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The U.S. Election Assistance Commission: Overview and Selected Issues for Congress

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SUMMARY

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The U.S. Election Assistance Commission: Overview and Selected Issues for Congress

The U.S. Election Assistance Commission (EAC) is an independent federal agency charged with helping improve the administration of federal elections. It was established by the Help America Vote Act of 2002 (HAVA; P.L. 107-252; 116 Stat. 1666; 52 U.S.C. §§20901-21145) and includes a four-member commission, a professional staff, an inspector general, and three advisory bodies.

The EAC—and the legislation that created it—marked a shift in the federal approach to election administration. Congress had set requirements for the conduct of elections before HAVA, but HAVA was the first federal election administration legislation also to back its requirements with substantial federal support. In addition to setting new types of requirements, it provided federal funding to help states meet those requirements and facilitate other improvements to election administration and created a dedicated federal agency—the EAC—to manage election administration funding and collect and share election administration information.

There was broad support in Congress during the HAVA debate for the idea of providing some assistance along these lines. Both at the time and since, however, opinions have differed about exactly what kind of assistance to provide and for how long. Members have disagreed about whether the EAC should be temporary or permanent, for example, and about what—if any—regulatory authority it should have.

Changes in the election administration landscape and in Congress have brought different aspects of the debate to the forefront at various times. The 112th Congress saw the start of legislative efforts in the House to limit or eliminate the EAC, for example, while the agency's participation in the federal response to attempted foreign interference in the 2016 elections has been cited as new grounds to extend or expand it.

These shifts have been reflected in some cases in legislative activity related to the agency. For example, bills have been introduced to grant the EAC additional authority as well as to eliminate it. Other legislative proposals would leave the fundamental role of the EAC largely as it is but add new versions of its existing responsibilities or change the way it performs those responsibilities. Such proposals would direct the EAC to administer new types of grants, for example, or add new members to its advisory bodies.

Contents

Introduction 1
Overview of the EAC 3
Duties 4
Administration of Funding 5
Collection and Sharing of Information 7
Structure 10
Commission 12
Professional Staff 12
Advisory Bodies 13
Office of Inspector General 15
Operational Funding 16
History of the EAC 17
Setting up the Agency 17
Debate About the Permanence of the Agency 18
The Agency's Role in Federal Election Security Efforts 20
Legislative Activity on the EAC 21
Proposals That Engage the Existing Role of the EAC 21
Proposals to Change the Role of the EAC 22
Proposals to Terminate the EAC 23
Proposals to Expand the EAC's Authority 23
Proposals to Change the Way the EAC Works 24
Potential Considerations for Congress 25

Figures

Figure 1. EAC Organizational Chart, 2019 13
Figure 2. Tenures of EAC Commissioners 20

Tables

Table 1. Funding Administered by the EAC 5
Table 2. Proposed and Enacted Funding for EAC Operations from FY2006 to FY2019 (nominal $, in millions) 16
Table 3. Selected Proposals That Engage the Existing Role of the EAC 22
Table 4. Selected Proposals to Change the Role of the EAC 23
Table 5. Selected Proposals to Change the Way the EAC Functions 24

Contacts

Author Information 27

Introduction

The U.S. Election Assistance Commission (EAC) is an independent federal agency charged with helping improve the administration of federal elections. It was established by the Help America Vote Act of 2002 (HAVA; P.L. 107-252; 116 Stat. 1666; 52 U.S.C. §§20901-21145) as part of Congress's response to administrative issues with the 2000 elections.[1]

The EAC—and the legislation that created it—marked a shift in the federal approach to election administration. Congress had set requirements for the conduct of elections before HAVA,[2] but HAVA was the first federal election administration legislation also to back its requirements with substantial federal support.[3] In addition to setting new types of requirements, it provided federal funding to help states meet those requirements and facilitate other improvements to election administration and created a dedicated federal agency—the EAC—to manage election administration funding and collect and share election administration information.[4]

There was broad support in Congress during the HAVA debate for the idea of providing some assistance along these lines. Both at the time and since, however, opinions have differed about exactly what kind of assistance to provide and for how long. Members have disagreed about whether the EAC should be temporary or permanent, for example, and about what—if any—regulatory authority it should have.

Changes in the election administration landscape and in Congress have brought different aspects of the debate to the forefront at various times. The 112th Congress saw the start of legislative efforts in the House to limit or eliminate the EAC, for example, while the agency's participation in the federal response to attempted foreign interference in the 2016 elections has been cited as new grounds to extend or expand it.[5]

This report provides an introduction to the EAC in the context of such developments. It starts with an overview of the EAC's duties, structure, and operational funding, and then summarizes the history of the EAC and legislative activity related to the agency. The report closes with some considerations that may be of interest to Congress as it conducts oversight of the EAC and weighs

[1] For more on HAVA, see CRS Report RS20898, *The Help America Vote Act and Election Administration: Overview and Selected Issues for the 2016 Election*, by Arthur L. Burris and Eric A. Fischer.

[2] For more on pre-HAVA federal requirements for the conduct of elections, see CRS Report R45302, *Federal Role in U.S. Campaigns and Elections: An Overview*, by R. Sam Garrett.

[3] Prior to HAVA, Congress had not provided funding to states and localities to help meet national election administration requirements, there was no federal agency wholly dedicated to election administration, and the two federal entities with election administration as core missions—the Office of Election Administration at the Federal Election Commission and the Federal Voting Assistance Program at the U.S. Department of Defense—had limited staff, funding, mandates, or all three. Sen. Chris Dodd, "Senate Consideration of S. 565," remarks in the Senate, *Congressional Record*, daily edition, vol. 148 (February 13, 2002), pp. S710-711; Jim Drinkard, "Holes in Punch-Card System Noted Long Ago," *USA Today*, March 7, 2001.

[4] The new requirements in HAVA set standards to be met by voting systems, such as enabling voters to verify and correct their ballots. They also require first-time voters who register by mail to provide identification and states to offer provisional voting, post certain information at the polls, and create and maintain computerized statewide voter registration systems. For more on the new requirements introduced by HAVA, see CRS Report RS20898, *The Help America Vote Act and Election Administration: Overview and Selected Issues for the 2016 Election*, by Arthur L. Burris and Eric A. Fischer.

[5] See, for example, U.S. Congress, House Committee on House Administration, *Markup of H.R. 634, Election Assistance Commission Termination Act; H.R. 133, to Reduce Federal Spending and the Deficit by Terminating Taxpayer Financing of Presidential Election Campaigns; and Committee Resolution 115-4, the Committee's Views and Estimates on the Fiscal Year 2018*, markup, 115th Cong., 1st sess., February 7, 2017 (Washington: GPO, 2017), pp. 2-3.

whether or how to take legislative action on either the agency or election administration more broadly.

EAC at a Glance

Mission: "The U.S. Election Assistance Commission helps election officials improve the administration of elections and helps Americans participate in the voting process."[6]

Enabling Legislation: Help America Vote Act of 2002 (HAVA; P.L. 107-252; 116 Stat. 1666)

Commission: Four members recommended by majority and minority congressional leadership and appointed by the President subject to the advice and consent of the Senate

Advisory Bodies:

Board of Advisors: 35 members representing a range of election administration stakeholders, including state and local officials, federal agencies, science and technology experts, and voters

Standards Board: 110 members, with one state official and one local official from each of the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands[7]

Technical Guidelines Development Committee: 15 members representing a range of election administration stakeholders, including state and local officials, individuals with disabilities, and science and technology experts

Personnel (FY2019 Level): 31 full-time equivalent staff[8]

Appropriations for Salaries and Expenses (FY2019): $9.2 million, including $1.25 million for transfer to the National Institute of Standards and Technology[9]

Primary Oversight Committees: House Committee on House Administration and Senate Committee on Rules and Administration

Appropriations Subcommittees: Financial Services and General Government

Notes on Terminology

HAVA defines "states" as the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands.[10] This report takes a similar approach. Except where context makes clear that another meaning is intended, such as in references to "the 50 states," "state" is intended to include U.S. territories and the District of Columbia.

"Election Assistance Commission" and "EAC" are used by some to refer to the four-member commission that is part of the agency. To avoid confusion, this report reserves those terms for the agency as a whole and uses "commission" for the four-member commission.

[6] U.S. Election Assistance Commission, *2018 Annual Report*, p. 3, at https://www.eac.gov/assets/1/6/EACannualreport_2018.pdf.

[7] HAVA directs the chief election officials of the District of Columbia, American Samoa, and Guam to establish procedures to select a representative to serve as a local election official for purposes of membership on the Standards Board (52 U.S.C. §20943).

[8] This number is from an EAC estimate of the resources available under an annualized level from the FY2019 continuing resolutions. U.S. Election Assistance Commission, *Fiscal Year 2020 Congressional Budget Justification*, March 18, 2019, p. 5, at https://www.eac.gov/assets/1/6/EACFY2020BudgetJustification.pdf.

[9] H.J.Res. 31.

[10] 52 U.S.C. §21141. Another U.S. territory, the Northern Mariana Islands, did not have congressional representation when HAVA was enacted. It first elected a delegate to Congress in 2008 (P.L. 110-229). For more on congressional delegates, see CRS Report R40555, *Delegates to the U.S. Congress: History and Current Status*, by Christopher M. Davis.

Overview of the EAC

The EAC was created by HAVA, Congress's primary legislative response to problems with the administration of the 2000 elections. Issues with the vote count in Florida delayed the results of the 2000 presidential race for weeks.[11] Subsequent investigations revealed widespread problems with states' conduct of elections. They also generated recommendations about how to prevent similar problems in the future, including via more expansive federal partnerships with states and localities.[12]

Exactly what those partnerships should look like was a matter of debate. There was broad agreement that they should involve some federal assistance to states and localities. Proposals from Members on both sides of the aisle and in both chambers of Congress included federal funding for improvements to election administration and federal guidance on voting system standards, for example.[13]

Members disagreed, however, about other features of the partnerships. These disagreements were rooted in part in competing concerns. Some Members were concerned that certain types of federal involvement would shift the balance of election administration authority from states and localities, which have traditionally had primary responsibility for administering elections, to the federal government.[14] Others worried that states and localities would not—or could not—make necessary changes to their election systems without federal intervention.[15]

Disagreements about the federal government's role in election administration played out in at least two discussions that were relevant to the EAC: (1) whether new federal election administration responsibilities should be assumed by extant federal entities like the Federal Election Commission's (FEC's) Office of Election Administration (OEA) or an entirely new agency; and (2) whether the new responsibilities should be focused solely on supporting states and localities or should also include more expansive authority to compel states and localities to act.[16]

The EAC, like HAVA as a whole, was a compromise.[17] It was a new agency, but its role was envisioned primarily as a support role. As one of the primary architects of HAVA, Representative Robert Ney, noted in the markup of the 2001 version of the bill,

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[11] Andrew Glass, "Congress Certifies Bush as Winner of 2000 Election, Jan. 6, 2001," *Politico*, January 6, 2016.

[12] See, for example, The National Commission on Federal Election Reform, *To Assure Pride and Confidence in the Electoral Process*, August 2001, pp. 12-14; and R. Michael Alvarez, Stephen Ansolabehere, Erik Antonsson et al., *Voting—What Is, What Could Be*, Caltech/MIT Voting Technology Project, July 2001, at https://vote.caltech.edu/reports/1.

[13] See, for example, H.R. 775 and S. 953 in the 107th Congress.

[14] See, for example, Rep. Robert Ney, "House Agreement to the Conference Report on H.R. 3295 and H.Con.Res. 508," House debate, *Congressional Record*, daily edition, vol. 148 (October 10, 2002), p. H7838; and Daniel J. Palazzolo and Fiona R. McCarthy, "State and Local Government Organizations and the Formation of the Help America Vote Act," *Publius*, vol. 35, no. 4 (Autumn 2005), pp. 516-517, 525. For more on the roles of states and localities in election administration, see CRS Report R45549, *The State and Local Role in Election Administration: Duties and Structures*, by Karen L. Shanton.

[15] See, for example, U.S. Congress, Senate Committee on Rules and Administration, *Election Reform: Volume 1*, hearings, 107th Cong., 1st sess., June 27, 2001, S.Hrg. 107-1036 (Washington: GPO, 2003), pp. 271, 348; and Palazzolo and McCarthy, "State and Local Government Organizations and the Formation of the Help America Vote Act," pp. 525-526.

[16] See, for example, Senate Committee on Rules and Administration, *Election Reform: Volume 1*, pp. 21, 118, 227-228.

[17] See, for example, Sen. Kit Bond, "Senate Agreement to the Conference Report on H.R. 3295," remarks in the Senate,

> [T]he name that we did choose, by the way, for this Commission is not an accident. The purpose of this Commission is to assist State and local governments with their election administration problems, basically taking the attitude we are the government, we are here to help. Its purpose is not to dictate solutions or hand down bureaucratic mandates.[18]

The following subsections provide an overview of the agency that emerged as a compromise from HAVA. They describe the EAC's duties, structure, and operational funding.

Duties

Consistent with the positioning of the EAC as a support agency, HAVA strictly limits the agency's power to compel action by states and localities. Responsibility for enforcing HAVA's national election administration requirements is assigned by the act to the U.S. Department of Justice (DOJ) and state-based administrative complaint procedures rather than to the EAC.[19] Decisions about exactly how to comply with those requirements are reserved to the states.[20] And EAC rulemaking is explicitly restricted to regulations for the voter registration reports and federal mail voter registration form required by the National Voter Registration Act of 1993 (NVRA; P.L. 103-31; 107 Stat. 77).[21]

Those limits do not mean the agency has no ability to influence state or local action. The EAC can trigger DOJ investigations of suspected violations of federal election law,[22] for example, and revoke voting system certifications and testing lab accreditations.[23] The agency can audit its grantees and specify how they should address issues identified by the audits.[24] Its voting system testing and certification program can be binding on states that choose—as some states have—to make some or all of it mandatory under state law.[25] Its voluntary guidance, while nonbinding, could be used by other agencies to inform HAVA enforcement.[26]

Congressional Record, daily edition, vol. 148 (October 16, 2002), p. S10488.

[18] U.S. Congress, House Committee on House Administration, *Mark up of H.R. 3295, the Help America Vote Act of 2001*, 107th Cong., 1st sess., November 15, 2001 (Washington: GPO, 2003), p. 2.

[19] 52 U.S.C. §§21111-21112.

[20] 52 U.S.C. §21085.

[21] 52 U.S.C. §20508; 52 U.S.C. §20929. For more on the NVRA, see CRS Report R45030, *Federal Role in Voter Registration: The National Voter Registration Act of 1993 and Subsequent Developments*, by Sarah J. Eckman.

[22] Then-Commissioner DeForest Soaries testified in 2004 that the EAC had established a process for triggering DOJ investigations of suspected HAVA violations and that the DOJ had already entered some related consent decrees. U.S. Congress, House Committee on House Administration, *Oversight Hearing on the Election Assistance Commission*, hearing, 108th Cong., 2nd sess., June 17, 2004 (Washington: GPO, 2004), p. 58. For more on the relationship between the EAC and the DOJ, see Robert S. Montjoy and Douglas M. Chapin, "The U.S. Election Assistance Commission: What Role in the Administration of Elections?" *Publius*, vol. 35, no. 4 (Autumn 2005), pp. 627, 632. For more on DOJ action under HAVA, see U.S. Department of Justice, *Cases Raising Claims Under the Help America Vote Act*, at https://www.justice.gov/crt/cases-raising-claims-under-help-america-vote-act.

[23] 52 U.S.C. 20971. State officials have used similar voting system certification and decertification authority to compel action by local election officials. See, for example, Steven F. Huefner, Daniel P. Tokaji, and Edward B. Foley, *From Registration to Recounts: The Election Ecosystems of Five Midwestern States* (Columbus, Ohio: The Ohio State University Michael E. Moritz College of Law, 2007), p. 64.

[24] U.S. Election Assistance Commission, *Audits & Resolutions*, at https://www.eac.gov/payments-and-grants/audits-resolutions/.

[25] For more on the federal voting system testing and certification program and on states' decisions formally to adopt some or all of its parts, see the "Voting System Guidelines, Testing, and Certification" section of this report.

[26] Montjoy and Chapin, "The U.S. Election Assistance Commission," pp. 632-634.

However, the EAC's duties are primarily envisioned by HAVA—and have primarily functioned—as support tasks. They fall into two general categories: (1) administration of funding and (2) collection and sharing of information.

Administration of Funding

The EAC is responsible for administering federal funding for improvements to election administration, including most of the grant and payment programs authorized by HAVA[27] and an election data collection grant program that was authorized and funded by the FY2008 Consolidated Appropriations Act (P.L. 110-161).

Congress appropriated $380 million for payments to states under HAVA in FY2018 (P.L. 115-141), following reports of attempted foreign interference in the 2016 elections.[28] Prior to those appropriations, funding was last provided for EAC-administered grants and payments in FY2010 (see **Table 1** for details).[29]

Table 1. Funding Administered by the EAC

Type of Funding	Authorized Amount	Appropriations Through FY2010[a]	Appropriations Since FY2010	Selected U.S.C. Citations
Payments to states[b] for general improvements to the administration of federal elections	$325.0 million	$650.0 million[c]	$380.0 million[d]	52 U.S.C. §§20901, 20903-20906
Payments to states to replace lever or punch card voting systems	$325.0 million		—	52 U.S.C. §§20902, 20903-20906
Payments to states to meet national election administration requirements (requirements payments)[e]	FY2003: $1.4 billion FY2004: $1.0 billion FY2005: $600.0 million FY2010 and subsequent fiscal years: Such sums as may be necessary[f]	$2.6 billion	—	52 U.S.C. §§21001-21008
Grants for voting technology research	FY2003: $20.0 million	$8.0 million	—	52 U.S.C. §§21041-21043
Grants for voting technology pilot programs	FY2003: $10.0 million	$3.0 million[g]	—	52 U.S.C. §§21051-21053
Funding for the National Student and Parent Mock Election Program	FY2003: $200,000 Subsequent six fiscal years: Such sums as may be necessary	$1.2 million[h]	—	52 U.S.C. §§21071-21072

[27] The General Services Administration handled some early HAVA funding before the EAC had been set up (52 U.S.C. §20901), and the U.S. Department of Health and Human Services administers HAVA funding related to voting and registration access for individuals with disabilities (52 U.S.C. §21021, 52 U.S.C. §21061).

[28] Ellen Nakashima, "Russian Hackers Targeted Arizona Election System," *The Washington Post*, August 29, 2016.

[29] U.S. Election Assistance Commission, *2018 Annual Report*, p. 15.

Type of Funding	Authorized Amount	Appropriations Through FY2010[a]	Appropriations Since FY2010	Selected U.S.C. Citations
Funding for the Help America Vote Foundation	FY2003: $5.0 million Subsequent fiscal years: Such sums as may be necessary	$2.3 million	—	36 U.S.C. §§90101-90112
Funding for the Help America Vote College Program	FY2003: $5.0 million Subsequent fiscal years: Such sums as may be necessary	$4.7 million[i]	—	52 U.S.C. §§21121-21123
Grants for election data collection pilot programs	$10.0 million	$10.0 million[h]	—	52 U.S.C. §20981 note

Source: CRS, based on analysis of the *U.S. Code* and relevant appropriations measures.

Notes: Figures are rounded and do not include rescissions or sequestration reductions. Appropriations figures include amounts specified in appropriations measures and accompanying explanatory statements.

a. The General Services Administration (GSA) handled some HAVA payments before the EAC had been set up, and the relevant appropriations included provisions for GSA's administrative expenses. Responsibility for administering the payments that were handled by GSA was subsequently transferred to the EAC.

b. HAVA defines "states" as the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands.

c. The FY2003 appropriations bill included $650 million for the payments in the first two rows of this table without specifying a distribution of funds between them. The FY2003 bill also provided a one-time $15 million payment to reimburse states that had acquired optical scan or electronic voting machines prior to the November 2000 elections.

d. The explanatory statement accompanying the FY2018 appropriations bill indicated that this funding was intended to be used for enhancing election technology and improving election security. The amount appropriated in the FY2018 bill—$380 million—appears to be approximately equal to the difference between the $3 billion HAVA authorized for requirements payments and the amount Congress had appropriated for requirements payments through FY2018. HAVA sets conditions on requirements payments that do not apply to payments for general improvements to the administration of federal elections. For more on those conditions, see CRS Report RS20898, *The Help America Vote Act and Election Administration: Overview and Selected Issues for the 2016 Election*, by Arthur L. Burris and Eric A. Fischer.

e. HAVA required states that did not meet certain deadlines to return some of the funding they received for replacing lever and punch card voting systems. The act directed the EAC to use such returned funds for requirements payments.

f. Under HAVA, funding authorized for requirements payments for FY2010 and subsequent years may be used only to meet requirements added to the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA; P.L. 99-410; 100 Stat. 924) by the Military and Overseas Voter Empowerment Act of 2009 (MOVE Act; P.L. 111-84; 123 Stat. 2190).

g. The FY2009 and FY2010 appropriations bills provided $1 million and $2 million, respectively, for a pilot program for grants to states and localities to conduct pre-election logic and accuracy testing and post-election verification of voting systems.

h. The explanatory statement accompanying the FY2008 appropriations bill designated $112,500 for administrative costs related to the mock election program and the election data collection pilot program.

i. The explanatory statement accompanying the FY2006 appropriations bill encouraged the EAC to spend an additional $250,000 on this program.

The EAC's administrative responsibilities typically extend past the fiscal year for which funding is appropriated. Much of the funding it administers has been provided as multiyear or no-year

funds,[30] and it performs ongoing funding maintenance tasks, such as providing technical assistance to funding recipients and issuing advisory opinions about proposed uses of funds.[31] Through its Office of Inspector General (OIG), the EAC also audits grantees to confirm that they are meeting funding conditions, such as matching-fund and maintenance-of-effort requirements, and using funds as intended.[32]

Collection and Sharing of Information

HAVA folded the FEC's OEA into the EAC, transferring its staff, duties, and funding to the new agency.[33] The OEA had performed a clearinghouse function at the FEC.[34] That function was first established by the Federal Election Campaign Act of 1971 (P.L. 92-225; 86 Stat. 3) at the General Accounting Office (now called the Government Accountability Office [GAO]),[35] as a source of election administration research and a forum for sharing election administration information.[36] The function was transferred to the FEC when that agency was created in 1975 (P.L. 93-443; 88 Stat. 1263).[37]

The mandate expanded at the FEC to include creating and updating voluntary federal standards for voting systems and, following the enactment of the NVRA in 1993, producing a biennial voter registration report and developing and maintaining a federal mail voter registration form.[38]

These information collection and sharing functions have carried over to—and undergone further expansion at—the EAC. The following subsections describe the EAC's information collection and sharing duties.

Research and Coordination

Like its clearinghouse predecessors at GAO and the FEC, the EAC conducts election administration research and provides opportunities for election administration stakeholders to share their experience and expertise.[39]

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[30] Multiyear funds are appropriations that are available for more than one fiscal year, and no-year funds are appropriations that are available without fiscal year limitation.

[31] U.S. Congress, House Committee on House Administration, Subcommittee on Elections, *Election Assistance Commission Operations and 2012 Budget Proposal*, hearing, 112th Cong., 1st sess., March 17, 2011 (Washington: GPO, 2011), p. 121.

[32] U.S. Election Assistance Commission, *Inspector General: About the Office*, at https://www.eac.gov/inspector-general/.

[33] 52 U.S.C. §§21131-21134.

[34] For more on the FEC, see CRS Report R44318, *The Federal Election Commission: Overview and Selected Issues for Congress*, by R. Sam Garrett.

[35] The General Accounting Office was renamed the Government Accountability Office in 2004. U.S. Government Accountability Office, *About GAO*, at https://www.gao.gov/about/what-gao-is/history/.

[36] Roy G. Saltman, *The History and Politics of Voting Technology: In Quest of Integrity and Public Confidence* (New York: Palgrave Macmillan, 2006), pp. 170-172; U.S. Election Assistance Commission, *History of the National Clearinghouse on Election Administration*, at https://www.eac.gov/assets/1/28/History%20of%20the%20National%20Clearinghouse%20on%20Election%20Administration.pdf.

[37] The OEA was originally known as the National Clearinghouse on Election Administration. Montjoy and Chapin, *The U.S. Election Assistance Commission*, p. 620; Federal Election Commission, *Twenty Year Report*, April 1995, p. 8, at https://www.fec.gov/resources/about-fec/reports/20year.pdf.

[38] Federal Election Commission, *Twenty Year Report*, p. 19.

[39] U.S. Election Assistance Commission, *Excellence in Elections: 2016 Annual Report*, p. 20, at https://www.eac.gov/assets/1/6/EAC_Annual_Report_2016.pdf.

Some of the work the EAC does as part of its research function is mandated specifically. The Election and Voting Survey (EAVS) it produces after each regular federal general election, for example, includes an NVRA-mandated voter registration report[40] and reporting on military and overseas voting that is required by UOCAVA.[41] The EAC was also directed by HAVA to conduct studies of military and overseas voting; voting system usability and accessibility; HAVA's voter identification requirement; use of Social Security information for voter verification; use of the internet in electoral processes; and postage-free absentee voting.[42]

The EAC also has considerable latitude to conduct other election administration research.[43] It has issued a number of reports under this authority, including studies of rural versus urban election administration, alternative voting methods, and voter fraud and intimidation. The EAC has also released products that are specifically geared toward practitioners, such as a series of Quick Start Guides for election managers.[44]

The EAC facilitates information exchanges among election administration stakeholders in multiple ways, from publishing state and local best practices and requests for proposals to convening meetings and hosting roundtables and summits.[45] One particularly high-profile example of the EAC's coordination work is its participation in the federal response to reports of attempted foreign interference in the 2016 elections. For more on that work, see the "The Agency's Role in Federal Election Security Efforts" section of this report.

Voting System Guidelines, Testing, and Certification

The FEC adopted the first voluntary federal voting system standards (VSS) in 1990 and updated them in 2002.[46] The National Association of State Election Directors (NASED), a professional organization for state election directors, established a program to accredit labs to test voting systems to the VSS and certify systems as meeting the standards.[47] When the EAC was created, it inherited enhanced versions of the FEC's and NASED's voting system guidelines, testing, and certification responsibilities.

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[40] 52 U.S.C. §20508.

[41] 52 U.S.C. §20302; U.S. Election Assistance Commission, *Studies and Reports*, at https://www.eac.gov/research-and-data/studies-and-reports/. For more on UOCAVA, see CRS Report RS20764, *The Uniformed and Overseas Citizens Absentee Voting Act: Overview and Issues*, by R. Sam Garrett.

[42] 52 U.S.C. §§20982-20986; U.S. Election Assistance Commission, *Annual Report Fiscal Year 2003*, pp. 15-16; U.S. Election Assistance Commission, *Fiscal Year 2004 Annual Report*, January 2005, p. 30; U.S. Election Assistance Commission, *Fiscal Year 2006 Annual Report*, p. 38. For more on the timing of the release of these reports, see the "Setting up the Agency" section of this report.

[43] 52 U.S.C. §20981.

[44] U.S. Election Assistance Commission, *Quick Start Guides*, at https://www.eac.gov/assets/1/28/QSG_Flyer.pdf.

[45] U.S. Election Assistance Commission, *Excellence in Elections: 2016 Annual Report*, p. 20.

[46] Federal Election Commission, *Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Voting Systems*, January 1990, at https://www.eac.gov/assets/1/28/FEC_1990_Voting_System_Standards1.pdf; Federal Election Commission, *Voting Systems Standards Volume I – Performance Standards*, April 2002, at https://www.eac.gov/assets/1/28/Voting_System_Standards_Volume_I.pdf; Federal Election Commission, *Voting Systems Standards Volume II – Test Standards*, April 2002, at https://www.eac.gov/assets/1/28/Voting_System_Standards_Volume_II.pdf.

[47] U.S. Election Assistance Commission, *Voluntary Voting System Guidelines*, at https://www.eac.gov/voting-equipment/voluntary-voting-system-guidelines/; U.S. Congress, House Committee on Science, *Voting Technology Standards Act of 2001*, report to accompany H.R. 2275, 107th Cong., 1st sess., October 31, 2001, H.Rept. 107-263 (Washington: GPO, 2001), p. 5.

The VSS were replaced at the EAC by Voluntary Voting System Guidelines (VVSG), which were called "guidelines" to distinguish them from the mandatory voting systems standards included among HAVA's national election administration requirements.[48] One of the EAC's advisory bodies, the Technical Guidelines Development Committee (TGDC), is charged with drafting the VVSG.[49] The draft guidelines are made available to the public, the agency's executive director, and the EAC's other two advisory bodies, the Board of Advisors and the Standards Board, for review and comment before they are submitted to the commissioners for a vote on adoption.[50]

The commissioners are also responsible for accrediting laboratories to test voting systems to the VVSG and revoking lab accreditations; certifying, decertifying, and recertifying systems as meeting the VVSG; and issuing advisories to help voting system manufacturers and testing labs interpret the VVSG. The National Institute of Standards and Technology (NIST), which provides the TGDC with technical support on request and whose Director chairs the TGDC, is charged with monitoring voting system testing labs and making recommendations to the commission about lab accreditations and accreditation revocations.[51]

The VVSG were first adopted in 2005 and updated in 2015. The 2005 version updated and expanded the 2002 VSS to account for technological advances and to increase security and accessibility requirements.[52] The 2015 iteration aimed to update outdated portions of the 2005 VVSG and increase the guidelines' testability.[53]

As of May 2019, the EAC was working on a second update (VVSG 2.0).[54] Unlike previous versions of the VVSG, which were presented as device-specific recommendations, VVSG 2.0 separates higher-level principles and guidelines from technical details. The main document, which was released for public comment on February 28, 2019, sets out function-based principles, such as auditability, and guidelines, such as capacity to support efficient audits and resilience against intentional tampering. Supplementary documents are expected to provide the technical specifications required to help voting system manufacturers to implement—and voting system testing labs to test whether systems meet—the higher-level principles and guidelines.[55]

States are not required by federal law to adhere to the VVSG,[56] but some have made the guidelines mandatory under their own state laws.[57] States may also adopt other parts of the

[48] 52 U.S.C. §21081.

[49] 52 U.S.C. §20961.

[50] 52 U.S.C. §20962.

[51] 52 U.S.C. §20961; 52 U.S.C. §20971.

[52] U.S. Election Assistance Commission, "EAC Adopts 2005 Voluntary Voting System Guidelines," press release, December 3, 2005, at https://www.eac.gov/assets/1/28/VVSG_1.0_Press_Release.pdf.

[53] U.S. Election Assistance Commission, "EAC Updates Federal Voting System Guidelines," press release, March 31, 2015, at https://www.eac.gov/assets/1/28/EAC%20Updates%20Federal%20Voting%20System%20Guidelines-News-Release-FINAL-3-31-15-website.pdf.

[54] U.S. Election Assistance Commission, *Voluntary Voting System Guidelines*.

[55] U.S. Election Assistance Commission, *VVSG Version 2.0: Scope and Structure*, p. 1, at https://www.eac.gov/assets/1/6/VVSGv_2_0_Scope-Structure(DRAFTv_8).pdf; U.S. Election Assistance Commission, *Voluntary Voting Systems Guidelines 2.0: Principles and Guidelines*, at https://www.eac.gov/assets/1/6/TGDC_Recommended_VVSG2.0_P_Gs.pdf; U.S. Election Assistance Commission, "Proposed Voluntary Voting System Guidelines 2.0 Principles and Guidelines," 84 *Federal Register* 6776, February 28, 2019.

[56] As noted above, HAVA does set some mandatory standards for voting systems (52 U.S.C. §21081). Those mandatory standards are distinct from the VVSG (52 U.S.C. §§20961-20971).

[57] National Conference of State Legislatures, *Voting System Standards, Testing and Certification*, August 6, 2018, at http://www.ncsl.org/research/elections-and-campaigns/voting-system-standards-testing-and-certification.aspx.

federal voting system testing and certification program. For example, they may choose to require voting systems to be tested by a federally accredited lab.[58]

Voluntary Guidance

HAVA set new national election administration requirements—such as certain standards for voting systems and requirements to offer provisional voting, post sample ballots at the polls on Election Day, and create and maintain a computerized statewide voter registration list[59]—and charged the EAC with adopting voluntary guidance about how to meet them.[60]

This voluntary guidance is intended to offer specifics about how to implement HAVA's general mandates. The EAC's guidance on statewide voter registration lists, for example, indicates that either a "top-down" system, in which a centrally located voter registration database is connected to local terminals, or a "bottom-up" system, in which information from locally hosted databases is used to update a central list, is acceptable under the law.[61]

As indicated by the name, this guidance is voluntary; states and localities can choose whether or not to adopt it.[62] As noted above, however, the voluntary guidance the EAC issues could be used by other agencies to inform HAVA enforcement.

Structure

The EAC includes a four-member commission, a professional staff led by an executive director and general counsel, an OIG, and three advisory bodies: the Board of Advisors, the Standards Board, and the TGDC. Its primary oversight committees are the House Committee on House Administration and the Senate Committee on Rules and Administration.[63] The components of the EAC are described in more detail in the subsections below.

The structure of the EAC was informed by at least three objectives

- **State and Local Partnership.** The EAC's advisory bodies play a central role in the agency's functioning, and state and local officials or the professional

[58] The information about state adoption of federal testing and certification requirements that was available on the EAC's website as of May 2019 was last updated in January 2011. At that time, 34 states required use of federally certified voting systems, testing of voting systems to federal standards, or testing by a federally accredited lab. U.S. Election Assistance Commission, *System Certification Process*, at https://www.eac.gov/voting-equipment/system-certification-process-s/. According to the National Conference of State Legislatures, 39 states required use of some part of the federal testing and certification program as of August 2018, and another 4 made reference in their statutes to federal agencies or standards. National Conference of State Legislatures, *Voting System Standards, Testing and Certification*.

[59] 52 U.S.C. §§21081-21083.

[60] 52 U.S.C. §21101.

[61] U.S. Election Assistance Commission, *Voluntary Guidance on Implementation of Statewide Voter Registration Lists*, July 2005, pp. 6-7, at https://www.eac.gov/assets/1/1/Implementing%20Statewide%20Voter%20Registration%20Lists.pdf.

[62] U.S. Election Assistance Commission, "Proposed Voluntary Guidance on Implementation of Statewide Voter Registration Lists," 70 *Federal Register* 20114-20116, April 18, 2005.

[63] 52 U.S.C. §20927; U.S. Congress, House, *Rules of the House of Representatives, One Hundred Sixteenth Congress*, prepared by Clerk of the House of Representatives, 116th Cong., January 11, 2019, pp. 7-8; U.S. Congress, Senate Committee on Rules and Administration, *Standing Rules of the Senate*, 113th Cong., 1st sess., November 4, 2013, S.Doc. 113-18 (Washington: GPO, 2013), p. 26.

associations that represent them serve on or appoint members to all three bodies.[64]

- **Expert Input.** The advisory bodies also feature a wide range of experience and expertise. In addition to state and local officials, members include representatives of voters, scientific and technical specialists, and disability access experts, among others.[65]
- **Bipartisanship.** The commission and two of the advisory bodies are designed to be politically balanced, and the commission cannot take certain actions without a three-vote majority of its members.

The agency's structure has also had implications for its functioning. For example, the three-vote quorum requirement for commission action has led at times to delays and inactivity. For more on such implications, see the "Debate About the Permanence of the Agency" section of this report.

Relationship of the EAC to Other Federal Entities

Prior to the creation of the Election Assistance Commission (EAC), the Federal Election Commission (FEC) housed the main federal entity dedicated to election administration as a whole: the Office of Election Administration (OEA). The EAC inherited OEA's duties, funding, and staff from the FEC. The EAC and FEC both work on election-related issues, and there are parallels between the structures of their similarly even-numbered and bipartisan commissions. However, the two agencies have different mandates and authorities—the FEC is a regulatory agency that focuses on campaign finance while the EAC is a nonregulatory agency that covers election administration—and they do not generally work together.

The EAC does work closely with other parts of the federal government. Multiple federal agencies are represented on its advisory bodies, and one of them, the National Institute of Standards and Technology, also contributes to some of the EAC's research, grant-making, and voting system testing and certification functions. The EAC provides election administration expertise to federal agencies directly and via reports and congressional testimony; collaborates with federal entities on research; and coordinates with federal agencies, state and local officials, and other election administration stakeholders. For example, following the designation of election systems as critical infrastructure in 2017, the EAC assisted the U.S. Department of Homeland Security with setting up the new Election Infrastructure Subsector.[66] The EAC also has or has had relationships with other agencies that have had statutory obligations under the Help America Vote Act of 2002 (HAVA; P.L. 107-252; 116 Stat. 1666), including the General Services Administration, the Government Accountability Office, the U.S. Department of Health and Human Services, and the U.S. Department of Justice.

For more on federal involvement in election administration, see CRS Report R45302, *Federal Role in U.S. Campaigns and Elections: An Overview*, by R. Sam Garrett.

[64] See, for example, Rep. Robert Ney, "House Agreement to the Conference Report on H.R. 3295 and H.Con.Res. 508," House debate, *Congressional Record*, daily edition, vol. 148 (October 10, 2002), p. H7838.

[65] See, for example, Sen. John McCain, "Senate Consideration of S. 565, Consideration and Passage of H.R. 3295 with Amendments, and Return to the Calendar of S. 565. Senate Insistence on Its Amendments to H.R. 3295, Request for a Conference, and Appointment of Conferees," remarks in the Senate, *Congressional Record*, daily edition, vol. 148 (April 11, 2002), p. S2527.

[66] U.S. Department of Homeland Security, *Statement by Secretary Jeh Johnson on the Designation of Election Infrastructure as a Critical Infrastructure Subsector*, January 6, 2017, at https://www.dhs.gov/news/2017/01/06/statement-secretary-johnson-designation-election-infrastructure-critical. For more on the critical infrastructure designation, see CRS In Focus IF10677, *The Designation of Election Systems as Critical Infrastructure*, by Eric A. Fischer. For more on the EAC's role in the Election Infrastructure Subsector, see the "The Agency's Role in Federal Election Security Efforts" section of this report.

Commission

The commission is designed to have four members, each of whom is required to have elections experience or expertise and no more than two of whom may be affiliated with the same political party. Candidates for the commission are recommended by the majority or minority leadership of the House or Senate and appointed by the President subject to the advice and consent of the Senate.[67]

Commissioners are appointed to four-year terms on staggered two-year cycles.[68] They may be reappointed to up to one additional term and may continue to serve on "holdover" status after their terms expire, pending appointment of a successor. Two commissioners representing different political parties are chosen by the commission membership each year to serve one-year terms as chair and vice chair.[69]

Certain actions by the commission require a three-vote majority of its members.[70] According to an organizational management document adopted by the commission in February 2015, the commission is responsible for setting EAC policy.[71] Among the actions that require a policymaking quorum of the EAC's commissioners are adopting voluntary guidance and the VVSG, appointing an executive director or general counsel, and promulgating regulations for the NVRA-mandated voter registration reports and federal mail voter registration form.[72]

Professional Staff

The EAC has two statutory officers—an executive director and a general counsel—who are appointed by the commission. Both serve four-year terms and are eligible for reappointment.[73]

HAVA grants the executive director the authority to hire other professional staff (see **Figure 1** for an organizational chart of the agency as of 2019).[74] As a matter of policy, the executive director is also responsible for the day-to-day operations of the agency, including preparing policy recommendations for consideration by the commissioners, implementing adopted policies, and handling administrative affairs.[75]

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[67] 52 U.S.C. §20923.

[68] Two of the original members of the commission were appointed to two-year terms rather than four-year terms to allow for staggering of member tenures (52 U.S.C. §20923).

[69] 52 U.S.C. §20923.

[70] 52 U.S.C. §20928. The structure of the EAC's commission and its quorum requirement are similar to those of the FEC. Both agencies' commissions have an even number of members, no more than half of whom may share a party and a majority of whose votes are required for certain types of action. For more on the structure of the FEC's commission, see CRS Report R45160, *Federal Election Commission: Membership and Policymaking Quorum, In Brief*, by R. Sam Garrett.

[71] U.S. Election Assistance Commission, *Organizational Management Policy Statement*, p. 2.

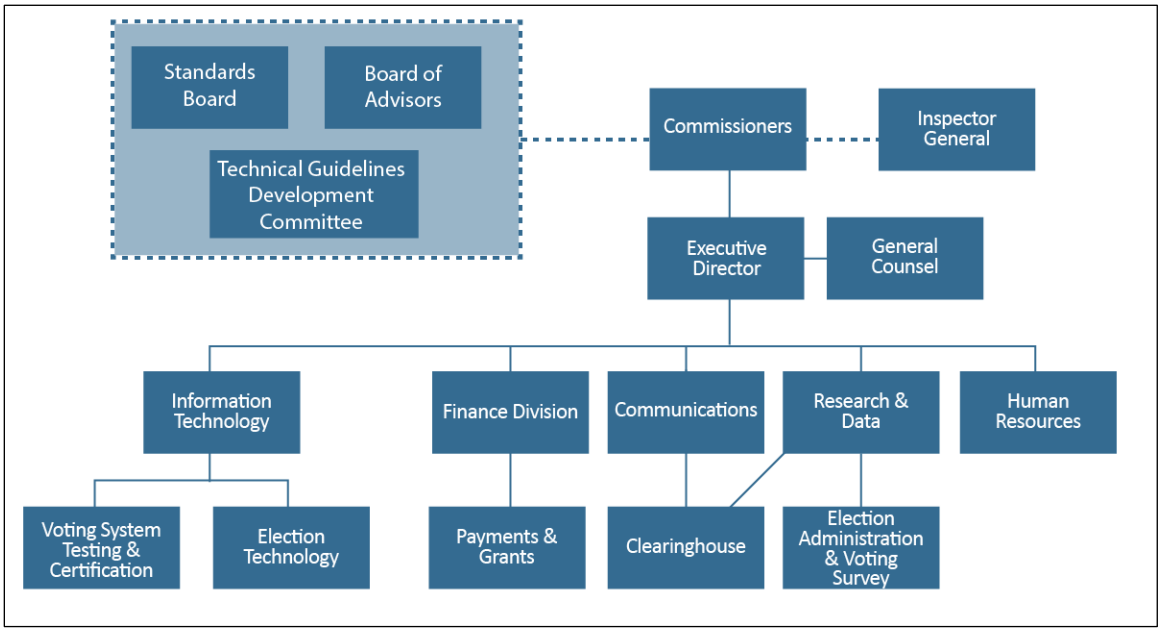
[72] The "Debate About the Permanence of the Agency" section of this report describes delays that occurred because the commission did not have enough members for a policymaking quorum. Because the commission is bipartisan and has an even number of members, there is also potential for the commission not to approve action when it *does* have enough members for a quorum. In 2006, for example, the commission deadlocked 2-2 along party lines over whether to change the state instructions on Arizona's version of the federal mail voter registration form to reflect state voters' approval of a proof of citizenship requirement for voter registration. Jennifer Nou, "Sub-Regulating Elections," *The Supreme Court Review*, vol. 2013, no. 1 (January 2014), pp. 139-141.

[73] 52 U.S.C. §20924.

[74] 52 U.S.C. §20924.

[75] U.S. Election Assistance Commission, *Organizational Management Policy Statement*, p. 2.

Figure 1. EAC Organizational Chart, 2019



Source: U.S. Election Assistance Commission, *Fiscal Year 2020 Congressional Budget Justification*, March 18, 2019, p, 10, at https://www.eac.gov/assets/1/6/EACFY2020BudgetJustification.pdf.

The size of the EAC's staff has varied, from the four commissioners and handful of OEA transfers in FY2004 to 50 full-time equivalent staff (FTEs) in FY2010 and around 30 FTEs since FY2015.[76] The number of FTEs the agency could maintain was capped at 22 in FY2005 and 23 in FY2006.[77] The cap was lifted in FY2007 and, as of May 2019, had not been reinstated.[78]

Advisory Bodies

HAVA created three advisory bodies for the EAC: the Board of Advisors, the Standards Board, and the TGDC. The three bodies—whose members represent a variety of agencies, associations,

[76] U.S. Election Assistance Commission, *Fiscal Year 2004 Annual Report*, p. 7; U.S. Election Assistance Commission, *Fiscal Year 2011 Congressional Budget Justification*, February 1, 2010, p. 5, at https://www.eac.gov/assets/1/6/157.PDF; U.S. Election Assistance Commission, *Fiscal Year 2017 Congressional Budget Justification*, February 9, 2016, p. 5, at https://www.eac.gov/assets/1/6/FY_2017_CBJ_Feb_9_2016_FINAL.pdf; U.S. Election Assistance Commission, *Fiscal Year 2020 Congressional Budget Justification*, p. 5.

[77] U.S. Congress, House Committee on Appropriations, *Making Appropriations for Foreign Operations, Export Financing, and Related Programs for the Fiscal Year Ending September 30, 2005, and For Other Purposes*, conference report to accompany H.R. 4818, 108th Cong., 2nd sess., November 20, 2004, H.Rept. 108-792 (Washington: GPO, 2004), p. 1452; U.S. Congress, House Committee on Appropriations, *Making Appropriations for the Departments of Transportation, Treasury, and Housing and Urban Development, the Judiciary, District of Columbia, and Independent Agencies for the Fiscal Year Ending September 30, 2006, and for Other Purposes*, conference report to accompany H.R. 3058, 109th Cong., 1st sess., November 18, 2005, H.Rept. 109-307 (Washington: GPO, 2005), pp. 284-285. The EAC indicated in a 2007 oversight hearing that, due to misunderstandings about FTE classifications, staffing exceeded the cap during this period. U.S. Congress, House Committee on House Administration, Subcommittee on Elections, *Oversight Hearing on the Election Assistance Commission*, hearing, 110th Cong., 1st sess., August 2, 2007 (Washington: GPO, 2007), p. 178.

[78] House Committee on House Administration, Subcommittee on Elections, *Election Assistance Commission Operations and 2012 Budget Proposal*, p. 2.

organizations, and interests—play important roles in the agency's functioning. The following subsections describe their structures and responsibilities.

The Board of Advisors and the Standards Board

The EAC's Board of Advisors and its Standards Board review voluntary guidance and the VVSG before they are presented to the commissioners for a vote on adoption.[79] In the event of a vacancy for executive director of the EAC, each of the boards is directed by HAVA to appoint a search committee for the position, and the commission is required to consider the candidates the search committees recommend.[80] The commission is also directed to consult with the two boards on research efforts, program goals, and long-term planning; and the National Institute of Standards and Technology (NIST) must consult with the boards on its monitoring and review of voting system testing labs.[81]

The Board of Advisors was initially assigned 37 members, but its membership dropped to 35 with the 2016 merger of two of the organizations responsible for appointing its members.[82] Sixteen members of the board are appointed by organizations that represent state and local officials,[83] and seven represent federal entities.[84] Four members are science and technology professionals, who are each appointed by the majority or minority leadership of the House or Senate. The remaining eight are voter representatives, two of whom are appointed by each of the chairs and ranking members of the EAC's two primary oversight committees. The overall membership of the board is intended to be bipartisan and geographically representative.[85]

The Standards Board has 110 members. They include two representatives of each of the U.S. jurisdictions that are eligible for HAVA's formula-based payments: the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. Each pair of representatives consists of one state election official and one local election official who are not affiliated with the same political party.[86]

The Standards Board chooses nine of its members to serve two-year terms on its Executive Board. Executive Board members may serve no more than three consecutive terms, and no more

[79] 52 U.S.C. §20942; 52 U.S.C. §20962.

[80] 52 U.S.C. §20924.

[81] 52 U.S.C. §20987; 52 U.S.C. §20924; 52 U.S.C. §20971.

[82] The National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials and Treasurers merged to form the International Association of Government Officials. Doug Chapin, "Fewer Letters in the Alphabet Soup: NACRC, IACREOT to Merge," *Election Academy*, July 7, 2015, at http://editions.lib.umn.edu/electionacademy/2015/07/07/fewer-letters-in-the-alphabet-soup-nacrc-iacreot-to-merge/.

[83] Two are appointed by each of the Election Center, the International Association of Government Officials, the National Association of Counties, the National Association of Secretaries of State, NASED, the National Conference of State Legislatures, the National Governors Association, and the United States Conference of Mayors (52 U.S.C. §20944).

[84] They are the Director of the U.S. Department of Defense's Federal Voting Assistance Program, the Chief of the DOJ's Office of Public Integrity or the Chief's designee, the Chief of the Voting Section of the DOJ's Civil Rights Division or the Chief's designee, two appointees of the Architectural and Transportation Barriers Compliance Board (Access Board), and two appointees of the U.S. Commission on Civil Rights (52 U.S.C. §20944).

[85] 52 U.S.C. §20944.

[86] HAVA directs the chief election officials of the District of Columbia, American Samoa, and Guam to establish procedures to select a representative to serve as a local election official for purposes of membership on the Standards Board (52 U.S.C. §20943).

than five Executive Board members may be either state officials, local officials, or members of the same political party.[87]

Technical Guidelines Development Committee

The 15-member TGDC is charged with helping the executive director of the EAC develop and maintain the VVSG. The Director of NIST serves as the chair of the committee and, in consultation with the commission, appoints its other 14 members. Appointees to the TGDC must include an equal number of members of the Board of Advisors, Standards Board, and Architectural and Transportation Barriers Compliance Board (Access Board); one representative of each of the American National Standards Institute (ANSI) and the Institute of Electrical and Electronics Engineers (IEEE); two NASED representatives who are chosen by the organization and neither share a political party nor serve on the Board of Advisors or Standards Board; and other individuals with voting system-related scientific or technical expertise.[88]

Office of Inspector General

The EAC is required to have an OIG under HAVA and the Inspector General Act of 1978, as amended (P.L. 95-452; 92 Stat. 1101).[89] As noted in the "Administration of Funding" section of this report, the EAC's OIG oversees audits of the use of HAVA funding and refers issues identified in audits to EAC management for resolution and, if necessary, corrective action.[90] In one instance, for example, the OIG determined that a HAVA grantee could not document its grant costs, and the EAC put the organization on a payment plan to return the funds.[91] In another case, some of a state's spending was found to be impermissible and some was found to be inadequately documented. The state was directed to repay the former funding to the U.S. Treasury and the latter to its HAVA state election fund.[92]

The OIG also oversees internal audits and investigations of the EAC. This work includes regular audits of the EAC's finances and compliance with federal laws, such as the Federal Information Security Management Act of 2002 (P.L. 107-347; 116 Stat. 2899), and reports on management challenges facing the agency. It also includes special audits and investigations in response to complaints about fraud, waste, mismanagement, or abuse at the EAC, such as a 2008 investigation of allegations of political bias in the agency's preparation of a voter fraud and intimidation report and a 2010 investigation of complaints about its work environment.[93]

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[87] Three of the original members of the Executive Board were limited to one term and three were limited to two terms to allow for staggering of member tenures (52 U.S.C. §20943).

[88] 52 U.S.C. §20961.

[89] 5 U.S.C. app. §8G. For more on inspectors general, see CRS Report R45450, *Statutory Inspectors General in the Federal Government: A Primer*, by Kathryn A. Francis.

[90] U.S. Election Assistance Commission, *Audits & Resolutions*. The EAC can also use suspension and debarment procedures to limit access to future EAC grants or payments by grantees who handle funds improperly. 2 C.F.R. §5800.

[91] U.S. Election Assistance Commission, *EAC Management Decision: Resolution of the OIG Audit Report on the Administration of Grant Funds Received Under the Help America Vote College Program by Project Vote*, November 24, 2010, p. 3, at https://www.eac.gov/assets/1/28/ Final%20EAC%20Management%20Decision%20Project%20Vote%20E-HP-SP-05-10.pdf; House Committee on House Administration, Subcommittee on Elections, *Election Assistance Commission Operations and 2012 Budget Proposal*, p. 121.

[92] 52 U.S.C. §21004; U.S. Election Assistance Commission, *Fiscal Year 2006 Annual Report*, pp. 29-30.

[93] U.S. Election Assistance Commission, *Inspector General: About the Office*; U.S. Election Assistance Commission Office of Inspector General, *Report of Investigation: Preparation of the Voter Fraud and Voter Intimidation Report*,

Operational Funding

The EAC has received operational funding for salaries and expenses, including for its OIG, in addition to the funding it has received for the grants and payments it administers and for transfers to NIST for HAVA-related activities like monitoring voting system testing labs. EAC appropriations have been under the jurisdiction of the Financial Services and General Government (FSGG) Subcommittees of the House and Senate Appropriations Committees since those subcommittees were created in 2007.[94]

HAVA explicitly authorized up to $10 million in operational funding for the EAC in each of FY2003, FY2004, and FY2005.[95] Congress appropriated significantly less than the authorized ceiling in the first two fiscal years: $2 million in FY2003 (P.L. 108-7) and $1.2 million, plus approximately $500,000 transferred from the OEA, in FY2004 (P.L. 108-7; P.L. 108-199).[96] The House Appropriations Committee also recommended significant cuts to the President's budget request for the agency from FY2012 through FY2018, although the enacted bills hewed more closely to presidential and Senate proposals. For more on those cases, see the "Setting up the Agency" section of this report and **Table 2**, respectively.

Congress appropriated $10.8 million for EAC salaries and expenses in the final year for which operational funding was explicitly authorized for the agency, FY2005 (P.L. 108-447).[97] Although the explicit authorization of appropriations for EAC operations only ran through FY2005, the agency has continued to receive operational funding in subsequent years pursuant to its enabling legislation (see **Table 2** for details).

Table 2. Proposed and Enacted Funding for EAC Operations from FY2006 to FY2019 (nominal $, in millions)

Figures for the House and Senate reflect chamber-passed, committee-reported, or other proposed levels, as indicated

Fiscal Year	06	07	08	09	10	11	12	13	14	15	16	17	18	19
Enacted	**11.4**	**11.3**	**12.3**	**12.9**	**13.4**	**13.1**	**8.8**	**8.8**	**8.1**	**8.1**	**8.1**	**8.2**	**8.6**	**8.0**
President	**14.8**	**12.0**	**12.2**	**12.7**	**13.3**	**13.6**	**10.5**	**8.8**	**8.3**	**8.1**	**8.1**	**8.3**	**7.7**	**7.7**
House[a]	**13.1**	**12.0**	**12.2**	12.9	**13.4**	**12.7**	5.2	4.4	0.0	**0.0**	4.8	**4.9**	**5.5**	**8.6**[b]
Senate[a]	**9.9**	12.1	12.2	12.7	13.3	13.6	11.5	8.8	8.3	8.1	8.1	8.1	7.7	**7.7**

Source: CRS, based on data from the President's budget requests and appropriations bills, drafts, and reports.

March 2008, at https://www.eac.gov/assets/1/1/Report%20of%20Investigation%20-%20Preparation%20of%20the%20Vote%20Fraud%20and%20Voter%20Intimidation%20Report.pdf; U.S. Election Assistance Commission Office of Inspector General, *Report of Investigation: Work Environment at the U.S. Election Assistance Commission*, March 2010, at https://www.eac.gov/assets/1/1/Report%20of%20Investigation%20Work%20Environment%20at%20the%20U.S.%20Election%20Assistance%20Commission.pdf.

[94] U.S. Congress, House Committee on Appropriations, *Subcommittee Jurisdiction*, committee print, 110th Cong., 1st sess., January 16, 2007 (Washington: GPO, 2007), p. 5.

[95] 52 U.S.C. §20930.

[96] Congress appropriated $800,000 to the OEA in FY2004. Approximately $500,000 was reported to be available when the OEA was officially transferred from the FEC to the EAC in April 2004. U.S. Election Assistance Commission, *Annual Report Fiscal Year 2003*, pp. 9, 11.

[97] This figure does not include funds designated for NIST, mock election grants, or the Help America Vote College Program.

Notes: Figures are from appropriations for the EAC's Salaries and Expenses account, including funds designated for the OIG. They are rounded and do not reflect rescissions, sequestration reductions, or funds designated for NIST, mock election grants, or the Help America Vote College Program.

a. Figures for the House and Senate indicate chamber-specific action: **bold** for a chamber-passed bill and regular text for a measure that did not pass the chamber. The figures in regular text are from committee-reported measures, with the exception of one case in which the measure was not reported out of subcommittee and another case in which it was not reported out of committee. The Senate figures for FY2015 and FY2018 are from the subcommittee bill and the committee chairman's draft, respectively.

b. This figure reflects the level in House-passed bill H.R. 6147. The House subsequently passed other bills that would have provided other levels of funding for the EAC.

Some Members have proposed explicitly reauthorizing appropriations for EAC operations, although none of the proposals had been enacted as of May 2019. For more on such proposals, see the "Proposals That Engage the Existing Role of the EAC" section of this report.

History of the EAC

It took some time for the EAC to become operational. HAVA called for members to be appointed to the agency's commission within 120 days of the act's enactment (on October 29, 2002), but the first four commissioners did not take office for more than a year.[98] Without commissioners, the agency drew limited appropriations, and the lack of commissioners and funding led to inactivity and missed deadlines.

After nearly a decade of agency operations, the 112th Congress saw the start of efforts to limit or eliminate the EAC, as some Members of Congress questioned whether there was still a need for the agency. More recently—following reports of attempted foreign interference in the 2016 elections—proponents of the EAC have cited the agency's participation in federal election security efforts as new grounds to preserve it.[99]

This section traces the history of the EAC from its origins in the wake of the 2000 elections to its position after the 2016 elections.

Setting up the Agency

HAVA called for members to be appointed to the commission by February 26, 2003, but the first four commissioners did not take office until December 13, 2003.[100]

The act also explicitly authorized up to $10 million in funding for EAC operations for each of FY2003, FY2004, and FY2005.[101] With no commissioners in place for the first of those fiscal years or the start of the second, Congress appropriated significantly less than that amount in FY2003 and FY2004 (P.L. 108-7; P.L. 108-199).

In a 2004 oversight hearing on the EAC, some Members of Congress expressed concern that the limited early funding and delays in establishing the EAC had affected the agency's ability to

[98] 52 U.S.C. §20923; U.S. Election Assistance Commission, *Annual Report Fiscal Year 2003*, p. 1.

[99] See, for example, House Committee on House Administration, *Markup of H.R. 634, Election Assistance Commission Termination Act; H.R. 133, to Reduce Federal Spending and the Deficit by Terminating Taxpayer Financing of Presidential Election Campaigns; and Committee Resolution 115-4, the Committee's Views and Estimates on the Fiscal Year 2018*, pp. 2-3.

[100] 52 U.S.C. §20923; U.S. Election Assistance Commission, *Annual Report Fiscal Year 2003*, p. 1.

[101] 52 U.S.C. §20930.

perform its duties.[102] One Member referred, for example, to missed deadlines for adopting voluntary guidance.[103] As set out in HAVA, the deadlines for the EAC to adopt voluntary guidance for meeting the act's requirements preceded the deadlines for states to start meeting them.[104] In theory, that would have given states the chance to review the agency's guidance before they finalized action on the requirements.[105] In practice, the commissioners took office nearly a month-and-a-half after the first guidance was due and less than three weeks before states were supposed to have started meeting requirements.[106]

Some of the deadlines for conducting statutorily mandated research had also passed before the commissioners were sworn in, and some commissioners testified that the early issues had caused them to limit the scope of their ambitions for other projects.[107] "We are unable to do anything more than … really recite anecdotal things that we have heard as opposed to giving research-based guidance to States on how to implement" certain election measures, then-Commissioner Ray Martinez said about the commission's ongoing guidance work, for example. He added, "That is a critical point. We just don't have the means at this point to do anything other than how we are going about it, which I think is a very responsible and the best possible way that we can, but it is within the context of some very severely limited funds."[108]

Debate About the Permanence of the Agency

Some aspects of HAVA, such as the provision for reappointment of EAC commissioners to a second four-year term and the absence of a sunset provision for the agency, are consistent with a vision of the EAC as a continuing agency.[109] Others, such as explicitly authorizing only three years of operational funding, suggest something more temporary.[110] That has left room for debate about how long-lasting the EAC should be.

Some have viewed its proper role as permanent. At various points in the HAVA debate, for example, Members of the Senate characterized the agency as permanent.[111] Other Members of Congress have highlighted benefits of ongoing EAC responsibilities like updating the VVSG, conducting the EAVS, and providing technical and other assistance to the states. They have argued that the tasks the EAC performs are essential and could not be carried out as effectively—or much more cost-effectively—by other agencies.[112]

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[102] See, for example, U.S. Congress, House Committee on House Administration, *Oversight Hearing on the Election Assistance Commission*, hearing, 108th Cong., 2nd sess., June 17, 2004 (Washington: GPO, 2004), pp. 52, 54-55, 64.

[103] See, for example, House Committee on House Administration, *Oversight Hearing on the Election Assistance Commission*, June 17, 2004, pp. 54-55.

[104] 52 U.S.C. §21101; 52 U.S.C. §§21081-21083.

[105] House Committee on House Administration, *Oversight Hearing on the Election Assistance Commission*, June 17, 2004, pp. 54-55.

[106] Montjoy and Chapin, "The U.S. Election Assistance Commission," p. 622.

[107] 52 U.S.C. §20983; 52 U.S.C. §20986; House Committee on House Administration, *Oversight Hearing on the Election Assistance Commission*, June 17, 2004, pp. 52, 59-60.

[108] House Committee on House Administration, *Oversight Hearing on the Election Assistance Commission*, June 17, 2004, p. 60.

[109] 52 U.S.C. §20923.

[110] 52 U.S.C. §20930.

[111] See, for example, Sen. Chris Dodd, "Senate Agreement to the Conference Report on H.R. 3295," p. 10501.

[112] See, for example, U.S. Congress, House Committee on House Administration, *Election Support Consolidation and Efficiency Act*, report to accompany H.R. 672, 112th Cong., 1st sess., June 2, 2011, H.Rept. 112-100 (Washington: GPO,

Other Members have seen the agency as temporary. As of the beginning of the 112th Congress, the EAC had distributed much of the funding it was authorized by HAVA to administer and completed a number of the studies HAVA directed it to conduct. The National Association of Secretaries of State had recently renewed a resolution—first adopted in 2005 and subsequently to be approved again in 2015—that called for the agency's elimination.[113] The EAC's inspector general reported ongoing issues with the agency's performance management, information security, work environment, records management, and overhead expenses.[114]

Such factors were cited by some as evidence that the agency had outlived its usefulness.[115] Bills were introduced to terminate the EAC, and the House Appropriations Committee recommended cutting or eliminating its operational funding. For more on those activities, see the "Proposals to Terminate the EAC" section of this report and **Table 2**, respectively.

The Senate also stopped confirming—and some congressional leaders stopped recommending[116]—nominees to the EAC. The commission lost the numbers required for a policymaking quorum in December 2010 and both of its remaining members in December 2011 (see **Figure 2** for details).[117] The Senate, some of whose Members cited opposition to the ongoing existence of the agency rather than to individual nominees, did not confirm any new commissioners until December 2014.[118]

Without the numbers for a policymaking quorum, the commission could not take official action. One notable consequence was that it could not update the VVSG.[119] The creation of the EAC was, in part, a response to the FEC's handling of the VSS. The committee report on legislation containing a precursor to the VVSG provisions of HAVA, for example, cited the FEC's failure to keep the VSS up to date.[120] The lack of numbers for a quorum between December 2011 and the

2011), pp. 54-56; and U.S. Congress, House Committee on House Administration, *Second Semiannual Report on the Activities of the Committee on House Administration of the House of Representatives During the One Hundred Twelfth Congress Together with Minority Views*, report, 112th Cong., 1st sess., December 30, 2011, H.Rept. 112-360 (Washington: GPO, 2011), p. 14.

[113] National Association of Secretaries of State, *Resolution Reaffirming the NASS Position on Funding and Authorization of the U.S. Election Assistance Commission*, July 12, 2015, at https://www.nass.org/sites/default/files/resolutions/2015/nass-resolution-eac-summer15-_0.pdf.

[114] See, for example, U.S. Congress, House Committee on Appropriations, Subcommittee on Financial Services and General Government, *Testimony of Curtis W. Crider, Inspector General, Before the U.S. House Appropriations Committee, Subcommittee on Financial Services and General Government*, 112th Cong., 1st sess., March 2, 2011, pp. 6, 9.

[115] See, for example, U.S. Congress, House Committee on House Administration, Markup of H.R. 94, to Amend the Internal Revenue Code of 1986 to Prohibit the Use of Public Funds for Political Party Conventions; H.R. 95, to Reduce Federal Spending and the Deficit by Terminating Taxpayer Financing of Presidential Election Campaigns and Party Conventions; H.R. 1994, Election Assistance Commission Termination Act; Committee Resolution Dismissing the Election Contest in CA-43; and Committee Resolution Dismissing the Election Contest in TN-9, hearing on H.R. 94, H.R. 95, and H.R. 1994, 113th Cong., 1st sess., June 4, 2013 (Washington: GPO, 2013), pp. 6-7, 54.

[116] Amanda Becker, "The Phantom Commission," *Roll Call*, October 31, 2012.

[117] U.S. Election Assistance Commission, *Statement of Gracia M. Hillman on the Occasion of her Resignation as Commissioner, U.S. Election Assistance Commission*, December 6, 2010; U.S. Election Assistance Commission, *2012 Activities Report*, p. 7, at https://www.eac.gov/assets/1/6/FY-2012-EAC-Activities-Report-Website-Scanned.pdf.

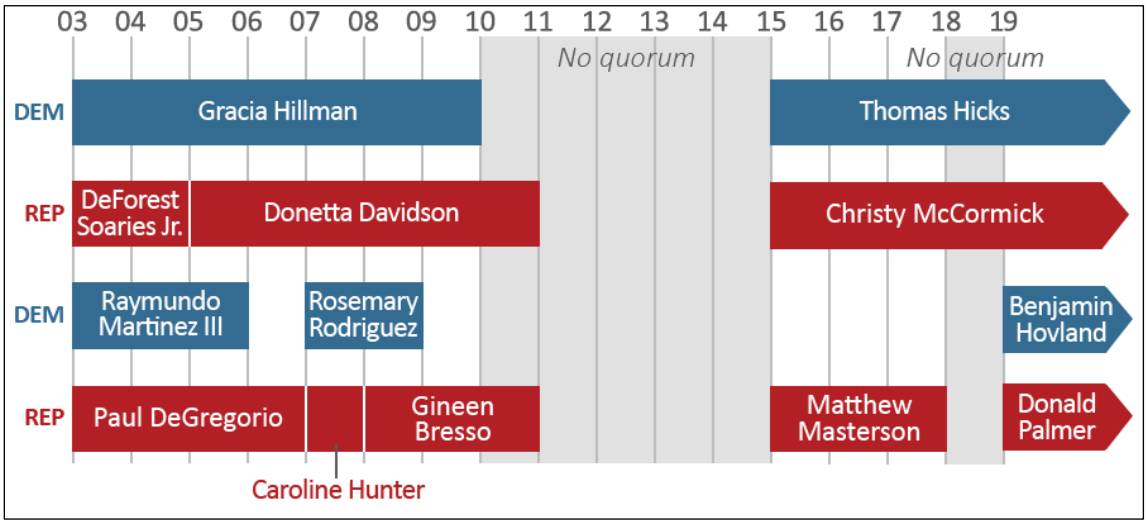
[118] See, for example, U.S. Congress, Senate Committee on Rules and Administration, *Hearings and Markups Before the Committee on Rules and Administration*, hearings and markups, 112th Cong., 1st sess., June 29, 2011, S.Hrg. 112-770 (Washington: GPO, 2014), p. 18.

[119] Another consequence was that the EAC could not appoint statutory officers. That left it without a permanent executive director and general counsel after the then-officeholders resigned in November 2011 and May 2012, respectively. U.S. Election Assistance Commission, *2012 Activities Report*, p. 7.

[120] House Committee on Science, *Voting Technology Standards Act of 2001*, p. 6. The Voting Technology Standards

swearing-in of the newly confirmed commissioners in January 2015, however, left an almost 10-year gap between the EAC's initial adoption of the VVSG in 2005 and its first update in 2015.[121]

Figure 2. Tenures of EAC Commissioners



Source: CRS, based on data from the EAC and Congress.gov.

The Agency's Role in Federal Election Security Efforts

The U.S. Intelligence Community reported in 2016 that foreign entities had attempted to interfere with that year's elections.[122] The U.S. Department of Homeland Security (DHS) responded in January 2017 by designating election systems as critical infrastructure,[123] and Congress responded in March 2018 by appropriating $380 million for payments to states that, it indicated in an accompanying explanatory statement, it intended to be used for enhancing election technology and improving election security (see **Table 1** for details).[124]

Act of 2001 (H.R. 2275) proposed establishing a commission to develop voluntary voting system standards and consult on accreditation of voting system testing labs. The bill was largely incorporated into HAVA. House Committee on House Administration, *Oversight Hearing on the Election Assistance Commission*, June 17, 2004, p. 54.

[121] A second quorum-less period led to another delay in updating the VVSG. The commission was without a quorum from the departure of one of its members in March 2018 until two new commissioners took office in February 2019. A pending update to the VVSG, which had previously been slated for release in 2018, was pushed back. U.S. Election Assistance Commission, *Commissioners Hovland, Palmer Sworn in to Restore Quorum at EAC*, February 6, 2019, at https://www.eac.gov/news/2019/02/06/commissioners-hovland-palmer-sworn-in-to-restore-quorum-at-eac/; U.S. Election Assistance Commission, *Voluntary Voting System Guidelines*.

[122] See, for example, U.S. Department of Homeland Security, "Joint Statement from the Department of Homeland Security and Office of the Director of National Intelligence on Election Security," press release, October 7, 2016, at https://www.dhs.gov/news/2016/10/07/joint-statement-department-homeland-security-and-office-director-national.

[123] U.S. Department of Homeland Security, Statement by Secretary Jeh Johnson on the Designation of Election Infrastructure as a Critical Infrastructure Subsector. For more on the critical infrastructure designation, see CRS In Focus IF10677, *The Designation of Election Systems as Critical Infrastructure*, by Eric A. Fischer.

[124] The funding was appropriated under a provision of HAVA that authorizes payments to states for general improvements to the administration of federal elections (52 U.S.C. §§20901, 20903-20904), but the explanatory statement accompanying the appropriations bill indicated that Congress intended it to be used for enhancing election technology and improving election security. Rep. Rodney Frelinghuysen, "Explanatory Statement Submitted by Mr. Frelinghuysen, Chairman of the House Committee on Appropriations, Regarding the House Amendment to Senate

The EAC has participated in both responses. First, it was charged with administering the new payments to states (P.L. 115-141). Second, it helped set up—and, in some cases, serves as a member of—the special channels for sharing threat information and facilitating sector and subsector coordination that came with the critical infrastructure designation. Those channels include the Election Infrastructure Subsector's Government Coordinating Council and Executive Committee, Sector Coordinating Council, and Elections Infrastructure Information Sharing and Analysis Center.[125]

The EAC has also focused on election security in some of its other work. It has provided information technology management trainings for election officials, for example, and produced election security and critical infrastructure resources for voters.[126]

Supporters of a permanent role for the EAC have pointed to its participation in the federal government's election security efforts as a new reason to keep the agency.[127] Other Members have also indicated that they see a longer-term role for the agency in light of the 2016 elections. For example, the House Appropriations Committee proposed increasing the EAC's operational funding above the President's budget request in FY2019 after seven years of recommending substantial cuts (see **Table 2** for details).[128]

Legislative Activity on the EAC

The EAC has continued to be a subject of legislative activity since its creation by HAVA. It has been part of the appropriations process, receiving operational funding each fiscal year. For more on appropriations activity on the EAC, see the "Operational Funding" section of this report.

It has also featured in a range of authorizing legislation. Some post-HAVA authorization bills have tapped into the existing role of the agency, while others have proposed changes to that role. There have also been proposals that focused less on the nature of the role the EAC performs than on how it performs that role.

Proposals That Engage the Existing Role of the EAC

The EAC has traditionally been responsible for managing certain election administration-related funding, adopting guidance for meeting some national election administration requirements, serving as a federal source of election administration expertise, conducting election administration research, and helping connect election administration stakeholders with one another. Members looking for a federal agency to perform such tasks—to administer new grants to states to conduct risk-limiting audits, for example, or to set standards for electronic poll

Amendment on H.R. 1625," explanatory statement, *Congressional Record*, daily edition, vol. 164 (March 22, 2018), p. H2519.

[125] U.S. Election Assistance Commission, *2018 Annual Report*, pp. 31-33.

[126] U.S. Election Assistance Commission, *2018 Annual Report*, pp. 30-35; U.S. Election Assistance Commission, *Fiscal Year 2020 Congressional Budget Justification*, pp. 15-16.

[127] See, for example, House Committee on House Administration, *Markup of H.R. 634, Election Assistance Commission Termination Act; H.R. 133, to Reduce Federal Spending and the Deficit by Terminating Taxpayer Financing of Presidential Election Campaigns; and Committee Resolution 115-4, the Committee's Views and Estimates on the Fiscal Year 2018*, pp. 2-3.

[128] U.S. Congress, House Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2019*, report to accompany H.R. 6258, 115th Cong., 2nd sess., June 28, 2018, H.Rept. 115-792 (Washington: GPO, 2018), p. 44.

books—have often turned to the EAC in their legislative proposals.[129] Members have also proposed explicitly reauthorizing appropriations for EAC operations either permanently or for a set number of years.

Table 3 presents selected examples of such bills.

Table 3. Selected Proposals That Engage the Existing Role of the EAC

Short Title	Number	Congress	Latest Status	Summary of Selected Provisions
For the People Act of 2019	H.R. 1	116th	Passed House	Would establish a National Commission to Protect United States Democratic Institutions, and direct the chair of the EAC to appoint one of its members
Election Security Act	H.R. 5011	115th	Introduced	Would have directed the EAC to make grants to states to replace voting systems, improve voting system security, and conduct risk-limiting audits
Voter Registration Modernization Act	S. 1088	114th	Introduced	Would have established national voter registration requirements, and directed the EAC to make payments to states to help meet them
Voter Confidence and Increased Accessibility Act of 2014	H.R. 5741	113th	Introduced	Would have directed the EAC to develop best practices for documenting voting system chains of custody
Federal Election Integrity Act of 2012	H.R. 6408	112th	Introduced	Would have directed states to provide voter ID cards at no charge to individuals who attest they cannot afford a fee, and directed the EAC to make payments to states to help provide the ID cards
Voting Opportunity and Technology Enhancement Rights Act of 2009	H.R. 105	111th	Introduced	Would have permanently reauthorized appropriations for operational funding for the EAC
E-Poll Book Improvement Act of 2007	H.R. 756	110th	Introduced	Would have directed the EAC to adopt voluntary guidance for electronic poll books and to include electronic poll books in federal testing and certification

Source: CRS, based on data from Congress.gov.

Notes: The provisions summarized in this table are intended as examples of the types of proposals that have been offered. They do not include all proposals in all bills in this category or even, in some cases, all such proposals in the bill in which they appear.

Proposals to Change the Role of the EAC

The long-standing disagreements about the federal role in election administration that played out in the HAVA debate and in discussions about filling seats on the commission have also played out

[129] These proposals have sometimes tracked broader national conversations about election administration policy. For example, during a period when there was particular interest in voter ID requirements, there were a number of proposals to provide EAC-administered federal funding for free ID cards. Following reports of attempted foreign interference in the 2016 elections, election security-related proposals have been common. See, for example, H.R. 4844 in the 109th Congress and H.R. 378 in the 116th Congress.

in post-HAVA legislative proposals. There have been proposals both to expand the EAC's authority and to eliminate the agency entirely. There have also been proposals to eliminate or substantially reduce the agency's funding. For more on proposed funding cuts, see the "Operational Funding" and "Debate About the Permanence of the Agency" sections of this report.

Proposals to Terminate the EAC

Some post-HAVA legislation has proposed eliminating the EAC. By the beginning of the 112th Congress, almost a decade had passed since HAVA was enacted. As noted in the "Debate About the Permanence of the Agency" section of this report, the EAC was nearing the end of some of the bigger projects it had been assigned by HAVA. And other agencies, such as NIST, were already playing a central role in ongoing EAC responsibilities like the federal voting system testing and certification program. There was a sense among some Members that there was no longer a need for a separate agency to fill the role the EAC had been filling. Combined with concerns about how the agency was being managed, this prompted calls to terminate it. Bills to disband the EAC and transfer duties to other agencies were introduced in each Congress from the 112th to the 115th.

Proposals to Expand the EAC's Authority

Other bills have taken the opposite tack, proposing new authority for the EAC. One such approach has been to revisit the limit on EAC rulemaking, proposing lifting it in certain cases—such as to permit the agency to promulgate regulations for a proposed new federal write-in absentee ballot—or striking it entirely. Another approach has been to propose giving the agency new powers to direct state or local action, such as imposing penalties for noncompliance with certain national election administration requirements or designating types of evidence that state and local officials may not use as grounds for removing individuals from the voter rolls.

Table 4 presents selected examples of proposals to terminate the EAC or to expand its authority.

Table 4. Selected Proposals to Change the Role of the EAC

Short Title	Number	Congress	Latest Status	Summary of Selected Provisions
Voter Empowerment Act of 2019	S. 549	116th	Introduced	Would permit the EAC to designate evidence that may not be used as the basis for removing voters from the rolls
Election Assistance Commission Termination Act	H.R. 634	115th	Introduced	Would have terminated the EAC
Election Integrity Act of 2016	H.R. 6072	114th	Introduced	Would have struck the limit on EAC rulemaking
Election Support Consolidation and Efficiency Act	H.R. 672	112th	Failed House	Would have terminated the EAC
Voting Opportunity and Technology Enhancement Rights Act of 2009	H.R. 105	111th	Introduced	Would have directed the EAC to establish a federal write-in absentee ballot and lifted the limit on EAC rulemaking as applied to the new absentee ballot
Valuing Our Trust in Elections Act	H.R. 2250	109th	Introduced	Would have permitted the EAC to impose penalties for noncompliance with the act's requirements on states that receive funding under the act

Short Title	Number	Congress	Latest Status	Summary of Selected Provisions
Voter Confidence and Increased Accessibility Act of 2003	S. 1980	108th	Introduced	Would have directed the EAC to conduct unannounced manual recounts of election results

Source: CRS, based on data from Congress.gov.

Notes: The provisions summarized in this table are intended as examples of the types of proposals that have been offered. They do not include all proposals in all bills in this category or even, in some cases, all such proposals in the bill in which they appear.

Proposals to Change the Way the EAC Works

Some post-HAVA legislation on the EAC has focused less on what the agency does and more on how it does it. Bills have been introduced that propose structural changes to the agency, such as adding members to its advisory bodies or creating new advisory boards or task forces, and procedural changes, such as adjusting the payment process for voting system testing, changing how the EAC submits its budget requests, and exempting the agency from certain federal requirements.

Such proposals aim to address perceived weaknesses in the way the agency operates. Some proposals may be responses to perceived inefficiencies in current processes, such as delays caused by the commission's quorum requirement or the public comment requirement of the Paperwork Reduction Act of 1980 (P.L. 96-511; 94 Stat. 2812), or to a perceived need for new kinds of experience or expertise at the agency. Other proposals may aim to prevent possible conflicts of interest, such as by eliminating direct payments from vendors to voting system testing labs, or to give Congress more insight into the agency's resource needs, such as by requiring it to submit budget requests to Congress at the same time as it sends them to the President or the Office of Management and Budget.[130]

Table 5 presents selected examples of these kinds of structural and procedural proposals.

Table 5. Selected Proposals to Change the Way the EAC Functions

Short Title	Number	Congress	Latest Status	Summary of Selected Provisions
For the People Act of 2019	H.R. 1	116th	Passed House	Would add the Secretary of DHS to the EAC's Board of Advisors and a DHS representative to the TGDC
Voting Innovation Prize Act of 2018	H.R. 6564	115th	Introduced	Would have directed the EAC to establish a prize competition for voting technology innovation and permitted the EAC to promulgate relevant regulations and carry out the act without a quorum

[130] U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on Information Policy, Census, and National Archives, *Certification and Testing of Electronic Voting Systems*, hearing, 110th Cong., 1st sess., May 7, 2007, H.Hrg. 110-13 (Washington: GPO, 2007), pp. 65, 78; CRS Insight IN10715, *When an Agency's Budget Request Does Not Match the President's Request: The FY2018 CFTC Request and "Budget Bypass,"* by Jim Monke, Rena S. Miller, and Clinton T. Brass, p. 2 (available to congressional clients upon request); Jennifer L. Selin and David E. Lewis, *Sourcebook of United States Executive Agencies*, Administrative Conference of the United States, October 2018, pp. 88-89.

Short Title	Number	Congress	Latest Status	Summary of Selected Provisions
Voter Empowerment Act of 2013	H.R. 12	113th	Introduced	Would have directed the EAC to establish an escrow account for payments to voting system testing labs and a schedule of testing fees for vendors
Voter Advocate and Democracy Index Act of 2007	S. 737	110th	Introduced	Would have created an Office of the Voter Advocate and Board of Advisors to help the EAC develop and administer a Democracy Index
Bipartisan Electronic Voting Reform Act of 2008	S. 3722	110th	Introduced	Would have added representatives of the voting system manufacturing industry and accessibility and usability sector to the TGDC
Secure America's Vote Act of 2005	H.R. 3094	109th	Introduced	Would have directed the EAC to submit its budget estimates and requests to Congress at the same time as it sent them to the President or the Office of Management and Budget

Source: CRS, based on data from Congress.gov.

Notes: The provisions summarized in this table are intended as examples of the types of proposals that have been offered. They do not include all proposals in all bills in this category or even, in some cases, all such proposals in the bill in which they appear.

Potential Considerations for Congress

Congress has the authority to conduct oversight of the EAC and to legislate on both the EAC in particular and election administration more generally.[131] In addition to issues raised by previous legislative proposals, such as whether to terminate the agency, the following issues may be of interest to Members as they consider whether or how to undertake such activities or whether to maintain the status quo:

Providing for New Expertise. The EAC was structured to ensure input from a range of election administration stakeholders, from voters to technical specialists to accessibility experts.[132] However, new developments, such as new election security threats, might call for experience or expertise not currently represented at the agency. If Congress seeks to assure the EAC access to such experience or expertise, how might it do so? Some possible options include directing the EAC to consult with specialist organizations or agencies, funding specialized professional staff or creating specialized departments within the agency, adding members to one or more of the advisory bodies, and establishing new advisory bodies or task forces. Are there reasons to prefer some of these options over others? For example, the EAC's advisory bodies play a particularly central role in the functioning of the agency. Are there reasons to want certain stakeholders to have—or not to have—such direct access to EAC actions and decisionmaking?[133]

[131] See, for example, U.S. Const. art. 1. sec. 4. cl. 1.

[132] See, for example, Sen. John McCain, "Senate Consideration of S. 565, Consideration and Passage of H.R. 3295 with Amendments, and Return to the Calendar of S. 565. Senate Insistence on Its Amendments to H.R. 3295, Request for a Conference, and Appointment of Conferees," remarks in the Senate, *Congressional Record*, daily edition, vol. 148 (April 11, 2002), p. S2527.

[133] For one possible concern about such access, see House Committee on House Administration, Subcommittee on Elections, *Oversight Hearing on the Election Assistance Commission*, August 2, 2007, p. 87; and U.S. Congress, House

Assigning (and Reassigning) Responsibilities. The EAC is the only federal agency dedicated to election administration as a whole.[134] As such, it is often taken to be the obvious choice to assume federal election administration responsibilities. As noted above, however, some Members have suggested that some of the duties currently in the EAC's portfolio might be better performed by other agencies or in other ways.[135] Are there election administration-related issues about which parts of the federal government other than the EAC might have relevant expertise? For example, the EAC has traditionally been the primary federal repository of election administration best practices, but DHS also provides resources related to election security.[136] Questions might arise, with respect to certain elections-related duties, about which agency—or combination of agencies—is best positioned to perform them. More broadly, how might the EAC's and other agencies' comparative advantages guide assignment of new federal election administration responsibilities or reassignment of existing responsibilities?

Assessing and Meeting Resource Needs. The EAC has been described variously as both overfunded and underfunded.[137] Developments like the emergence of new election security threats have prompted calls for additional resources for agency operations and for distribution to states via the EAC.[138] How do current levels of funding match up to the agency's—and its grantees'—resource needs? Are there tools, such as concurrent budget submission or research into appropriate funding levels for HAVA payments, that might help Congress better assess those needs?[139] Are there resources other than funding, such as security clearances for commissioners or professional staff, that the EAC needs and does not currently have?

Considering the Role of the Quorum Requirement. The quorum requirement for official action by the commission has led at times to delays and inactivity, such as deferred updates to the VVSG. Does Congress seek to consider ways to reduce the likelihood or frequency of such delays? If so, would it prefer an approach that eliminated the need for a quorum in certain cases, such as by exempting certain actions from the quorum requirement,[140] or one that reduced the likelihood of the commission being without a quorum? Options for the latter approach might include structural changes to the commission, such as adding or removing a seat, or procedural changes to the way commissioners are seated, such as revising the roles of the President and congressional leadership in the candidate selection process.

Committee on House Administration, Subcommittee on Elections, *Oversight Hearing on the Election Assistance Commission*, hearing, 110th Cong., 1st sess., March 12, 2008 (Washington: GPO, 2008), pp. 34-37.

[134] For an overview of the federal role in election administration, see CRS Report R45302, *Federal Role in U.S. Campaigns and Elections: An Overview*, by R. Sam Garrett.

[135] The committee report on a proposal to terminate the EAC states, for example, "It is an open question whether a federal testing and certification program using standards developed under the HAVA system is the best long-term process for supporting voting system quality." House Committee on House Administration, *Election Support Consolidation and Efficiency Act*, p. 13.

[136] See, for example, U.S. Department of Homeland Security, *Election Security Resource Library*, at https://www.dhs.gov/publication/election-security-resource-library.

[137] See, for example, the "Setting up the Agency" and "Debate About the Permanence of the Agency" sections of this report.

[138] See, for example, Letter from Rep. Steny Hoyer, Rep. Jamie Raskin, Rep. Bob Brady et al. to Rep. Rodney Frelinghuysen, Rep. Nita Lowey, Rep. Tom Graves, and Rep. Mike Quigley, March 19, 2018, at https://raskin.house.gov/sites/raskin.house.gov/files/FY%2019%20EAC%20Appropriations%20Letter_0.pdf.

[139] For examples of proposals to provide such tools, see S. 3722 in the 110th Congress and H.R. 108 in the 112th Congress.

[140] See, for example, Edward Perez, "Perspectives from the U.S. Election Assistance Commission Public Hearing in Memphis," *OSET Institute*, April 12, 2019.

Scheduling EAC Action. HAVA envisioned that the EAC would adopt voluntary guidance about how to meet the act's national election administration requirements before the states actually had to meet them. The idea was to give states the opportunity to review the federal guidance before finalizing their actions on the requirements.[141] Subsequent legislative proposals have similarly called for new national election administration requirements and EAC guidance about how to meet them.[142] How might deadlines be set in such proposals to give the EAC time to research and adopt meaningful guidance and the states time to make best use of it? Are there additional conditions that might need to be set—or support that might need to be provided—to ensure that the deadlines can be met?

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[141] For more on how this worked in practice, see the "Setting up the Agency" section of this report.

[142] See, for example, H.R. 1 and S. 549 in the 116th Congress.