out security patches?
- c. Would a machine fail certification if it were running an operating system that was no longer being supported for security patches?
- d. Is there a cut-off for how far into the future the operating system needs to support security patches to pass certification?
- e. Would a machine pass if the operating system was not going to be supported in one month? Six months?

- f. How will the EAC handle ES&S products running on Windows 7 after patches are discontinued on January 14, 2020?
- g. Would the EAC decertify those machines? If not, why not?
- h. For ES&S machines that run Windows 7, does the EAC need to recertify a machine if ES&S subsequently upgrades to Windows 10? If so, are there any machines currently in the certification process? What is the best estimate of when the machines will be certified?



U.S. ELECTION ASSISTANCE COMMISSION

1335 EAST-WEST HIGHWAY, SUITE 4300
SILVER SPRING, MD 20910

August 12, 2019

Representative Zoe Lofgren
Chairperson
Committee on House Administration
U.S. House of Representatives
1309 Longworth House Office Building
Washington, DC 20515

Dear Chairperson Lofgren,

This letter responds to your July 18 correspondence seeking additional information about the U.S. Election Assistance Commission's responses to the Questions for the Record that followed the Committee on House Administration's May 21 Oversight hearing.

Unless otherwise noted, the following responses are respectfully jointly submitted by all four EAC Commissioners; however, because Commissioners are not involved in day-to-day operational and personnel activities, answers to many of the questions were developed by relevant staff under the direction of the Executive Director and General Counsel. Answers jointly submitted by all Commissioners are so designated at the end of the answer with (C). Answers provided by a particular Commissioner are noted in the body of the answer.

Sincerely,

Christy A. McCormick
Chairwoman
U.S. Election Assistance Commission

Ben Hovland
Vice Chair
U.S. Election Assistance Commission

Thomas Hicks
Commissioner
U.S. Election Assistance Commission

Donald Palmer
Commissioner
U.S. Election Assistance Commission

Question 8. Your answers to Parts a. and b. are nonresponsive, as there is no HAVA Section 205(a)(3)(C). Please clarify.

We believe you may have been referring to HAVA Section 204(a)(3)(C). If this is the case, you note that the General Counsel will serve as Acting Director in the event of a vacancy in the Executive Director position. While your QFR answers reflect that you are unsure of the dates of expiration of the terms of both your Executive Director and General Counsel, it appears that their concomitant appointment suggests their terms will expire simultaneously, such that the General Counsel could not take over as Acting Executive Director. As you noted, your 2015 Policy Statement only refers to a succession plan when there are no Commissioners. We would like to understand the succession plan in other circumstances.

- a. If there are four Commissioners, and a vacancy arises in the Executive Director position, and there is a deadlock among the Commissioners, what is the succession plan, title by title? Who would make the decision about who becomes the Executive Director?**

We apologize for the incorrect HAVA citation. The only succession plan in HAVA establishes that the General Counsel will serve as Acting Executive Director until that position is filled by the Commission.

- b. If there are four Commissioners, and a vacancy arises in the General Counsel position, and there is a deadlock among the Commissioners, what is the succession plan, title by title? Who would make the decision about who becomes the General Counsel?**

In this circumstance, there is no succession plan. The Executive Director can appoint an attorney as the lead attorney or “Acting General Counsel” until the Commissioners select a General Counsel.

- c. If there are four Commissioners, and vacancy arises in both the Executive Director position and the General Counsel position, and there is a deadlock, what is the succession plan, title by title?**

In this circumstance, there is no succession plan established by HAVA. Additionally, the Commission has not previously adopted a succession plan to address this scenario, but it is an issue that should be considered.

- d. What document or authority is the source for each of the aforementioned succession plans?**

Not applicable.

- e. Given the high number of unfilled positions at the EAC, should a vacancy in both the Executive Director and General Counsel position arise, as of today, what is the name of the individual who would then fill the Acting Executive Director title, and what is that person’s current title?**

Should a vacancy in both the Executive Director and General Counsel position arise, as of today, the agency does not have a provision for someone to fill the Acting Executive Director title.

Your answer to Part c. is similarly nonresponsive. You answer with your 2015 Policy Statement document, which establishes a succession plan if there are “no Commissioners.”

- f. Per the question, please provide the succession plan when there is no quorum of Commissioners.**

In this circumstance, there is no succession plan established by HAVA. Additionally, the Commission has not previously adopted a succession plan to address this scenario, but it is an issue that should be considered.

- g. Please provide the source for this succession plan.**

Not applicable.

In Part d., you state that, in the event there were no quorum of Commissioners and no General Counsel, the Executive Director can appoint a General Counsel.

- h. With a specific citation, under what authority would the Executive Director appoint an Acting General Counsel?**

Under Section 204(a)(5), the Executive Director is authorized to appoint and fix the pay of such additional personnel as considered appropriate. Therefore, it would be appropriate for the Executive Director, if the Executive Director determined, to appoint an attorney as the lead attorney or “Acting General Counsel” until the Commissioners select a General Counsel.

- i. If there is a quorum and no General Counsel, and no agreement among Commissioners on the appropriate candidate to serve as General Counsel, are you suggesting the authority to choose an Acting General Counsel would similarly fall to the Executive Director?**

The Executive Director can appoint an attorney as the lead attorney or “Acting General Counsel” until the Commissioners select a General Counsel.

- j. Under what specific authority?**

HAVA Section 204(a)(5).

In Part e., you note HAVA does not provide for a succession plan for the General Counsel.

- k. You have some authority to develop, or oversee the development of, internal personnel policy. Can you commit to developing a succession plan for the General Counsel?**

The Executive Director can appoint an attorney as the lead attorney or “Acting General Counsel” until the Commissioners select a General Counsel. However, the Commissioners could discuss a formalized succession plan for an interim General Counsel should the scenario present itself.

Question 9. This question relies on statutory requirements under HAVA, which Commissioners initially pointed to as barring them from starting an executive search process prior to the announcement of a vacancy.

As you note, the EAC's practice has "historically" been to post a vacancy announcement and then have the advisory boards begin their search process, but given the circumstances, we were pleased to see that you agree that the EAC should create a policy that would make preliminary inquiries "a few months" prior to a potential vacancy to determine if the incumbent Executive Director and/or General Counsel are interested in being retained for an additional term, and to ascertain if other parties are interested.

You did refer to your concern that this "may not be possible" for two reasons: your Notice and Comment Policy and the conflict with your current General Counsel. First, your Notice and Public Comment Policy states "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." Per the Notice and Public Comment Policy, the definition of a "policy of general applicability" addresses issues such as program manuals for testing and certification, and guidance on implementation or administration of HAVA or NVRA—the personnel matter of establishing an informal inquiry to discern the potential intentions of your incumbent Executive Director and General Counsel, and the interest of outside parties in those positions, are not of the same type of matter contemplated in the "policy of general applicability." Neither do those informal inquiries fall under the definition of "proposed policy or rule," as defined in the Notice and Public Comment Policy, as such rule is simply "Any policy, advisory, manual, procedure, regulation or rule covered hereunder that the Commission has voted affirmatively to post for public comment." Pursuant to the second part of the definition, the Commission would have to affirmatively vote to post the informal inquiry for public comment, and is not required to do so. Thus, your policy obligations to provide notice and comment would not be present in this instance, and the policy's own definitions suggest you may proceed with the inquiries you mention, and may even set up preliminary efforts to begin collecting candidates for consideration in the event of a vacancy. We additionally reference your own conclusion, per Question 8 Part d., that when there is no quorum of Commissioners and no General Counsel, the Executive Director can appoint a General Counsel. This circumstance is not addressed in HAVA, and is not addressed in your 2015 Policy Statement either, yet to our knowledge, the policy you reference was not subject to Notice and Comment. Your conclusion about this authority of the Executive Director, absent a Notice and Comment period per your policy, further suggests Notice and Comment is not required of personnel matters.

To your second concern, while we agree your General Counsel is conflicted out of this consideration, it is our understanding you have recently hired a second attorney. This attorney would not be conflicted out and would be available to serve should any legal questions arise concerning this preliminary inquiry a few months before the potential vacancy escalates into a crisis.

Finally, while the above demonstrates how a preliminary search satisfies your policy obligations, we agree it is important to address your statutory obligations as well. Per Sec. 204(a)(3)(A), HAVA requires the advisory boards to begin a search “When a vacancy exists.” Additionally, HAVA does not expressly preclude the Commission or the Advisory Boards from beginning such a process immediately, perhaps even at your direction. (As you note, the Boards are merely advisory and are bound by the advisory boards’ statutory mandates in HAVA, so regardless of whether the advisory boards started an informal or formal search immediately at your direction or at the House’s request, they would still be bound by statute to “each appoint a search committee to recommend at least three nominees for the position” when a vacancy exists, in addition to any preliminary action they had already taken.) Thus, it is absolutely possible to meet your statutory obligations with respect to the Standards Board and Board of Advisors while also directing a formal or informal search to begin immediately.

- a. Having resolved your concerns regarding the EAC’s Notice and Public Comment Policy obligations, your legal advisor capacity, and your statutory obligations through the above, can you commit to begin making the inquiries you mention in your QFR responses (specifically inquiring “if the incumbent Executive Director and/or General Counsel are interested in being retained for an additional term, as described in HAVA, and to ascertain if other parties are interested in the positions”) by August 12, 2019, which is within “a few months” of any potential vacancies in November 2019?**

Please note, the EAC has not hired a second attorney. This continues to be a personnel matter that would suggest deliberations and one that cannot be answered here. The EAC is committed to following a process consistent with HAVA. The EAC’s General Counsel is in consultation with the Department of Justice regarding the options available to the Commission. (C)

Question 10. In your answer to this question regarding the availability of holdover status for staff, you note you “do not anticipate a legal opinion from [your] General Counsel,” likely because he would be conflicted out on this question. It is our understanding that you just hired a new attorney who would not be conflicted out of providing a legal opinion on this question. We request that you allow this nonconflicted counsel to handle this question, which should allow you to proceed on this critical issue.

- a. Can you commit to having a legal opinion on this matter provided by your new counsel by August 12, 2019?**

As previously mentioned, the EAC has not hired a new attorney. Unfortunately, years of budget cuts have left the agency with only one staff member in a number of departments. We raised this issue at our hearing and with Appropriators as it has real consequences on the agency’s ability to function as designed by HAVA. However, we have asked the Department of Justice to review these issues and provide a non-binding opinion. (C)

In your answer to Question 10, you reference questions you have asked to “federal personnel authorities.”

b. Who are these authorities?

Staff has discussed the matter with the Government Accountability Office, with the Merit System Protection Board, and with the Department of Justice.

c. What is their authority to answer this question?

The above agencies have routinely provided interpretations regarding personnel and employment status inquiries.

d. What specific questions did you ask them?

Our General Counsel asked for input regarding the term appointment, tenure interpretation, and general statutory construction as it relates to holdover status for term appointments. These discussions and consultation are ongoing.

e. When do you anticipate this answer?

We have asked the Department of Justice to provide input as soon as practical.

f. Given the term expiration likely in November, we request that you submit the answers from the “federal personnel authorities” by August 12, 2019, to provide ample time for planning in the event of a transition.

Once feedback is received from the Department of Justice, we then will determine how to proceed and a potential further course of action.

Question 11. We appreciate your privacy concerns.

g. Please provide the total number of individual candidates whose names were ranked by the each of the respective boards, the Board of Advisors and the Standards Board.

30 individuals applied for the position.

h. For each list, please note what rank your current Executive Director was on each of those lists.

Commissioners received an unranked list of three candidates recommended by the Board of Advisors and a ranked list of candidates from the Standards Board. The current Executive Director was not among the three names from the Board of Advisors, but was tied with the current General Counsel for first in the rankings from the Standards Board, which represents 110 election officials from 55 states and territories.

i. Please note if your current Executive Director did or did not appear on each of the respective lists.

The current Executive Director’s name appeared on the list from the Standards Board, but not on the list from the Board of Advisors.

Question 12. In your answer, you reference questions you have asked to “federal personnel authorities.”

a. Who are these authorities?

Staff has discussed the matter with the Government Accountability Office, with the Merit System Protection Board, and with the Department of Justice.

b. What is their authority to answer this question?

The above agencies have routinely provided interpretations regarding personnel and employment status inquiries.

c. What specific questions did you ask them?

Our General Counsel asked for input regarding the term appointment, tenure interpretation, and general statutory construction as it relates to holdover status for term appointments.

d. When do you anticipate this answer?

We have asked the Department of Justice to provide input as soon as practical.

e. Given the term expiration likely in November, we request that you submit the answers from the “federal personnel authorities” by August 12, 2019, to provide ample time for planning in the event of a transition.

Once feedback is received from the Department of Justice, we then will determine how to proceed and a potential further course of action.

Question 13. In your answer, you reference questions you have asked to “federal personnel authorities.”

a. Who are these authorities?

Staff has discussed the matter with the Government Accountability Office, with the Merit System Protection Board, and with the Department of Justice.

b. What is their authority to answer this question?

The above agencies have routinely provided interpretations regarding personnel and employment status inquiries.

c. What specific questions did you ask them?

Our General Counsel asked for input regarding the term appointment, tenure interpretation, and general statutory construction as it relates to holdover status for term appointments.

d. When do you anticipate this answer?

We have asked the Department of Justice to provide input as soon as practical.

e. Given the term expiration likely in November, we request that you submit the answers from the “federal personnel authorities” by August 12, 2019, to provide ample time for planning in the event of a transition.

Once feedback is received from the Department of Justice, we then will determine how to proceed and a potential further course of action.

Question 14. Given the analysis provided in Question 8, and the Commission’s interest in beginning preliminary inquiries so as to avoid an inopportune vacancy in November, it

would be appropriate for the Commission to begin the “require[d] deliberation and a consensus of the Commissioners on how to proceed.”

- a. **Can you commit to arriving at a consensus on how to proceed by August 12, 2019, allowing sufficient time to begin an informal or formal search process?**

The Commission has not reached consensus on how to proceed beyond the statutory conditions. However, conversations among Commissioners are ongoing. (C)

Question 17. In your discussion of the hiring process for Election Technology Specialists as additions to the Testing and Certification staff, you note you received a total of 76 applications, and interviewed exactly 2 candidates.

- a. **Were Paul Aumayr and Jessica Bowers among those 76 candidates who applied for this specific position?**

With apologies, in looking at the timeline closer after our initial response, Ms. Bowers applied directly to the Testing and Certification Director, making the total candidate pool 77. The Testing and Certification Director inquired regarding Ms. Bowers’ interest, she expressed an interest, she applied, the Testing and Certification Director and Executive Director discussed her candidacy, and the Testing and Certification Director and the Human Resources Director interviewed Ms. Bowers. Mr. Aumayr’s process was similar except that he applied for the position in 2018.

- b. **On what date did the interview occur for Paul Aumayr?**

May 10, 2019

- c. **On what date did you offer him the position?**

May 13, 2019

- d. **On what date did you publicly announce he had been hired?**

The EAC did not make a public announcement. The Executive Director sent an internal email to EAC staff on May 14.

- e. **On what date did the interview occur for Jessica Bowers?**

May 9, 2019

- f. **On what date did you offer her the position?**

May 10, 2019

- g. **On what date did you publicly announce she had been hired?**

The EAC did not make a public announcement. The Executive Director sent an internal email to EAC staff on May 14.

- h. **On what basis did you decide to interview only 2 out of 76 candidates?**

The Office of Human Resources compared all candidates against the requirements of the position. EAC’s previous Testing and Certification Director, Brian Hancock, reviewed candidates who had applied in 2018. Executive Director Brian Newby reviewed all candidate materials, as did the current Testing and Certification Director, Jerome Lovato. Mr. Newby and Mr. Lovato discussed the specific skill sets desired for these positions, were aware of Ms. Bowers’ experience, and had observed her capabilities while working

with her in other settings. Mr. Lovato reached out to Ms. Bowers to determine interest in applying as the 77th candidate.

Both individuals hired possess vast voting systems certification experience and familiarity with the EAC's testing and certification program. There are relatively few people across the U.S. with more than a decade of voting systems certification expertise, and Mr. Aumayr and Ms. Bowers each have over a decade of experience in this field.

- i. Is the EAC committed to considering and hiring a diverse pool of candidates? If yes, how did you incorporate this commitment in your hiring process for these openings?**

Of course. Ms. Bowers is a bi-lingual veteran of the U.S. Air Force and has a strong background in software development. Mr. Aumayr is a naturalized U.S. citizen with a strong background in engineering and 15 years of public service in the State of Maryland. They form a small team with Mr. Lovato, who is regarded as one of the foremost experts in post-election audits in the country, has an Electrical Engineering degree, and is pursuing a Master's Degree in cybersecurity. For such a small team, the EAC is proud of the diverse strength of talent, expertise, background, and experience this team possesses.

- j. If you do have a diversity policy or plan, please share it.**

This is enclosed as **Attachment A**.

Overall, for the Director of Testing and Certification and the two open Testing and Certification positions, you received 96 total applications, and the EAC interviewed only three people (one internal) and hired exactly those three people.

- k. This does not suggest a robust process. Please explain.**

Testing and certification of voting systems involves special skills that few possess. In this case, the EAC was able to identify candidates who each had approximately a decade of certification experience. The EAC was able to recruit and hire extremely qualified individuals with this background.

- l. How does this process overall meet diversity best practices in hiring?**

Over the last four years, many stakeholders, including some Members on this committee, have complimented the EAC for positive changes in the agency. The EAC has a track record of recruiting high-achieving, results-oriented professionals, and the recent hires in Testing and Certification represent excellent talent and diversity.

Question 19. In Part g, you note that “when individuals travel on EAC business, travel expenses are paid by the EAC,” yet in Part h you note that for Fiscal Year 2018 and the first half of Fiscal Year 2019, “the cost of travel covered by the agency in this regard was \$0.” These two facts do not seem compatible unless no employee with a duty station outside of Silver Spring, Maryland travelled to EAC headquarters on EAC business in that entire time period.

- a. **Are the five individuals with duty stations outside of Silver Spring, Maryland reimbursed by the EAC when they travel to and from the Silver Spring office for EAC business?**

These employees are eligible for travel reimbursement by the EAC to and from the Silver Spring office for EAC business.

- b. **Does the \$0 figure for the period of Fiscal Year 2018 and the first half of Fiscal Year 2019 indicate that there has been no travel for any of the individuals with a duty station outside of Silver Spring, Maryland to and from EAC headquarters for EAC business in that entire time period?**

The information provided was correct. The EAC used its latest financial data available when preparing our answers. This data was through the first half of Fiscal Year 2019 (March 31). The EAC had only one person with a duty station outside of Silver Spring through that period.

- c. **If not, please explain the \$0 figure.**

The information provided was correct. Other responses here have updated numbers when appropriate.

In Part f, you note two Commissioners and three employees have duty stations away from EAC headquarters in Silver Spring, Maryland, which raises concerns about how much of taxpayer money is being used to accommodate travel between duty stations and agency headquarters when the agency is avowedly struggling with its current funding levels.

- d. **When Chairwoman McCormick travels to Silver Spring, Maryland from her duty station in Williamsburg, Virginia and back, has the EAC ever reimbursed her for this travel?**

Yes.

- e. **If not, at whose expense does this travel occur?**

Commissioner McCormick has been reimbursed \$267.79 for travel to Silver Spring.

- f. **Since her duty station was established in Williamsburg, Virginia, how much in total has the EAC covered or reimbursed Chairwoman McCormick for travel between Silver Spring, Maryland and her duty station in Williamsburg, VA?**

\$267.79, since joining the EAC through the third quarter of FY 2019

- g. **Since establishing her duty station in Williamsburg, Virginia, how many times would you estimate Chairwoman McCormick has actually been present at EAC headquarters?**

Commissioner McCormick travels extensively to meet with election administrators nationwide. The Commissioners have collectively traveled to more than 25 states for activities in 2019 alone. Each Commissioner comes to the EAC office as their schedules allow, but has contact with some members of staff, usually the Executive Director or General Counsel, on a daily basis. However, day-to-day operations of the agency and oversight of agency employees does not rest with one Commissioner or all Commissioners, all political appointees. The EAC Operation Management Policy

Statement adopted in 2015 delineates the policymaking responsibilities of each Commissioner and the responsibility of the Executive Director for day-to-day operations of the agency. (Commissioner McCormick)

- h. When Commissioner Palmer travels to Silver Spring, Maryland from St. Johns, Florida and back, has the EAC ever reimbursed him for this travel?**

Yes

- i. If not, at whose expense does this travel occur?**

Commissioner Palmer has been reimbursed \$1,436.67 for travel to Silver Spring.

- j. Since his duty station was established in St. Johns, Florida, how much has the EAC covered or reimbursed Commissioner Palmer for travel between Silver Spring and his duty station in St. John's Florida?**

\$1,436.67, since joining the EAC through the third quarter of FY 2019

- k. Since establishing his duty station in St. Johns, Florida, how many times would you estimate Commissioner Palmer has actually been present at EAC headquarters?**

Commissioner Palmer travels extensively to meet with election administrators nationwide. The Commissioners have collectively traveled to more than 25 states for activities in 2019 alone. Each Commissioner comes to the EAC office as their schedules allow, but has contact with some members of staff, usually the Executive Director or General Counsel, on a daily basis. However, day-to-day operations of the agency and oversight of agency employees does not rest with one Commissioner or all Commissioners, all political appointees. The EAC Operation Management Policy Statement adopted in 2015 delineates the policymaking responsibilities of each Commissioner and the responsibility of the Executive Director for day-to-day operations of the agency. (Commissioner Palmer)

- l. Please provide the total the EAC has spent on each of the following respective individuals travelling between their duty station and Silver Spring, Maryland:**

Margaret Ollove

\$0

Jessica Bowers

\$0

Jerome Lovato

\$334.88 through the third quarter of FY2019

- m. On what grounds were certain individuals allowed to establish their duty stations a far distance from the EAC's headquarters?**

The Executive Director based his duty station determinations on reasonable accommodation issues, situations where a staff member's duty station outside of Silver Spring was for the convenience or in the best interest of the agency, and after discussions with OPM, GSA, EAC's Human Resources Director and EAC's General Counsel related to 5 CFR 531.605.

- n. Is there an internal policy on the establishment of duty stations away from EAC's headquarters? If so, please share.**

No

o. Who signed off on the establishment of these duty stations?

The Executive Director signed off on the establishment for duty stations since 2016; before 2016 it is assumed that the person signing off was either the Chief Operating Officer or the Executive Director.

p. Under what authority did the individual signing off on these duty stations sign off on the distant duty stations?

5 CFR 531.605

q. Are travel costs for distant duty stations automatically paid, or are they reviewed and approved by someone? Who is that individual?

Staff travel is discussed and pre-approved by the Executive Director prior to any staff traveling on behalf of the agency. Travel cost then goes through the standard travel process, which requires input into the Concur travel system and the necessary sign offs for the expense to be incurred. However, this does not imply that staff approves or disapproves Commissioner travel.

Question 23. In Attachment G of your responses, Current Commissioner Donald Palmer is listed as an individual hired during Executive Director Brian Newby's tenure at the EAC. Donald Palmer was paid \$73,946 for part-time work at the EAC.

a. What work was Mr. Palmer then doing for the EAC? Please provide a detailed list of deliverables and major accomplishments in this part-time role.

The EAC posted a position to conduct a national search for an expert on the National Voter Registration Act (NVRA) and, even more specifically, the challenges election officials have in understanding and executing the requirements of this law. A number of candidates across the nation applied for the position, and Mr. Palmer was selected as the most qualified candidate. He is an attorney with past experience in enforcing the NVRA and HAVA at the Department of Justice, advising counties on compliance with the NVRA at DOJ and state election offices, and implementing the NVRA at the state level as an election administrator. He served as the chief election official in Virginia and the NVRA Coordinator in both Virginia and Florida. As an attorney and former chief election official, his legal experience with the NVRA and election administration was extremely valuable to the EAC. He is one of the few experts on the NVRA in the country who has both legal and practicable experience. Compared to the cost of outside attorneys without specific expertise in this area or other non-attorney experts available, his advice and research on this voting rights law was of significant value to the agency.

b. Please provide Mr. Palmer's contract, or multiple contracts, for the period of his employment with the EAC as a part-time employee, and as a Commissioner.

Mr. Palmer worked as a part-time employee for the EAC. He did not work as a contractor in any capacity; thus, there are no contracts.

c. Besides the Bipartisan Policy Center, what additional clients if any did Mr. Palmer work for during his time as a part-time employee with the EAC?

Mr. Palmer also consulted under the business Palmer Squared Inc. for the following clients while Mr. Palmer worked as a part-time employee with the EAC: Lawyers Democracy Fund and American Civil Rights Union. (Commissioner Palmer)

Other part-time employees you noted in Attachment G were paid in the range of \$1,170 to \$8,440, and had assignments that lasted for about three months, while not working for any other employers.

- a. Please explain the choice to retain Mr. Palmer for over a year as a part-time employee, as compared to other short-term part-time employees.**

The previous response that showed Mr. Palmer as a part-time employee related to a question for persons hired during the tenure of Executive Director Brian Newby. There were other part-time employees who have worked or are working in this period, but they were not hired by Mr. Newby.

These employees are listed below so that Mr. Palmer's tenure can be viewed in a fuller context:

Years	Employee	Total Compensation (through July 6, 2019)*
2016-Current	Mark Abbott	\$ 372,019.33
2016-2018	Thomas Caddy	\$ 234,555.00
2016	Denise Lamb	\$ 4,012.50
2016-2019	Margaret Ollove	\$ 25,402.74
2016	Connie Schmidt	\$ 2,062.00
2016-2018	Thomas Watson	\$ 219,260.00

*All of these employees worked part-time for the EAC before Mr. Newby's tenure, previous to 2016, but the compensation only reflects the years stated above.

- b. Please explain the relative pay disparity between Mr. Palmer and other part-time employees (as even accounting for the fact that Mr. Palmer worked a longer period, his rate of pay seems significantly higher).**

Mr. Palmer is an attorney and his hourly rate, for example, was the same as paid to Ms. Lamb and Ms. Schmidt, was \$20/hour per hour less than Mr. Caddy and Mr. Watson.

- c. Please provide your conflict of interest assessment for Mr. Palmer maintaining employment at the Bipartisan Policy Center while also being paid by the EAC.**

The General Counsel reviewed the **Conflict of Interest** (18 U.S.C. § 208(a) & 5 C.F.R. § 2635.402) provisions, the **Impartiality in Performing Official Duties** (5 C.F.R. § 2635.502) provisions and the **Outside Activities** (5 C.F.R. § 2635.802) provisions regarding Mr. Palmer's employment.

The analysis involved whether the outside employment would create a conflict of interest

(18 U.S.C. §208(a) & 5 C.F.R. § 2635.402) or the appearance of a conflict of interest (5 C.F.R. § 2635.502) such that "it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired."

Because the Bipartisan Policy Center does not contract with the EAC, is not a grantee of the EAC, nor is it a prohibited source of the EAC, it was determined that the employee would not have a conflict of interest with the outside employment.

d. What work was Mr. Palmer doing with the Bipartisan Policy Center?

Mr. Palmer's projects at the Bipartisan Policy Center related to recommendations from the Presidential Commission on Election Administration (PCEA) created by executive order by President Obama: Projects included a national line data collection program with analysis of the voter wait times in 2014 and 2016; Online voter registration briefings; ERIC registration modernization and data-sharing briefings; Large County meeting preparation for general elections; Voting Technology Meetings. (Commissioner Palmer)

Mr. Palmer's nomination to the EAC is noted as received in the Senate on July 18, 2018. Attachment G notes that Mr. Palmer was in the employ of the EAC at this time, having served as a part-time employee from January 1, 2018, to February 4, 2019. In fact, Mr. Palmer's part-time work appears to have ended on February 4, 2019, more than a month after he was confirmed to become a Commissioner by the Senate on January 2, 2019. Thus, it seems that while Mr. Palmer was awaiting confirmation (for a position in which he would have the power to extend the term of the current Executive Director), and even after he was confirmed, he was being paid by the same Executive Director, via the EAC, for part-time employment. This raises at least the appearance of impropriety, if not impropriety itself.

e. Who approved Mr. Palmer's part-time employment contract?

Mr. Palmer did not have a part-time employment contract. He was an EAC employee, hired by the Executive Director.

f. How was his pay decided?

His pay was commensurate with other part-time employees and recommended by EAC's HR manager. Mr. Palmer is an attorney, but was paid at the same hourly rate, for instance, as Connie Schmidt and Denise Lamb. He was paid \$20 per hour less than Thomas Caddy and Thomas Watson.

g. Who approved his pay?

The Executive Director approves all hourly pay and salary levels for employees.

h. At any time, was there any internal deliberation or discussion about the propriety of these multiple roles for Mr. Palmer—as part-time employee, nominee, and then confirmed appointee?

Until he was sworn in as Commissioner, Mr. Palmer had only one role with the EAC and that was as an employee. The EAC is not involved with the decision to nominate a

potential Commissioner. Some nominees never received Senate confirmation. The U.S. Government was “shut down,” due to a lapse in funding when Mr. Palmer was confirmed and no employee could process any paperwork related to a change in roles until a funding solution was reached. There were brief deliberations between the EAC, OPM, and GSA to determine if the Commissioners could be on-boarded during this time but neither GSA nor the EAC considered this activity to qualify as an excepted staff activity in times of government shutdown. Further, during the nomination and clearance process, discussions were held involving the General Counsel and Mr. Palmer that, once confirmed, Mr. Palmer would cease serving as an employee of the agency and cease all other outside employment activities. This understanding was set forth in an ethics agreement.

i. **If they did occur, please describe the content of the discussions, and between what parties did they occur?**

The Executive Director, the General Counsel, Human Resources Director, and the Office of Government Ethics engaged in discussions at some point. Part of the discussion involved the likelihood of the confirmation, the wrapping up of any projects that he was working on and the ceasing of activities after confirmation. It is also important to note that while Mr. Palmer remained listed as a part-time employee until February 4, 2019, he was not added as a Commissioner because the EAC was in a furlough period. All HR activities were suspended; the agency had not designated human resource employees as essential excepted employees, except for activities related to unemployment benefits of employees who had requested unemployment benefits. GSA emailed the EAC’s HR Director on January 17 to explain that GSA could not perform work for the EAC while furloughed.

As you are aware, the Committee is concerned about the possibility of a vacancy in the Executive Director position when Mr. Brian Newby’s term expires some time in November 2019. As you correctly noted during the EAC’s Oversight Hearing, HAVA Sec. 204(a)(2) provides that “An Executive Director may serve for a longer period only if reappointed for an additional term or terms by a vote of the Commission.”

Commissioner Palmer will serve as an important vote in the decision of whether to continue your existing Executive Director’s term. Yet Commissioner Palmer was hired to the EAC by the current Executive Director, and received at least \$73,946 from the agency during the current Executive Director’s term, raising questions about the appearance of a quid pro quo and a conflict of interest with regard to voting on Mr. Newby’s continuance.

j. **Does Commissioner Palmer have an ethics waiver to vote on continuing Mr. Newby’s tenure as Executive Director since he was being paid by Mr. Newby as a part-time employee while Mr. Newby was Executive Director?**

The agency has not discussed an ethics waiver with the Office of Government Ethics (OGE) as the General Counsel is not certain that a waiver is necessary. However, he has broached

the subject with the OGE and anticipates continued discussions with OGE. Any waiver, if necessary would involve a consult with the OGE prior to a waiver being granted.

k. **Should he recuse himself from this vote?**

It is the EAC's General Counsel's position that no Commissioner is in a position to be recused from this vote at this time without further consultation with OGE.

l. **Please provide the Committee with a formal ethics opinion on this question by August 12, 2019.**

A formal opinion is not available at this time. However, an opinion may be provided after our consultation with OGE.

We appreciate the agency's willingness to be forthcoming about its personnel decisions. Per Question 23, the Committee requested information on "all staff, consultants, or any other person paid any amount during Executive Director Brian Newby's tenure at the EAC." Responding to our question, you noted in Attachment G that Mr. Palmer's employment with the EAC as a part-time employee ran from January 1, 2018, to February 4, 2019. Yet in an e-mail from Cristy McCormick to Andrew Kossack dated July 30, 2017 and recommending that "we consider hiring Don Palmer to oversee/consultant [sic] on the data project," of the Presidential Advisory Commission on Election Integrity (or the "Kobach Commission") Ms. McCormick referenced that Mr. Palmer is "currently working on an NVRA project for the EAC as a contractor." Mr. Newby was appointed in November 2015, so the contract referenced here by Ms. McCormick would have been awarded during Mr. Newby's tenure. Yet this contractor position was not reflected in your answers to the Committee.

m. **Please provide clarity on the dates of Mr. Palmer's employment with the EAC.**

Mr. Palmer worked for the EAC beginning January 1, 2018, until he was confirmed by the U.S. Senate as a Commissioner. The EAC was not operating at this time due to a lengthy government shutdown. His paperwork was changed to reflect his start date when he and Ben Hovland began service as EAC Commissioners in the first pay period following the end of the government shutdown.

n. **Ms. McCormick referred to Mr. Palmer as an EAC consultant as of July 2017. Please provide his contract for this specific position.**

Mr. Palmer did not work as a consultant to the EAC in July 2017 and, in fact, never worked as a consultant for the EAC.

o. **Please provide clarity on whether Mr. Palmer was initially a consultant, and subsequently hired as a part-time employee. If so, please provide the total amount paid for his initial consultancy distinct from the \$73,946 you mentioned in Attachment G.**

Mr. Palmer did not work as a consultant to the EAC in July 2017 and, in fact, never worked as a consultant for the EAC.

p. **What were Mr. Palmer's major deliverables and accomplishment during his consultancy?**

Mr. Palmer provided regular advice to EAC on the NVRA and election administration best practices. For example, he monitored NVRA litigation across the country, including the Supreme Court case of *Husted v. A. Philip Randolph Institute* that defined the parameters of address list maintenance permissible under the NVRA. He researched and provided a briefing at the EAC Data Summit proposing a summary of new technological options available to states and counties in conducting list maintenance. In that appearance, he participated on a panel of experts to highlight local best practices in voter registration maintenance. In the course of his research, he interviewed a number of state and local election officials in the development of best practices in list maintenance to supplement the FEC former guidance on the NVRA, and provided written content to staff for the future development of a number of quick start guides designed to be used by state and local election officials.

- q. **In that email, Ms. McCormick refers to Mr. Palmer as “a believer in the cause” while referring him to work in elections oversight. Please explain Ms. McCormick’s statement.**

The EAC was created with the passage of the Help America Vote Act (HAVA) under the premise that all voting-age Americans should be able to freely and conveniently vote in a an independent, secure, and private manner. Chairwoman McCormick, like her fellow EAC Commissioners, are committed to these values. Ms. McCormick worked for the Department of Justice on assignment in Iraq and saw first-hand the difficulty members of the military encountered to vote, and she knew that Mr. Palmer, a military veteran, had experienced this as well and like his election administrator peers, also had a commitment to the values protected by HAVA. (Commissioner McCormick).

Additional Questions.

Supplemental Question 1. Committee on House Administration staff have twice privately requested a copy of the OPM Report referenced during the Committee’s Oversight hearing. EAC staff has not provided a copy to this Committee and has not responded to either of the two requests.

- a. **Please provide a copy of the OPM report with your answers to these questions.**

We apologize for this oversight. Upon reading these questions, our General Counsel realized the report had not been sent and has since responded to staff of both parties with the report as provided to Senate Committee on Rules and Administration staff.

Supplemental Question 2. On July 14, 2019 the AP reported that voting machines provided by two of the three major vendors (ES&S and Hart) run on dated versions of Microsoft Windows. On January 14, 2020—the 10-year anniversary of the release of Windows 7—Microsoft will stop supporting security updates for Windows 7. That Microsoft will cease support is not a new revelation. As early as 2012 it was well known that in 2020 Microsoft would stop supporting security patches for Windows 7. The AP story also reported that the EAC has recently certified voting machines that run on Windows 7 (as recently as the

spring of 2019) and will not have security updates from Microsoft within 6 months of certification.

- a. **Does the EAC certification process evaluate the underlying software the machine runs on? If so, how?**

Yes, the EAC's testing and certification process evaluates the underlying software of a voting system. In order to be certified by the EAC, a voting system must meet all of the requirements of the applicable voting system standard (i.e. Voluntary Voting System Guidelines 1.0). Section 5 of VVSG 1.0 Volume I describes software requirements.

- b. **Does the EAC de-certify machines that run on Windows (or other operating systems) when the parent company ceases to put out security patches?**

Decertification of an election system has wide-reaching consequences, affecting manufacturers, election administration at the state and local levels, as well as voters. The EAC takes the matter of decertification very seriously and has a specific policy in place to handle such action. Per that policy, when there is credible information presented to the EAC that a system is not in compliance with the VVSG, the agency begins the process of decertifying that system in accordance with the policy detailed in Section 7 of the Voting System Testing and Certification Manual. The decertification policy is included as **Attachment B** for your information.

Based on the decertification policy detailed in the Voting System Testing and Certification Manual, the EAC does not have grounds to decertify any ES&S product that uses software that is no longer supported by a third-party vendor. These products have been previously certified to be in compliance with the VVSG and this certification continues to the present.

- c. **Would a machine fail certification if it were running an operating system that was no longer being supported for security patches?**

Yes.

- d. **Is there a cut-off for how far into the future the operating system needs to support security patches to pass certification?**

No. Neither the Voluntary Voting System Guidelines nor the EAC's Testing & Certification Program Manual determine a cut-off.

- e. **Would a machine pass if the operating system was not going to be supported in one month? Six months?**

All voting systems must meet applicable voting systems standards. A voting system would be certified if it meets these standards.

- f. **How will the EAC handle ES&S products running on Windows 7 after patches are discontinued on January 14, 2020?**

The EAC has independently reached out to Microsoft to request information about its plan to support aging software and whether vendors and election officials will have access to software support that protects their systems. We learned that Microsoft had already announced that it would offer extended security updates for Windows 7 for a nominal cost per license through 2023. Microsoft advised the EAC directly that it "made

a commitment to provide 10 years of product support for Windows 7 when it was released on October 22, 2009. When this 10-year period ends, Microsoft will discontinue Windows 7 support. The specific end of support day for Windows 7 will be January 14, 2020. Microsoft's goal however is to keep people secure. For this reason, Microsoft has not only provided long lead times in notifying customers of the end of life for Windows 7, but has also offered low price paid extended security updates through 2023."

g. **Would the EAC decertify those machines? If not, why not?**

Based on the decertification policy detailed in the Voting System Testing and Certification Manual, the EAC does not have grounds to decertify any ES&S product that uses software that is no longer supported by a third-party vendor. These products have been previously certified to be in compliance with the VVSG and this certification continues to the present.

h. **For ES&S machines that run Windows 7, does the EAC need to recertify a machine if ES&S subsequently upgrades to Windows 10? If so, are there any machines currently in the certification process? What is the best estimate of when the machines will be certified?**

In May 2019, ES&S submitted for certification a modification to its EVS system. This modification includes the use of Windows 10, as well as Windows Server 2016 for its election management system. The test plan has been approved by the EAC and testing is underway. The best estimate for this voting system to be certified is mid-October 2019.

Attachment A



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

2019 Election Assistance Commission Statement on Non-Discrimination and Equal Employment Opportunity

The U.S. Election Assistance Commission (EAC) is firmly committed to promoting and maintaining a work environment that ensures equality of opportunity for all of its employees and applicants for employment without regard to race, color, religion, sex, national origin, age, disability, genetic information, sexual orientation, gender identity, political affiliation, marital status, parental status, or retaliation for participating in equal employment opportunity activity. Therefore, in accordance with Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the Age Discrimination Act, as amended; the Rehabilitation Act of 1973, as amended, the Genetic Information Nondiscrimination Act of 2008, Presidential Executive Orders, and all other relevant laws, regulations, and agency practices, it is the intent of the EAC to prohibit discrimination in the terms, conditions, and privileges of employment.

Our mission is to serve all voters and to work with states and other federal agencies to improve the administration and conduct of elections and to insure confidence and integrity in the election process. Given our mission, it is appropriate that we ensure that our own employees are afforded a fair opportunity to develop and to contribute fully to the achievement of the EAC mission. If we are to succeed in helping a diverse population of voters from all over America, EAC's workforce must reflect the very best that our country has to offer, and maximize the use of diverse employees and their talents. Our human resources programs must reflect equal opportunity in areas of hiring, professional growth, promotion, leadership development and training. Not only do we seek the most qualified persons to perform our tasks, but we also seek a workforce that is representative of America. This principle is not only based in law; it is the right thing to do.

The EAC prohibits discrimination in all aspects of its personnel and employment practices and procedures and management practices and decisions, including, but not limited to, recruitment/hiring, merit promotion, transfer, reassignments, training and career development, benefits, and separation. We promote programs of affirmative recruitment and employment at all levels of the EAC. The EAC subscribes to, and will implement to the full extent, all applicable laws that promote equality of opportunity. The EAC expects all employees, supervisors, managers, and senior leadership to commit and adhere to sharing the responsibility of maintaining a work environment that is free of discrimination,

retaliation, and harassment. The EAC takes allegations of discrimination, retaliation, and harassment seriously. Therefore, if any employee or applicant believes he or she has been discriminated against, you may pursue your claim through EAC's Employment Discrimination Process. All allegations will be immediately investigated and handled with the appropriate level of confidentiality. Where allegations are substantiated, appropriate action will be taken. All EAC staff will be held accountable for their conduct and performance as public servants. Employees are expected to promptly bring any concerns about discrimination, retaliation, or harassment, in any form, to the attention of management. Managers are expected to promptly identify and correct any discriminatory practices and behavior.

The EAC is firmly committed to fostering a culture that values diversity and complies with our nation's equal employment opportunity and civil rights laws. Diversity enhances EAC's ability to accomplish its mission by bringing people together with a wide range of skills, approaches and experience. The EAC is also committed to creating and maintaining both a high quality work environment for all employees and an Agency that delivers programs and services to all people with utmost fairness, integrity, and equality.

Dated this 3 day of May 2019


Brian D. Newby, Executive Director

Attachment B

7. Decertification

7.1. Overview. Decertification is the process by which the EAC revokes a certification previously granted to a voting system. It is an important part of the Certification Program because it serves to ensure the standards of the program are followed and certified voting systems fielded for use in Federal elections maintain the same level of quality as those presented for testing. Decertification is a serious matter. Its use will significantly affect Manufacturers, State and local governments, the public, and the administration of elections. As such, the process for Decertification is complex. It is initiated when the EAC receives information that a voting system may not be in compliance with the Voluntary Voting System Guidelines or the procedural requirements of this Manual. Upon receipt of this information, the Program Director may initiate an Informal Inquiry to determine the credibility of the information. If the information is credible and suggests the system is non-compliant, a Formal Investigation will be initiated. If the results of the Formal Investigation demonstrate non-compliance, the Manufacturer will be provided a Notice of Non-Compliance. Before a final decision on Decertification is made, the Manufacturer will have the opportunity to remedy any defects identified in the voting system and present information for consideration by the Decertification Authority. A Decertification of a voting system may be appealed in a timely manner.

7.2. Decertification Policy. Voting systems certified by the EAC are subject to Decertification. Systems shall be decertified if (1) they are shown not to meet applicable Voluntary Voting System Guidelines standards, (2) they have been modified or changed without following the requirements of this Manual, or (3) the Manufacturer has otherwise failed to follow the procedures outlined in this Manual and the quality, configuration, or compliance of the system is in question. Systems will be decertified only after completion of the process outlined in this chapter.

7.3. Informal inquiry. An Informal Inquiry is the first step taken when information is presented to the EAC that suggests a voting system may not be in compliance with the Voluntary Voting System Guidelines standards or the procedural requirements of this Manual.

7.3.1. Informal Inquiry Authority. The authority to conduct an Informal Inquiry shall rest with the Program Director.

7.3.2. Purpose. The sole purpose of the Informal Inquiry is to determine whether a Formal Investigation is warranted. The outcome of an Informal Inquiry is limited to a decision on referral for investigation.

7.3.3. Procedure. Informal Inquiries do not follow a formal process.

7.3.3.1. Initiation. Informal Inquiries are initiated at the discretion of the Program Director. They may be initiated any time the Program Director receives

attributable, relevant information that suggests a certified voting system may require Decertification. The information shall come from a source that has directly observed or witnessed the reported occurrence. Such information may be a product of the Certification Quality Monitoring Program (see Chapter 8). Information may also come from State and local election officials, voters or others who have used or tested a given voting system. The Program Director may notify a Manufacturer that an Informal Inquiry has been initiated, but such notification is not required. Initiation of an inquiry shall be documented through the creation of a Memorandum for the Record.

7.3.3.2. *Inquiry.* The Informal Inquiry process is limited to inquiries necessary to determine whether a Formal Investigation is required. In other words, the Program Director shall conduct such inquiry necessary to determine (1) the accuracy of the information obtained; and (2) if the information, if true, would serve as a basis for Decertification. The nature and extent of the inquiry process will vary depending on the source of the information. For example, an Informal Inquiry initiated as a result of action taken under the Certification Quality Monitoring Program will often require the Program Director merely to read the report issued as a result of the Quality Monitoring action. On the other hand, information provided by election officials or by voters who have used a voting system may require the Program Director (or assigned technical experts) to perform an in-person inspection or make inquiries of the Manufacturer.

7.3.3.3. *Conclusion.* An Informal Inquiry shall be concluded after the Program Director determines the accuracy of the information that initiated the inquiry and whether that information, if true, would warrant Decertification. The Program Director may make only two conclusions: (1) refer the matter for a Formal Investigation or (2) close the matter without additional action or referral.

7.3.4. Closing the Matter without Referral. If the Program Director determines, after Informal Inquiry, a matter does not require a Formal Investigation, the Program Director shall close the inquiry by filing a Memorandum for the Record. This document shall state the focus of the inquiry, the findings of the inquiry and the reasons a Formal Investigation was not warranted.

7.3.5. Referral. If the Program Director determines, after Informal Inquiry, a matter requires a Formal Investigation, the Program Director shall refer the matter in writing to the Decision Authority. In preparing this referral, the Program Director:

7.3.5.1. State the facts that served as the basis for the referral.

7.3.5.2. State the findings of the Program Director.

7.3.5.3. Attach all documentary evidence that served as the basis for the conclusion.

7.3.5.4. Recommend a Formal Investigation, specifically stating the system to be investigated and the scope and focus of the proposed investigation.

7.4. Formal Investigation. A Formal Investigation is an official investigation to determine whether a voting system warrants Decertification. The end result of a Formal Investigation is a Report of Investigation.

7.4.1. Formal Investigation Authority. The Decision Authority shall have the authority to initiate and conclude a Formal Investigation by the EAC.

7.4.2. Purpose. The purpose of a Formal Investigation is to gather and document relevant information sufficient to make a determination on whether an EAC-certified voting system warrants Decertification consistent with the policy put forth in Section 7.2.

7.4.3. Initiation of Investigation. The Decision Authority shall authorize the initiation of an EAC Formal Investigation.

7.4.3.1. *Scope.* The Decision Authority shall clearly set the scope of the investigation by identifying (in writing) the voting system (or systems) and specific procedural or operational non-conformance to be investigated. The non-conformance to be investigated shall be set forth in the form of numbered allegations.

7.4.3.2. *Investigator.* The Program Director shall be responsible for conducting the investigation unless the Decision Authority appoints another individual to conduct the investigation. The Program Director (or Decision Authority appointee) may assign staff or technical experts, as required, to investigate the matter.

7.4.4. Notice of Formal Investigation. Upon initiation of a Formal Investigation, notice shall be given to the Manufacturer of the scope of the investigation, which shall include:

7.4.4.1. Identification of the voting system and specific procedural or operation non-conformance being investigated (scope of investigation).

7.4.4.2. An opportunity for the manufacturer to provide relevant information in writing.

7.4.4.3. An estimated timeline for the investigation.

7.4.5. Investigation. Investigations shall be conducted impartially, diligently, promptly, and confidentially and shall utilize appropriate techniques to gather the necessary information.

- 7.4.5.1. *Fair and Impartial Investigation.* All Formal Investigations shall be conducted in a fair and impartial manner. All individuals assigned to an investigation must be free from any financial conflicts of interest.
- 7.4.5.2. *Diligent Collection of Information.* All investigations shall be conducted in a meticulous and thorough manner. Investigations shall gather all relevant information and documentation that is reasonably available. The diligent collection of information is vital for informed decision making.
- 7.4.5.3. *Prompt Collection of Information.* Determinations that may affect the administration of Federal elections must be made in a reasonable, yet expedited manner. The EAC's determinations on Decertification will affect the actions of State and local election officials conducting elections and as such, all investigations regarding Decertification must proceed with an appropriate sense of urgency.
- 7.4.5.4. *Confidential Collection of Information.* Consistent with Federal law, information pertaining to a Formal Investigation should not be made public until the Report of Investigation is complete. The release of incomplete and unsubstantiated information or predecisional opinions that may be contrary or inconsistent with the final determination of the EAC could cause public confusion or could unnecessarily negatively affect public confidence in active voting systems. Such actions could serve to impermissibly affect election administration and voter turnout. All predecisional investigative materials must be appropriately safeguarded.
- 7.4.5.5. *Methodologies.* Investigators shall gather information by means consistent with the four principles noted above. Investigative tools include (but are not limited to) the following:
- 7.4.5.5.1. Interviews. Investigators may interview individuals (such as State and local election officials, voters, or manufacturer representatives). All interviews shall be reduced to written form; each interview should be summarized in a statement that is reviewed, approved, and signed by the interviewee.
 - 7.4.5.5.2. Field audits.
 - 7.4.5.5.3. Manufacturer site audits.
 - 7.4.5.5.4. Written interrogatories. Investigators may pose specific, written questions to the Manufacturer for the purpose of gathering information relevant to the investigation. The Manufacturer shall

respond to the queries within a reasonable timeframe (as specified in the request).

7.4.5.5.5. System testing. Testing may be performed in an attempt to reproduce a condition or failure that has been reported. This testing will be conducted at a VSTL as designated by the EAC.

7.4.5.6. *Report of Investigation*. The end result of a Formal Investigation is a Report of Investigation.

7.4.6. Report of Investigation. The Report of Investigation serves primarily to document: (1) all relevant and reliable information gathered in the course of the investigation; and (2) the conclusion reached by the Decision Authority.

7.4.6.1. *When Complete*. The report is complete and final when certified and signed by the Decision Authority.

7.4.6.2. *Contents of the Report of Investigation*. The following shall be included in the written report:

7.4.6.2.1. The scope of the investigation, identification of the voting system and specific matter investigated.

7.4.6.2.2. Description of the investigative process employed.

7.4.6.2.3. Summary of the relevant and reliable facts and information gathered in the course of the investigation.

7.4.6.2.4. All relevant and reliable evidence collected in the course of the investigation that documents the facts shall be documented and attached.

7.4.6.2.5. Analysis of the information gathered.

7.4.6.2.6. Statement of the findings of the investigation.

7.4.7. Findings, Report of Investigation. The Report of Investigation shall state one of two conclusions. After gathering and reviewing all applicable facts, the report shall find each allegation investigated to be either (1) substantiated or (2) unsubstantiated.

7.4.7.1. *Substantiated Allegation*. An allegation is substantiated if a preponderance of the relevant and reliable information gathered requires the voting system in question

to be decertified (consistent with the policy set out in Section 7.2). If any allegation is substantiated a Notice of Non-Compliance shall be issued.

7.4.7.2. *Unsubstantiated Allegation.* An allegation is unsubstantiated if the preponderance of the relevant and reliable information gathered does not warrant Decertification (see Section 7.2). If all allegations are unsubstantiated, the matter shall be closed and a copy of the report forwarded to the Manufacturer.

7.4.8. Publication of Report. The report shall not be made public nor released to the public until final.

7.5. **Effect of Informal Inquiry or Formal Investigation on Certification.** A voting system's EAC certification is not affected by the initiation or conclusion of an Informal Inquiry or Formal Investigation. Systems under investigation remain certified until a final Decision on Decertification is issued by the EAC.

7.6. **Notice of Non-Compliance.** If an allegation in a Formal Investigation is substantiated, the Decision Authority shall send the Manufacturer a Notice of Non-Compliance. The Notice of Non-Compliance is not, itself, a Decertification of the voting system. The purpose of the notice is to (1) notify the Manufacturer of the non-compliance and the EAC's intent to Decertify the system; and (2) inform the Manufacturer of its procedural rights so that it may be heard prior to Decertification.

7.6.1. Noncompliance Information. The following shall be included in a Notice of Non-Compliance:

7.6.1.1. A copy of the Report of Investigation to the Manufacturer.

7.6.1.2. The non-compliance, consistent with the Report of Investigation.

7.6.1.3. Notification to the Manufacturer that if the voting system is not made compliant, the voting system will be decertified.

7.6.1.4. State the actions the Manufacturer must take, if any, to bring the voting system into compliance and avoid Decertification.

7.6.2. Manufacturer's Rights. The written Notice of Non-compliance shall also inform the Manufacturer of its procedural rights under the program, which include the following:

7.6.2.1. *Right to Present Information Prior to Decertification Decision.* The Manufacturer shall be informed of its right to present information to the Decision Authority prior to a determination of Decertification.

7.6.2.2. *Right to Have Access to the Information That Will Serve as the Basis of the Decertification Decision.* The Manufacturer shall be provided the Report of Investigation and any other materials that will serve as the basis of an agency Decision on Decertification.

7.6.2.3. *Right to Cure System Defects Prior to the Decertification Decision.* A Manufacturer may request an opportunity to cure within 20 calendar days of its receipt of the Notice of Non-Compliance.

7.7. Procedure for Decision on Decertification. The Decision Authority shall make and issue a written Decision on Decertification whenever a Notice of Non-Compliance is issued. The Decision Authority will not take such action until the Manufacturer has had a reasonable opportunity to cure the non-compliance and submit information for consideration.

7.7.1. Opportunity to Cure. The Manufacturer shall have an opportunity to cure a non-conformant voting system in a *timely* manner prior to Decertification. A cure shall be considered timely when the process can be completed before the next Federal election, meaning that any proposed cure must be in place before *any* individual jurisdiction fielding the system holds a Federal election. The Manufacturer must request the opportunity to cure and if the request is approved, a compliance plan must be created, approved by the EAC, and adhered to. If the cure process is successfully completed, a Manufacturer may modify a non-compliant voting system, remedy procedural discrepancies, or otherwise bring its system into compliance without resubmission or Decertification.

7.7.1.1. *Manufacturer's Request to Cure.* Within 10 calendar days of receiving the EAC's Notice of Non-Compliance, a Manufacturer may request an opportunity to cure all defects identified in the Notice of Non-Compliance in a *timely* manner. The request must be sent to the Decision Authority and outline how the Manufacturer intends to modify the system, update the technical information (as required by Section 4.3.2), have a VSTL create a test plan and test the system, and obtain EAC approval before the next election for Federal office.

7.7.1.2. *EAC Action on Request.* The Decision Authority will review the request and approve it if the defects identified in the Notice of Non-Compliance may reasonably be cured before the next election for Federal office.

7.7.1.3. *Manufacturer's Compliance Plan.* Upon approval of the Manufacturer's request for an opportunity to cure, the Manufacturer shall submit a compliance plan to the Decision Authority for approval. This compliance plan must set forth the steps to be taken (including time frames) to cure all identified defects in a timely manner. The plan shall describe the proposed changes to the system, provide for modification of the system, update the technical information required by Section 4.3.2, include a test plan delivered to the EAC by the VSTL (testing the system

consistent with Section 4.4.2.3), and provide for the VSTL's testing of the system and submission of the test report to the EAC for approval. The plan shall also include a schedule of periodic progress reports to the Program Director.²

7.7.1.4. *EAC Action on the Compliance Plan.* The Decision Authority must review and approve the compliance plan. The Decision Authority may require the Manufacturer to provide additional information and modify the plan as required. If the Manufacturer is unable or unwilling to provide a Compliance Plan acceptable to the Decision Authority, the Decision Authority shall provide written notice terminating the "opportunity to cure" process.

7.7.1.5. *VSTL's Submission of the Compliance Plan Test Report.* The VSTL shall submit the test report created pursuant to the Manufacturer's EAC-approved Compliance Plan. The EAC shall review the test report and any other necessary or relevant materials. The report will be reviewed by the EAC in a manner similar to the procedures described in Chapter 4 of this Manual.

7.7.1.6. *EAC Decision on the System.* After receipt of the VSTL's test report, the Decision Authority shall issue a decision within 20 working days.

7.7.2. Opportunity to Be Heard. The Manufacturer may submit written materials in response to the Notice of Non-Compliance and Report of Investigation. These documents shall be considered by the Decision Authority when making a determination on Decertification. The Manufacturer shall ordinarily have 20 calendar days from the date it received the Notice of Non-Compliance (or in the case of a failed effort to cure, the termination of that process) to deliver its submissions to the Decision Authority. When warranted by public interest (because a delay in making a determination on Decertification would affect the timely, fair, and effective administration of a Federal election), the Decision Authority may request a Manufacturer to submit information within a condensed timeframe. This alternative period (and the basis for it) must be stated in the Notice of Non-Compliance and must allow the Manufacturer a reasonable amount of time to gather its submissions. Submissions may include the following materials:

7.7.2.1. A written argument responding to the conclusions in the Notice of Non-Compliance or Report of Investigation.

7.7.2.2. Documentary evidence relevant to the allegations or conclusions in the Notice of Non-Compliance.

² Manufacturers should also be cognizant of State certification procedures and local pre-election logic and accuracy testing. Systems that meet EAC guidelines will also be impacted by independent State and local requirements. These requirements may also prevent a system from being fielded, irrespective of EAC Certification.

7.7.3. Decision on Decertification. The Decision Authority shall make an agency determination on Decertification.

7.7.3.1. *Timing.* The Decision Authority shall promptly make a decision on Decertification. The Decision Authority may not issue such a decision, however, until the Manufacturer has provided all of its written materials for consideration or the time allotted for submission (usually 20 calendar days) has expired.

7.7.3.2. *Considered Materials.* The Decision Authority shall review and consider all relevant submissions by the Manufacturer. To reach a decision on Decertification, the Decision Authority shall consider all documents that make up the record and any other documented information deemed relevant.

7.7.3.3. *Agency Decision.* The Decision Authority shall issue a written Decision on Decertification after review of applicable materials. This decision shall be the final decision of the agency. The following shall be included in the decision:

7.7.3.3.1. The agency's determination on the Decertification, specifically addressing the areas of non-compliance investigated.

7.7.3.3.2. The issues raised by the Manufacturer in the materials it submitted for consideration.

7.7.3.3.3. Facts, evidence, procedural requirements, and/or voting system standards (VVSG or VSS) that served as the basis for the decision.

7.7.3.3.4. The reasoning for the decision.

7.7.3.3.5. Documented information, identified and provided as an attachment, that served as a basis for the decision and that was not part of the Manufacturer's submission or the Report of Investigation.

7.7.3.3.6. Notification to the Manufacturer of its right to appeal.

7.8. Effect of Decision Authority's Decision on Decertification. The Decision Authority's Decision on Decertification is the determination of the agency. A Decertification is effective upon the EAC's Publication or Manufacturer's receipt of the decision (whichever is earlier). A Manufacturer that has had a voting system decertified may appeal that decision.

7.9. Appeal of Decertification. A Manufacturer may, upon receipt of a Decision on Decertification, request an appeal in a timely manner.

7.9.1. Requesting Appeal.

7.9.1.1. *Submission.* Requests must be submitted by the Manufacturer in writing to the Chair of the U.S. Election Assistance Commission.

7.9.1.2. *Timing of Appeal.* The Manufacturer may request an appeal within 20 calendar days of receipt of the Agency Final Decision on Decertification. Late requests will not be considered.

7.9.1.3. *Contents of Request.* The following actions are necessary for the Manufacturer to write and submit a request for appeal:

7.9.1.3.1. Clearly state the specific conclusions of the Final Decision the Manufacturer wishes to appeal.

7.9.1.3.2. Include additional written argument, if any.

7.9.1.3.3. Do not reference or include any factual material not previously considered or submitted to the EAC.

7.9.1.4. *Effect of Appeal on Decertification.* The initiation of an appeal does not affect the decertified status of a voting system. Systems are decertified upon notice of Decertification in the agency's Decision on Decertification (see Section 7.8).

7.9.2. Consideration of Appeal. All timely appeals will be considered by the Appeal Authority.

7.9.2.1. The Appeal Authority shall consist of two or more EAC Commissioners or other individual(s) designated by the Commissioners who has not previously served as an investigator, advisor, or decision maker in the Decertification process.

7.9.2.2. All decisions on appeal shall be based on the record.

7.9.2.3. The decision of the Decision Authority shall be given deference by the Appeal Authority. Although it is unlikely that the scientific certification process will produce factual disputes, in such cases, the burden of proof shall belong to the Manufacturer to demonstrate by clear and convincing evidence that its voting system met all substantive and procedural requirements for certification. In other words, the determination of the Decision Authority will be overturned only when the Appeal Authority finds the ultimate facts in controversy highly probable.

7.9.3. Decision on Appeal. The Appeal Authority shall issue a written, final Decision on Appeal that shall be provided to the Manufacturer. Each Decision on Appeal shall be final and

binding and no additional appeal shall be granted. The following shall be included in a Decision on Appeal:

- 7.9.3.1. The final determination of the agency.
- 7.9.3.2. The matters raised by the Manufacturer on appeal.
- 7.9.3.3. The reasoning behind the decision.
- 7.9.3.4. Statement that the decision on appeal is final.

7.9.4. Effect of Appeal.

- 7.9.4.1. *Grant of Appeal.* If a Manufacturer's appeal is granted in whole, the decision of the Decision Authority shall be reversed and the voting system shall have its certification reinstated. For purposes of this program, the system shall be treated as though it was never decertified.
- 7.9.4.2. *Denial of Appeal.* If a Manufacturer's appeal is denied in whole or in part, the decertification decision of the Decision Authority shall be upheld. Therefore, the voting system shall remain decertified and no additional appeal shall be made available.

7.10. Effect of Decertification. A decertified voting system no longer holds an EAC certification under the EAC Certification Program. For purposes of this Manual and the program, a decertified system will be treated as any other uncertified voting system. As such, the effects of Decertification are as follows:

- 7.10.1. The Manufacturer may not represent the voting system as certified.
- 7.10.2. The voting system may not be labeled with a Mark of Certification.
- 7.10.3. The voting system will be removed from the EAC's list of certified systems.
- 7.10.4. The EAC will notify State and local election officials of the Decertification.

7.11. Recertification. A decertified system may be resubmitted for certification. Such systems shall be treated as any other system seeking certification. The Manufacturer shall present an application for certification consistent with the instructions of this Manual.

RON WYDEN
OREGON

RANKING MEMBER OF COMMITTEE ON
FINANCE

221 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5244

United States Senate
WASHINGTON, DC 20510-3703

COMMITTEES:

COMMITTEE ON FINANCE
COMMITTEE ON BUDGET
COMMITTEE ON ENERGY & NATURAL RESOURCES
SELECT COMMITTEE ON INTELLIGENCE
JOINT COMMITTEE ON TAXATION

July 12, 2019

The Honorable Christy McCormick
Chairwoman
U.S. Election Assistance Commission
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

Dear Chairwoman McCormick:

I write to better understand what the Election Assistance Commission (EAC) is doing to address the looming cybersecurity crisis created by states using out-of-date software to administer elections, leaving our democracy needlessly vulnerable to hackers.

As you are aware, there are currently no nationwide, mandatory cybersecurity standards for elections. No federal law or regulation makes it illegal for states to use election systems that run old operating systems with known software vulnerabilities that hackers can easily exploit. For example, it has been widely reported that the voting machines used by Georgia in the 2018 general election were running Windows 2000, an operating system that Microsoft stopped updating in 2010. Until 2015, Virginia used WiFi-connected, paperless voting machines which last received a security update in 2005 and used "abcde" as the administrator password.

This problem will only get worse. On January 14, 2020, Microsoft will stop providing security updates for its Windows 7 operating system. This operating system is widely used by ES&S, the largest voting machine manufacturer in the United States. It appears from documents published on the EAC website that every single release of ES&S' election management products, certified by the EAC from 2011 to May of this year, uses a version of Windows that will not receive security updates after January 14, 2020.

In February 2019, I asked the Department of Homeland Security (DHS) for data on the number of states that used voting machines with out-of-date, insecure software in the 2018 general election. In its response, DHS revealed that it does not have that data, and, as such, has no idea how vulnerable our election infrastructure is to foreign hackers.

Intelligence officials have made it clear that Russian hackers targeted our elections in 2016, and that they expect similar threats in 2020. The continued use of out-of-date software on voting machines and the computers used to administer elections lays out the red carpet for foreign hackers. This is unacceptable. Now more than ever, the American people expect that the government is taking the necessary steps to secure our elections from foreign attacks. To that end, please provide me with answers to the following questions by July 26, 2019:

911 NE 11TH AVENUE
SUITE 630
PORTLAND, OR 97232
(503) 326-7525

405 EAST 8TH AVE.
SUITE 2020
EUGENE, OR 97401
(541) 431-0229

SAC ANNEX BUILDING
105 FIR ST
SUITE 201
LA GRANDE, OR 97850
(541) 962-7691

U.S. COURTHOUSE
310 WEST 6TH ST
ROOM 118
MEDFORD, OR 97501
(541) 858-5122

THE JAMISON BUILDING
131 NW HAWTHORNE AVE
SUITE 107
BEND, OR 97701
(541) 330-9142

707 13TH ST, SE
SUITE 285
SALEM, OR 97301
(503) 589-4555

[HTTP://WYDEN.SENATE.GOV](http://wyden.senate.gov)

PRINTED ON RECYCLED PAPER

1. Do you expect that all of the voting machines and election management systems used by states and local governments in the November 2020 election will be running up-to-date, vendor-supported software? If not, which states do you expect to be using voting systems that run out-of-date software, and what is the EAC doing to address this serious cybersecurity problem?
2. Has the EAC directed ES&S to submit for certification updated products that use operating system software that will be supported by the manufacturer beyond November, 2020? If not, why not?
3. Does the EAC intend to decertify ES&S products that use Windows 7 before January 15, 2020? If not, why not?

If you have any questions regarding this request, please contact Chris Soghoian in my office.

Sincerely,



Ron Wyden
United States Senator



U.S. ELECTION ASSISTANCE COMMISSION
1335 EAST-WEST HIGHWAY, SUITE 4300
SILVER SPRING, MD 20910

July 26, 2019

Senator Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Wyden,

This letter is in response to your July 12, 2019 inquiry about the U.S. Election Assistance Commission's (EAC) plans to address concerns stemming from states operating election systems that use out-of-date software. I share your desire to ensure all Americans have confidence in our election system and to give state and local election leaders the support they need to administer secure, accessible, and efficient elections. With that in mind, I am pleased to provide the following answers to your questions:

1. Do you expect that all of the voting machines and election management systems used by states and local governments in the November 2020 election will be running up-to-date, vendor-supported software? If not, which states do you expect to be using voting systems that run out-of-date software, and what is the EAC doing to address this serious cybersecurity problem?

It is essential that all election systems in the field during the 2020 Presidential Election be secure and that election officials have the proper tools in place to administer efficient and accurate elections. The EAC is committed to working with state and local election leaders, as well as registered election system manufacturers and their software providers, to support this work.

Based on our direct and ongoing conversations with registered manufacturers, we are confident that they are working to address potential issues stemming from potentially outdated software, and that these companies are in regular communication with States to ensure systems in the field for the 2020 Presidential Election are functioning with supported software and that States have the ability to implement patches necessary to secure their systems. We also understand that election system manufacturers are in direct contact with Microsoft regarding support to the Windows 7 software and that they have received commitments from Microsoft regarding software support.

The EAC has independently reached out to Microsoft to request information about its plan to support aging software and whether election system manufacturers and election officials will have access to software support that protects their systems. We learned that Microsoft had already announced that it would offer extended security updates for Windows 7 for a nominal cost per license through 2023. Microsoft advised the EAC directly that it “made a commitment to provide 10 years of product support for Windows 7 when it was released on October 22, 2009. When this 10-year period ends, Microsoft will discontinue Windows 7 support. The specific end of support day for Windows 7 will be January 14, 2020. Microsoft’s goal however is to keep people secure. For this reason, Microsoft has not only provided long lead times in notifying customers of the end of life for Windows 7, but has also offered low price paid extended security updates through 2023.”

Microsoft has also published additional information regarding its software lifecycle policy on its website. That information can be found here:
<https://support.microsoft.com/en-us/help/4497181/lifecycle-faq-extended-security-updates>.

Be assured that the EAC is committed to disseminating information to the vendors and election officials related to securing voting systems that are operating on Windows 7.

Beyond directly contacting election system vendors and Microsoft, the EAC plans to host a security forum that brings together these entities with election system experts, government officials, as well as state and local election leaders to discuss the plan moving forward. It is essential that the election community and the EAC have a full appreciation not only for the scope of this specific software issue, but also the issues of patching and internet connectivity more broadly. The EAC has consistently championed the best practice of not connecting election systems to the internet at any stage of election administration, guidance we reiterate at our IT trainings around the nation and in resources available on our website. This tenant is also a cornerstone of the work that the EAC does in coordination with DHS and as an executive team member of the Government Coordinating Council.

2. Has the EAC directed ES&S to submit for certification updated products that use operating system software that will be supported by the manufacturer beyond November, 2020? If not, why not?

No. The EAC does not direct or influence the development cycles of any registered voting system manufacturer, including ES&S. That action would be outside of the scope of our mandate as defined by the Help America Vote Act of 2002.

Without our direction, however, in May 2019, ES&S submitted for certification a modification to its EVS system. This modification includes the use of Windows 10, as well as Windows Server 2016 for its election management system. The test plan has been approved by the EAC and testing is underway.

3. Does the EAC intend to decertify ES&S products that use Windows 7 before January 15, 2020? If not, why not?

Decertification of an election system has wide-reaching consequences, affecting manufacturers, election administration at the state and local levels, as well as voters. The EAC takes the matter of decertification very seriously and has a specific policy in place to handle such action. Per that policy, when there is credible information presented to the EAC that a system is not in compliance with the VVSG, the agency begins the process of decertifying that system in accordance with the policy detailed in Section 7 of the Voting System Testing and Certification Manual. The decertification policy is attached for your information.

Based on the decertification policy detailed in the Voting System Testing and Certification Manual, the EAC does not have grounds to decertify any ES&S product that uses software that is no longer supported by a third-party vendor. These products have been previously certified to be in compliance with the VVSG and this certification continues to the present.

Thank you for your inquiry. If you would more information on the EAC's work to help secure elections, please contact EAC Executive Director Brian Newby at bnewby@eac.gov or 301-563-3959.

Sincerely yours,

A handwritten signature in blue ink, reading "Christy A. McCormick". The signature is fluid and cursive, with a large, stylized "C" at the beginning and a long, sweeping underline.

Christy A. McCormick
Chairwoman
U.S. Election Assistance Commission

7. Decertification

- 7.1. Overview.** Decertification is the process by which the EAC revokes a certification previously granted to a voting system. It is an important part of the Certification Program because it serves to ensure the standards of the program are followed and certified voting systems fielded for use in Federal elections maintain the same level of quality as those presented for testing. Decertification is a serious matter. Its use will significantly affect Manufacturers, State and local governments, the public, and the administration of elections. As such, the process for Decertification is complex. It is initiated when the EAC receives information that a voting system may not be in compliance with the Voluntary Voting System Guidelines or the procedural requirements of this Manual. Upon receipt of this information, the Program Director may initiate an Informal Inquiry to determine the credibility of the information. If the information is credible and suggests the system is non-compliant, a Formal Investigation will be initiated. If the results of the Formal Investigation demonstrate non-compliance, the Manufacturer will be provided a Notice of Non-Compliance. Before a final decision on Decertification is made, the Manufacturer will have the opportunity to remedy any defects identified in the voting system and present information for consideration by the Decertification Authority. A Decertification of a voting system may be appealed in a timely manner.
- 7.2. Decertification Policy.** Voting systems certified by the EAC are subject to Decertification. Systems shall be decertified if (1) they are shown not to meet applicable Voluntary Voting System Guidelines standards, (2) they have been modified or changed without following the requirements of this Manual, or (3) the Manufacturer has otherwise failed to follow the procedures outlined in this Manual and the quality, configuration, or compliance of the system is in question. Systems will be decertified only after completion of the process outlined in this chapter.
- 7.3. Informal inquiry.** An Informal Inquiry is the first step taken when information is presented to the EAC that suggests a voting system may not be in compliance with the Voluntary Voting System Guidelines standards or the procedural requirements of this Manual.
- 7.3.1. Informal Inquiry Authority.** The authority to conduct an Informal Inquiry shall rest with the Program Director.
- 7.3.2. Purpose.** The sole purpose of the Informal Inquiry is to determine whether a Formal Investigation is warranted. The outcome of an Informal Inquiry is limited to a decision on referral for investigation.
- 7.3.3. Procedure.** Informal Inquiries do not follow a formal process.
- 7.3.3.1. Initiation.** Informal Inquiries are initiated at the discretion of the Program Director. They may be initiated any time the Program Director receives

attributable, relevant information that suggests a certified voting system may require Decertification. The information shall come from a source that has directly observed or witnessed the reported occurrence. Such information may be a product of the Certification Quality Monitoring Program (see Chapter 8). Information may also come from State and local election officials, voters or others who have used or tested a given voting system. The Program Director may notify a Manufacturer that an Informal Inquiry has been initiated, but such notification is not required. Initiation of an inquiry shall be documented through the creation of a Memorandum for the Record.

7.3.3.2. *Inquiry.* The Informal Inquiry process is limited to inquiries necessary to determine whether a Formal Investigation is required. In other words, the Program Director shall conduct such inquiry necessary to determine (1) the accuracy of the information obtained; and (2) if the information, if true, would serve as a basis for Decertification. The nature and extent of the inquiry process will vary depending on the source of the information. For example, an Informal Inquiry initiated as a result of action taken under the Certification Quality Monitoring Program will often require the Program Director merely to read the report issued as a result of the Quality Monitoring action. On the other hand, information provided by election officials or by voters who have used a voting system may require the Program Director (or assigned technical experts) to perform an in-person inspection or make inquiries of the Manufacturer.

7.3.3.3. *Conclusion.* An Informal Inquiry shall be concluded after the Program Director determines the accuracy of the information that initiated the inquiry and whether that information, if true, would warrant Decertification. The Program Director may make only two conclusions: (1) refer the matter for a Formal Investigation or (2) close the matter without additional action or referral.

7.3.4. Closing the Matter without Referral. If the Program Director determines, after Informal Inquiry, a matter does not require a Formal Investigation, the Program Director shall close the inquiry by filing a Memorandum for the Record. This document shall state the focus of the inquiry, the findings of the inquiry and the reasons a Formal Investigation was not warranted.

7.3.5. Referral. If the Program Director determines, after Informal Inquiry, a matter requires a Formal Investigation, the Program Director shall refer the matter in writing to the Decision Authority. In preparing this referral, the Program Director:

7.3.5.1. State the facts that served as the basis for the referral.

7.3.5.2. State the findings of the Program Director.

7.3.5.3. Attach all documentary evidence that served as the basis for the conclusion.

7.3.5.4. Recommend a Formal Investigation, specifically stating the system to be investigated and the scope and focus of the proposed investigation.

7.4. Formal Investigation. A Formal Investigation is an official investigation to determine whether a voting system warrants Decertification. The end result of a Formal Investigation is a Report of Investigation.

7.4.1. Formal Investigation Authority. The Decision Authority shall have the authority to initiate and conclude a Formal Investigation by the EAC.

7.4.2. Purpose. The purpose of a Formal Investigation is to gather and document relevant information sufficient to make a determination on whether an EAC-certified voting system warrants Decertification consistent with the policy put forth in Section 7.2.

7.4.3. Initiation of Investigation. The Decision Authority shall authorize the initiation of an EAC Formal Investigation.

7.4.3.1. *Scope.* The Decision Authority shall clearly set the scope of the investigation by identifying (in writing) the voting system (or systems) and specific procedural or operational non-conformance to be investigated. The non-conformance to be investigated shall be set forth in the form of numbered allegations.

7.4.3.2. *Investigator.* The Program Director shall be responsible for conducting the investigation unless the Decision Authority appoints another individual to conduct the investigation. The Program Director (or Decision Authority appointee) may assign staff or technical experts, as required, to investigate the matter.

7.4.4. Notice of Formal Investigation. Upon initiation of a Formal Investigation, notice shall be given to the Manufacturer of the scope of the investigation, which shall include:

7.4.4.1. Identification of the voting system and specific procedural or operation non-conformance being investigated (scope of investigation).

7.4.4.2. An opportunity for the manufacturer to provide relevant information in writing.

7.4.4.3. An estimated timeline for the investigation.

7.4.5. Investigation. Investigations shall be conducted impartially, diligently, promptly, and confidentially and shall utilize appropriate techniques to gather the necessary information.

7.4.5.1. *Fair and Impartial Investigation.* All Formal Investigations shall be conducted in a fair and impartial manner. All individuals assigned to an investigation must be free from any financial conflicts of interest.

7.4.5.2. *Diligent Collection of Information.* All investigations shall be conducted in a meticulous and thorough manner. Investigations shall gather all relevant information and documentation that is reasonably available. The diligent collection of information is vital for informed decision making.

7.4.5.3. *Prompt Collection of Information.* Determinations that may affect the administration of Federal elections must be made in a reasonable, yet expedited manner. The EAC's determinations on Decertification will affect the actions of State and local election officials conducting elections and as such, all investigations regarding Decertification must proceed with an appropriate sense of urgency.

7.4.5.4. *Confidential Collection of Information.* Consistent with Federal law, information pertaining to a Formal Investigation should not be made public until the Report of Investigation is complete. The release of incomplete and unsubstantiated information or predecisional opinions that may be contrary or inconsistent with the final determination of the EAC could cause public confusion or could unnecessarily negatively affect public confidence in active voting systems. Such actions could serve to impermissibly affect election administration and voter turnout. All predecisional investigative materials must be appropriately safeguarded.

7.4.5.5. *Methodologies.* Investigators shall gather information by means consistent with the four principles noted above. Investigative tools include (but are not limited to) the following:

7.4.5.5.1. Interviews. Investigators may interview individuals (such as State and local election officials, voters, or manufacturer representatives). All interviews shall be reduced to written form; each interview should be summarized in a statement that is reviewed, approved, and signed by the interviewee.

7.4.5.5.2. Field audits.

7.4.5.5.3. Manufacturer site audits.

7.4.5.5.4. Written interrogatories. Investigators may pose specific, written questions to the Manufacturer for the purpose of gathering information relevant to the investigation. The Manufacturer shall

respond to the queries within a reasonable timeframe (as specified in the request).

7.4.5.5. System testing. Testing may be performed in an attempt to reproduce a condition or failure that has been reported. This testing will be conducted at a VSTL as designated by the EAC.

7.4.5.6. *Report of Investigation*. The end result of a Formal Investigation is a Report of Investigation.

7.4.6. Report of Investigation. The Report of Investigation serves primarily to document: (1) all relevant and reliable information gathered in the course of the investigation; and (2) the conclusion reached by the Decision Authority.

7.4.6.1. *When Complete*. The report is complete and final when certified and signed by the Decision Authority.

7.4.6.2. *Contents of the Report of Investigation*. The following shall be included in the written report:

7.4.6.2.1. The scope of the investigation, identification of the voting system and specific matter investigated.

7.4.6.2.2. Description of the investigative process employed.

7.4.6.2.3. Summary of the relevant and reliable facts and information gathered in the course of the investigation.

7.4.6.2.4. All relevant and reliable evidence collected in the course of the investigation that documents the facts shall be documented and attached.

7.4.6.2.5. Analysis of the information gathered.

7.4.6.2.6. Statement of the findings of the investigation.

7.4.7. Findings, Report of Investigation. The Report of Investigation shall state one of two conclusions. After gathering and reviewing all applicable facts, the report shall find each allegation investigated to be either (1) substantiated or (2) unsubstantiated.

7.4.7.1. *Substantiated Allegation*. An allegation is substantiated if a preponderance of the relevant and reliable information gathered requires the voting system in question

to be decertified (consistent with the policy set out in Section 7.2). If any allegation is substantiated a Notice of Non-Compliance shall be issued.

7.4.7.2. *Unsubstantiated Allegation.* An allegation is unsubstantiated if the preponderance of the relevant and reliable information gathered does not warrant Decertification (see Section 7.2). If all allegations are unsubstantiated, the matter shall be closed and a copy of the report forwarded to the Manufacturer.

7.4.8. Publication of Report. The report shall not be made public nor released to the public until final.

7.5. **Effect of Informal Inquiry or Formal Investigation on Certification.** A voting system's EAC certification is not affected by the initiation or conclusion of an Informal Inquiry or Formal Investigation. Systems under investigation remain certified until a final Decision on Decertification is issued by the EAC.

7.6. **Notice of Non-Compliance.** If an allegation in a Formal Investigation is substantiated, the Decision Authority shall send the Manufacturer a Notice of Non-Compliance. The Notice of Non-Compliance is not, itself, a Decertification of the voting system. The purpose of the notice is to (1) notify the Manufacturer of the non-compliance and the EAC's intent to Decertify the system; and (2) inform the Manufacturer of its procedural rights so that it may be heard prior to Decertification.

7.6.1. Noncompliance Information. The following shall be included in a Notice of Non-Compliance:

7.6.1.1. A copy of the Report of Investigation to the Manufacturer.

7.6.1.2. The non-compliance, consistent with the Report of Investigation.

7.6.1.3. Notification to the Manufacturer that if the voting system is not made compliant, the voting system will be decertified.

7.6.1.4. State the actions the Manufacturer must take, if any, to bring the voting system into compliance and avoid Decertification.

7.6.2. Manufacturer's Rights. The written Notice of Non-compliance shall also inform the Manufacturer of its procedural rights under the program, which include the following:

7.6.2.1. *Right to Present Information Prior to Decertification Decision.* The Manufacturer shall be informed of its right to present information to the Decision Authority prior to a determination of Decertification.

7.6.2.2. *Right to Have Access to the Information That Will Serve as the Basis of the Decertification Decision.* The Manufacturer shall be provided the Report of Investigation and any other materials that will serve as the basis of an agency Decision on Decertification.

7.6.2.3. *Right to Cure System Defects Prior to the Decertification Decision.* A Manufacturer may request an opportunity to cure within 20 calendar days of its receipt of the Notice of Non-Compliance.

7.7. Procedure for Decision on Decertification. The Decision Authority shall make and issue a written Decision on Decertification whenever a Notice of Non-Compliance is issued. The Decision Authority will not take such action until the Manufacturer has had a reasonable opportunity to cure the non-compliance and submit information for consideration.

7.7.1. Opportunity to Cure. The Manufacturer shall have an opportunity to cure a non-conformant voting system in a *timely* manner prior to Decertification. A cure shall be considered timely when the process can be completed before the next Federal election, meaning that any proposed cure must be in place before *any* individual jurisdiction fielding the system holds a Federal election. The Manufacturer must request the opportunity to cure and if the request is approved, a compliance plan must be created, approved by the EAC, and adhered to. If the cure process is successfully completed, a Manufacturer may modify a non-compliant voting system, remedy procedural discrepancies, or otherwise bring its system into compliance without resubmission or Decertification.

7.7.1.1. *Manufacturer's Request to Cure.* Within 10 calendar days of receiving the EAC's Notice of Non-Compliance, a Manufacturer may request an opportunity to cure all defects identified in the Notice of Non-Compliance in a *timely* manner. The request must be sent to the Decision Authority and outline how the Manufacturer intends to modify the system, update the technical information (as required by Section 4.3.2), have a VSTL create a test plan and test the system, and obtain EAC approval before the next election for Federal office.

7.7.1.2. *EAC Action on Request.* The Decision Authority will review the request and approve it if the defects identified in the Notice of Non-Compliance may reasonably be cured before the next election for Federal office.

7.7.1.3. *Manufacturer's Compliance Plan.* Upon approval of the Manufacturer's request for an opportunity to cure, the Manufacturer shall submit a compliance plan to the Decision Authority for approval. This compliance plan must set forth the steps to be taken (including time frames) to cure all identified defects in a timely manner. The plan shall describe the proposed changes to the system, provide for modification of the system, update the technical information required by Section 4.3.2, include a test plan delivered to the EAC by the VSTL (testing the system

consistent with Section 4.4.2.3), and provide for the VSTL's testing of the system and submission of the test report to the EAC for approval. The plan shall also include a schedule of periodic progress reports to the Program Director.²

7.7.1.4. *EAC Action on the Compliance Plan.* The Decision Authority must review and approve the compliance plan. The Decision Authority may require the Manufacturer to provide additional information and modify the plan as required. If the Manufacturer is unable or unwilling to provide a Compliance Plan acceptable to the Decision Authority, the Decision Authority shall provide written notice terminating the "opportunity to cure" process.

7.7.1.5. *VSTL's Submission of the Compliance Plan Test Report.* The VSTL shall submit the test report created pursuant to the Manufacturer's EAC-approved Compliance Plan. The EAC shall review the test report and any other necessary or relevant materials. The report will be reviewed by the EAC in a manner similar to the procedures described in Chapter 4 of this Manual.

7.7.1.6. *EAC Decision on the System.* After receipt of the VSTL's test report, the Decision Authority shall issue a decision within 20 working days.

7.7.2. Opportunity to Be Heard. The Manufacturer may submit written materials in response to the Notice of Non-Compliance and Report of Investigation. These documents shall be considered by the Decision Authority when making a determination on Decertification. The Manufacturer shall ordinarily have 20 calendar days from the date it received the Notice of Non-Compliance (or in the case of a failed effort to cure, the termination of that process) to deliver its submissions to the Decision Authority. When warranted by public interest (because a delay in making a determination on Decertification would affect the timely, fair, and effective administration of a Federal election), the Decision Authority may request a Manufacturer to submit information within a condensed timeframe. This alternative period (and the basis for it) must be stated in the Notice of Non-Compliance and must allow the Manufacturer a reasonable amount of time to gather its submissions. Submissions may include the following materials:

7.7.2.1. A written argument responding to the conclusions in the Notice of Non-Compliance or Report of Investigation.

7.7.2.2. Documentary evidence relevant to the allegations or conclusions in the Notice of Non-Compliance.

² Manufacturers should also be cognizant of State certification procedures and local pre-election logic and accuracy testing. Systems that meet EAC guidelines will also be impacted by independent State and local requirements. These requirements may also prevent a system from being fielded, irrespective of EAC Certification.

7.7.3. Decision on Decertification. The Decision Authority shall make an agency determination on Decertification.

7.7.3.1. Timing. The Decision Authority shall promptly make a decision on Decertification. The Decision Authority may not issue such a decision, however, until the Manufacturer has provided all of its written materials for consideration or the time allotted for submission (usually 20 calendar days) has expired.

7.7.3.2. Considered Materials. The Decision Authority shall review and consider all relevant submissions by the Manufacturer. To reach a decision on Decertification, the Decision Authority shall consider all documents that make up the record and any other documented information deemed relevant.

7.7.3.3. Agency Decision. The Decision Authority shall issue a written Decision on Decertification after review of applicable materials. This decision shall be the final decision of the agency. The following shall be included in the decision:

7.7.3.3.1. The agency's determination on the Decertification, specifically addressing the areas of non-compliance investigated.

7.7.3.3.2. The issues raised by the Manufacturer in the materials it submitted for consideration.

7.7.3.3.3. Facts, evidence, procedural requirements, and/or voting system standards (VVSG or VSS) that served as the basis for the decision.

7.7.3.3.4. The reasoning for the decision.

7.7.3.3.5. Documented information, identified and provided as an attachment, that served as a basis for the decision and that was not part of the Manufacturer's submission or the Report of Investigation.

7.7.3.3.6. Notification to the Manufacturer of its right to appeal.

7.8. Effect of Decision Authority's Decision on Decertification. The Decision Authority's Decision on Decertification is the determination of the agency. A Decertification is effective upon the EAC's Publication or Manufacturer's receipt of the decision (whichever is earlier). A Manufacturer that has had a voting system decertified may appeal that decision.

7.9. Appeal of Decertification. A Manufacturer may, upon receipt of a Decision on Decertification, request an appeal in a timely manner.

7.9.1. Requesting Appeal.

7.9.1.1. *Submission.* Requests must be submitted by the Manufacturer in writing to the Chair of the U.S. Election Assistance Commission.

7.9.1.2. *Timing of Appeal.* The Manufacturer may request an appeal within 20 calendar days of receipt of the Agency Final Decision on Decertification. Late requests will not be considered.

7.9.1.3. *Contents of Request.* The following actions are necessary for the Manufacturer to write and submit a request for appeal:

7.9.1.3.1. Clearly state the specific conclusions of the Final Decision the Manufacturer wishes to appeal.

7.9.1.3.2. Include additional written argument, if any.

7.9.1.3.3. Do not reference or include any factual material not previously considered or submitted to the EAC.

7.9.1.4. *Effect of Appeal on Decertification.* The initiation of an appeal does not affect the decertified status of a voting system. Systems are decertified upon notice of Decertification in the agency's Decision on Decertification (see Section 7.8).

7.9.2. Consideration of Appeal. All timely appeals will be considered by the Appeal Authority.

7.9.2.1. The Appeal Authority shall consist of two or more EAC Commissioners or other individual(s) designated by the Commissioners who has not previously served as an investigator, advisor, or decision maker in the Decertification process.

7.9.2.2. All decisions on appeal shall be based on the record.

7.9.2.3. The decision of the Decision Authority shall be given deference by the Appeal Authority. Although it is unlikely that the scientific certification process will produce factual disputes, in such cases, the burden of proof shall belong to the Manufacturer to demonstrate by clear and convincing evidence that its voting system met all substantive and procedural requirements for certification. In other words, the determination of the Decision Authority will be overturned only when the Appeal Authority finds the ultimate facts in controversy highly probable.

7.9.3. Decision on Appeal. The Appeal Authority shall issue a written, final Decision on Appeal that shall be provided to the Manufacturer. Each Decision on Appeal shall be final and

binding and no additional appeal shall be granted. The following shall be included in a Decision on Appeal:

- 7.9.3.1. The final determination of the agency.
- 7.9.3.2. The matters raised by the Manufacturer on appeal.
- 7.9.3.3. The reasoning behind the decision.
- 7.9.3.4. Statement that the decision on appeal is final.

7.9.4. Effect of Appeal.

- 7.9.4.1. *Grant of Appeal.* If a Manufacturer's appeal is granted in whole, the decision of the Decision Authority shall be reversed and the voting system shall have its certification reinstated. For purposes of this program, the system shall be treated as though it was never decertified.
- 7.9.4.2. *Denial of Appeal.* If a Manufacturer's appeal is denied in whole or in part, the decertification decision of the Decision Authority shall be upheld. Therefore, the voting system shall remain decertified and no additional appeal shall be made available.

7.10. Effect of Decertification. A decertified voting system no longer holds an EAC certification under the EAC Certification Program. For purposes of this Manual and the program, a decertified system will be treated as any other uncertified voting system. As such, the effects of Decertification are as follows:

- 7.10.1. The Manufacturer may not represent the voting system as certified.
- 7.10.2. The voting system may not be labeled with a Mark of Certification.
- 7.10.3. The voting system will be removed from the EAC's list of certified systems.
- 7.10.4. The EAC will notify State and local election officials of the Decertification.

7.11. Recertification. A decertified system may be resubmitted for certification. Such systems shall be treated as any other system seeking certification. The Manufacturer shall present an application for certification consistent with the instructions of this Manual.

QUESTIONS FOR THE RECORD - EAC
SECURING AMERICA'S ELECTIONS PART II:
OVERSIGHT OF GOVERNMENT AGENCIES
HEARING DATE: OCTOBER 22, 2019

I. Chairman Jerrold Nadler

1. During the hearing, Congresswoman Mucarsel-Powell asked whether each agency had briefed the President on Russian interference in the 2020 elections. As of May 1st, 2019, Director Krebs testified that the President still had not received a briefing on Russia interference in the 2020 elections. Each agency testified that they were “not aware” of such a briefing.
 - **Question for FBI, DOJ, DHS and EAC:** *Can each of you confirm whether your Department has met with the President on election security and if so, how many times in the last year and if no, whether your Department has tried to schedule a meeting and been turned down?*
2. As you all are aware, 97% of states and territories use vendors in some capacity. Three vendors control over 90% of this process; of those three, over 60 percent of American voters cast ballots on systems owned and operated by a single vendor. Despite the impact of vendors, there is no real regulation over vendors to ensure election security. As a result, we've seen serious issues with vendor security. H.R. 1 includes regulations on vendors, such that DHS and EAC could be able to complete supply chain security and other qualification mandates on vendors.
 - **Question for FBI, DOJ, DHS and EAC:** *Do you think such regulation over vendors would be helpful? Given that H.R. 1 has not passed, what else is each of your agencies doing to ensure that vendors are not undermining election security?*
3. The intelligence community has been universal in confirming the gravity of the threat to our elections. Indeed, Director of National Intelligence Daniel R. Coats testified last summer, along with the heads of the CIA, FBI, NSA, and DIA, that the United States is quote, “under attack.” FBI Director Christopher Wray elaborated, “make no mistake: the threat just keeps escalating and we're going to have to up our game to stay ahead of it.”
 - **Question for FBI, DOJ, DHS and EAC:** *I'd like to hear from each witness: do you agree that there are serious threats facing our 2020 elections, yes or no?*

- **Question for FBI, DOJ, DHS and EAC:** *If you received additional resources for your respective organizations to secure our elections, what would be the most pressing need for the additional funds?*
4. The Senate Intelligence Committee's report published October 8 concludes, and I'm quoting: Increased transparency is another critical priority if the United States is to defend itself against foreign influence campaigns. A dear lesson from 2016 is that the U.S. public needs information about influence campaigns prior to the election itself. That includes information about U.S. adversaries' attempts to undermine some candidates while assisting others. In 2016, the specific intent of the Russians was not made public during the election. . . . Between now and the 2020 election, the Intelligence Community must find ways to keep the U.S. public informed not only of individual influence operations, but the Community's assessment of the goals and intent of Russia and other foreign adversaries."
- **Question for FBI, DOJ, DHS and EAC:** *Can each of you describe your protocols for sharing threat information with the public on election day or leading up to the elections?*
 - **Question for FBI, DOJ, DHS and EAC:** *Canada created the "Critical Election Incident Public Protocol," a series of steps to notify political parties and the wider public about foreign interference in elections in real time. Can each of you describe your thoughts on this process and whether the U.S. should adopt a comparable one?*
5. The Defending Digital Democracy Report wrote that, on pages 8-9: "disparities in cybersecurity resources and experience across jurisdictions creates vulnerabilities. Smaller jurisdictions with fewer resources may be seen as more vulnerable targets by adversaries. Our nationwide security survey of states and territories reinforced this, with the most frequent concern noted by election officials being insufficient resources to secure the process, especially in smaller counties."
- **Question for FBI, DOJ, DHS and EAC:** *Are your organizations prioritizing protecting more vulnerable counties with less resources? What is the protocol for ensuring protection of these communities?*
6. The proposed federal Voluntary Voting System Guidelines (VVSG) do not include a ban on internet connectivity and wireless modems, despite over 55k public comments that were sent in urging the inclusion of a ban. In fact, EAC Chair Christy McCormick testified at a Senate Rules Oversight Committee hearing in response to a direct question that the VVSG *did* ban internet connectivity, only to correct herself that they do not.

- **Question for EAC:** *Can you please clarify whether the VVSG will be amended to ban internet connectivity and wireless modems and, if not, why you are not doing this despite the public support for such a ban?*
7. On November 18, 2018, Business News reported that China granted trademarks for Ivanka Trump to make voting machines.
- **Question for FBI, DOJ, DHS and EAC:** *Are these trademarks for machines in China or here? Do we accept voting machines in this country from foreign countries, particularly countries trying to attack us?*

II. Congressman Greg Stanton

1. The Senate Select Committee's Intelligence Report concluded that the intelligence community is dependent on the states' doing their own investigation in order to collect information on potential breaches.
 - **Question for FBI, DOJ, DHS and EAC:** *What are your agencies doing to ensure that you can preemptively detect breaches, and ensure adequate investigation of breaches following any issues on election day?*
2. The proposed federal Voluntary Voting System Guidelines (VVSG) do not include a ban on internet connectivity and wireless modems, despite over 55 thousand public comments that were sent in urging the inclusion of a ban. In fact, EAC Chair Christy McCormick testified at a Senate Rules Oversight Committee hearing in response to a direct question that the VVSG *did* ban internet connectivity, only to correct herself that they do not.
 - **Question for EAC:** *Can you please clarify whether the VVSG will be amended to ban internet connectivity and wireless modems and, if not, why you are not doing this despite the public support for such a ban?*
3. The current guidelines used by EAC were certified under standards that were set in 2005—nearly **15** years old. Moreover, my understanding from our witnesses last month is that there is not a single election system that's ever been certified under these guidelines. Secretary of State Boockvar testified last month that she had to create her own minimum standards because the EAC's and federal standards are old, so most states do this. The press releases on your website seem to have different dates for when these guidelines concluded public comment, when they were voted on by a quorum of commissioners, and when they will be finalized.

- **Question for EAC:** *Can you please explain why the process has taken over 15 years and what you are doing to expedite the process so that states have the minimum standard guidelines they need on a national level to protect their state systems?*
4. During our testimony last month Mr. Burt, a representative from Microsoft, said that, quote: “We need the EAC to adopt new guidelines for certification quickly” because the “current ones . . . don’t adequately address security and they take too long and they’re too burdensome.” He went on to say that “one of the really critical things for all state and local election officials is we need to make it very easy to apply security updates. . . . We need to apply security updates quickly, expeditiously, without so much bureaucracy so that we can respond.”
- **Question for EAC:** *Why is there not more urgency to impose minimum standards? What are you doing to make sure that certification for security updates is faster and more efficient, in light of the evolving threat picture?*
 - **Question for EAC:** *What do you need to finish the guidelines and implement them as quickly as possible?*
5. The National Association of State Secretaries has suggested that EAC should delegate authority without a quorum so that requirements can be updated and the certification process can be expedited.
- **Question for EAC:** *Do you agree with the NASS’s recommendation? Why or why not?*

III. Congresswoman Lucy McBath

1. Multiple witnesses testified that their agencies rely on information-sharing between local, state, and federal entities to effectively address threats.
- **Question for FBI, DOJ, DHS and EAC:** *What are each of your agencies doing to ensure sufficient information-sharing from local and state jurisdictions to your agencies?*
 - **Question for FBI, DOJ, DHS and EAC:** *What obstacles, if any, have your agencies encountered in making sure that local and state entities are willing to quickly share threat information with your agencies?*
2. The Election Assistance Commission’s (EAC) report to Congress, “Election Administration and Voting Survey: 2018 Comprehensive Report” reports the number of

poll workers per polling location. Georgia was one of only seven states that did not provide this data in responding to the survey.

- **Question for EAC:** *What efforts does EAC take to ensure it collects complete data from state and local jurisdictions?*
- **Question for EAC:** *Has Georgia provided this data on previous Election Administration and Voting Surveys (EAVS)? If so, please provide this data for the past four EAVS.*

December 2, 2019

Chairman Jerrold Nadler
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Nadler:

Thank you for the opportunity to appear before members of the House Committee on the Judiciary for your hearing entitled "Securing America's Elections Part II: Oversight of Government Agencies" on October 22, 2019.

I appreciated the opportunity to address how the U.S. Election Assistance Commission is fulfilling its mission to support election administrators and the voters they serve, and I respectfully submit for the record the following responses to the Committee's follow-up questions.

This letter addresses each of the questions posed by members of the Committee. Unless otherwise noted, I am solely responding to the questions as Vice Chair of the Commission. The responses do not necessarily reflect the views of my fellow Commissioners.

The EAC looks forward to our continued work together on assisting election officials across the United States in providing secure, accessible, and accurate elections.

Sincerely,



Ben Hovland

Vice Chair

U.S. Election Assistance Commission

QUESTIONS FOR THE RECORD - EAC SECURING AMERICA'S ELECTIONS PART II:
OVERSIGHT OF GOVERNMENT AGENCIES HEARING DATE: OCTOBER 22, 2019

I. Chairman Jerrold Nadler

1. During the hearing, Congresswoman Mucarsel-Powell asked whether each agency had briefed the President on Russian interference in the 2020 elections. As of May 1st, 2019, Director Krebs testified that the President still had not received a briefing on Russia interference in the 2020 elections. Each agency testified that they were “not aware” of such a briefing.

• Question for FBI, DOJ, DHS and EAC: *Can each of you confirm whether your Department has met with the President on election security and if so, how many times in the last year and if no, whether your Department has tried to schedule a meeting and been turned down?*

To the best of my knowledge, the EAC Commissioners have not met with or requested a meeting with the President of the United States regarding election security. The EAC remains focused on assisting state and local election officials in running secure, accessible and accurate elections across America. The EAC stands ready to meet with any Congressional or Executive Branch partners as we help to advance these goals.

2. As you all are aware, 97% of states and territories use vendors in some capacity. Three vendors control over 90% of this process; of those three, over 60 percent of American voters cast ballots on systems owned and operated by a single vendor. Despite the impact of vendors, there is no real regulation over vendors to ensure election security. As a result, we've seen serious issues with vendor security. H.R. 1 includes regulations on vendors, such that DHS and EAC could be able to complete supply chain security and other qualification mandates on vendors.

• Question for FBI, DOJ, DHS and EAC: *Do you think such regulation over vendors would be helpful? Given that H.R. 1 has not passed, what else is each of your agencies doing to ensure that vendors are not undermining election security?*

The matter of vendor security is an important one, particularly in light of continued threats of foreign interference in our elections. The EAC has previously provided feedback and technical assistance on draft legislation and will continue to do so if asked.

Should the Congress enact legislation to cultivate regulations in this area, the EAC will work to implement the new legislation. In addition, the EAC also recommends and assists jurisdictions in working with federal partners so they can benefit from the “whole of government” approach to securing our nation's election systems.

In addition, the EAC Testing and Certification Program provides built-in layers of depth for mitigating supply chain threats to EAC-certified voting systems. Through the Voluntary Voting System Guidelines (VVSG) and EAC's Testing and Certification program, the EAC closely monitors vendors and the certification process.

Voting systems certified by the EAC are required to meet the security requirements as described in the VVSG. In addition, the draft VVSG 2.0 requirements include vendor supply chain security requirements. The EAC's Testing and Certification Program is required to conduct quality monitoring reviews of voting system manufacturers and fielded voting systems, and is planning on conducting these reviews prior to the 2020 General Election.

3. The intelligence community has been universal in confirming the gravity of the threat to our elections. Indeed, Director of National Intelligence Daniel R. Coats testified last summer, along with the heads of the CIA, FBI, NSA, and DIA that the United States is quote, "under attack." FBI Director Christopher Wray elaborated, "make no mistake: the threat just keeps escalating and we're going to have to up our game to stay ahead of it."

• Question for FBI, DOJ, DHS and EAC: *I'd like to hear from each witness: do you agree that there are serious threats facing our 2020 elections, yes or no?*

Yes.

• Question for FBI, DOJ, DHS and EAC: *If you received additional resources for your respective organizations to secure our elections, what would be the most pressing need for the additional funds?*

First and foremost, I would hope that additional election security grant money would be made available to the state and local election officials responsible for conducting our elections. As I have travelled around the country and spoken with election officials, I have seen firsthand the difference the FY2018 HAVA funds have made. However, I have also seen that election officials are having to make tough decisions about which security upgrades to prioritize. Additional federal investment is critical to ensuring our election infrastructure is adequately maintained and secured.

Beyond additional funding for state and local administrators, the EAC has real needs. With a funding level approximately half of where it was a decade ago, there are baseline investments that the EAC must make to meet the demands of our statutory mandates as well as our stakeholder needs.

The agency is continuing to move forward with its preparation for the 2020 election cycle, recognizing that our mission is to support states and local jurisdictions in the administration of elections and prepare for any event that may disrupt an election. As resources are made available, there are additional activities that the Commission has in the queue to provide valuable new assistance to state and local election officials.

Below are a few priority initiatives and supporting descriptions on each individual effort.

1. Develop, complete and maintain a Cybersecurity and Technology Initiative overhaul.

Last year, the EAC hired a Chief Information Officer (CIO) to oversee technology and security at the agency. The CIO performed an in-depth analysis of technology and security, identifying areas where the agency can modernize, consolidate, and strengthen security while improving services. Given the EAC's critical role in election security, it is important that we maintain a positive public image in the field of cybersecurity. Any breach that receives media coverage may negatively impact our reputation and has the potential to place an immediate threat on national election integrity.

Increased funding is needed in the development and maintenance of a modernized information technology infrastructure, VoIP system, hardware, software, cyclical replacements, cloud initiatives, and a new cybersecurity program at the Commission to substantially enhance the EAC's information technology security posture.

2. Creation of a Cyber Navigator Program

The EAC will develop a Cyber Navigator program to assist election officials in developing cybersecurity awareness and best practices with a specific understanding of election technology. Personnel support is needed to increase engagement with election officials. The navigators will provide ongoing assistance by elevating the EAC's presence around the country with additional regional conferences and train the trainer activities. The increased interaction between navigators and election officials is an important step toward improving voting security in the U.S.

This navigator program would serve an important and complementary role to the DHS/CISA resources that have been made available following the designation of election infrastructure as critical infrastructure.

3. Double the size of the Testing and Certification staff.

Doubling the existing staff to six staff members focused on Testing and Certification, the Voluntary Voting System Guidelines, and the Election Technology and Security programs would allow for increased output from the Testing and Certification division in certifying voting systems and cyber security support.

4. Grant Management & Auditing.

The EAC's distribution of \$380 million in 2018 HAVA funds to states in the lead up to the 2018 midterms was and continues to be critically important to helping election officials secure elections infrastructure. States are spending these funds to enhance security and harden their systems against intrusions. Additional funds appropriated by Congress would allow the EAC to support the effective use of these funds ahead of the 2020 elections and

facilitate greater information sharing among states on how funds are being spent to improve election security. Such funds would also enable the EAC to increase efficiencies in funds distribution and help ensure timely distribution of funds should new appropriations be made available.

4. The Senate Intelligence Committee's report published October 8 concludes, and I'm quoting:

Increased transparency is another critical priority if the United States is to defend itself against foreign influence campaigns. A dear lesson from 2016 is that the U.S. public needs information about influence campaigns prior to the election itself. That includes information about U.S. adversaries' attempts to undermine some candidates while assisting others. In 2016, the specific intent of the Russians was not made public during the election.... Between now and the 2020 election, the Intelligence Community must find ways to keep the U.S. public informed not only of individual influence operations, but the Community's assessment of the goals and intent of Russia and other foreign adversaries.

• **Question for FBI, DOJ, DHS and EAC:** *Can each of you describe your protocols for sharing threat information with the public on election day or leading up to the elections?*

The EAC does not currently collect or disseminate threat information to the public. However, the Commission closely participates in a number of related activities. The EAC serves as co-chair of the Government Coordinating Council Executive Board and, as such, participates in meetings with DHS and others semi-weekly. The Acting Executive Director also has a regular weekly call with the DHS/CISA Election Chief of Staff. These discussions, as well as other regular conversations, would allow for certain threat information to be disseminated quickly. In keeping closely engaged with state and local election officials, the EAC holds annual meetings and quarterly conference calls with our Standards Board and the Board of Advisors, consisting of election officials and other stakeholders, at which election security information is shared.

The EAC participates in the Multi-State Information Sharing and Analysis Center (MS-ISAC) and Election Infrastructure Information Sharing and Analysis Center (EI-ISAC) for threat sharing information. This collaboration allows for sharing of threat indicators and involvement by jurisdictions in the EI-ISAC and the process. The EAC works to improve these lines of communication between federal agencies and between the federal government, election jurisdictions, and ultimately the public.

Last month, the Trump administration announced a framework for prioritizing the sharing of threat intelligence and providing support and services that improve the security of election infrastructure across the U.S. Under the plan, FBI and CISA will continue to take the lead in informing targets of foreign interference. As this new process moves forward, the EAC stands ready to assist our federal partners in the notification of election officials and the public of any threats.

• **Question for FBI, DOJ, DHS and EAC:** *Canada created the "Critical Election*

Incident Public Protocol," a series of steps to notify political parties and the wider public about foreign interference in elections in real time. Can each of you describe your thoughts on this process and whether the U.S. should adopt a comparable one?

The EAC is aware of Canada's new Election Incident Public Protocol effort, which demonstrates how foreign interference has grown increasingly sophisticated since the 2016 U.S. election and seeks to implement tactics to keep the Canadian elections secure.

As set forth in HAVA, the EAC Commissioners are focused on assisting with the administration of U.S. elections. The EAC, along with our federal and local partners, remain focused on ensuring the security of our nation's elections and instilling confidence in the process.

Given the importance of gleaned best practices and information from international election security efforts conducted by U.S. allies, we will continue to stay abreast of the Canadian initiative.

5. The Defending Digital Democracy Report wrote that, on pages 8-9: "disparities in cybersecurity resources and experience across jurisdictions creates vulnerabilities. Smaller jurisdictions with fewer resources may be seen as more vulnerable targets by adversaries. Our nationwide security survey of states and territories reinforced this, with the most frequent concern noted by election officials being insufficient resources to secure the process, especially in smaller counties.

• Question for FBI, DOJ, DHS and EAC: *Are your organizations prioritizing protecting more vulnerable counties with less resources? What is the protocol for ensuring protection of these communities?*

The EAC is the only federal agency solely focused on election administration and has deep contacts and relationships with local election officials who are the front line in securing and defending the nation's election system.

Additionally, the EAC assists election officials in protecting their election systems. The Commission has taken a multifaceted approach to helping local election officials strengthen their election security. This work includes testing and federally certifying voting systems, leading in the development of the Voluntary Voting System Guidelines (VVSG), producing security-focused resources, disseminating security best practices information and checklists to state and local election officials, and hosting widely attended forums that feature security experts as speakers.

Local election leaders often face tough choices when it comes to how they will allocate their limited resources. During our day-to-day operations, the EAC answers this need. We provide in-person training focused on the election official's role as an IT manager, which includes topics such as security and procurement. The EAC also assists jurisdictions with conducting risk-limiting audits.

Finally, the EAC uses data collected via our biennial Election Administration and Voting Survey (EAVS) to inform prioritization of federal assistance. As the most comprehensive nationwide data on election administration, EAVS data serves as an invaluable tool for the EAC and its federal partners to better understand and secure U.S. election infrastructure. From broad categories like the number of voters served and the number of ballots submitted by method in each jurisdiction, to specific items like the type of voting equipment deployed by jurisdictions and where electronic poll books are used, EAVS data is being used to help identify core assets of U.S. elections infrastructure, inform cybersecurity threat analysis, and support protection efforts.

6. The proposed federal Voluntary Voting System Guidelines (VVSG) do not include a ban on internet connectivity and wireless modems, despite over 55k public comments that urged including such a ban. In fact, EAC Chair Christy McCormick testified at a Senate Rules Oversight Committee hearing in response to a direct question that the VVSG *did* ban internet connectivity, only to correct herself that they do not.

• **Question for EAC:** *Can you please clarify whether the VVSG will be amended to ban internet connectivity and wireless modems and, if not, why you are not doing this despite the public support for such a ban?*

While I appreciate the nature of this question and the committee's concern regarding the matter, I respectfully note that this issue is a pending one in front of the Commission.

I can say that connectivity is a complicated subject, particularly when coupled with the need for voting systems to be accessible for all eligible Americans. The EAC's work on VVSG 2.0 has led to very important conversation about how we can ensure the next generation of voting equipment is both accessible and secure.

Regarding the process moving forward, the public comment period on the VVSG 2.0 Principles and Guidelines concluded in June. EAC staff and NIST reviewed and considered thousands of comments. The Acting Executive Director is currently working with Commissioners on recommended revisions and the Commissioners will deliberate over what to include in the final VVSG 2.0 Principles and Guidelines.

In September, the Technical Guidelines Development Committee (TGDC) met to discuss the VVSG 2.0 Requirements and is currently conducting a series of conference calls in order to complete their work. Following the TGDC's recommendation, the Executive Director will forward the Requirements to the EAC's Standards Board and Board of Advisors for comment. Additionally, HAVA requires a public meeting and public comment period before final adoption. The Commissioners are committed to a transparent and thorough deliberation regarding those comments and the path forward toward a vote on the VVSG 2.0.

7. On November 18, 2018, Business News reported that China granted trademarks for Ivanka Trump to make voting machines.

• Question for FBI, DOJ, DHS and EAC: *Are these trademarks for machines in China or here? Do we accept voting machines in this country from foreign countries, particularly countries trying to attack us?*

All voting systems certified by the EAC meet the Voluntary Voting System Guidelines (VVSG), which includes a number of security-related parameters. The EAC has not received correspondence from Ms. Trump to register as a manufacturer under our Testing and Certification Program.

The EAC is continuously focused on the security of the vendor certification process. One of the strongest incentives for election equipment vendors is the VVSG, which the EAC maintains with our partners at NIST. The VVSG are a set of specifications and requirements against which voting systems can be tested to determine if the systems meet required standards. Some factors examined under these tests include functionality, accessibility, accuracy, auditability, and security capabilities. These principles, and the best practices disseminated as part of the EAC's Testing and Certification program, help set and maintain the standard for voting equipment around the country. The EAC does not currently consider the origin of voting systems in its certification decisions.

II. Congressman Greg Stanton

1. The Senate Select Committee's Intelligence Report concluded that the intelligence community is dependent on the states doing their own investigation in order to collect information on potential breaches.

• Question for FBI, DOJ, DHS and EAC: *What are your agencies doing to ensure that you can preemptively detect breaches and ensure adequate investigation of breaches following any issues on election day?*

The EAC is not an investigative body and does not play a role in investigating breaches and related activities. Nevertheless, EAC-distributed 2018 HAVA funds are being used by states in many ways to strengthen their ability to prevent, detect, investigate, and recover from cybersecurity breaches.

Additionally, the EAC supports information sharing among state and local election officials and their federal partners through multiple channels. We receive updates regarding DHS, law enforcement and intelligence agency activities during our regular Government Coordinating Council (GCC) executive committee calls. These conversations typically include discussions about how to share security information with state and local jurisdictions after federal intelligence agencies make it available. The EAC further participates in the Multi-State Information Sharing and Analysis Center (MS-ISAC) and Election Infrastructure Information Sharing and Analysis Center (EI-ISAC) for threat sharing information, and encourages state and local election officials to participate as well. We also frequently provide a platform at EAC

events for representatives from DHS, ODNI, and other federal partners to share election security information with election officials and other key stakeholders.

2. The proposed federal Voluntary Voting System Guidelines (VVSG) do not include a ban on internet connectivity and wireless modems, despite over 55 thousand public comments that were sent in urging the inclusion of a ban. In fact, EAC Chair Christy McCormick testified at a Senate Rules Oversight Committee hearing in response to a direct question that the VVSG *did* ban internet connectivity, only to correct herself that they do not.

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Regarding the process moving forward, the public comment period on the VVSG 2.0 Principles and Guidelines concluded in June. EAC staff and NIST reviewed and considered thousands of comments. The Acting Executive Director is currently working with Commissioners on recommended revisions and the Commissioners will deliberate over what to include in the final VVSG 2.0 Principles and Guidelines.

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3. The current guidelines used by EAC were certified under standards that were set in 2005—nearly 15 years old. Moreover, my understanding from our witnesses last month is that there is not a single election system that's ever been certified under these guidelines. Secretary of State Boockvar testified last month that she had to create her own minimum standards because the EAC's and federal standards are old, so most states do this. The press releases on your website seem to have different dates for when these guidelines concluded public comment, when they were voted on by a quorum of commissioners, and when they will be finalized.

• **Question for EAC:** *Can you please explain why the process has taken over 15 years and what you are doing to expedite the process so that states have the minimum standard*

guidelines they need on a national level to protect their state systems?

The 2005 VVSG has become known as VVSG 1.0 and has had 57 voting systems certified to that standard with an additional 3 in testing currently.

In 2010, the EAC Commissioners did not agree to adopt a new draft version of the VVSG. Later that year, the EAC lost a quorum (my seat remained vacant for 9 years, 11 months and 7 days). During that time, the agency faced substantial budget cuts and threat of elimination. In 2019, the EAC's budget is roughly half of what it was in 2010.

With an EAC quorum restored in 2015, the Commissioners adopted VVSG 1.1 as one of their first actions and quickly began the preliminary work of developing VVSG 2.0. No systems have been certified under the VVSG 1.1 standard.

Regarding the process moving forward, the public comment period on the VVSG 2.0 Principles and Guidelines concluded in June. EAC staff and NIST reviewed and considered thousands of comments. The Acting Executive Director is currently working with Commissioners on recommended revisions and the Commissioners will deliberate over what to include in the final VVSG 2.0 Principles and Guidelines.

In September, the Technical Guidelines Development Committee (TGDC) met to discuss the VVSG 2.0 Requirements and is currently conducting a series of conference calls in order to complete their work. Following the TGDC's recommendation, the Executive Director will forward the Requirements to the EAC's Standards Board and Board of Advisors for comment. Additionally, HAVA requires a public meeting and public comment period before final adoption. The Commissioners are committed to a transparent and thorough deliberation regarding those comments and the path forward toward a vote on the VVSG 2.0.

4. During our testimony last month Mr. Burt, a representative from Microsoft, said that, quote: "We need the EAC to adopt new guidelines for certification quickly" because the "current ones...don't adequately address security and they take too long and they're too burdensome." He went on to say that "one of the really critical things for all state and local election officials is we need to make it very easy to apply security updates.... We need to apply security updates quickly, expeditiously, without so much bureaucracy so that we can respond."

• **Question for EAC:** *Why is there not more urgency to impose minimum standards? What are you doing to make sure that certification for security updates is faster and more efficient, in light of the evolving threat picture?*

• **Question for EAC:** *What do you need to finish the guidelines and implement them as quickly as possible?*

As mentioned above, the EAC is working to complete the VVSG 2.0 as soon as possible. With the historic quorum and funding issues, this work was delayed longer than it should have been. The result is the new VVSG 2.0 is a substantial undertaking. Our work with NIST continues and

I am hopeful that we will be able to vote on the VVSG 2.0 Principles and Guidelines in the coming weeks. As described above, we are following the HAVA process to completely the Requirements as quickly as possible.

In regards to more timely security updates, this is an important matter to the EAC and our partners in the VVSG. Software patches are currently allowed under the EAC certification program as de minimis changes. The EAC published a Notice of Clarification on November 14 that removes ambiguity from this process and clarifies that software security patches meet the definition of a software de minimis change. In the future, we are hopeful these types of changes are able to be tested and certified within two weeks of submission.

As cybersecurity is a constantly evolving field, we must ensure that we have adequate resources to address changing circumstances while balancing the need for minimum standards and software updates.

As it relates to the EAC's needs in order "*finish the guidelines and implement them as quickly as possible*" – I would reiterate that the EAC's funding level is half of what it was a decade ago. We need a commitment to fund this agency sufficiently to meet its critical mission.

5. The National Association of State Secretaries has suggested that EAC should delegate authority without a quorum so that requirements can be updated and the certification process can be expedited.

• **Question for EAC:** *Do you agree with the NASS's recommendation? Why or why not?*

I reached out to the National Association of Secretaries of State and was told they do not have an official position on this matter.

III. Congresswoman Lucy McBath

1. Multiple witnesses testified that their agencies rely on information-sharing between local, state, and federal entities to effectively address threats.

• **Question for FBI, DOJ, DHS and EAC:** *What are each of your agencies doing to ensure sufficient information-sharing from local and state jurisdictions to your agencies?*

• **Question for FBI, DOJ, DHS and EAC:** *What obstacles, if any, have your agencies encountered in making sure that local and state entities are willing to quickly share threat information with your agencies?*

The EAC serves as co-chair of the Government Coordinating Council Executive Board and, as such, participates in meetings with DHS/CISA, as well as representatives of the National

Association of Secretaries of State, National Association of State Election Directors, and representatives of local election official organizations semi-weekly. We are focused on the partnership efforts of federal, state, and local entities in this important information sharing process.

We are committed to assisting local officials on the frontlines of U.S. elections. In dedication to supporting local election officials, so far this year the Commissioners have collectively traveled to more than 30 states and other members of the Commission's staff – including members of its senior leadership, research team, and testing and certification program – have crisscrossed the nation to ensure that state and local election officials in every corner of the nation have access to the EAC's valuable tools and security-focused resources. These efforts serve to connect the EAC with localities across the nation and open lines of communication with even the smallest municipalities. In keeping closely engaged with local election officials, the EAC holds annual meetings and quarterly conference calls with our Standards Board and the Board of Advisors, consisting of election officials and other stakeholders, in which election security information is shared.

2. The Election Assistance Commission's (EAC) report to Congress, "Election Administration and Voting Survey: 2018 Comprehensive Report" reports the number of poll workers per polling location. Georgia was one of only seven states that did not provide this data in responding to the survey.

• Question for EAC: *What efforts does EAC take to ensure it collects complete data from state and local jurisdictions?*

The EAC works to strengthen data quality and completeness in the biennial Election Administration and Voting Survey (EAVS) responses in many ways, including making the survey easier for states, territories, counties, and municipalities to complete and validating data submissions. Throughout survey administration, the EAC provides technical assistance to respondents, including detailed instructional materials and videos, dedicated help desk support, and training webinars.

In 2018, the EAC introduced the option for EAVS respondents to complete the survey online and plans to phase out the Excel-based survey template in future iterations of the survey. Importantly, the EAC embeds data validation flags in the EAVS survey template, which highlights for respondents potentially invalid or incomplete survey responses. Following states' initial submissions of their EAVS responses, the EAC conducts additional validation of the data with trained data analysts and sends a report to each state identifying any responses flagged as potentially invalid or incomplete. The EAC provides at least one round of data validation support as states work to address flagged responses. Finally, the EAC requires that the chief state election official in each state certify its data submission.

The EAC also works to ensure that states are aware of their federal data reporting requirements under the National Voter Registration Act and the Uniformed and Overseas Citizens Absentee Voting Act, as well as the EAC's mandate to serve as a national clearinghouse of information for

election administration and review of procedures with respect to the administration of Federal elections.

The technical and data support provided to EAVS respondents has resulted in marked improvements in data completeness over the years. In 2018, the overall jurisdiction-level response rate was 99.9 percent, the highest level yet.

The recently appropriated 2018 HAVA funds are currently being used by states in ways that complement these efforts. Importantly, according to state plans submitted to the EAC, 29 states are expected to spend roughly \$52 million on modernizing their voter registration data systems. We expect that these investments will have positive downstream impacts on EAVS data quality and completeness. The EAC will continue to encourage states to integrate federal election data reporting requirements into their statewide election data architecture.

Although EAVS data quality and completeness have improved considerably in recent years, the EAC's efforts in this area are hampered by the agency's limited resources. The EAVS is currently managed by 1.5 full-time EAC employees and is implemented through a \$600,000 contract every two years. This resource level is significantly lower than other comparable federal data collection efforts.

• Question for EAC: *Has Georgia provided this data on previous Election Administration and Voting Surveys (EAVS)? If so, please provide this data for the past four EAVS.*

The EAC collects data on various election administration and voting topics, including polling sites and poll workers, through the EAVS. This data is captured at the local jurisdiction-level (e.g. county, parish, township, etc.), but aggregated and reported by each state election office. For the 2018 EAVS, data on poll workers and polling places was captured through questions D4a (total number of Election Day polling places); D5a (total number of early voting polling places); D6 (total number of poll workers used on Election Day); D7 (total number of poll workers used during early voting); and D8a (total number of poll workers). 2018 was the first year in which the EAVS asked respondents to provide both the total number of poll workers as well as a breakdown of how many poll workers worked on Election Day and how many worked during in-person early voting; previous surveys only asked respondents to provide the total number of poll workers.

For the 2018 EAVS, Georgia provided numerical data in response to question D8a (total number of poll workers) but was not able to disaggregate this data for Election Day (D6) and early voting (D7). Georgia was one of seven states that did not provide numerical data for any of its local jurisdictions in response to D6 (total number of poll workers used on Election Day). In addition, there were 94 local jurisdictions in 12 other states that also did not provide numerical data in response to D6. Overall, 43 percent of local jurisdictions nationwide (2,776 of 6,460) responded to question D6 as "does not apply," "data not available," or left the question blank.

Data points that can be captured at the state-level, such as voter registration data that derive from a statewide voter registration database, are typically easier for states to provide, resulting in more complete EAVS responses. Incompleteness of data is an ongoing challenge in administering the EAVS, particularly regarding data points that are captured at the local jurisdiction level, such as those related to poll workers.

For the 2016, 2014, 2012 and 2010 EAVS, question D3a requested data on the number of poll workers used in the jurisdiction for the November general election. In 2016, Georgia provided data on the number of poll workers used for all of its 159 counties. In 2014, Georgia provided data on the number of poll workers used for 150 out of its 159 counties. In 2012 and 2010, Georgia did not provide data on the number of poll workers used for any of its 159 counties. Since 2012, Georgia's reporting of poll worker data used has improved markedly. Discussions with Georgia completed as part of EAC's research attribute this progress to the implementation of an updated voter registration database after the 2012 election cycle.

The poll worker data submitted by Georgia through the EAVS is provided in an attached spreadsheet. The EAVS datasets used to create this spreadsheet are publicly available on the EAC website at the following link: <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys/>.

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ONE HUNDRED SIXTEENTH CONGRESS

JEN DAULBY, MINORITY STAFF DIRECTOR

November 15, 2019

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Thomas Hicks
Commissioner
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Donald Palmer
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Dear Chairwoman McCormick, Vice Chair Hovland, Commissioner Hicks, and Commissioner Palmer:

On September 19, 2019, I wrote a letter to of Dominion Voting Systems (Dominion), Election Systems & Software (ES&S), and Hart InterCivic (Hart), asking them a series of questions about the security and testing requirements of their voting machines. Their October 18, 2019 response raised some questions for the EAC. Attached, please find the letter and written questions for EAC. In preparing your answers please include the text of the question with your response.

Please provide written responses by **Friday, December 6, 2019** to Sean Jones, Legislative Clerk, in Room 1309 of the Longworth House Office Building and electronically to sean.jones@mail.house.gov.

If you have any questions concerning this matter, please feel free to contact the Committee at (202) 225-2061. Thank you for your attention to this matter and I look forward to your prompt response.

Sincerely,



Zoe Lofgren
Chairperson

CC: Representative Rodney Davis, Ranking Member

Please answer the following questions:

- 1) In their October 18, 2019 letter, Dominion, Hart, and ES&S, stated in their response to question one that there was a lack of consensus regarding the definition of “vulnerability” and other key terms.
 - a) Do you agree with the Dominion, Hart, and ES&S that there is a lack of consensus around the definition of key election security terms?
 - b) If so, how do you plan to create clarity around such definitions?
 - c) How does the EAC define “vulnerability” with regards to election equipment and systems? How does this differ from Common Weakness Enumeration definition of “vulnerability” that the IT-ISAC EI-SIG Coordinated Vulnerabilities Disclosure Program White Paper choose to use?

- 2) One problem that Dominion, Hart, and ES&S point to in their response to question on is the inability to swiftly update software when a vulnerability is discovered. The software must go through the full recertification process in order to patch a vulnerability.
 - a) Under the current process, on average, how long does it take from the time a software vulnerability is discovered to the time a fix to the vulnerability is certified? On average, how long does the federal testing and certification process take for updates to software?
 - b) What are the plans to create a process that would make it easier to certify fixes to vulnerabilities in a timely fashion? How is this issue addressed by NIST in VVSG 2.0? Could NIST be tasked with developing guidelines on approving routine updates that would expedite deployment?
 - a) How often and when have you used the de minimis change process to allow for the patch of software vulnerabilities? What is the standard used when determining whether use this process for patches to software vulnerabilities?
 - b) How often has the pre-election emergency modification process been used since 2010? How many times has an emergency modification waiver been requested and on what dates? How many times has the waiver been granted and on what dates? What is the standard used when determining whether to grant the waiver?
 - c) If the discovered vulnerability is severe, would the EAC consider decertifying a previously certified machine? What is the standard you use when determining whether to decertify machines? When have you used the decertification process?

- 3) Since 2010, what reports have you received through the Field Anomaly Reporting of the Quality Monitoring Program? Please send the reports, the dates of the reports, and the resolution to the anomalies, if any.

- 4) In their letter, Dominion, Hart, and ES&S, write in response to question 2(b), “...every registered manufacturer is required to report certain issues (i.e., malfunctions) to the EAC following each federal election. As those issues are reported, they’re documented to ensure that Voting System Test Labs (VSTLs) can verify the issues are resolved in subsequent

releases.” Can you please provide more details on the reporting requirement they are referring to? What issues have they reported to the EAC since 2010 and what are the dates of those reports? How have these issues been resolved in subsequent releases?

- 5) The Vendors’ response to question five mentions that the EAC has previously commissioned a study on threat models. Do you believe the study they reference is the “Elections Operations Assessment Summarization”? If so, as of March 15, 2017, Phase 2 of the study, which would analyze models to identify threats and develop a threat assessment tool, is listed as “currently under review.” What is the current status of Phase 2 and how is it being used to assist in evaluating the proposed security requirements of VVSG 2.0?

October 18, 2019

Hon. Zoe Lofgren, Chairperson
Committee on House Administration
1309 Longworth HOB
Washington, DC 20515-6157

Chairperson Lofgren:

Thank you for your recent letter, jointly addressed to our three companies. We are pleased to have an opportunity to update you on the security and testing requirements of our systems. In many cases, the issues raised in your letter invoke broad process and incident response strategies shared across the elections industry, enabling this collective response.

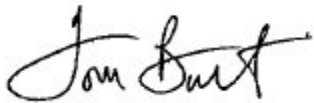
Over the past two and a half years, our companies have dedicated significant effort to enhancing industry security measures, guided by support from the U.S. Department of Homeland Security (DHS) and other federal partners. As each of our companies has done with DHS, the Election Assistance Commission (EAC), and other congressional offices, we welcome the opportunity to further brief you and your staff under appropriate conditions for sharing sensitive information vital to national security. In several instances, we note the risks of providing a written roadmap through the technical design and security features of our products. In some cases, doing so could violate state law or customer non-disclosure agreements. With these considerations in mind, please find our responses to your questions accompanying this letter.

We also urge you to reach out to our industry colleagues at Clear Ballot, MicroVote, Smartmatic, and Unisyn Voting Solutions, who – along with our companies – account for 100 percent of the tabulation providers for the nation, if you need additional industry input. Thank you.

Sincerely,



John Poulos, President & CEO
Dominion Voting Systems



Tom Burt, President & CEO
Election Systems & Software



Phillip Braithwaite, Chairman & CEO
Hart InterCivic

1. *Since the 2016 election, what vulnerabilities have you identified in your hardware, software, or third-party software (an example would be the Windows operating system)?*

Voting system manufacturers adhere to the federal test program conducted by the Election Assistance Commission (EAC) and state processes for patching and updating systems, including any mitigations for system malfunctions or documented functionality issues. Given that such changes typically require notice and re-certification of the entire system, it is possible to access information on system software/firmware updates in publicly-available test reports available online. However, we would also note that all our companies are working together with other voting systems providers via the IT-ISAC Election Industry – Special Interest Group (EI-SIG) to voluntarily establish an industry-wide Coordinated Vulnerability Disclosure (CVD) program for election technology. We issued an industry white paper on the subject in August 2019, followed by an open RFI that remains active through the end of October. As part of our ongoing work, we need to establish a consensus definition of “vulnerability” and other key terms. We are enclosing information on federally-certified versions of our systems and software, which can be verified by the EAC. Please contact individual state election offices for information regarding individual state certifications. While many states allow for public disclosure of this information, every state has processes for requesting and sharing this information. Please note: while there is currently no efficient manner in which to swiftly update operating system software, we have been discussing this with the EAC as part of the ongoing conversation regarding updates to the federal Voluntary Voting Systems Guidelines (VVSG 2.0).

a. *What versions of your hardware, software, and third-party software are currently deployed by Boards of Election across the country and in what states?*

Please see the attached lists for each of our companies, which notes all versions of fielded EAC certified voting systems.

b. *What vulnerabilities exist in any of those versions?*

Election technology undergoes extensive internal and external testing by manufacturers, federal and state governments, and third-party testers to determine if reported vulnerabilities apply to voting systems. Vulnerabilities that impact consumer electronics do not necessarily have the same risk of exploitation in election technology due to the extensive system hardening and compensating controls applied to election technology. However, manufacturers must address any reported, exploitable vulnerability in election technology that is tested by the EAC accredited Voting System Test Labs (VSTL) before the technology is certified for use by the EAC. Further, several states employ their own rigorous third-party security test programs to election technology that must be satisfied before that technology can be used in the state.

All documentation involving EAC-approved testing of the certified versions of our hardware and software currently in the field is available on the EAC website at <https://www.eac.gov/voting-equipment/voting-system-reports-collection>.

c. *What vulnerabilities existed in prior versions of these tools?*

Election technology manufacturers began building hardware and software systems to meet the EAC’s Voluntary Voting System Guidelines version 1.0 in 2006, and we continue to support any certified system in the field built to those standards. There are a small percentage of older fielded systems that may not be capable of upgrades due to hardware incompatibilities with the newer standards. Regardless of the age of these systems, the election jurisdictions continue to apply compensating controls to operate these systems in a protected environment.

Regarding coordinated vulnerability disclosure programs, we have already noted that election technology manufacturers are working with the IT-ISAC to form a CVD program for the elections industry. An RFI has been issued, and we are collecting comments and suggestions from the security research community on how that will work for elections. In the meantime, several manufacturers have established corporate website security pages and a way for interested parties to communicate with us about security questions or report potential vulnerabilities, bugs or equipment issues.

2. *How do you test for bugs in your software and third-party software?*

a. *How do you test for the correct operation of your hardware, software, and third-party software?*

Proper testing starts with a clear identification of system requirements. Most system requirements are derived from the VVSG and state election laws. An understanding of these requirements enables the creation of a thorough test plan. Test plans are generated, and specific test cases are created early in the software development cycle and include a battery of tests to ensure quality in hardware and software. These tests include automated, regression, negative, integration, environmental, security, usability, volume, stress, and safety testing. Functionality is tested throughout the development cycle, followed by thorough end-to-end integration and regression testing before entering the certification process, where additional tests are conducted at both the federal and state levels. End-to-end integration testing is designed to ensure that all functionality of all components throughout the entirety of the system is operating as designed and expected.

b. *How do you test to ensure that past mistakes are not reintroduced?*

Each company retains a set of test cases for their voting system(s). For each system release, these tests are conducted to ensure proper functionality, accuracy, performance, and quality. As new issues are identified, test cases are created and or updated to ensure that test coverage expands to include testing of the newly identified issue(s). Furthermore, every registered manufacturer is required to report certain issues (i.e., malfunctions) to the EAC following each federal election. As those issues are reported, they're documented to ensure that Voting System Test Labs (VSTLs) can verify the issues are resolved in subsequent releases.

c. *Which components of any systems you currently sell are tested independently?*

All system components are independently tested.

d. *What tests address the components collectively (i.e., systems integration test)?*

Full end-to-end system integration tests, as well as regression test suites, are executed prior to entering the certification process. Furthermore, additional tests, such as stress, volume, and security testing, also address the components collectively. Finally, VSTLs conduct functional testing that addresses all components of the certified systems.

3. *What steps have you taken to correct any vulnerabilities or bugs identified?*

Each of our companies stays abreast of emerging or documented threats that may impact our technology, including through our ISAC memberships. We use the steps outlined above to correct, test, and certify for use any system updates which may be required.

4. *The 2016 elections showed that foreign actors are constantly probing our election systems in search of vulnerabilities. What adversarial testing is performed on your systems?*

Our companies are taking cyber threats seriously. While the U.S. intelligence community has concluded that public-facing election websites and other types of infrastructure related to the registration of voters and voter databases were widely targeted, it is worth noting the Office of the Director of National Intelligence has repeatedly stated that “the types of systems Russian actors targeted or compromised were not involved in vote tallying.”¹

We all want to ensure that our voting systems continue to remain safe and secure for 2020 and beyond. We recognize that a proactive approach to discovering and remediating misconfigurations and vulnerabilities in voting systems is critical to reducing risk in the current threat environment. It is a driving factor behind our joint industry effort to create a CVD program via the IT-ISAC’s EI-SIG.

Additionally, as the only group of federally-regulated providers in the elections industry, voting systems manufacturers have both voluntary and compulsory testing performed on every system in use as part of mandatory federal and state certification processes. A number of factors determine whether a red team engagement is conducted as part of this testing, including customer and certification requirements. Generally, penetration testing is used to identify and remediate vulnerabilities in products before they are certified for use. However, both federal and state election authorities re-examine systems as needed.

While the authority to require red team and or penetration-type testing currently resides largely with the states that use it for certification purposes, the EAC and the National Institute for Standards and Technology (NIST) are working to update the federal VVSG and have released draft information that indicates support for more rigorous cybersecurity testing frameworks for voting systems.²

Finally, our companies can use voluntary vulnerability testing services available through the DHS. Tabletop exercises hosted in partnership with state, local, tribal, and territorial governments also help to exercise attack simulations created to measure how well an organization’s staff, networks, applications, and physical security controls can withstand real-life attacks. All our companies had senior personnel participating in CISA’s “Tabletop the Vote” exercise on June 18-19 to test preparedness, identification, response, and recovery plans.

a. *Who performs the adversarial testing and how are they compensated?*

Adversarial testing can be performed by third-party providers, federally-accredited VSTLs or CISA, via a partnership agreement with Idaho National Laboratory (INL). All our companies have either had systems undergo testing by CISA at INL, or we are discussing this voluntary offering as it relates to our current third-party testing schemes. Compensation ranges from free (DHS services) to tens of thousands of dollars or more, depending on the scope of testing. Individual companies would be happy to brief your staff on specifics with appropriate confidentiality measures in place to ensure security protections and compliance.

¹ USODNI Joint Intelligence Community Assessment, *Assessing Russian Activities and Intentions in Recent U.S. Elections* (Jan. 6, 2017). See also: U.S. Senate Select Committee on Intelligence, *Russian Targeting of Election Infrastructure During the 2016 Election* (May 2018).

² Approximately 7% of states conduct third-party penetration testing annually, according to the 2016 Deloitte-NASCIO Cybersecurity Study, with additional states (Delaware, Missouri) moving to do so more recently.

b. *What outputs are testers expected to produce?*

The scope of testing can range depending on the need or objective (i.e., certification/recertification, system/process validation, system modification), but typically a report identifying known vulnerabilities and or mitigations is produced for company review and use. This report may be required for state review pending a certification.

c. *What versions of your hardware or software are currently tested?*

All federally-approved system test reports are publicly available on the EAC website at <https://www.eac.gov/voting-equipment/voting-system-reports-collection/>. States also make test reports public. Individual companies would be happy to brief your staff on specifics with appropriate measures in place to ensure customer security protections and compliance.

d. *How frequently does adversarial testing happen?*

The answer to this question will depend upon the state or jurisdiction in question and related certification testing requirements. Individual companies would be happy to brief your staff on specifics with appropriate measures in place to ensure customer security protections and compliance.

e. *Do you currently sell any versions of your hardware or software that have not undergone adversarial testing? What are they?*

Vote tabulation systems are the only type of election technology that must uniformly meet testing standards for compliance at the federal and or state levels before they are permitted to be used. While the VVSG is deemed a voluntary standard, each of our three companies ensures that our voting systems are VVSG compliant, as our state customers rely upon that federal stamp of approval as a minimum requirement. Beyond that, states have the authority to set their own testing requirements for certification. Currently federal and state requirements vary on the degree of adversarial testing that is necessary for certification and deployment of a system. Individual companies are happy to brief your staff on specific steps we have in place, with appropriate measures to ensure company confidentiality and compliance.

f. *Are there any versions of your hardware or software that are currently in use by election officials that have not undergone adversarial testing? What are they and where are they in use?*

Please refer to the previous answer.

5. *Do you have a documented threat model? Please provide a copy in your response.*

Yes, each of our companies has scalable threat models that provide key guidance to our engineers and operations teams to better allow them to understand the relation between our products and services and the potential vulnerabilities and risks to which they may be susceptible.

Though the EAC previously commissioned a study on threat models for voting system vendors, there are currently no federally-mandated standards relative to threat modeling. While some states require the secure disclosure of a company's threat model as part of the state certification process, the practice is not uniform across the country. In some cases, this information is protected from public disclosure for security reasons.

In many cases in this letter, our responses cover the practices and processes followed by our entire industry. Similarly, here we can assure you that each of our companies, as well those companies not represented in our response, have identified our assets, outlined the details of the architecture into which those assets are placed, and identified and reviewed the most likely risks and threats they invoke. And as we do with our state partners, we are committed to briefing Congress on those threat models in a setting in which the discussion and data are appropriately protected.

6. *Do you have requirements documents? Please provide a copy in your response.*

Under the EAC Testing & Certification Program vendors are required to submit complete listings of software and hardware (BOM) components in a Technical Data Package (TDP) to the VSTL for each voting system to be tested. The TDP shall provide enough data so that the VSTL can unequivocally identify the software and hardware components of the system configuration submitted for testing, along with descriptions of how they are assembled and used in the operation and maintenance of the system.

Requirements for voting systems are established via several methods. First, requirements for testing are set forth by the VVSG as part of the Federal Testing Program. Current requirements are all published on the EAC website. The newest set of requirements (in the VVSG 2.0) are currently under draft by NIST. Second, each state establishes requirements that apply to their state laws such as ranked-choice voting, straight party, cumulative voting, and ballot rotation, to name a few. In addition to the federal guidelines and state laws, local jurisdictions can and often do dictate additional requirements which are specified in their requests for proposals.

7. *Do you have design documents? Please provide a copy in your response.*

All vendors use design document templates. These templates vary by vendor and by application. They contain many variables, including:

- Business context
- In scope
- Out of scope
- Key assumptions
- Constraints
- Systems overview
- Technical requirements
- Data management
- Security considerations
- Logging
- Testing

8. *What are your software and hardware Bill of Materials?*

As previously stated, under the EAC Testing & Certification Program vendors are required to submit complete listings of software and hardware (BOM) components in a Technical Data Package (TDP) to the VSTL for each voting system to be tested. The TDP shall provide enough data so that the VSTL can unequivocally identify the software and hardware components of the system configuration submitted for testing, along with descriptions of how they are assembled and used in the operation and maintenance of the system.

During the initial stage of the testing process, the VSTL performs a Physical Configuration Audit (PCA), comparing the voting system components submitted for qualification to the vendor's technical documentation and confirms that the documentation submitted meets the requirements of the VVSG guidelines. As part of the PCA, the accredited test lab also performs what becomes the trusted build of all software components to ensure that the qualified executable release is built from the tested components.

9. *A critical point of vulnerability can be the supply chain. How do you manage your supply chain for software and hardware?*

In our modern, global economy, efforts to protect the supply chain of our manufacturing operations are paramount. Though our specific business partners and suppliers may differ by company, the mechanisms and best practices employed to protect the supply chain are largely shared.

These include regular assessments of points of origination of all components of our products, safe-handling protocols, tracking of inventory, secure container locks and tags for products in transit, and monitoring of both external and internal risks to technology and data. We only use trusted partners with longstanding reputations for quality control, and ensure that our supply chain is fully mapped, controlled, and monitored from design through final delivery of a device.

Specifically, some of the primary features of our supply chain protection process include:

- Each of our companies is in direct control of our supply chains — it is a closely managed element of our business.
- The supply chain is regularly reviewed for new risks, and our policies are continuously updated or enhanced to address new vulnerabilities.
- Stringent security assurances are built into agreements with our manufacturing partners.
- We each employ strict authorization processes with detailed step-by-step procedures for logging, securing, and tracking the chain of custody of our products.
- When shipping a product to an election official customer, we follow state-specific mandated policies for handling new or returned equipment per that state's guidelines. When providing election devices or systems in states without prescribed policies, we employ industry best practices.

Though responsibility for the physical storage and conservation of election equipment rests with the local election offices once delivered, our companies routinely provide services and education to our customers to support security practices after the final delivery of our products. We also provide specific guidance to customers to ensure they meet the necessary security protocols to maintain ongoing supply chain security at their election sites.

10. *Executing on Election Day in a manner that ensures every voter can cast their ballot, can do so in a manner that gives them confidence it will be counted as cast, and does not disenfranchise voters due to technical malfunctions is critical. Local election officials and volunteer poll workers can only do so much. What protocols do you follow for contingency planning?*

There are thousands of elections conducted each year across America. For each of these elections, established protocols are in place to ensure that the users of our voting systems have direct access to trained hardware and software technicians through help-desk support as well as on-site support where requested. In the event of an equipment malfunction, ballots can be collected in auxiliary

bins (at the poll site) while a replacement unit is deployed. Ensuring continuity of the elections process is the top priority for election officials and for us, their system providers.

a. What systems do you have in place to detect a failure while elections are being prepared?

Pre-election testing is an established practice in all 50 states. In most states, this is a legally mandated process that is open to the public for viewing. This testing validates both the accuracy of the ballot definition and the performance of the equipment.

b. If a software vulnerability is discovered in the run-up to an election, what steps would you take to address the issue?

The EAC Testing & Certification Program provides pre-election emergency modification procedures to deal with extraordinary pre-election emergencies that might arise in the run-up to an election where there is insufficient time to address the vulnerability through the normal EAC and state certification procedures.

The request for an emergency modification waiver is made to the EAC by the vendor in conjunction with the election authority whose jurisdiction(s) would be impacted if the requested modification were not implemented before Election Day. Requests must be submitted at least five calendar days before an election. Only systems previously certified are eligible for such a waiver. If the EAC grants such a waiver, the modification remains subject to such testing and certification immediately following the election.

i. Who specifically would be assigned to take these steps?

Upon notification, it is the responsibility of the vendor, the jurisdiction and the testing authority to take action to determine the impact and severity of the vulnerability, identify a suitable workaround or corrective action, and notify the affected jurisdiction(s) and state official(s).

ii. How do you communicate with election officials who are using systems with identified vulnerabilities?

An affected vendor would initiate an immediate communication process between the EAC, the State Election Authority, and any affected jurisdictions utilizing both written and verbal communications.

c. A lack of public confidence and disinformation can lead to a suppressed vote. How would you rebut a false claim about an exploitable software vulnerability in your tools? What independent confirmation is available to permit someone weighing such a claim to be confident in your rebuttal?

Though Dominion, ES&S, and Hart represent only a fraction of the private industry engaged in elections, we embrace our role in making the voting process easy to navigate and accessible for all eligible voters. Combating disinformation in elections is a problem as old as our democracy. As private industry companies, we know the best method to get accurate, transparent information out to the public is through collaboration with the election officials that run elections and the national security agencies that defend them. Our ability to combat disinformation has been immeasurably strengthened over the past two years, thanks to our partners at DHS, the EI-ISAC, and the IT-ISAC.

The Department's Sector Coordinating Council (SCC), comprised of a broad collection of private-sector companies that provide election-related services and products, was specifically designed to facilitate collaboration with our election official counterparts on the Government Coordinating Council (GCC). These councils provide our companies the ability to respond to incidents quickly, fully, and with the weight and added assurances of having national security experts at DHS back up our message.

Similarly, we can rely on the IT-ISAC to bolster any response we may need to communicate to specific election audiences or even the public at large. The IT-ISAC can amplify the message by sharing information across the other relevant ISACs, such as the EI-ISAC and MS-ISAC, ensuring a broad distribution.

In addition, state law provides for the inspection of voting systems in public fashion before, during and after elections, including the use of post-election audits to validate the accuracy of an election.

d. If your organization were incapacitated (e.g. ransomware, bankruptcy, natural disaster), what steps would be available to a locality that had acquired and deployed your system, and were concerned that there may be something wrong with it?

Each of our companies have disaster recovery plans in place to mitigate and minimize the impacts of any unforeseen or unplanned event.

Each of our three companies embrace the duty that comes after the point of sale to ensure our customers are educated and fully prepared to execute an election under a wide range of emergency conditions. For election officials, the training, support, and routine maintenance services that we provide are often as important as the actual purchase of physical voting devices. In fact, election officials are very skilled at ensuring contingency planning and resilience levels for carrying out elections.

We work directly with our customers to ensure they have the information and training needed to host an election with or without vendor support. Each of our three companies has participated in numerous planning and tabletop exercises with state and local election officials, DHS, and other national security experts to prep and practice for potential attacks or disasters.

11. *What tools and techniques do you use to perform static program analysis on your systems?*

Vendors use a variety of static program analysis tools to enforce coding standards, ensure proper nesting, identify unreachable code, highlight boundary violations, and call out improper variable use. Static analysis is complemented by internal peer reviews as well as source code reviews that are required as part of the EAC certification process and performed by accredited Voting System Test Labs. These extensive code reviews are part of all vendor releases.

a. Is it performed on the source code or binary/object code? How often do you use it?

Static analysis is typically performed on source code although there are object code static analysis tools available. Static analysis tools are typically used with all new builds of software solutions.

b. Is formal analysis used as part of your static analysis process? If so, what methods?

The formal analysis approach will vary across vendors. Key components of the formal analysis will include the process and procedures wrapped around evaluating and reacting to the results of the static analysis to ensure the soundness and completeness of the software. Regardless of the approach, the formal analysis will align with EAC and VVSG requirements.

12. Do you perform dynamic program analysis on your systems?

Vendors use a variety of dynamic program analysis tools to identify vulnerabilities in a runtime environment and compute code coverage. These tools are used to identify memory leaks, race conditions, threading deadlocks, memory allocation issues and performance bottlenecks. The extensive testing under the EAC testing program also serves to identify these issues.

a. What tools and techniques do you use? For example, do you use “fuzzing”?

The introduction of rogue data, or fuzzing is part of test scenarios across the vendor landscape to ensure that systems properly manage rogue data.

b. What is the code coverage of your software (ie what percentage of your code is covered by your automated testing)? How was that percentage calculated?

Vendors use a variety of code coverage tools to determine the dynamic program analysis tools to identify vulnerabilities in a runtime environment and compute code coverage. These tools are used to identify memory leaks, race conditions, threading deadlocks, memory allocation issues, and performance bottlenecks. The extensive testing under the EAC testing program also serves to identify these issues.

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ONE HUNDRED SIXTEENTH CONGRESS

JEN DAULBY, MINORITY STAFF DIRECTOR

February 27, 2020

The Honorable Don Palmer
Commissioner
Election Assistance Commission
1325 East West Highway, Suite 4300
Silver Spring, MD 20910

Dear Commissioner Palmer:

Attached please find Questions for the Record for the Committee on House Administration hearing titled “2020 Election Security—Perspectives from Voting System Vendors and Experts” held on January 9, 2020.

Please provide written responses by Friday, March 20, 2020 and forward electronically to Georgina Cannan at Georgina.Cannan@mail.house.gov.

If you have any questions concerning this matter, please feel free to contact the Committee at (202) 225-2061. Thank you for your attention to this matter and looking forward to your prompt response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Zoe Lofgren", with a long horizontal flourish extending to the right.

Zoe Lofgren
Chairperson

HEARING
COMMITTEE ON HOUSE ADMINISTRATION
“2020 ELECTION SECURITY-PERSPECTIVES FROM VOTING SYSTEM VENDORS
AND EXPERTS”
JANUARY 9, 2019
MAJORITY QUESTIONS FOR THE RECORD
FOR
THE HONORABLE DONALD PALMER
COMMISSIONER, ELECTION ASSISTANCE COMMISSION

1. In the Election Assistance Commission’s (EAC’s) response to an oversight letter the Committee sent in November 2019, the EAC informed the Committee that it had never decertified a voting machine. The only time the EAC mentioned that it began the process, the machine was withdrawn voluntarily by the voting machine manufacturer from the list of EAC-certified voting systems. Given the existence of machines that continue to be used long after their vulnerabilities have been exposed, why has the EAC only once begun the process of decertifying a machine?
2. In the EAC’s August 12, 2019 response to the Committee’s Questions for the Record, the EAC stated it would not certify a machine running an operating system that was no longer supported for security patches, but also would not decertify a machine that when the parent company of an operating system ceased to put out security patches because it would not meet the grounds for decertification under Section 7 of the Voting System Testing and Certification Manual.
 - a. What provision in Section 5 of the Voluntary Voting System Guidelines (VVSG) 1.0 Volume 1 prevents a voting system running an operating system that is no longer supported for security patches from being certified?
 - b. According to the decertification policy outlined in Section 7 of the Voting System Testing and Certification Manual, one of the reasons voting systems can be decertified is if “they are shown not to meet applicable Voluntary Voting System Guidelines standards.” How is it possible for a system to fail to meet the standard to be certified under the VVSG but not meet the grounds to decertify? Specifically, how is it possible that the EAC would not certify an operating system that is no longer supported for security patches, but also say that the system does not meet the grounds for decertification?

MINORITY QUESTIONS FOR THE RECORD

1. We know that the Commission has and is doing everything it can to secure our elections into 2020, what new programs or initiatives is the Commission undertaking to address emerging threats?

March 13, 2020

Chairwoman Zoe Lofgren
Committee on House Administration
1309 Longworth House Office Building
Washington, DC 20515

Dear Chairwoman Lofgren:

Thank you for the opportunity to appear before members of the Committee on House Administration for your hearing on January 9, 2020 entitled “2020 Election Security- Perspectives from Voting System Vendors and Experts.”

I appreciate the opportunity to address how the U.S. Election Assistance Commission is fulfilling its mission to support election administrators and the voters they serve. I respectfully submit for the record the following responses to the Committee’s follow-up questions.

This letter addresses each of the questions posed by the Committee’s majority and minority members. Unless otherwise noted, I am solely responding to the questions as Vice Chair of the Commission. The responses do not reflect the views of my fellow Commissioners.

The EAC looks forward to our continued work together on assisting election officials across the United States in providing secure, accessible, and accurate elections.

Sincerely,

A handwritten signature in blue ink, appearing to be 'DP', followed by a horizontal line.

Donald Palmer, Vice Chairman

HEARING
COMMITTEE ON U.S. HOUSE ADMINISTRATION
“2020 ELECTION SECURITY-PERSPECTIVES FROM VOTING SYSTEM VENDORS AND EXPERTS”
JANUARY 9, 2020

MAJORITY QUESTIONS FOR THE RECORD
FOR THE HONORABLE DONALD PALMER
COMMISSIONER, ELECTION ASSISTANCE COMMISSION

1. In the Election Assistance Commission’s (EAC’s) response to an oversight letter the Committee sent in November 2019, the EAC informed the Committee that it had never decertified a voting machine. The only time the EAC mentioned that it began the process, the machine was withdrawn voluntarily by the voting machine manufacturer from the list of EAC-certified voting systems. Given the existence of machines that continue to be used long after their vulnerabilities have been exposed, why has the EAC only once begun the process of decertifying a machine?

The EAC takes the decertification of voting systems very seriously. Decertification has the potential to impact jurisdictions that depend on these systems to run their elections. Affected jurisdictions may not have the financial means to quickly replace problematic systems with more modern versions. Section 7 of the Voting System Testing and Certification Manual (hereinafter, the “Manual”) details the process of decertification including informal and formal investigations, notices of non-compliance to a manufacturer, and final decertification. The process is designed to incentivize manufacturers to fix a reported non-compliance rather than decertifying a system first with the expectation that it will be replaced with a compliant system by a jurisdiction who may not have the means to immediately do so. The EAC’s Testing and Certification Program also includes a strict quality monitoring program to ensure manufacturers and users of field-certified systems maintain the certified configuration of the systems, address any manufacturing quality problems, and report field performance issues.

According to Section 7.1 of the Manual, decertification is initiated when the EAC receives information that a voting system may not be in compliance with the Voluntary Voting System Guidelines (VVSG) or the procedural requirements of the Manual. In practice, that means that a jurisdiction or other agent must report a non-compliance before the EAC begins any informal investigation. If the EAC determines there is potential non-compliance, a formal investigation is conducted which may lead to subsequent decertification.

The EAC has been notified of a non-compliance in the single case mentioned in our previous response and, it is the only instance of a decertification investigation that we can offer. The EAC closely monitors election system vendors and solicits information from state and local election officials on any anomaly that may appear, and remains committed to a robust, transparent, and results-driven testing and certification program.

2. In the EAC's August 12, 2019 response to the Committee's Questions for the Record, the EAC stated it would not certify a machine running an operating system that was no longer supported for security patches, but also would not decertify a machine that when the parent company of an operating system ceased to put out security patches because it would not meet the grounds for decertification under Section 7 of the Voting System Testing and Certification Manual.
 - a. What provision in Section 5 of the Voluntary Voting System Guidelines (VVSG) 1.0 Volume 1 prevents a voting system running an operating system that is no longer supported for security patches from being certified?

The EAC voting system testing and certification program does not currently have a provision to prevent a system running an operating system that is no longer supported for security patches from being submitted for certification. While the current availability of support for an operating system is not directly addressed as part of the VVSG, including the draft VVSG 2.0 requirements, the adoption of VVSG 2.0 requires updating the Testing and Certification Manual used to administer the program. The EAC envisions updates to the Manual that directly address the circumstances under which a system will be accepted for certification testing including the submission of systems using operating systems that are no longer supported with security updates. Approval of the VVSG 2.0 guidelines and updated program manuals is expected by the end of this year.

It is important to note that in November of 2019, the EAC's Testing and Certification Program issued a Notice of Clarification providing clear guidelines on submitting minor software changes for certification. The EAC expects that this process will be used often by vendors to rapidly update the security of their systems with the latest software patches and operating system updates. To date, one vendor has utilized this new capability. The vendor's submission was approved in four days. We look forward to further utilizing this service to assist the elections community.

- b. According to the decertification policy outlined in Section 7 of the Voting System Testing and Certification Manual, one of the reasons voting systems can be decertified is if "they are shown not to meet applicable Voluntary Voting System Guidelines standards." How is it possible for a system to fail to meet the standard to be certified under the VVSG but not meet the grounds to decertify? Specifically, how is it possible that the EAC would not certify an operating system that is no longer supported for security patches, but also say that the system does not meet the grounds for decertification?

The EAC voting system testing and certification process currently evaluates systems by determining if they are in accordance with the VVSG requirements in place at the time of certification. As mentioned in the response to question 1, the EAC has not historically pursued decertification of systems unless there is an external request to do so.

Furthermore, decertification of systems must be conducted with deliberation as it has the potential to severely impact jurisdictions and their ability to successfully run an election.

The current Manual describes a process that is meant to hold manufacturers accountable for the correct functioning, durability, and reliability of their systems. The decertification process is designed to give manufacturers an opportunity to correct defects as they are reported, not to immediately disable systems. Section 2.3.2.7 of the manual is an example of a requirement for manufacturers to submit reports on any malfunctions of EAC-certified systems when the malfunction occurs during a federal election. The manual is being updated as part of VVSG 2.0 approval and adoption with completion of the updates expected by the end of 2020. The EAC is committed to a comprehensive, transparent, and results-based testing and certification program. We look forward to the assistance that VVSG 2.0 will provide for election system vendors and others across the elections community.

MINORITY QUESTIONS FOR THE RECORD

1. We know that the Commission has and is doing everything it can to secure our elections into 2020, what new programs or initiatives is the Commission undertaking to address emerging threats?

The EAC greatly appreciates the increased fiscal year 2020 appropriations provided by Congress. As the only federal agency committed to the whole of election administration, the EAC is focused on providing more resources to state and local election officials to help them strengthen cybersecurity practices and securely manage their election technology assets. Currently, the EAC is distributing the recent Congressional appropriation of 2020 Help America Vote Act (HAVA) funds. We will continue to work with states as they use these funds to replace aging voting equipment and bolster the security of election systems.

In addition, the EAC is moving forward with approval of the Voluntary Voting System Guidelines (VVSG) 2.0. The Guidelines will further secure election systems and future machine development by providing updated guidelines for the certification of voting systems. It is our hope that VVSG 2.0 will receive final approval later this year.

Regarding other vital activities, we are filling critical staffing vacancies within the agency as well as enhancing our staff to meet rising demands. The Commission recently hired two crucial security-focused positions of Deputy Chief Information Security Officer (CISO) and Senior Cybersecurity Program Manager. Both positions require in-depth security credentials as well as election technology and operations expertise. These individuals will begin developing cybersecurity capabilities to assist state and local jurisdictions with securing their election systems and programs as well as improving the overall security posture of the Commission itself.

We also plan to add staff to our Testing and Certification Program. Expansions to this program will enhance its capability of handling frequent voting system security updates through the de minimis process while fulfilling its other duties of conducting security training for election administrators, performing on-site audits of voting system manufacturing and test lab facilities, conducting field reviews of EAC-certified voting systems, support penetration testing of voting systems, and overseeing a post-election audit assistance program.

The EAC is exploring all the program areas listed below. The degree to which we are able to develop these programs is contingent on an increase in appropriations as requested. Programs the EAC would like to implement if increased funding is received:

Securing Non-voting systems

There are limited federal standards regarding the use of other types of election technology. The EAC's HAVA-mandated voluntary guidance on the implementation of statewide voter registration lists, which discusses database security measures in limited detail, has not been updated since its adoption in 2005. There are no federal standards regarding the use of electronic poll books, election night reporting systems, remote ballot delivery systems, or other computerized election systems. Given these limited standards, and the increased cybersecurity threat associated with these internet-connected systems, the EAC recognizes the importance of supporting election officials. We will work with election officials and experts to develop and share best practices and voluntary guidance in this area, as well as pilot a verification program for non-voting system election technology.

The EAC is working alongside federal partners and other stakeholders to support election officials as they seek to protect voters against disinformation in elections and promote trusted sources of information. In America's hyper-decentralized election system, where many voters are unaware of which office administers elections in their jurisdiction, it can be a challenge to provide voters with official information on registration and voting procedures. We would like to work on improving voter-facing information on vote.gov and the EAC website, as well as engage in promotional activities supporting anti-disinformation campaigns, such as #TrustedInfo2020. The EAC recently entered into an interagency agreement with the General Services Administration regarding vote.gov and is participating in #TrustedInfo2020 educational efforts led by the National Association of Secretaries of State.

Clearinghouse

The EAC website is a core component of the agency's clearinghouse function. From "nuts and bolts" election administration issues, such as voter registration, ballot design, preventing long lines, and serving voters with disabilities, to emerging issues, such as election security, cybersecurity, and health emergency preparedness, the EAC website serves as a unique national platform for information and resources that can help election officials improve election administration in their jurisdictions. The EAC seeks to revamp its website and streamline how clearinghouse resources and information are organized, as well as

collect and develop new resources on issues of importance to election officials, including issues that emerge during the 2020 elections. Funds will also be used for training materials for the states and other research projects that necessitate partnerships with universities to assist with collecting important data. Additionally, the EAC will seek to compile helpful resources to assist our stakeholders with contingency planning and election best practices.

New Federal Advisory Committee for Local Election Official Leaders

With the establishment of the Election Infrastructure Subsector Government Coordinating Council (GCC) and Election Infrastructure Information Sharing and Analysis Center (EI-ISAC), the infrastructure for national coordination and information sharing among election officials on election security and cybersecurity matters has improved significantly since 2016. The EAC Standards Board, a 110-member federal advisory committee comprised of one state and one local election official from each of the 50 states, the District of Columbia, and four U.S. territories, complements this infrastructure and provides a platform for election officials to share information and coordinate on election security and cybersecurity, as well as other election administration issues. One notable weakness of this existing national infrastructure is the limited presence of local election officials, who play the lead role in administering elections in most states.

The EAC seeks to establish and convene a 165-member federal advisory committee comprised of three local election officials from each state and territory. The local election officials represented on the advisory committee will include the president, immediate past-president, and president-elect of each state's association of local election officials. An alternative process would be used in the few states and territories where no such associations exist. This would create a body through which the EAC and its federal partners can share information quickly among local election official leaders and receive critical input and advice regarding EAC programs and activities, particularly informing discussions regarding level of resources and types of assistance most beneficial to local jurisdictions. This body would also be designed to help strengthen the profession of local election administration through the existing state association structure.