

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

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

The U.S. Election Assistance Commission (EAC) is an independent federal agency that is charged with helping voters participate in the electoral process and election officials improve the administration of elections. It was established by the Help America Vote Act of 2002 (HAVA) as part of Congress's response to problems with the administration of the 2000 elections.

The EAC—and the legislation that created it—marked something of a shift in the federal approach to election administration. Previous federal election laws had set requirements for the administration of federal elections, but HAVA was the first to back its requirements with substantial support. The act authorized grant programs for elections and an assistance-oriented elections agency, the EAC.

That focus on assistance—in combination with other objectives, such as providing for a range of expert input into agency activities and guarding against partisanship—informed the duties and structure of the agency. The EAC's rulemaking authority is limited, and its other duties are primarily oriented toward facilitating or incentivizing elections activities rather than compelling them. Those duties, which are designed for input from a range of elections stakeholders, include administering grant programs; providing for voluntary voting system guidelines, testing, and certification; issuing voluntary guidance for implementation of certain HAVA requirements; conducting research and sharing best practices; and establishing a youth voter participation and poll worker recruitment program.

The EAC consists of an appointed commission, a professional staff led by an executive director and general counsel, an Office of Inspector General, three statutory advisory bodies (Board of Advisors, Standards Board, and Technical Guidelines Development Committee), and one agency-created advisory body (Local Leadership Council). The structure of the EAC, like its duties, reflects its emphasis on assistance. The agency's advisory bodies are central to its functioning, with opportunities for input into its guidance, planning, and staffing. Voters are represented on one of the advisory bodies, and state officials, local officials, or their representatives make up some or all of the membership of all four.

The EAC was also set up to ensure a range of expert input into agency activities and help guard against partisanship. In addition to voters and state and local officials, for example, the advisory bodies include experts in a range of other fields relevant to election administration. The membership and selection processes for the commission and some of the advisory bodies, as well as a quorum requirement for certain actions by the commission, are also designed for partisan balance.

Both at the time of HAVA and since, opinions have differed about exactly what role the EAC should play. One question Congress considered when developing the agency was whether it should exist as a separate agency at all. That question was also a subject of particular congressional interest for a period starting with the 112th Congress. As of the beginning of that Congress, the EAC had distributed most of the funding it was authorized by HAVA to administer and completed much of the research the act directed it to conduct. The authorization of operational funding for the agency had expired, and the National Association of Secretaries of State had recently renewed a resolution that called for disbanding the agency.

Those developments were taken by some as evidence that the agency had outlived its usefulness. Members introduced legislation to terminate the EAC in each of the 112th through 115th Congresses, and the House Appropriations Committee recommended cutting or eliminating its funding each year between FY2012 and FY2018.

At least as of the 116th and 117th Congresses, however, debate about whether there is a role for the EAC seems to have receded in prominence. Recent election cycles have seen a number of high-profile developments, including foreign efforts to interfere in the 2016 elections and the emergence of the Coronavirus Disease 2019 (COVID-19) pandemic in the 2020 cycle, and the EAC has played a role in the federal response to those developments. It has administered grant funding Congress has provided in response to some of them, for example, and developed resources to help election officials address physical and cybersecurity threats to their systems.

Supporters of an ongoing role for the EAC have cited its participation in the federal response to recent developments as new grounds to extend or expand it. More generally, the primary focus of legislative activity on the agency seems to have shifted in the 116th and 117th Congresses from whether there is a role for the EAC to what that role should be.

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Introduction

The U.S. Election Assistance Commission (EAC) is an independent federal agency that is charged with helping voters participate in the electoral process and election officials improve the administration of elections. It was established by the Help America Vote Act of 2002 (HAVA; P.L. 107-252; 52 U.S.C. §§20901-21145) as part of Congress’s response to problems with the administration of the 2000 elections.¹

The EAC—and the legislation that created it—marked something of a shift in the federal approach to election administration. Previous federal election laws had set requirements for the administration of federal elections, but HAVA was the first to back its requirements with substantial support.² The act authorized grant programs for elections and an assistance-oriented elections agency, the EAC.³

There was broad support in Congress during the HAVA debate for the idea of providing some assistance along those lines. Both at the time and since, however, opinions have differed about exactly what role the EAC should play. Members have disagreed about whether the agency should focus solely on assistance or also have regulatory authority, for example, and whether it should be temporary or permanent.

Changes in the election administration landscape and in Congress have brought different aspects of the debate to the forefront at different times. The 112th through 115th Congresses saw attempts to terminate the agency, whereas recent developments like foreign efforts to interfere in the 2016 elections and the onset of the Coronavirus Disease 2019 (COVID-19) pandemic in the 2020 election cycle have been cited as new grounds to extend or expand it.⁴

This report provides an overview of the agency in the context of those changes. It starts by describing the EAC’s duties and structure, and then summarizes the history of the agency and related legislative activity. The report closes by introducing some considerations that may be of interest to Members who are weighing whether or how to engage with issues related to the EAC or to election administration more broadly.

Notes on Terminology

In this report, “state” is generally intended to include the District of Columbia (DC) and U.S. territories. Exceptions to that general usage are references to “the 50 states,” which do not include

¹ For more on HAVA, see CRS Report R46949, *The Help America Vote Act of 2002 (HAVA): Overview and Ongoing Role in Election Administration Policy*, by Karen L. Shanton.

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

³ For more on federal grant funding for elections, see CRS Report R46646, *Election Administration: Federal Grant Funding for States and Localities*, by Karen L. Shanton; and CRS Report WPD00035, *Federal Role in Elections Funding*, by Karen L. Shanton.

⁴ See, for example, U.S. Congress, 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; and U.S. Congress, Senate Committee on Rules and Administration, *Nominations*, 115th Cong., 2nd sess., November 28, 2018, S.Hrg. 115-583 (Washington: GPO, 2019), pp. 1, 4.

DC or the territories, and references to “HAVA states,” which do not include the Commonwealth of the Northern Mariana Islands (CNMI).⁵

“Election Assistance Commission” and “EAC” are sometimes used to refer to the appointed commission that is part of the agency. To avoid confusion, the report reserves those terms for the agency as a whole and uses “commission” for the appointed commission.

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; 52 U.S.C. §§20901-21145)

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, DC, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands

Technical Guidelines Development Committee (TGDC): 15 members representing a range of election administration stakeholders, including the director of the National Institute of Standards and Technology (NIST) as chair, state and local officials, individuals with disabilities, and science and technology experts

Local Leadership Council (LLC): 100 members, with two local election officials from each of the 50 states

Personnel (FY2021): 46 full-time equivalent (FTE) positions⁷

Appropriations for Salaries and Expenses (FY2023): \$28.0 million, including \$1.5 million to be made available to NIST for activities authorized under HAVA and \$1.0 million for the Help America Vote College Program⁸

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

Appropriations Subcommittees: Financial Services and General Government

Overview

The highest-profile problems with the administration of the 2000 elections were in Florida—where disputes about the vote count delayed resolution of the presidential race for weeks—but post-election investigations revealed widespread problems with states’ conduct of elections.⁹ Those investigations also prompted suggestions about how to avoid similar problems in the future, including proposals to increase federal involvement in elections.¹⁰

⁵ CNMI was not included in HAVA’s definition of “state” because it did not hold federal elections when HAVA was enacted in 2002. Testimony of the Honorable Gregorio Kilili Camacho Sablan, in U.S. Congress, Committee on House Administration, Subcommittee on Elections, *Voting Rights and Election Administration in the U.S. Virgin Islands and Other Territories*, hearing, 116th Cong., 2nd sess., July 28, 2020, p. 2.

⁶ U.S. Election Assistance Commission, *Fiscal Year 2023 Congressional Budget Justification*, p. 3, at https://www.eac.gov/sites/default/files/cbj/US_EAC_FY_2023_Congressional_Budget_Justification_508_FINAL.pdf.

⁷ EAC, *Fiscal Year 2023 Congressional Budget Justification*, p. 3.

⁸ P.L. 117-328.

⁹ Andrew Glass, “Congress Certifies Bush as Winner of 2000 Election, Jan. 6, 2001,” *Politico*, January 6, 2016, at <https://www.politico.com/story/2016/01/congress-certifies-bush-as-winner-of-2000-election-jan-6-2001-217291>.

¹⁰ See, for example, The National Commission on Federal Election Reform, *To Assure Pride and Confidence in the*

Exactly what that involvement should look like was a matter of debate. There was general agreement that it should include some federal assistance to states and localities. Proposals from Members on both sides of the aisle and in both chambers of Congress would have authorized election administration grant programs, for example, and federal guidance about voting systems.¹¹

Members disagreed, however, about other aspects of federal involvement in elections. The disagreements were rooted in part in competing concerns. Some Members worried that certain types of involvement would shift the balance of election administration authority from the states and localities that have traditionally run elections to the federal government.¹² Others were concerned that some states and localities would not—or could not—make necessary changes to their election systems without federal intervention.¹³

Disagreements about the proper role of the federal government in elections played out in at least two debates relevant to the EAC: (1) whether any new federal responsibilities should be assigned to existing 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 focus solely on supporting states and localities or also include authority to compel them to act.¹⁴

Congress struck a compromise in HAVA by creating a new agency, the EAC, but positioning it as a support agency. As one of the primary architects of HAVA, Representative Robert Ney, noted in the markup of a 2001 version of the act,

[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.¹⁵

That focus on assistance—in combination with other objectives, such as providing for a range of expert input into agency activities and guarding against partisanship—informed the duties and structure of the agency.

Duties

In keeping with its positioning as an assistance agency, the EAC's rulemaking authority is limited. HAVA explicitly restricts the agency's authority to issue rules, regulations, and other requirements for states or localities to regulations about two duties it transferred to the EAC from the FEC: (1) reporting to Congress on the impact of the National Voter Registration Act of 1993

Electoral Process, August 2001, pp. 12-14, at http://web1.millercenter.org/commissions/comm_2001.pdf; and R. Michael Alvarez et al., *Voting—What Is, What Could Be*, Caltech/MIT Voting Technology Project, July 2001, at <https://vote.caltech.edu/reports/1> (cited hereinafter as “R. Michael Alvarez et al., *Voting—What Is, What Could Be*”).

¹¹ See, for example, H.R. 775 and S. 953 in the 107th Congress.

¹² 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.

¹³ 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.

¹⁴ See, for example, Senate Committee on Rules and Administration, *Election Reform: Volume 1*, pp. 21, 118, 227-228.

¹⁵ U.S. Congress, 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.

(NVRA; P.L. 103-31; 52 U.S.C. §§20501-20511), and (2) maintaining the federal mail voter registration form required by the NVRA.¹⁶

That limitation does not mean that the agency has no ability to influence state or local action. The EAC can audit its grantees, for example, and specify how issues identified by audits should be addressed.¹⁷ It can revoke certification of voting systems to its voluntary guidelines and accreditation of laboratories to test systems to the guidelines.¹⁸

However, its duties are primarily oriented toward facilitating or incentivizing elections activities rather than compelling them. Those duties, which are designed for input by a range of elections stakeholders, include administering the grant programs and voting system testing and certification program referenced above. They also include issuing voluntary guidance for implementing certain HAVA requirements, conducting elections research and sharing election administration best practices, and establishing a youth voter participation and poll worker recruitment program.

Grant Programs

HAVA authorized the first major federal grant programs for election administration, and Congress has established additional grant programs for certain limited elections-related purposes since. The EAC has been charged with administering or helping administer the funding Congress has provided for most of those grant programs, including funding for

- **Meeting election administration requirements.** Title III of HAVA set requirements for the administration of federal elections, including for voting systems, provisional voting, voting information, and voter registration.¹⁹ Meeting those requirements involved significant financial investments for many HAVA states, and Congress authorized a *requirements payments program* primarily to help cover those costs. The Military and Overseas Voter Empowerment (MOVE) Act of 2009, which set new requirements for the voting and registration processes available to military and overseas voters, authorized additional funding for the grant program to help HAVA states meet its requirements.²⁰
- **Making general improvements to election administration.** The problems with the administration of the 2000 elections varied by state.²¹ HAVA authorized a *general improvements grant program* to help each HAVA state²² make the improvements to

¹⁶ 52 U.S.C. §20508; and 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.

¹⁷ 52 U.S.C. §21142. EAC, *Audits & Resolutions*, at <https://www.eac.gov/payments-and-grants/audits-resolutions/>.

¹⁸ 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.

¹⁹ 52 U.S.C. §§21081-21083.

²⁰ The MOVE Act was enacted as Subtitle H of Title V of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84). For more on UOCAVA and the MOVE Act, see CRS Report RS20764, *The Uniformed and Overseas Citizens Absentee Voting Act: Overview and Issues*, by R. Sam Garrett.

²¹ See, for example, R. Michael Alvarez et al., *Voting—What Is, What Could Be*; and U.S. Government Accountability Office, *Elections: Perspectives on Activities and Challenges Across the Nation*, GAO-02-3, October 2001, at <https://www.gao.gov/new.items/d023.pdf>.

²² Some recent appropriations measures that have provided funding under this grant program have extended eligibility for the funding to CNMI. See, for example, P.L. 117-328.

its election administration processes it considered most pressing.²³ Funding under the program was authorized for use in making general improvements to the administration of federal elections and various other specific purposes, including providing voter education and poll worker training, acquiring and updating voting systems, improving the accessibility of polling places, and establishing voter hotlines.²⁴

- **Replacing lever and punch card voting systems.** The punch card voting systems used by some jurisdictions in 2000 contributed to the problems with Florida's vote count.²⁵ Post-election investigations also identified problems with lever voting machines, such as the potential for levers to jam and the lack of a paper trail that might be used to recover votes cast on a jammed machine.²⁶ Congress authorized a *lever and punch card voting system replacement grant program* to help HAVA states replace both types of system.
- **Conducting election technology research.** Issues with election technology, such as the unreliability of lever and punch card voting systems, contributed to the problems with the administration of the 2000 elections. In addition to helping HAVA states replace unreliable systems, Congress authorized funding to help develop better alternatives. It directed the EAC, with assistance from NIST, to oversee a *voting technology improvements research grant program* for researching improvements to election systems and a *voting technology pilot program grant program* for testing new voting technologies.²⁷
- **Encouraging youth voter participation and facilitating poll worker recruitment.** Young people participated in the 2000 elections at lower rates than their older counterparts,²⁸ and some of the problems with the conduct of the 2000 elections were traced to a shortage of qualified poll workers.²⁹ HAVA authorized grant-making under two EAC programs to try to address one or both of those problems: a *mock elections grant program* to encourage students and their parents to engage with the elections process, and the *Help America Vote College Program* to encourage students at institutions of higher education to serve as poll workers and election officials to use

²³ The committee report for the House-passed version of HAVA said that a similar general purpose grant program it would have authorized would "give states the opportunity to direct fund payments to the areas where the resources are most needed. Jurisdictions that want to modernize their voting equipment can use election fund payments for that purpose. Others may have more pressing needs for modernized statewide voter registration systems, or better equipment and training of voters and poll workers." U.S. Congress, Committee on House Administration, *Help America Vote Act of 2001*, report to accompany H.R. 3295, 107th Cong., 1st sess., December 10, 2001, H.Rept. 107-329 (Washington, DC: GPO, 2001), p. 34.

²⁴ 52 U.S.C. §20901.

²⁵ Brooks Jackson, "Punch-Card Ballot Notorious for Inaccuracies," *CNN*, November 15, 2000.

²⁶ See, for example, R. Michael Alvarez et al., *Voting—What Is, What Could Be*.

²⁷ 52 U.S.C. §§21041-21043; and 52 U.S.C. §§21051-21053. The EAC has used funding provided for these grant programs to conduct Accessible Voting Technology, Military Heroes, and Pre-Election Logic and Accuracy Testing and Post-Election Audit initiatives. EAC, *Discretionary Grants*, at <https://web.archive.org/web/20200622235023/https://www.eac.gov/payments-and-grants/discretionary-grants/>.

²⁸ Thom File, *Young-Adult Voting: An Analysis of Presidential Elections, 1964-2012*, U.S. Census Bureau, April 2014, p. 6, at <https://www.census.gov/library/publications/2014/demo/p20-573.html>.

²⁹ See, for example, GAO, *Elections: Perspectives on Activities and Challenges Across the Nation*.

their services.³⁰ For more on the latter program, see the “Help America Vote College Program” section of this report.

- **Improving the collection of election data.** As described in the “Research and Best Practices” section of this report, the EAC collects data from state and local election officials after each regular federal general election. Congress found that the data quality and response rates for early iterations of the survey were lower than expected and established an *election data collection grant program* to help improve data collection for the November 2008 election.³¹

For details of the funding Congress has authorized and appropriated for each of the above purposes to date, see **Table 1**. For more on elections grant funding in general, see CRS Report R46646, *Election Administration: Federal Grant Funding for States and Localities*, by Karen L. Shanton; and CRS Report WPD00035, *Federal Role in Elections Funding*, by Karen L. Shanton.

Table 1. Funding Authorized and Appropriated for EAC Grant Programs

(Rounded, as of February 2023)

Grant Programs	Authorization of Appropriations ^a	Appropriations ^b	Summary of Primary Purpose
General improvements grant program ^c 52 U.S.C. §§20901, 20903-20906	\$325.0 million	FY2003: ^d FY2018: \$380.0 million ^e FY2020: \$825.0 million ^{e, f} FY2022: \$75.0 million FY2023: \$75.0 million	Making certain general improvements to election administration
Lever and punch card voting system replacement grant program 52 U.S.C. §§20902-20906	\$325.0 million	FY2003: ^d	Replacing lever or punch card voting systems in precincts that used them in the November 2000 federal election
Election data collection grant program 52 U.S.C. §20981 note	\$10.0 million	FY2008: \$10.0 million ^g	Improving the collection of data related to the November 2008 federal election
Requirements payments program ^h 52 U.S.C. §§21001-21008	FY2003: \$1.4 billion FY2004: \$1.0 billion FY2005: \$600.0 million FY2010 and subsequent fiscal years: Such sums as may be necessary ⁱ	FY2003: \$830.0 million FY2004: \$1.5 billion ⁱ FY2008: \$115.0 million FY2009: \$100.0 million FY2010: \$70.0 million FY2011: ^k	Complying with specified requirements for the administration of federal elections

³⁰ HAVA also authorized another initiative to encourage youth voter participation: the Help America Vote Foundation. Some EAC appropriations have been designated for the foundation, but HAVA did not assign the EAC an official role in its operations. Also, although nominees were named to the foundation’s board of directors in July 2004, CRS has not been able to locate additional information about its activities. The White House, “Personnel Announcement,” press release, July 9, 2004, at <https://georgewbush-whitehouse.archives.gov/news/releases/2004/07/text/20040709-6.html>.

³¹ 52 U.S.C. §20981 note. U.S. Congress, House Committee on Appropriations, *House Appropriations Committee Print: Consolidated Appropriations Act, 2008 (H.R. 2764; P.L. 110-161)*, committee print, 110th Cong., 1st sess., p. 893.

Grant Programs	Authorization of Appropriations ^a	Appropriations ^b	Summary of Primary Purpose
Voting technology improvements research grant program 52 U.S.C. §§21041-21043	FY2003: \$20.0 million	FY2009: \$5.0 million FY2010: \$3.0 million	Researching improvements to election systems
Voting technology pilot program grant program 52 U.S.C. §§21051-21053	FY2003: \$10.0 million	FY2009: \$1.0 million FY2010: \$2.0 million	Conducting pilot programs to test new voting technologies
Mock elections grant program 52 U.S.C. §§21071-21072	FY2003: \$200,000 Subsequent six fiscal years: Such sums as may be necessary	FY2004: \$200,000 ^l FY2005: \$200,000 ^l FY2008: \$200,000 ^g FY2009: \$300,000 FY2010: \$300,000	Conducting voter education activities for students and their parents
Help America Vote College Program 52 U.S.C. §§21121-21123	FY2003: \$5.0 million Subsequent fiscal years: Such sums as may be necessary ^m	FY2003: \$1.5 million FY2004: \$750,000 ^l FY2005: \$200,000 ^l FY2006: ⁿ FY2008: \$750,000 ^l FY2009: \$750,000 FY2010: \$750,000 FY2023: \$1.0 million	Encouraging college students to serve as poll workers and election officials to use their services

Sources: CRS, based on review of the U.S. Code and relevant appropriations measures.

Notes:

- a. Authorized amounts are listed here as they are presented in statutory language.
- b. Appropriations figures do not account for rescissions or sequestration reductions.
- c. The Help America Vote Act of 2002 (HAVA) lists the U.S. General Services Administration (GSA) as the administrator for its general improvements and lever and punch card voting system replacement grant programs (52 U.S.C. §§20901-20906), but the act names the U.S. Election Assistance Commission (EAC) the administrator of that funding for purposes of audits and repayments (52 U.S.C. §21142) and Congress has assigned responsibility for administering recent funding under the general improvements grant program to the EAC.
- d. The Consolidated Appropriations Resolution, 2003 (P.L. 108-7) provided \$650 million for the general improvements and lever and punch card voting system replacement grant programs without specifying a distribution of the funds between the two programs. The legislation indicated that some of the funding—not to exceed \$500,000—was to be available to GSA for expenses associated with administering the funds.
- e. The \$380 million appropriated under this program for FY2018 was provided by the Consolidated Appropriations Act, 2018 (P.L. 115-141), and \$425 million of the \$825 million appropriated for FY2020 was provided by the Consolidated Appropriations Act, 2020 (P.L. 116-93). Explanatory statements accompanying those two appropriations acts listed some election security-specific purposes for which the funds could be used. For differences between the general improvements grant program as authorized by HAVA and the FY2018 and FY2020 funds, see CRS Report R46646, *Election Administration: Federal Grant Funding for States and Localities*, by Karen L. Shanton.
- f. This figure includes \$425 million from the Consolidated Appropriations Act, 2020, and \$400 million from the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136). The CARES Act restricted use of its HAVA funds to preventing, preparing for, and responding to coronavirus, domestically and internationally, in the 2020 federal election cycle. For other differences between the general improvements grant program as authorized by HAVA and the FY2020 and CARES Act funds, see CRS Report R46646, *Election Administration: Federal Grant Funding for States and Localities*, by Karen L. Shanton.

- g. Report language accompanying the Consolidated Appropriations Act, 2008 (P.L. 110-161) indicated that \$112,500 of the funding the act provided for EAC Salaries and Expenses was for administrative expenses associated with the election data collection and mock elections grant programs.
- h. The Consolidated Appropriations Act, 2004 (P.L. 108-199) authorized GSA to make requirements payments while the EAC was being established but provided for expiration of that authority by the earlier of (1) June 30, 2004, or (2) the end of the three-month period after the appointment of all members of the EAC.
- i. Appropriations for the requirements payments program for FY2010 and subsequent fiscal years were authorized only for complying with requirements established by the Military and Overseas Voter Empowerment (MOVE) Act of 2009 (52 U.S.C. §21001).
- j. The Consolidated Appropriations Act, 2004 (P.L. 108-199) indicated that some of this funding—not to exceed \$100,000—was to be transferred to GSA for expenses associated with administering the funds. Report language accompanying the act (H.Rept. 108-401) indicated that \$750,000 of the funding was for the Help America Vote Foundation, \$750,000 was for the Help America Vote College Program, and \$200,000 was for the National Student Parent Mock Election.
- k. HAVA required states that had not replaced all of their lever and punch card voting systems by a certain deadline to return some of the funds they received under the lever and punch card voting system replacement grant program and directed the EAC to redistribute the returned funds as requirements payments. The EAC made some funding for requirements payments available for FY2011 from returned funds. EAC, *Memorandum Re: 2011 Requirements Payments Disbursements*, May 13, 2014, at https://www.eac.gov/sites/default/files/eac_assets/1/6/Instructions_for_Requesting_FY_2011_Requirements_Payments_Memo.2014.pdf.
- l. These figures are from appropriations report language rather than bill text.
- m. The amounts listed here are for the Help America Vote College Program as a whole. Grant-making is one of a number of activities, including developing materials and sponsoring seminars and workshops, that HAVA authorizes the EAC to conduct as part of the program (52 U.S.C. §21122).
- n. The joint explanatory statement accompanying the FY2006 appropriations act (H.Rept. 109-307; P.L. 109-115) stated that the conferees encouraged the EAC to apply \$250,000 of the funding it received for Salaries and Expenses to the Help America Vote College Program.

The EAC's grant programs were not originally designed—and have not historically functioned—as ongoing sources of new elections funding. Congress has returned to some of them on occasion, however, in response to new developments. For example, it has appropriated funding under HAVA's general improvements grant program for recent fiscal years in response to foreign efforts to interfere in the 2016 elections and the onset of the COVID-19 pandemic in the 2020 election cycle.

The EAC also continues to manage some HAVA grant funding appropriated for previous fiscal years. Most of the funding Congress has provided under HAVA's requirements payments program and general improvements grant program has been available to states until expended, so the EAC continues to provide technical assistance and receive spending reports for some of those funds.³² HAVA also authorizes the EAC to audit its grantees and, on a vote of the commission, recipients of other grant funding authorized by the act.³³ For more on those audits, see the "Office of Inspector General (OIG)" section of this report.

Voting System Guidelines, Testing, and Certification

States and localities choose the voting systems used in U.S. elections, but the federal government offers some guidance. The first set of voluntary federal guidelines for voting systems was issued

³² See, for example, EAC, *2021 Grant Expenditure Report*, October 1, 2020 - September 30, 2021, July 2022, p. 3, at https://www.eac.gov/sites/default/files/paymentgrants/expenditures/EAC_2021_Grant_Expenditure_Report_FINAL.pdf.

³³ 52 U.S.C. §21142.

by the FEC in 1990 in response to the increased complexity—and new problems—introduced by use of computerized systems for vote casting and counting.³⁴ The National Association of State Election Directors (NASED), a professional association for state election officials, developed a program to test and qualify voting systems to the FEC’s guidelines.³⁵

Following the reports of problems with voting systems in 2000, Congress transferred the FEC’s and NASED’s responsibilities to the new elections agency it created in HAVA. One of the EAC’s statutory advisory bodies is responsible for helping the agency’s executive director develop draft Voluntary Voting System Guidelines (VVSG), with technical assistance from NIST.³⁶ The draft VVSG are then made available to the EAC’s other two statutory advisory bodies and the public for review and comment before they are submitted to the commissioners for a vote on adoption.³⁷

The EAC’s commissioners are also charged with providing for testing and certification of voting systems to the VVSG. With input from NIST, which is responsible for monitoring and providing recommendations about voting system test laboratories (VSTLs), the commission accredits and can revoke accreditation of labs to test systems to the VVSG. It also provides for certification, decertification, and recertification of systems to the guidelines.³⁸

The commission has adopted three versions of the VVSG to date: VVSG 1.0 in 2005, VVSG 1.1 in 2015, and VVSG 2.0 in 2021.³⁹ The most recent iteration of the guidelines is divided into higher-level principles and guidelines and more detailed information voting system vendors and VSTLs can use to guide development and testing of systems to the high-level principles and guidelines.⁴⁰ Vendors who are interested in having voting systems federally certified must comply

³⁴ Federal Election Commission, *Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Voting Systems*, January 1990, pp. xvii–xviii, at https://www.eac.gov/sites/default/files/eac_assets/1/28/FEC_1990_Voting_System_Standards1.pdf.

³⁵ EAC, *Voluntary Voting System Guidelines*, at <https://www.eac.gov/voting-equipment/voluntary-voting-system-guidelines/>; and 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.

³⁶ 52 U.S.C. §20961.

³⁷ 52 U.S.C. §20962.

³⁸ 52 U.S.C. §20961; and 52 U.S.C. §20971. According to the EAC’s voting system testing and certification manual, certification decisions are made by the executive director of the EAC or the executive director’s designee and subject to appeal to an Appeal Authority consisting of two or more commissioners or commission appointees. EAC, *Voting System Testing and Certification Program Manual, Version 3.0*, pp. 38–47, at https://www.eac.gov/sites/default/files/TestingCertification/Testing_and_Certification_Program_Manual_Version_3_020421.pdf.

³⁹ EAC, “EAC Adopts 2005 Voluntary Voting System Guidelines,” press release, December 3, 2005, at https://web.archive.org/web/20170327213819/https://www.eac.gov/assets/1/28/VVSG_1.0_Press_Release.pdf; EAC, “EAC Updates Federal Voting System Guidelines,” press release, March 31, 2015, at <https://web.archive.org/web/20170327213732/https://www.eac.gov/assets/1/28/EAC%20Updates%20Federal%20Voting%20System%20Guidelines-News-Release-FINAL-3-31-15-website.pdf>; EAC, “U.S. Election Assistance Commission Adopts New Voluntary Voting System Guidelines 2.0,” press release, February 10, 2021, at <https://www.eac.gov/news/2021/02/10/us-election-assistance-commission-adopts-new-voluntary-voting-system-guidelines-20>.

⁴⁰ As noted in the “Efforts to Terminate” section of this report, loss of a quorum of EAC commissioners has delayed updates to the VVSG. The divided structure described here was proposed as a way to prevent future delays; authority to adopt and modify the higher-level principles and guidelines was to be reserved to the commissioners, while the more detailed information could be updated by agency staff. That division of responsibilities between the EAC’s commissioners and its professional staff was not ultimately implemented, due to an internal legal opinion questioning its permissibility under HAVA. National Association of State Election Directors, *NASED Executive Board Comment on the Voluntary Voting System Guidelines*, May 3, 2019, at <https://www.nased.org/news/2019/5/3/comment-on-the-vvsg>; and EAC, *Technical Guidelines Development Committee Meeting*, September 19, 2019, p. 42, at <https://www.eac.gov/sites/default/files/2020-01/EAC09192019VerbatimTGDC%20%282%29.pdf>.

with certain requirements, such as providing information about their policies and ownership and agreeing to permit visits to their manufacturing facilities and report certain modifications and malfunctions of their systems.⁴¹

Use of voting systems that have been certified to the VVSG is voluntary under federal law. However, states can require federal testing or certification of the voting systems they use, and many have chosen to do so. According to a September 2020 report from the EAC, DC and 37 of the 50 states have made some or all of the federal testing and certification program mandatory under their own state laws.⁴²

Some states have also chosen to require similar testing or certification at the state level of other systems used in elections, such as electronic poll books (e-poll books) used for voter check-in.⁴³ Those nonvoting systems are not covered by the federal testing and certification program, which is limited to voting systems, but the EAC has taken some steps to offer states guidance about them. It launched a partnership with the Center for Internet Security (CIS) in 2020 to pilot a process for testing nonvoting election systems, including e-poll books and election night reporting systems.⁴⁴

Voluntary Guidance

In addition to providing for voluntary federal guidelines for voting systems, HAVA set some requirements voting systems used in federal elections have to meet. Title III of the act requires HAVA states to set uniform standards for what counts as a vote on each type of voting system they use for federal elections. It also requires the voting systems they use in federal elections to satisfy various criteria, including offering voters the opportunity to check and correct their ballots, producing a manually auditable permanent paper record, providing for accessibility to individuals with disabilities and members of language minority groups, and meeting specified error rate standards.⁴⁵

Title III of HAVA also set requirements for other aspects of the administration of federal elections, including provisional voting, voting information, voter identification, and voter registration. Election officials in HAVA states are required to post certain information at the polls

⁴¹ EAC, *Manufacturer Registration Application*, at https://www.eac.gov/sites/default/files/TestingCertification/Manufacturer_Registration_Application_EAC_001C_0820.pdf.

⁴² EAC, *State Requirements and the U.S. Election Assistance Commission Voting System Testing and Certification Program*, September 4, 2020, at https://www.eac.gov/sites/default/files/TestingCertification/State_Requirements_for_Certification09042020.pdf.

⁴³ National Conference of State Legislatures, *Electronic Poll Books*, October 25, 2019, at <https://www.ncsl.org/research/elections-and-campaigns/electronic-pollbooks.aspx>.

⁴⁴ EAC, “U.S. Election Assistance Commission and the Center for Internet Security Partner on Non-Voting Election Technology Verification Pilot Program,” press release, June 17, 2020, at <https://www.eac.gov/news/2020/06/17/us-election-assistance-commission-and-center-internet-security-partner-non-voting>. CIS also operates the Elections Infrastructure Information Sharing and Analysis Center (EI-ISAC) as part of a collaboration with the U.S. Department of Homeland Security’s (DHS’s) Cybersecurity and Infrastructure Security Agency (CISA) and Election Infrastructure Subsector Government Coordinating Council (EIS GCC). Cybersecurity and Infrastructure Security Agency, *Election Infrastructure Security Resource Guide*, May 2019, pp. 3-4, at https://www.cisa.gov/sites/default/files/publications/19_0531_cisa_election-security-resources-guide-may-2019.pdf.

⁴⁵ 52 U.S.C. §21081. For more on these and other HAVA requirements, see CRS Report R46949, *The Help America Vote Act of 2002 (HAVA): Overview and Ongoing Role in Election Administration Policy*, by Karen L. Shanton.

and offer certain voters the opportunity to cast a provisional ballot, for example, and HAVA states have to maintain centralized, computerized statewide voter registration databases.⁴⁶

HAVA reserved decisions about exactly how to comply with the new requirements to the HAVA states but directed the EAC to issue voluntary guidance about them.⁴⁷ The guidance was intended to offer more specifics about how to implement the act's general mandates. The EAC's guidance about statewide voter registration databases, for example, indicated that either a "top-down" system, in which a centrally located 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.⁴⁸

Research and Best Practices

The Federal Election Campaign Act of 1971 (FECA; P.L. 92-225; 52 U.S.C. §§30101-30146) charged the U.S. General Accounting Office (GAO; now known as the U.S. Government Accountability Office) with maintaining a clearinghouse of election administration research.⁴⁹ The 1974 amendment to the act (P.L. 93-443) created the FEC, which inherited the clearinghouse function and assigned it to its OEA.⁵⁰

HAVA transferred the OEA's clearinghouse responsibilities—along with its staff and funding—to the EAC.⁵¹ The EAC has broad authority under the act to conduct elections research and share election administration best practices, and it has used that authority both to collect data of ongoing interest and to address particular developments.⁵² The agency includes a section on state elections policies in its biennial Election Administration and Voting Survey (EAVS),⁵³ for example, and has produced resources to help election officials respond to foreign efforts to interfere in the 2016 elections, elections effects of the COVID-19 pandemic, and a reported increase in threats to election workers during and since 2020.⁵⁴

⁴⁶ 52 U.S.C. §§21082-21083.

⁴⁷ 52 U.S.C. §21085; and 52 U.S.C. §§21101-21102.

⁴⁸ EAC, *Voluntary Guidance on Implementation of Statewide Voter Registration Lists*, July 2005, pp. 6-7, at <https://web.archive.org/web/20170328070125/https://www.eac.gov/assets/1/1/Implementing%20Statewide%20Voter%20Registration%20Lists.pdf>.

⁴⁹ For more on FECA, see CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett. The U.S. General Accounting Office was renamed the U.S. Government Accountability Office in 2004. GAO, *100 Years of GAO*, at <https://www.gao.gov/about/what-gao-does/hundred-years-of-gao>.

⁵⁰ For more on the FEC, see CRS Report R44318, *The Federal Election Commission: Overview and Selected Issues for Congress*, by R. Sam Garrett. The OEA was originally known as the National Clearinghouse on Election Administration. 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), p. 620; and FEC, *Twenty Year Report*, April 1995, p. 8, at <https://www.fec.gov/resources/about-fec/reports/20year.pdf>.

⁵¹ 52 U.S.C. §§21131-21133. EAC, *History of the National Clearinghouse on Election Administration*, at <https://web.archive.org/web/20170328053335/https://www.eac.gov/assets/1/28/History%20of%20the%20National%20Clearinghouse%20on%20Election%20Administration.pdf>.

⁵² 52 U.S.C. §20981.

⁵³ For more on the EAVS, see CRS In Focus IF11266, *The Election Administration and Voting Survey: Overview and 2018 Findings*, by Karen L. Shanton.

⁵⁴ See, for example, EAC, *Studies and Reports*, at <https://www.eac.gov/research-and-data/studies-and-reports>; EAC, *Election Security*, at <https://www.eac.gov/voters/election-security>; EAC, *Coronavirus (COVID-19) Resources*, at <https://www.eac.gov/election-officials/coronavirus-covid-19-resources>; and EAC, *Election Official Security*, at <https://www.eac.gov/election-officials/election-official-security>.

HAVA also assigned the EAC some specific research projects. It charged the agency with conducting studies of

- military and overseas voting, in consultation with the U.S. Department of Defense (DOD);
- human factor research, in consultation with NIST;
- mail voter registration and, in consultation with the Social Security Administration (SSA), use of Social Security numbers for voter registration or election eligibility or identification purposes;
- electronic voting and the electoral process; and
- free postage for absentee ballots, in consultation with the U.S. Postal Service (USPS).⁵⁵

The EAVS also includes congressionally mandated reporting on voter registration and military and overseas voting, in addition to the EAC-initiated section on state elections policies.⁵⁶

Help America Vote College Program

As noted in the “Grant Programs” section of this report, Congress identified challenges with youth voter participation and poll worker recruitment in the 2000 elections. It responded in part by directing the EAC to establish a program to encourage students at institutions of higher education to serve as poll workers and election officials to use their services.

HAVA authorizes the EAC to conduct various activities as part of that program, including developing materials, sponsoring seminars and workshops, producing advertisements directed at students, and awarding grants. To date, the agency has primarily used funding appropriated for the program for grant-making.⁵⁷

Relationship of the EAC to Other Federal Entities

Federal agency support for the general administration of elections at the time of the 2000 elections was primarily provided by the FEC’s OEA. Following the enactment of HAVA and transfer of the OEA’s duties, staff, and funding to the EAC, however, the FEC no longer plays a role in election administration. Although the FEC and EAC both work on elections-related issues and share some structural similarities, they have different authorities and mandates—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, however. Multiple federal agencies are represented on its advisory bodies, and some provide additional assistance with its work. The agency’s Board of Advisors includes representatives of DOD, the Architectural and Transportation Barriers Compliance (Access) Board, the U.S. Commission on Civil Rights (USCCR), and the U.S. Department of Justice (DOJ), for example, and NIST assists the EAC with some of its research, grant-making, and voting system testing and certification responsibilities.

The EAC also provides election administration expertise to other federal agencies directly and through congressional testimony and collaborates with them on responses to election administration developments. Following the U.S. Department of Homeland Security’s (DHS’s) designation of election systems as critical

⁵⁵ 52 U.S.C. §§20982-20986.

⁵⁶ 52 U.S.C. §20508; and 52 U.S.C. §20302. See also EAC, *Studies and Reports*, at <https://www.eac.gov/research-and-data/studies-and-reports>.

⁵⁷ EAC, *Help America Vote College Program*, at https://www.eac.gov/payments_and_grants/help_america_vote_college_program.

infrastructure in January 2017, for example, the EAC helped establish and continues to participate in the department's new Election Infrastructure Subsector (EIS).⁵⁸

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.

Structure

The EAC consists of an appointed commission, a professional staff led by an executive director and general counsel, an OIG, three statutory advisory bodies, and one agency-created advisory body. Its primary oversight committees are the Committee on House Administration and the Senate Committee on Rules and Administration, and its appropriations are under the jurisdiction of the Financial Services and General Government (FSGG) Subcommittees of the House and Senate Appropriations Committees.⁵⁹

The structure of the EAC, like its duties, reflects its emphasis on assistance.⁶⁰ The agency's advisory bodies are central to its functioning, with opportunities for input into its guidance, planning, and staffing. Voters are represented on one of the advisory bodies, and state officials, local officials, or their representatives make up some or all of the membership of all four.

The EAC was also set up to ensure a range of expert input into agency activities and help guard against partisanship.⁶¹ In addition to voters and state and local officials, for example, the advisory bodies include experts in a range of other fields relevant to election administration, from disability access to science and technology. The membership and selection processes for the commission and some of the advisory bodies, as well as a provision that certain actions require approval by a three-vote quorum of the four commissioners, are also designed for partisan balance.

Commission

The EAC's 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

⁵⁸ 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 Brian E. Humphreys.

⁵⁹ 52 U.S.C. §20927. See also U.S. Congress, House, *Rules of the House of Representatives, One Hundred Seventeenth Congress*, prepared by Clerk of the House of Representatives, 117th Cong., July 19, 2022, p. 12; 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; and U.S. Congress, House Committee on Appropriations, *Subcommittee Jurisdiction*, committee print, 110th Cong., 1st sess., January 16, 2007 (Washington: GPO, 2007), p. 5.

⁶⁰ 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.

⁶¹ 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.

leadership of the House or Senate and appointed by the President subject to the advice and consent of the Senate.⁶²

HAVA provides for commissioners to be appointed to four-year terms on staggered two-year cycles.⁶³ They may be reappointed to up to one additional term and continue to serve on “holdover” status after their terms expire, pending appointment of a successor. Two commissioners representing different parties are to be chosen by the commission’s membership each year to serve one-year terms as chair and vice chair.⁶⁴

Action on activities the commission is authorized by HAVA to conduct requires approval by a three-vote quorum of the commissioners.⁶⁵ That quorum requirement applies to most of the agency’s major activities, from updating the VVSG to promulgating regulations for the NVRA-mandated voter registration reports and federal mail voter registration form to appointing the agency’s statutory officers.⁶⁶

⁶² 52 U.S.C. §20923.

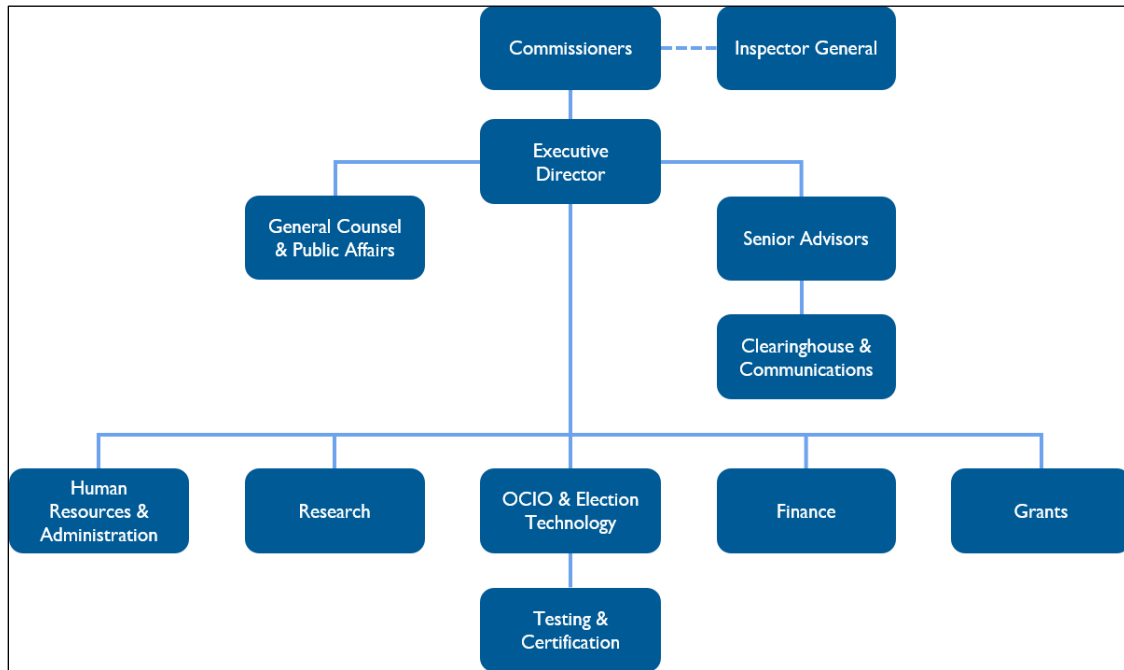
⁶³ Two of the original members of the commission were appointed to two-year terms rather than four-year terms to allow for staggering of member tenures. 52 U.S.C. §20923.

⁶⁴ 52 U.S.C. §20923.

⁶⁵ 52 U.S.C. §20928. This is similar to the FEC’s commission, which also has 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.

⁶⁶ The “Efforts to Terminate” section of this report describes delays in EAC action caused by lack of a quorum at the commission. Because the commission is bipartisan and has an even number of members, there is also potential for it not to take 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.

Figure 1. EAC Organizational Chart
(As of FY2023)



Source: CRS, based on EAC, *Fiscal Year 2023 Congressional Budget Justification*, p. 8, at https://www.eac.gov/sites/default/files/cbj/US_EAC_FY_2023_Congressional_Budget_Justification_508_FINAL.pdf.

Professional Staff

The EAC has two statutory officers—an executive director and a general counsel—who are appointed by the commission with input in the case of the executive director from two of the agency’s advisory bodies. Both the executive director and the general counsel are appointed to four-year terms and eligible for reappointment.⁶⁷

HAVA authorizes the executive director of the EAC to hire other professional staff (see **Figure 1** for an organizational chart of the agency as of FY2023).⁶⁸ As a matter of agency policy, the executive director is also responsible for the day-to-day operations of the EAC, including preparing policy recommendations for consideration by the commissioners, implementing adopted policies, and handling administrative affairs.⁶⁹

The size of the EAC’s staff has varied, from the four commissioners and handful of transfers from OEA in FY2004 to 50 full-time equivalent positions (FTEs) in FY2010, about 25 to 30 FTEs between FY2013 and FY2020, and 46 FTEs in FY2021.⁷⁰ The number of FTEs at the

⁶⁷ 52 U.S.C. §20924.

⁶⁸ 52 U.S.C. §20924.

⁶⁹ EAC, *Organizational Management Policy Statement*, February 24, 2015, p. 2, at https://www.eac.gov/sites/default/files/eac_assets/1/28/EAC%20Organizational%20Management%20Policy%20Statement%20-%20Adopted%2024-15.pdf.

⁷⁰ EAC, *Fiscal Year 2004 Annual Report*, January 2005, p. 7, at https://www.eac.gov/sites/default/files/document_library/files/FY_2004_Annual_Report.pdf; EAC, *Fiscal Year 2011 Congressional Budget Justification*,

agency was capped at 22 in FY2005 and 23 in FY2006.⁷¹ The cap was lifted for FY2007 and, as of this writing, has not been reinstated.⁷²

Advisory Bodies

HAVA provided for three advisory bodies for the EAC: the Board of Advisors, the Standards Board, and the Technical Guidelines Development Committee (TGDC). In 2021, the EAC used its own authority to add a fourth advisory body, the Local Leadership Council (LLC).⁷³

Board of Advisors

The EAC's Board of Advisors is charged with reviewing draft VVSG and voluntary guidance before they are presented to the agency's commissioners for a vote on adoption.⁷⁴ HAVA directs the board to appoint a search committee in the event of a vacancy for executive director of the EAC and the commissioners to consider the candidates the search committee recommends.⁷⁵ The commissioners are also supposed to consult with the board on research, program goals, and long-term planning, and NIST is supposed to consult with it on monitoring and review of VSTLs.⁷⁶

The Board of Advisors was designed by HAVA to have 37 members, but its membership dropped to 35 with the 2016 merger of two of the organizations responsible for appointing its members.⁷⁷

February 1, 2010, p. 5, at <https://web.archive.org/web/20170328074236/https://www.eac.gov/assets/1/6/157.PDF>; EAC, *Fiscal Year 2015 Interim Congressional Budget Justification*, March 10, 2014, p. 5, at https://www.eac.gov/sites/default/files/eac_assets/1/6/FY_2015_CBJ_March_4_2014_FINAL.pdf; EAC, *Fiscal Year 2017 Congressional Budget Justification*, February 9, 2016, p. 5, at https://web.archive.org/web/20171221003454/https://www.eac.gov/assets/1/6/FY_2017_CBJ_Feb_9_2016_FINAL.pdf; EAC, *Fiscal Year 2019 Congressional Budget Justification*, February 12, 2018, p. 4, at https://www.eac.gov/sites/default/files/eac_assets/1/6/FY_2019_CBJ_Feb_12_2018_FINAL.pdf; EAC, *Fiscal Year 2020 Congressional Budget Justification*, p. 5, at https://www.eac.gov/sites/default/files/eac_assets/1/6/EACFY2020BudgetJustification.pdf; EAC, *Fiscal Year 2021 Congressional Budget Justification*, February 10, 2020, at https://www.eac.gov/sites/default/files/eac_assets/1/28/EACFY2021CBJ.pdf; and EAC, *Fiscal Year 2023 Congressional Budget Justification*, p. 3.

⁷¹ 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, 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.

⁷² U.S. Congress, 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. 2. A bill introduced in the 117th Congress, the American Confidence in Elections (ACE) Act (H.R. 8528), would have amended HAVA to cap the number of FTEs at the EAC and its OIG.

⁷³ EAC, *Local Leadership Council*, at <https://www.eac.gov/about-eac/local-leadership-council>.

⁷⁴ 52 U.S.C. §20942; and 52 U.S.C. §20962.

⁷⁵ 52 U.S.C. §20924.

⁷⁶ 52 U.S.C. §20987; 52 U.S.C. §20924; and 52 U.S.C. §20971.

⁷⁷ 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>

Sixteen members of the board are appointed by organizations that represent state and local officials,⁷⁸ and seven represent federal entities.⁷⁹ Four members are science and technology experts, who are each appointed by the majority or minority leadership of the House or Senate. The remaining eight members of the board represent voters, with two appointed by each of the chairs and ranking members of the EAC's two primary oversight committees. The overall membership of the board is supposed to be bipartisan and geographically representative.⁸⁰

Standards Board

HAVA assigned the Standards Board and its nine-member Executive Board the same duties as the Board of Advisors. Like the Board of Advisors, the full Standards Board is responsible for reviewing draft voluntary guidance and VVSG; appointing a search committee in the event of a vacancy for the executive director; consulting with the commission on research, program goals, and long-term planning; and consulting with NIST on monitoring and review of VSTLs. The Executive Board is charged with reviewing draft VVSG and making recommendations about them to the full board, as well as carrying out any other duties the full board delegates to it.⁸¹

The full Standards Board has 110 members. They include two representatives from each of the 50 states, DC, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. Each pair of representatives includes one state election official and one local election official who are not affiliated with the same political party. State election officials are chosen for membership on the board by their state's chief election official, and local officials are selected according to a process overseen by the chief state election official.⁸²

The nine members of the Executive Board are appointed to two-year terms by the full membership of the Standards Board. Executive Board members may serve no more than three consecutive terms, and no more than five Executive Board members may be either state officials, local officials, or members of the same political party.⁸³

Technical Guidelines Development Committee (TGDC)

The 15-member TGDC is charged with helping the executive director of the EAC develop the VVSG.⁸⁴ That has tended to involve working with NIST to draft guidelines for consideration by the other two statutory advisory bodies, the public, and the commission.

The director of NIST serves as chair of the TGDC and, in collaboration with the EAC's commissioners, appoints its other 14 members. Appointees to the TGDC must include an equal

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⁷⁸ Two of the state and local representatives 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.

⁷⁹ The federal representatives are the director of DOD's Federal Voting Assistance Program, the chief of DOJ's Office of Public Integrity or the chief's designee, the chief of the Voting Section of DOJ's Civil Rights Division or the chief's designee, and two members appointed by each of the Access Board and USCCR. 52 U.S.C. §20944.

⁸⁰ 52 U.S.C. §20944.

⁸¹ 52 U.S.C. §20962; and 52 U.S.C. §20943.

⁸² 52 U.S.C. §20943.

⁸³ 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.

⁸⁴ 52 U.S.C. §20961.

number of members of the Board of Advisors, Standards Board, and Access Board; one representative of each of the American National Standards Institute (ANSI) and the Institute of Electrical and Electronics Engineers (IEEE); two representatives of NASED who do not serve on the Board of Advisors or Standards Board and do not share a political party; and other experts in voting system-related science and technology.⁸⁵

Local Leadership Council (LLC)

The LLC was established by the EAC in 2021 to provide input into the agency's work, such as by offering recommendations and sharing experiences and best practices.⁸⁶ A primary motivation for creating the council, according to agency leadership, was to help the EAC build direct relationships with local election officials.⁸⁷

The council consists of two local election officials from each of the 50 states. Where applicable, the members are supposed to be current or former leaders of professional associations for local election officials in their states.⁸⁸

Office of Inspector General (OIG)

The EAC is required to have an OIG under the Inspector General Act of 1978, as amended by HAVA (IG Act; P.L. 95-452; 5 U.S.C. app.).⁸⁹ As noted in the "Grant Programs" section of this report, the EAC's OIG audits its grantees and refers issues identified in audits to agency management for resolution.⁹⁰ In one instance, for example, the OIG determined that a grantee could not document certain grant expenses, and the grantee was required to return some of its grant funds.⁹¹

The EAC's OIG also conducts internal audits and investigations of the agency itself. That includes regular reporting on the EAC's management challenges and compliance with federal laws, such as the Federal Information Security Modernization Act of 2014 (FISMA; P.L. 113-283; 44 U.S.C. §§3551-3559). It also includes audits of the EAC's finances and investigation of complaints about fraud, waste, mismanagement, or abuse at the agency, such as a 2008 investigation of alleged political bias in preparation of an EAC report about voter fraud and intimidation, a 2010 investigation of complaints about the agency's work environment, and a 2015 investigation of reports of disbursement of expired grant funds.⁹²

⁸⁵ 52 U.S.C. §20961.

⁸⁶ EAC, *Local Leadership Council*, at <https://www.eac.gov/about-eac/local-leadership-council>.

⁸⁷ EAC, *2022 Board of Advisors Annual Meeting*, at https://www.youtube.com/watch?v=_q0wjZD1l4E.

⁸⁸ EAC, *Charter of the U.S. Election Assistance Commission Local Leadership Council*, p. 2, at https://www.eac.gov/sites/default/files/LLC/EAC_Local_Leadership_Council_Charter.pdf.

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 Ben Wilhelm.

⁹⁰ EAC, *Audits & Resolutions*. The EAC can also use suspension and debarment procedures to limit access to future EAC grants or payments by certain 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://web.archive.org/web/20170328070206/https://www.eac.gov/assets/1/28/Final%20EAC%20Management%20Decision%20Project%20Vote%20E-HP-SP-05-10.pdf>; and Committee on House Administration, Subcommittee on Elections, Election Assistance Commission Operations and 2012 Budget Proposal, p. 121.

⁹² EAC Office of Inspector General, *Report of Investigation: Preparation of the Voter Fraud and Voter Intimidation*

History

Implementation of the EAC has sometimes deviated in practice from the plan for the agency set out in HAVA. The first commissioners were not appointed on the timeline specified by the act, for example, which contributed to failures to meet other statutory deadlines.

Interpretations of the plan for the agency—and views about whether to change it—have also differed among Members and in response to new developments. Some have seen the EAC as a temporary fix for a short-term problem, for example, while others have viewed it as a permanent fixture in federal elections work. Recent developments in the election administration landscape, such as foreign efforts to interfere in the 2016 elections and the onset of the COVID-19 pandemic in the 2020 election cycle, have suggested potential new functions for the agency.

As a result, the role of the EAC and congressional perspectives on its role have varied over the course of the agency's history, from its initial setup in the wake of the 2000 elections to its participation in the federal response to more recent developments.

Initial Setup

HAVA called for members to be appointed to the EAC's commission by February 2003, but the first four commissioners did not take office until December.⁹³ The act also authorized up to \$10 million in operational funding for the agency for each of FY2003 through FY2005, but, with no commissioners in place for FY2003 or the start of FY2004, Congress appropriated significantly less than the authorized ceiling for the first two of those fiscal years (see **Table 2** for details).⁹⁴

The delay in appointing commissioners and limited early funding for the agency contributed to the EAC missing statutory deadlines for conducting research and issuing voluntary guidance. Work on the agency's voting system testing and certification program also started later than anticipated.

Those developments had practical implications. As set out in HAVA, the deadlines for the EAC to release voluntary guidance for implementing the act's Title III requirements preceded the deadlines for states to start meeting the requirements.⁹⁵ In theory, that would have enabled states to use the guidance to inform their implementation of the requirements.⁹⁶ In practice, the commissioners took office nearly a month-and-a-half after the first set of guidance was due and less than three weeks before states were supposed to start meeting requirements.⁹⁷

Report, at https://www.eac.gov/sites/default/files/eac_assets/1/1/Report%20of%20Investigation%20-%20Preparation%20of%20the%20Vote%20Fraud%20and%20Voter%20Intimidation%20Report.pdf; EAC OIG, *Report of Investigation: Work Environment at the U.S. Election Assistance Commission*, at https://www.eac.gov/sites/default/files/eac_assets/1/1/Report%20of%20Investigation%20Work%20Environment%20at%20the%20U.S.%20Election%20Assistance%20Commission.pdf; and EAC OIG, *Redacted Report of Investigation: Misconduct – Election Assistance Commission*, at https://www.eac.gov/sites/default/files/eac_assets/1/28/Redacted%20Report%20of%20Investigation%20-%20ADA.pdf.

⁹³ 52 U.S.C. §20923. U.S. Election Assistance Commission, *Annual Report Fiscal Year 2003*, p. 1, at https://www.eac.gov/sites/default/files/document_library/files/FY_2003_Annual_Report.pdf.

⁹⁴ 52 U.S.C. §20930.

⁹⁵ 52 U.S.C. §21101; and 52 U.S.C. §§21081-21083.

⁹⁶ Committee on House Administration, *Oversight Hearing on the Election Assistance Commission*, June 17, 2004, pp. 53-54.

⁹⁷ Montjoy and Chapin, "The U.S. Election Assistance Commission: What Role in the Administration of Elections?" p.

The EAC's voting system testing and certification program is also intended to help inform state and local choices of voting systems. However, states that were planning to use HAVA's lever and punch card voting system replacement grant funding to upgrade their systems after the 2000 elections had to either replace all of their lever and punch card machines by the regular federal general election in November 2004 or return some of the funds.⁹⁸ They could apply for an extension of that deadline to the first election after January 1, 2006—which was ultimately further extended to the first election after November 1, 2010—but VVSG 1.0 was not adopted until December 2005 and the first system was not certified to the guidelines until February 2009.⁹⁹

Efforts to Terminate

As of the beginning of the 112th Congress, the EAC had distributed most of the grant funding it was authorized by HAVA to administer and completed much of the research the act directed it to conduct. The National Association of Secretaries of State (NASS) had recently renewed a resolution—first adopted in 2005 and subsequently approved again in 2015—that called for disbanding the agency.¹⁰⁰ The authorization of operational funding for the EAC had expired, and the agency's OIG reported ongoing issues with its performance management, information security, work environment, records management, and overhead expenses.¹⁰¹

Those developments were taken by some as evidence that the agency had outlived its usefulness.¹⁰² Members introduced legislation to terminate the EAC in each of the 112th through 115th Congresses, and the House Appropriations Committee recommended cutting or eliminating its funding each fiscal year between FY2012 and FY2018.¹⁰³ For details of those funding recommendations, see **Table 2** and **Table 3**.

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⁹⁸ 52 U.S.C. §20902.

⁹⁹ EAC, "EAC Adopts 2005 Voluntary Voting System Guidelines," at https://web.archive.org/web/20170327213819/https://www.eac.gov/assets/1/28/VVSG_1.0_Press_Release.pdf; and Brennan Center for Justice, *Voting System Failures: A Database Solution*, 2010, p. 8, at <https://www.brennancenter.org/our-work/research-reports/voting-system-failures-database-solution>. According to information available on the EAC's website, it appears as if only one other system was certified before November 1, 2010. EAC, *Certified Voting Systems*, at <https://www.eac.gov/voting-equipment/certified-voting-systems>.

¹⁰⁰ 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>.

¹⁰¹ 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.

¹⁰² See, for example, U.S. Congress, 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*, 113th Cong., 1st sess., June 4, 2013 (Washington: GPO, 2013), pp. 6-7, 54.

¹⁰³ Election Support Consolidation and Efficiency Act (H.R. 672, 112th Congress); To reduce Federal spending and the deficit by terminating taxpayer financing of presidential election campaigns and party conventions and by terminating the Election Assistance Commission (H.R. 260, 113th Congress); Election Assistance Commission Termination Act (H.R. 1994, 113th Congress); Election Assistance Commission Termination Act (H.R. 195, 114th Congress); and Election Assistance Commission Termination Act (H.R. 634, 115th Congress).

Table 2. Proposed and Enacted Funding for EAC Operations, FY2003 to FY2013

Figures for the House and Senate reflect chamber-passed, committee-reported, or other proposed levels, as indicated (\$ millions)

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Request	—	10.0	10.0	14.8	12.0	12.2	12.7	13.3	13.6	10.5	8.8
House ^b	—	5.0	12.5	13.1	12.0	12.2	12.9	13.4	12.7	5.2	4.4
Senate ^b	—	^c	7.0	9.9	12.1	12.2	12.7	13.3	13.6	11.5	8.8
Enacted	2.0	1.2^a	10.8	11.4	11.3	12.3	12.9	13.4	13.1	8.8	8.8

Sources: CRS, based on data from the President's budget requests and relevant appropriations measures.

Notes: Figures are from appropriations for the EAC's Salaries and Expenses account, including funds designated for the agency's Office of Inspector General. They are rounded and do not reflect rescissions, sequestration reductions, or funds designated for the National Institute of Standards and Technology, mock election grants, or the Help America Vote College Program. As such, the amounts in this table may not match total figures provided in appropriations measures or other budget documents.

- The Consolidated Appropriations Act, 2004 (P.L. 108-199) provided \$800,000 in funding for the Federal Election Commission's Office of Election Administration (OEA). The act indicated that any of that funding OEA had left when its staff and functions were transferred to the EAC should also be transferred to the EAC.
- 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.
- The Senate-passed bill did not include a separate account for EAC Salaries and Expenses. It would have provided \$1.5 billion for EAC-administered grants under a general EAC account but did not designate a specific portion of the funds for EAC operations.

Table 3. Proposed and Enacted Funding for EAC Operations, FY2014 to FY2023

Figures for the House and Senate reflect chamber-passed, committee-reported, or other proposed levels, as indicated (\$ millions)

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Request	8.3	8.1	8.1	8.3	7.7	7.7	8.1	11.6	21.3	28.6
House ^a	0.0	0.0	4.8	4.9	5.5	8.6^b	12.5	17.6	21.3	28.6
Senate ^a	8.3	8.1	8.1	8.1	7.7	7.7	8.1	11.3	18.5	20.5
Enacted	8.1	8.1	8.1	8.2	8.6	8.0	11.3	15.5	18.5	25.5

Sources: CRS, based on data from the President's budget requests and relevant appropriations measures.

Notes: Figures are from appropriations for the EAC's Salaries and Expenses account, including funds designated for the agency's Office of Inspector General. They are rounded and do not reflect rescissions, sequestration reductions, or funds designated for the National Institute of Standards and Technology, mock election grants, the Help America Vote College Program, or agency relocation expenses. As such, the amounts in this table may not match total figures provided in appropriations measures or other budget documents.

- 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 following exceptions: the Senate figure for FY2015 is from the subcommittee bill, and the Senate figures for FY2018, FY2021, FY2022, and FY2023 are from the committee chairman's draft.
- 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.

The Senate also stopped confirming—and some congressional leaders stopped recommending—nominees to the agency’s commission.¹⁰⁴ The commission lost the numbers required for a quorum in December 2010 and both of its remaining members in December 2011 (see **Figure 2** for details).¹⁰⁵ The Senate, some of whose Members cited opposition to the existence of the agency rather than to individual nominees, did not confirm any new commissioners until December 2014.¹⁰⁶

Without a quorum, the commission could not take official action. One notable consequence was that it could not update the VVSG.¹⁰⁷ The creation of the EAC was partly a response to the FEC’s failure to keep its voting system guidelines up to date.¹⁰⁸ However, the lack of a quorum between December 2010 and the swearing in of the newly confirmed commissioners in January 2015 left a nearly decade-long gap between the EAC’s adoption of VVSG 1.0 in 2005 and its first update in 2015.¹⁰⁹

¹⁰⁴ Amanda Becker, “The Phantom Commission,” *Roll Call*, October 31, 2012, at <https://rollcall.com/2012/10/31/the-phantom-commission/>.

¹⁰⁵ EAC, *Statement of Gracia M. Hillman on the Occasion of her Resignation as Commissioner, U.S. Election Assistance Commission*, December 6, 2010, at https://www.eac.gov/sites/default/files/document_library/files/GH%20Statement_12_06_10.pdf; and EAC, *2012 Activities Report*, p. 7, at <https://web.archive.org/web/20170328053540/https://www.eac.gov/assets/1/6/FY-2012-EAC-Activities-Report-Website-Scanned.pdf>.

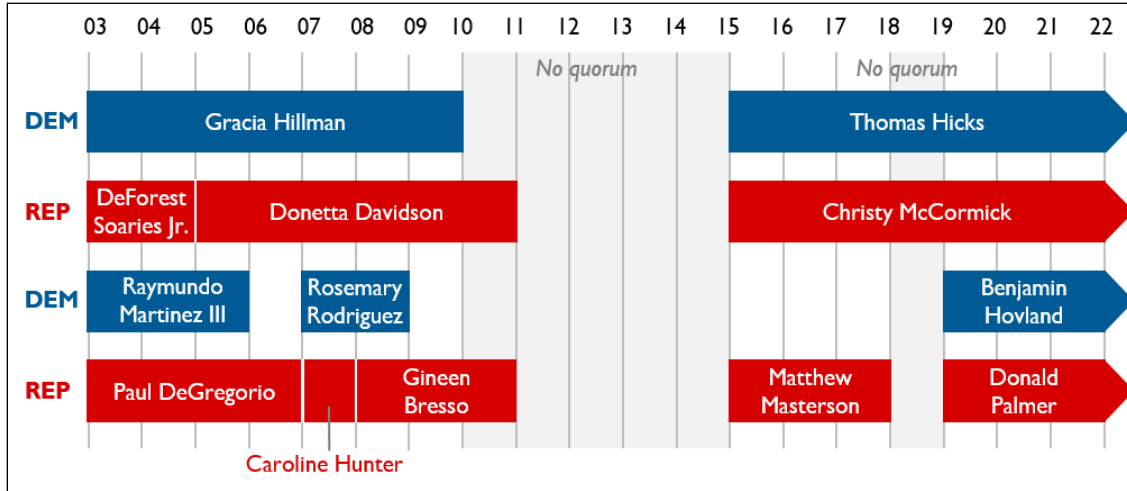
¹⁰⁶ See, for example, U.S. Congress, Senate Committee on Rules and Administration, *Hearings and Markups Before the Committee on Rules and Administration*, hearings and markups, 112th Cong., 1st sess., June 29, 2011, S.Hrg. 112-770 (Washington: GPO, 2014), p. 18.

¹⁰⁷ Another consequence was that the EAC could not appoint statutory officers. That left it without a permanent executive director or general counsel after the then-officeholders resigned in November 2011 and May 2012, respectively. U.S. Election Assistance Commission, *2012 Activities Report*, p. 7.

¹⁰⁸ House Committee on Science, *Voting Technology Standards Act of 2001*, pp. 5-6. The Voting Technology Standards Act of 2001 (H.R. 2275) proposed establishing a commission to develop voluntary voting system standards and consult on accreditation of voting system test labs. The bill was largely incorporated into HAVA. Committee on House Administration, *Oversight Hearing on the Election Assistance Commission*, June 17, 2004, p. 54.

¹⁰⁹ 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. EAC, *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/>; EAC, *Voluntary Voting System Guidelines*.

Figure 2. Tenures of EAC Commissioners



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

Response to Recent Developments

Recent election cycles have seen a number of high-profile developments, including efforts by foreign actors to interfere in the 2016 elections, the emergence of the COVID-19 pandemic in the 2020 election cycle, and an increase in reports of threats to election workers during and after 2020.¹¹⁰

The EAC has played a role in the federal response to each of those developments. Perhaps most prominently, it has administered elections grants. Congress responded to foreign efforts to interfere in the 2016 elections and the onset of the COVID-19 pandemic in part with funding under HAVA’s general improvements grant program, and it charged the EAC with administering the funds.¹¹¹

The agency has also provided nonfinancial resources. As noted in the “Structure” section of this report, it helped set up and has continued to participate in the EIS.¹¹² Both in that role and independently, it has offered assistance with securing election systems. It has produced resources to help election officials address the cybersecurity threats highlighted by foreign efforts to interfere in elections, for example, as well as the physical threats posed by the COVID-19 pandemic and both physical and cybersecurity threats to election workers.¹¹³

¹¹⁰ See, for example, DHS, “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>. For more on threats to election workers, see CRS Insight IN11831, *Election Worker Safety and Privacy*, by Sarah J. Eckman and Karen L. Shanton; and CRS Legal Sidebar LSB10781, *Overview of Federal Criminal Laws Prohibiting Threats and Harassment of Election Workers*, by Jimmy Balser.

¹¹¹ For more on the HAVA funding Congress has provided in response to recent developments, see CRS Report R46646, *Election Administration: Federal Grant Funding for States and Localities*, by Karen L. Shanton; and CRS Report WPD00035, *Federal Role in Elections Funding*, by Karen L. Shanton.

¹¹² EAC, *2018 Annual Report*, pp. 31-33, at https://web.archive.org/web/20190322203853/https://www.eac.gov/assets/1/6/EACannualreport_2018.pdf.

¹¹³ See, for example, EAC, *Election Security*, at <https://www.eac.gov/voters/election-security>; EAC, *Coronavirus (COVID-19) Resources*, at <https://www.eac.gov/election-officials/coronavirus-covid-19-resources>; and EAC, *Election*

Supporters of an ongoing role for the EAC have cited its participation in the federal response to recent developments as new grounds to extend or expand it.¹¹⁴ More generally, the focus of debate about the EAC seems to have shifted in the 116th and 117th Congresses from whether there is a role for the agency to what that role should be. Proposed and enacted operational funding for the EAC has increased in recent years over the levels provided in earlier Congresses, for example, and proposals to terminate the agency were not reintroduced in the 116th or 117th Congresses.

Legislative Activity

One question Congress considered when developing the EAC was whether it should exist as a separate agency at all. That question was also a subject of particular congressional interest in the 112th through 115th Congresses, which saw efforts by some Members to disband the agency.

As noted in the “Response to Recent Developments” section of this report, debate about whether there is a role for the EAC seems to have receded in prominence in the 116th and 117th Congresses. There have continued to be questions about exactly what the agency’s role should be, however, including what types of tasks it should perform and how it should operate.

Members have introduced legislation on each of the above questions since HAVA’s enactment in 2002, offering proposals related to (1) whether to maintain an election administration agency and, if so, (2) what the agency should do and (3) how it should do it.

Whether to Maintain an Election Administration Agency

HAVA only authorized operational funding for the new election administration agency it created for three fiscal years. Some Members took that as an indication that the EAC was intended to be temporary. As described in the “Efforts to Terminate” section of this report, they introduced appropriations measures that would have reduced or eliminated the agency’s funding and authorizing legislation that would have terminated it and redistributed any of its remaining duties to other agencies.

Other Members have highlighted benefits of ongoing EAC responsibilities like updating the VVSG and conducting the EAVS and argued that its duties could not be performed as effectively—or much more cost-effectively—by other agencies.¹¹⁵ They have provided for ongoing appropriations for the agency and proposed removing potential ambiguity about its status by reauthorizing its operational funding.

Table 4 offers some examples of legislative proposals to terminate or defund the EAC, as well as examples of proposals to extend it.

Official Security, at <https://www.eac.gov/election-officials/election-official-security>.

¹¹⁴ See, for example, 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*, February 7, 2017, pp. 2-3.

¹¹⁵ See, for example, U.S. Congress, 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, 2011), pp. 54-56; and U.S. Congress, 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.

Table 4. Selected Legislation Related to Whether to Maintain an Election Administration Agency

Short Title	Number	Congress	Summary of Selected Provisions
Election Assistance Commission Termination Act	H.R. 634	115 th	Would have terminated the U.S. Election Assistance Commission (EAC)
Election Support Consolidation and Efficiency Act	H.R. 672	112 th	Would have terminated the EAC
Enhanced Election Security and Protection Act	S. 4574	117 th	Would have reauthorized operational funding for the EAC
Financial Services and General Government Appropriations Act, 2015	H.R. 5016	113 th	Would have defunded the EAC
Freedom to Vote Act	S. 2747	117 th	Would have reauthorized operational funding for the EAC

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.

What the Agency Should Do

The EAC is the only federal agency dedicated to the general administration of elections. As a result, it has been a common choice of agency for proposals to take new federal action on elections issues.

That is especially true of proposals to extend the EAC's existing duties into new issue areas. HAVA charged the EAC with administering grant programs; issuing voluntary guidance for implementing federal requirements; conducting research and sharing best practices; and providing for voluntary voting system guidelines, testing, and certification. Elections legislation involving those types of tasks, such as bills that would authorize development of voluntary guidelines for e-poll books or grant programs for conducting risk-limiting audits, often assigns them to the EAC.

There have also, though, been proposals to assign the agency new types of tasks, including tasks that would expand it beyond its traditional assistance focus. Members have introduced legislation that would direct the agency to set mandatory standards for certain aspects of election administration, for example, or lift the limit on EAC rulemaking in general.¹¹⁶

Table 5 offers some examples from the 117th Congress of legislative proposals to assign the EAC new responsibilities.

¹¹⁶ See, for example, the Election Integrity Act of 2016 (H.R. 6072).

Table 5. Selected Legislation Related to What the Agency Should Do
(117th Congress)

Short Title	Number	Summary of Selected Provisions
Frank Harrison, Elizabeth Peratrovich, and Miguel Trujillo Native American Voting Rights Act of 2021	H.R. 5008	Would have directed the U.S. Election Assistance Commission (EAC) to administer a grant program for establishing and operating state Native American voting task forces
Protect Our Elections Act	H.R. 6574	Would have directed the EAC to maintain a database of election service providers that meet specified criteria
Restoring Faith in Elections Act	H.R. 102	Would have instituted a voter identification requirement, and directed the EAC to issue voluntary guidance for implementing it
Voter Choice Act	H.R. 5500/S. 2939	Would have directed the EAC to establish a program to provide technical assistance and award grants for transitioning to ranked choice voting
Voting Access Act	H.R. 1343	Would have directed the EAC to set mandatory standards for polling place locations and operations

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.

How the Agency Should Function

How agencies are set up can help determine how effective they are at achieving their intended purposes. As a result, some legislative activity on the EAC has focused less on what the agency does and more on how it does it.

Some proposals to change how the EAC works have focused on the structure of the agency. Bills have been introduced to create new EAC advisory bodies or add new members to existing advisory bodies, for example, as well as to prohibit use of operational funding for agency-created advisory bodies other than the LLC.

Other bills would make procedural changes. Members have proposed exempting the EAC from the Paperwork Reduction Act of 1995 (PRA; P.L. 104-13; 44 U.S.C. §§3501-3521) to make it easier for the agency to solicit information from election officials, for example, or providing for concurrent submission of its budget requests to Congress to give Members more insight into its resource needs.¹¹⁷

Table 6 offers some examples from the 117th Congress of legislative proposals to change the EAC's structure or procedures.

¹¹⁷ See, for example, the EAC Improvements Act of 2013 (H.R. 2017) and the Secure America's Vote Act of 2005 (H.R. 3094).

Table 6. Selected Legislation Related to How the Agency Should Function
(117th Congress)

Short Title	Number	Summary of Selected Provisions
Accessible Voting Act of 2021	H.R. 2941/S. 1470	Would have established an Office of Accessibility within the U.S. Election Assistance Commission (EAC)
American Confidence in Elections (ACE) Act	H.R. 8528	Would have instituted caps on the number of staff at the EAC and its Office of Inspector General, prohibited the agency from using operational funding for agency-created advisory bodies other than the Local Leadership Council, and adjusted commissioner compensation
For the People Act of 2021	H.R. 1	Would have directed the EAC to have a Senior Cyber Policy Advisor
For the People Act of 2021	H.R. 1/S. 1 /S. 2093	Would have added the Secretary of the U.S. Department of Homeland Security (DHS) or the Secretary's designee to the EAC's Board of Advisors and a DHS representative to its Technical Guidelines Development Committee
Voter Empowerment Act of 2021	H.R. 2358/S. 954	Would have repealed the EAC's exemption from certain government contracting requirements

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 agency and election administration more broadly.¹¹⁸ The history of the EAC and related legislative activity suggest some considerations that may be of interest to Members who are weighing whether or how to take action on those authorities.

- **Adding agency expertise.** As noted in the “Overview” section of this report, the EAC was designed in part to provide for a range of expert input into agency activities. However, new developments might call for experience or expertise not contemplated by HAVA. Previously introduced legislation suggests various possible ways to provide for new expertise at the agency if Congress chooses to do so, including adding members to the agency's advisory bodies, creating new advisory bodies or agency offices, and directing the agency to hire certain staff or consult with certain stakeholders.¹¹⁹

¹¹⁸ See, for example, U.S. Const. art. 1, §4, cl. 1.

¹¹⁹ Each of these options might have its own advantages and disadvantages. Adding new advisory body members provides for additional expert input into agency activities, for example, but might give certain stakeholders more direct access to EAC actions and decisionmaking than some Members might prefer. For one possible concern about such access, see Committee on House Administration, Subcommittee on Elections, *Oversight Hearing on the Election Assistance Commission*, August 2, 2007, p. 87; and U.S. Congress, 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.

- **Assigning duties.** One way to provide for elections-related expertise at the federal level is to add new expertise at the EAC. Another is to draw on other federal agencies. Congress assigned many of the elections responsibilities it established in HAVA to the EAC, but it reserved certain tasks to other agencies or to the EAC in conjunction with other agencies. It charged the U.S. Department of Health and Human Services (HHS) with administering HAVA’s disability access grant programs, for example, and NIST with providing the EAC various types of technical assistance. Members contemplating new elections duties that would involve experience or expertise available at agencies other than the EAC might consider whether to take a similar approach or to assert a sole or primary role for the EAC.
- **Assessing resource needs.** The EAC has been described variously as both overfunded and underfunded.¹²⁰ Developments like the election security threats in recent election cycles have also prompted calls for additional resources for agency operations and for distribution to states and localities through the EAC.¹²¹ Congress might choose to consider how the types and levels of funding available for the EAC, agencies like NIST that support the EAC, and EAC grantees align with current resource needs.¹²² Members who are considering assigning new tasks to the EAC might also consider whether or not to authorize or appropriate additional funding for the new tasks and, if so, whether to provide it as a dedicated funding stream or part of an overall increase in the agency’s operational funding. Various tools might be available to help assess resource needs, including studies of appropriate funding levels, concurrent budget submission, and reporting on available resources.¹²³
- **Scheduling activity.** As noted in the “Initial Setup” section of this report, EAC guidance is intended to inform state and local action. As also noted in that section, however, it has not always served that purpose in practice. Lack of a quorum at the commission and the time required to complete tasks like developing voting system guidelines and manufacturing, testing, and certifying systems to the guidelines have delayed the availability—and reduced the practical utility—of some of the EAC’s guidance. Members who are contemplating assigning the EAC new guidance responsibilities might consider whether to try to account for the potential for such delays. One option might be to build in extra time between EAC deadlines and state or local deadlines. Another might be to condition state or local deadlines on EAC action, by setting the deadline for state or local action for a certain number of months or years after the EAC has issued guidance rather than a specific date.

¹²⁰ See, for example, the “Initial Setup” and “Efforts to Terminate” sections of this report.

¹²¹ 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://web.archive.org/web/20181222200937/https://raskin.house.gov/sites/raskin.house.gov/files/FY%2019%20EAC%20Appropriations%20Letter_0.pdf.

¹²² HAVA did not explicitly authorize funding for the activities it directed NIST to carry out. However, appropriations measures have consistently directed the EAC to transfer funding or make funding available to NIST for those activities.

¹²³ See, for example, the Bipartisan Electronic Voting Reform Act of 2008 (S. 3722, §7), the Voting Opportunity and Technology Enhancement Rights Act of 2011 (H.R. 108, §112), and the For the People Act of 2021 (H.R. 1/S. 1/S. 2093, §3602).

- **Considering the quorum requirement.** One possible approach to addressing delays in EAC activity caused by lack of a quorum of commissioners is to adjust deadlines. Another might be to try to reduce the potential for quorum-related delays. Some general strategies for doing so might include (1) eliminating the need for a quorum for certain activities, by exempting them from the quorum requirement, and (2) trying to reduce the likelihood of loss of a quorum.¹²⁴ 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 or congressional leadership in the selection process.

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¹²⁴ See, for example, Edward Perez, "Perspectives from the U.S. Election Assistance Commission Public Hearing in Memphis," *OSET Institute*, April 12, 2019. See also footnote 40 in the "Voting System Guidelines, Testing, and Certification" section of this report.