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The U.S. Election Assistance Commission (EAC): An Overview

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 act 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.

This In Focus provides an introduction to the EAC. It describes the agency's duties and structure and briefly reviews some of its history and related legislative activity.

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. Those investigations also prompted suggestions about how to avoid similar problems in the future, including proposals to increase federal involvement in elections.

Exactly what that involvement should look like was a matter of debate. The disagreements played out in at least two discussions 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.

Congress struck a compromise in HAVA by creating a new agency, the EAC, but positioning it as a support agency. 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 (NVRA), and (2)

maintaining the federal mail voter registration form required by the NVRA.

That limitation does not mean the agency has no ability to influence state or local action. However, its 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 (VVSG), testing, and certification;
- issuing voluntary guidance for implementation of certain HAVA requirements;
- conducting research and sharing best practices; and
- establishing a Help America Vote College Program to encourage students at institutions of higher education to serve as poll workers and election officials to use their services.

Structure

The EAC includes a commission, a professional staff led by an executive director and general counsel, an Office of Inspector General (OIG), three statutory advisory bodies, and one agency-created advisory body.

The commission is designed to have four members, each of whom is required to have elections experience or expertise and no more than two of whom may be affiliated with the same political party. Commissioners are recommended by the majority or minority leadership of the House or Senate and appointed by the President subject to the advice and consent of the Senate. Action on activities the commission is authorized by HAVA to conduct, such as updating the VVSG and appointing statutory officers, requires approval by a three-vote quorum of the commissioners.

The EAC has two statutory officers, the executive director and 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. HAVA authorizes the executive director to hire other professional staff. The size of the EAC's staff has varied, from the four commissioners and handful of transfers from the FEC's OEA in FY2004 to 50 full-time equivalent positions in FY2010, about 25 to 30 between FY2013 and FY2020, and 46 in FY2021.

One of the EAC OIG's primary responsibilities is auditing recipients of grant funds administered by the EAC. The OIG also conducts internal audits and investigations of the agency itself, including audits of its finances, reports on management challenges, and investigations of complaints of fraud, waste, mismanagement, and abuse. The OIG conducted a 2008 investigation of alleged political bias in

preparation of an EAC report about voter fraud and intimidation, for example, and a 2010 investigation of complaints about the agency's work environment.

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

- **Board of Advisors.** 35 members representing state and local officials, federal entities, science and technology experts, and voters. Intended to be bipartisan and geographically representative. Responsible for reviewing draft VVSG and guidance; appointing a search committee in the event of a vacancy for the EAC's executive director; and consulting on research, program goals, long-term planning, and monitoring and review of voting system test laboratories.
- **Standards Board.** 110 members, with one state official and one local official from different parties for each of the 50 states, DC, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. Responsible for the same tasks as the Board of Advisors.
- **TGDC.** 15 members representing state and local officials, individuals with disabilities, and science and technology experts, with the director of the National Institute of Standards and Technology as chair. Responsible for helping develop the VVSG.
- **LLC.** 100 members, with two local election officials from each of the 50 states. Responsible for providing input into the agency's work, such as by sharing experiences and best practices.

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 commission's quorum requirement and the membership and selection processes for the commission and some of the advisory bodies are also designed for partisan balance.

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 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 during the 116th and 117th Congresses, however, debate about whether there is a role for the EAC receded in prominence. Recent election cycles have seen a number of high-profile developments, including foreign efforts to interfere in the 2016 elections, the onset of the COVID-19 pandemic in the 2020 election cycle, and an increase in reports of threats to election workers during and after 2020.

The EAC played a role in the federal response to each of those developments. It administered grant funding Congress provided to help states address foreign efforts to interfere in elections and elections effects of the COVID-19 pandemic, for example, and developed resources to help election officials address physical and cybersecurity threats. Following the U.S. Department of Homeland Security's designation of election systems as critical infrastructure in January 2017, it also helped set up and continues to participate in the Election Infrastructure Subsector.

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 recent Congresses from whether there is a role for the EAC to what that role should be, including

- **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 election administration. Some bills would extend the EAC's existing duties into new areas, such as by directing it to administer new elections grant programs. Others would assign it new types of tasks, such as setting mandatory standards for certain aspects of election administration.
- **How the agency should function.** Some legislative activity on the EAC has focused less on what the agency does and more on how it does it, proposing changes to its structure or procedures. Members have introduced bills to create new EAC advisory bodies or add new members to the existing bodies, for example, and to exempt the agency from the Paperwork Reduction Act of 1995.

None of the changes to the EAC proposed in authorizing legislation has been enacted to date, but Congress has made some adjustments in appropriations measures, such as by increasing the agency's operational funding. For more on those changes, see CRS Report R45770, *The U.S. Election Assistance Commission: Overview and Selected Issues for Congress*, by Karen L. Shanton.

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