

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

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

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

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

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

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

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

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

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

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

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

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

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

No legal analysis has been received at this time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Potential sites for these trainings include:

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



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

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

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

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

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

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