



U.S. ELECTION ASSISTANCE COMMISSION
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**U.S. Election Assistance Commission
Legislative Proposals
May 2023**

Below are the EAC's legislative proposals for improving overall agency operations in order to further assist election officials, congressional stakeholders, and voters.

Provide Election Officials and Congress with Timely and Actionable Information

1) Proposal: Empower the EAC to collect relevant information from states and jurisdictions to quickly disseminate best practices throughout the country. This will allow the EAC to assist election officials by exempting the agency from the mandatory Paperwork Reduction Act (PRA) process.

Justification: When Congress established the EAC through the Help America Vote Act of 2002 (HAVA), it transferred from the Federal Election Commission (FEC) the responsibility of serving as the nation's clearinghouse for information on the administration of elections. To be an effective clearinghouse, the EAC must collect information from state and local election officials in a timely manner so agency guidance and work products are up-to-date and actionable to stakeholders at the time of dissemination.

Compliance with the PRA involves a lengthy process that requires considerable time and resources. The requirements impede the EAC's efforts to collect critical time-sensitive information from state and local election officials. Given that election integrity and cybersecurity play a vital role in our national security, the EAC's ability to respond to evolving threats by quickly distributing alerts and guidance is essential, especially in today's environment of heightened election security concerns. Often clearinghouse work products and election guidance are unique to a given election cycle, and the PRA serves as a serious barrier to the EAC's efforts in quickly providing information to stakeholders. Any burden from voluntarily answering the EAC's questions is outweighed by the benefit of the clearinghouse to these same stakeholders.

When the PRA was originally codified in 1980, the FEC, which had the election administration clearinghouse duties at that time, was made exempt. The PRA of 1995 continued this exemption for the FEC. Congress implicitly recognized the importance of timely collection and dissemination of election information when it granted a PRA exemption for the FEC. Unfortunately, when the EAC was established in 2002 and took over the clearinghouse duties and other election administration related responsibilities from the FEC, the PRA was not amended to grant the EAC the same exemption afforded to the FEC. This issue should be corrected by adding the EAC to the list of agencies exempt from the PRA.

Necessary Legislative Change: Amend 44 U.S.C. § 3502(1) to add section (E) below, adding the EAC to agencies excepted from the requirements of the PRA.

“(1) the term “agency” means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include—

- (A) the Government Accountability Office;
- (B) Federal Election Commission;
- (C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions;
- (D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities; or
- (E) Election Assistance Commission.”

2) Proposal: Preserve the independence of the EAC by adding language to HAVA authorizing the EAC to submit budget estimates, legislative recommendations, testimony, or legislative comments to Congress concurrently with the agency’s submissions to the President and the Office of Management and Budget (OMB).

Justification: For the EAC to preserve its independent status, the agency needs to be able to freely communicate with Congress. It is common for other independent commissions, such as the Federal Election Commission, to have language in their enabling statute authorizing the commission to submit budget estimates, legislative recommendations, testimony, or legislative comments to Congress concurrently with the President and OMB. This addition ensures the EAC can work with Congress on the important independent and bipartisan work of election administration regardless of the posture of any given administration.

In addition, the EAC Inspector General (IG) recently issued a comprehensive report entitled, [“Management Challenges for the U.S. Election Assistance Commission in 2023.”](#) The IG noted the importance of this issue in their recent report.

Necessary Legislative Change: Amend section 205 of HAVA (52 U.S.C. § 20925) by adding a new subsection (f) as follows:

“(f) CONCURRENT TRANSMISSIONS TO CONGRESS.—

- (1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress.
- (2) Whenever the Commission submits any legislative recommendation, or testimony, or comments on legislation, requested by the Congress or by any Member of the Congress, to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress or to the Member requesting the same. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, testimony, or comments on legislation, to any office or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.”

Helping EAC Compete for Talented Leaders

3) Proposal: Amend the Help America Vote Act of 2002 (HAVA) to increase EAC Commissioner executive level pay schedule, as well as that of the Executive Director. This will allow for more competitive compensation throughout the agency and improve retention of election expertise.

Justification: The EAC Commissioners' pay is set by HAVA at [Executive Schedule IV and subject to the 2013 Executive Schedule pay freeze on political appointees](#). Unique to the EAC as specified in HAVA, Commissioners are also prohibited from any outside "business, vocation, or employment" while serving as a commissioner, including teaching. These constraints to the Commissioners' pay contribute to agency-wide pay compression issues and difficulty in recruitment and retention of critical positions at the agency. Competitive salaries at the Commissioner and Executive Director level will also assist with retaining a quorum of qualified election experts to lead the EAC, which is key for the agency's continuity and ongoing success. Past periods without a quorum of Commissioners have caused substantial damage to the agency's reputation with stakeholders. This can be prevented by ensuring that the agency can recruit and retain qualified candidates.

Necessary Legislative Changes:

1) Amend section 203(d)(1) of the Help America Vote Act of 2002 (52 U.S.C. § 20923(d)(1)) by striking "level IV of the Executive Schedule under section 5315" and inserting "level II of the Executive Schedule under section 5314."

2) Amend 52 U.S.C. § 20923(d)(2) by striking the paragraph in its entirety.

4) Proposal: Amend the Help America Vote Act of 2002 (HAVA) to modify the pay ceiling that applies to EAC staff salaries.

Justification: EAC staff pay is currently [limited to no more than level V of the Executive Schedule](#). This limitation leads to pay compression and impacts the ability of the EAC to attract qualified staff and offer competitive salaries. Because of the pay ceiling, recruitment and retention of critical positions are adversely impacted. The EAC currently has more than 55 full-time equivalent employees with strategic plans to add additional crucial staff in 2023. Additionally, partly due to competitive salary considerations, senior EAC staff positions frequently remain unfilled for more than one year, which impacts agency operations.

The IG's recent report, "Management Challenges for the U.S. Election Assistance Commission in 2023," emphasized the impact of salary restrictions and detailed a need to address the pay cap and enable the agency to offer a competitive salary. As referenced in the report, "in addition to meeting its obligations in HAVA, as a small agency, EAC still has the responsibilities of a large agency but with fewer resources to address Executive Orders and other federal requirements. EAC's executive salary caps and restrictions on the Commissioners further hamper the ability to recruit and retain employees."

In the past few years, several reports have been released from the U.S. Office of Personnel Management (OPM) and the U.S. Government Accountability Office (GAO) addressing federal workforce and human capital challenges in the federal government. These reports are focused on ways to recruit private-sector employees; however, the salary restrictions placed on the EAC prevent the agency from competing with other federal agencies in recruiting qualified employees from the private sector. GAO-19-181, Federal Workforce: Key Talent Management Strategies for Agencies to Better Meet Their Missions, outlines a list of recommendations that are not available to the EAC due to the pay cap limitations. GAO's strategic recommendations to assist with staff retention and the recruitment of qualified personnel include incentivizing and compensating employees, leveraging existing pay authorities, and strategically applying special payment authorities.

These cumbersome mandates have negative implications for the future recruitment efforts required to fulfill and enhance the EAC's mission, advance information technology initiatives, and protect the agency from cybersecurity threats. As the EAC seeks to modernize and stay competitive, we are focused on the efficient and careful use of federal funding. EAC staff serve both election officials and voters, and the Commission pays close attention to the careful expenditure of taxpayer dollars.

Necessary Legislative Changes:

- 1) Amend Section 204(a)(1) of HAVA (52 U.S.C. § 20924(a)(1)) by striking "level V of the Executive Schedule under section 5316" and inserting "level II of the Executive Schedule under section 5315, except in cases where certain positions are difficult to recruit as designated by the Office of Personnel Management."
- 2) Amend 52 U.S.C. § 20924(a)(6) by striking "level II of the Executive Schedule under section 5316" and inserting "level IV of the Executive Schedule under section 5315."

Enhance EAC's Services to Assist Election Officials

5) Proposal: Add developing voluntary standards, guidance, and training materials including security and accessibility best practices for election supporting technology to the list of EAC duties.

Justification: The EAC seeks to implement a new program to develop voluntary standards, guidance, and training material covering election supporting technologies. Examples of election supporting technologies include electronic poll books, voter registration systems, and accessible ballot delivery, marking and return solutions. These technologies are currently outside the scope of a voting system as defined by HAVA (Section 301) but are frequently used by election officials and voters as part of the overall process of voting. The security and accessibility of election technologies are critically important. Voluntary standards, guidance, and training material will help set a national baseline elevating the quality, security, and accessibility of election supporting technologies available to election officials.

Elections involve critical infrastructure. Election supporting technology, therefore, must be

safeguarded to avoid the risks associated with common cyberattacks including denial of service, ransomware, spear phishing, and exploitation of software vulnerabilities. Ensuring election supporting technologies are accessible to voters with disabilities is necessary for the entire voting experience to be truly equitable, private, and independent. As more state and local election officials look to adopt election supporting technologies, federal voluntary standards and guidance are being sought to buttress the current patchwork of state laws, regulations, and certification programs of varying degrees of quality, applicability, and scope. These stakeholders, through roundtable discussions and federal advisory board meetings, have made it clear that a voluntary federal standard for election supporting technology is needed.

Necessary Legislative Change: Amend section 202 of HAVA (52 U.S.C. § 20922) by adding a new subsection (7) as follows: “developing voluntary standards, guidance, and training materials on the security and accessibility best practices for election supporting technology.”

6) Proposal: Extend the deadline by three months for the biannual Election Administration Voting Survey comprehensive report (EAVS Report) to be submitted to Congress.

Justification: The EAVS Report provides the most comprehensive source of jurisdiction-level data about election administration in the United States. The report assists Congress, election officials, and other stakeholders in identifying trends, anticipating and responding to changing voter needs, investing resources to improve election administration and the voter experience, and better securing the nation’s elections infrastructure.

Elections are increasingly complicated for election officials to run and are often not finalized until weeks after Election Day due to the procedures required. This makes it increasingly difficult for election officials to provide the required EAVS data in time, and we have heard feedback reflecting this reality. Additionally, the amount of data being collected from states and territories has expanded over the years, increasing the amount of time needed to gather, verify, analyze, and publish the EAVS Report. Furthermore, as election misinformation and disinformation have grown more prevalent, additional data verification processes have become necessary. Extending the deadline to submit the EAVS Report to Congress by three months will ensure that it continues to be accurate and comprehensive. Moreover, changing the delivery date from June 30 to September 30 aligns the deadline for the report required under the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. § 20308(b)).

Necessary Legislative Change: Amend 52 U.S.C. § 20508(a)(3) by striking “June 30” and inserting “September 30.”