



December 16, 2025

Sarah Dreyer, Inspector General
U.S. Election Assistance Commission
Office of Inspector General
633 3rd Street NW, Suite 200
Washington, DC 20001

Dear Inspector General Dreyer:

Democracy Defenders Fund (DDF) writes to respectfully request that your office open an investigation into whether the U.S. Election Assistance Commission's ("EAC") newly announced "End-of-Life" ("EoL") review of certified voting systems complies with federal law and the agency's own governing procedures. Specifically, we ask that you assess whether the initiative is consistent with: (1) the Help America Vote Act of 2002 ("HAVA") framework for testing, certification, and decertification of voting systems; (2) the EAC's Voting System Testing & Certification Program Manual; (3) the EAC's implementation of the Voluntary Voting System Guidelines ("VVSG"), including longstanding practice that systems certified under prior VVSG versions remain certified absent system-specific evidence of noncompliance; and (4) the Administrative Procedure Act ("APA"), to the extent the EoL initiative operates as a binding, program-wide policy change affecting certification status without notice-and-comment.

Legal Framework

In the wake of the administrative and technological chaos in the 2000 election, Congress enacted HAVA to create a uniform, transparent, and evidence-driven national system, designed to prevent arbitrary or politically influenced decisions.¹ HAVA established, for the first time, a comprehensive federal standard for the testing, certification, decertification, and recertification of voting-system hardware and software used in federal elections.² The legal framework

¹ Karen L. Shanton, Cong. Rsch. Serv., R46949, The Help America Vote Act of 2002 (HAVA): Overview and Ongoing Role in Election Administration Policy (2025), <https://www.congress.gov/crs-product/R46949>, ("Congress's response to those findings, in HAVA, spanned a correspondingly wide range of elections topics, from voting systems to voter identification to the accessibility of the electoral process to individuals with disabilities. HAVA took three main approaches to the issues: (1) setting requirements for the administration of federal elections, (2) authorizing the first major federal grant programs for election administration, and (3) providing for creation of the election administration-dedicated U.S. Election Assistance Commission (EAC)).

² Voting System Testing and Certification Program Manual Version 3.0, U.S. Election Assistance Commission, https://www.eac.gov/sites/default/files/TestingCertification/Testing_and_Certification_Program_Manual_Version_3_0.pdf, (HAVA requires that the EAC certify and decertify voting systems. Section 231(a)(1) of HAVA specifically requires the EAC to "... provide for the certification, decertification and recertification of voting system hardware and software by accredited laboratories." The EAC has the sole authority to grant certification or withdraw certification at the federal level, including the authority to grant, maintain, extend, suspend, and withdraw the right to retain or use any certificates, marks, or other indicators of certification).

governing the EAC's voting-system certification and decertification authority is neither discretionary nor amorphous. These standards are curated to guarantee that voting technology is vetted by independent experts, shielded from political interference, and continuously monitored for performance and security.

To ensure neutrality and continuity in election administration nationwide, Congress embedded three core legal premises into the EAC's authority: (1) certification stability, meaning no voting system may lose its approval absent specific, documented evidence of noncompliance and adherence to due-process protections; (2) transparency, requiring the EAC to conduct and publicly disclose its certification activities to prevent undisclosed alterations to systems on which millions rely; and (3) adherence to federal voting-system standards—certification, continued use, and decertification decisions must remain grounded in HAVA's statutory criteria and the technical requirements established under the Voluntary Voting System Guidelines (VVSG), which operate as the controlling benchmarks for whether a system meets federal performance, accessibility, and security requirements.³

To further operationalize these statutory constraints, the EAC adopted the Testing and Certification Program Manual, which delineates a pathway for any decertification action: credible system-specific evidence, informal inquiry, formal investigation, public reporting of findings, notice to the manufacturer, and an opportunity to cure—only then followed by a final, appealable determination.⁴

The EAC is prohibited from acting on voting systems by implication, convenience, or executive directive. Its authority to certify and decertify voting systems is constrained by law, procedure, and principle. The EoL initiative, as currently framed, appears to disregard these statutory boundaries and the congressional intent that created the EAC in the first place—to protect, not politicize, the machinery of American democracy.

Background

On September 30, 2025, the EAC issued a press release announcing that it had met with registered voting-system manufacturers to initiate a formal EoL review of certified voting systems that are “no longer supported or active for potential decommissioning or withdrawal from service.”⁵ The EAC framed the initiative as a modernization effort to “reinforce the

³ Karen L. Shanton, Cong. Rsch. Serv., R46949, The Help America Vote Act of 2002 (HAVA): Overview and Ongoing Role in Election Administration Policy (2025), <https://www.congress.gov/crs-product/R46949>; Voting System Testing and Certification Program Manual Version 3.0, U.S. Election Assistance Commission, https://www.eac.gov/sites/default/files/TestingCertification/Testing_and_Certification_Program_Manual_Version_3_0.pdf.

⁴ *Id.*

⁵ See Press Release, U.S. Election Assistance Commission, The EAC Directs Review of End-of-Life (EoL) Voting Systems to Strengthen Election Technology (Sept. 30, 2025),

integrity of the voting process.”⁶ However, the nature and scope of this review, an agency-wide, proactive reassessment of previously certified systems, represent a striking departure from the EAC’s established procedures and longstanding guidance.

There is no prior EAC regulation, rule, or policy providing that the EAC will conduct across-the-board reviews of all certified systems nor is there any precedent evidenced by any document, policy manual, or public statements indicating that the agency has ever conducted a commission-led, across-the-board review of all certified systems to determine whether they have reached “end-of-life” status. Additionally, this EoL initiative’s timing and context, as described below, raises serious questions including whether it was undertaken in accordance with established rules or is being pursued in response to political pressures.

On March 25, 2025, President Trump issued Executive Order 14248 directing federal agencies to take various actions related to election systems, including to “amend the Voluntary Voting System Guidelines 2.0 and issue other appropriate guidance establishing standards for voting systems to protect election integrity”.⁷ At an event hosted by the America First Policy Institute (AFPI), EAC Commissioner Christy McCormick reportedly stated that the EoL review was initiated “in accordance with the President’s order.”⁸ That statement suggests that the President, and not the EAC, has made the final determination about the scope and content of changes to the decertification process, removing EAC’s role as a neutral and independent body. Importantly, the President’s authority does not extend to directing the EAC in this manner.⁹ The EAC was established precisely to serve as an independent referee, providing technical guidance and certification grounded in evidence, not politics.¹⁰ Created by the HAVA, the EAC is structured to ensure neutrality in both its composition and its decision-making.¹¹ It consists of four

<https://www.eac.gov/news/2025/09/30/eac-directs-review-end-life-eol-voting-systems-strengthen-election-technology>.

⁶ *Id.*

⁷ Exec. Order No. 14248, Preserving and Protecting the Integrity of American Elections (2025), (Instructs the EAC to re-certify voting equipment in accordance with this order and new standards of election integrity.).

⁸ See Panel, Recent Progress in Election Security Policy Roundtable, AFPI Secure American Elections Center (Oct. 29, 2025), <https://www.americafirstpolicy.com/events/recent-progress-in-election-security-policy-roundtable>; see also, Susan Greenhalgh, Is a Key Federal Elections Panel Doing Trump’s Bidding on Voting Machines?, Democracy Docket (Nov. 4, 2025)

<https://www.democracymarket.com/opinion/is-a-key-federal-elections-panel-doing-trumps-bidding-on-voting-machines/>.

⁹ *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986), (“[A]n agency literally has no power to act . . . unless and until Congress confers power upon it.”).

¹⁰ Brennan Center to House: Do Not Terminate the Only Federal Agency Protecting Voter Systems, Brennan Center for Justice (Feb. 7, 2017),

<https://www.brennancenter.org/our-work/research-reports/brennan-center-house-do-not-terminate-only-federal-agency-protecting>,

¹¹ See H.R. Rep. 107-329, at 59 (2001) (describing the EAC as a “four-member, bipartisan commission”); see also Help America Vote Act of 2002, Pub. L. No. 107-252, 116 Stat. 1666 (codified in 42 U.S.C. §§ 15301-15545 (2006))[hereinafter “HAVA”].

commissioners, two from each major political party.¹² Although the President appoints these commissioners (subject to Senate confirmation), Congress, not the Executive, sets the EAC's mandate and duties.¹³

When a sitting Commissioner publicly links agency action to a presidential directive at a partisan event, it raises serious concerns about whether the agency's decisions are being guided by lawful, neutral standards rather than executive pressure.

At a time when voting is being attacked from every angle, the integrity of the EAC as a neutral, bipartisan referee is more critical than ever. Across the country, election systems and voting rights are actively under systematic assault, through both an executive order and legislation like the SAVE Act, which seeks to impose burdensome and unfounded mandates on voting requirements that would disenfranchise millions of voters.¹⁴ Together, these actions reflect a strategy of suppression: using agencies, commissions, and technical-sounding rules to restrict access to the ballot box. When the EAC, the nation's bipartisan election authority, appears to echo such efforts, it legitimizes them and weakens the safeguards meant to keep partisan interference at bay.

Taken together, these facts suggest that the EAC's EoL review may represent an unprecedented policy shift lacking procedural ground across the agency's governing documents, undertaken without proper public notice, and possibly influenced by partisan directives. This departure from established practice justifies the Inspector General review to determine whether the initiative was lawfully initiated, transparently conducted, and consistent with the EAC's mission as an impartial guardian of election integrity.

Violations of Binding Legal Standards Governing Voting-System Certification

A. HAVA

The EAC's recent EoL initiative suggests a sharp departure from the structure and safeguards Congress deliberately put in place. HAVA, and the EAC, set forth mechanisms to address the

¹² See 52 U.S.C. §§ 20923(a)(1), (b)(2).

¹³ See *Seila Law v. CFPB*, 591 U.S. 197, 216-18 (2020) (discussing how multimember, bipartisan agencies can be insulated from the President's ability to remove agency officials).

¹⁴ See Exec. Order No. 14248, Preserving and Protecting the Integrity of American Elections (2025); see also The Safeguard American Eligibility Act, H.R. 8281, 118th Cong. (2023-2024), <https://www.congress.gov/bill/118th-congress/house-bill/8281/text>; see also Kevin Morris et al., The SAVE Act Would Hurt Americans Who Actively Participate in Elections, Brennan Center for Justice (Feb. 20, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/save-act-would-hurt-americans-who-actively-participate-in-elections>.

ongoing systemic failures that had undermined voter access. In response, Congress sought to create a reliable, evidence-based certification framework to ensure that election technology remains secure, transparent, accessible, and stable.¹⁵ Certifying and, when warranted, decertifying voting machines is essential to protecting the integrity, security, and credibility of U.S. elections. Certification ensures that every voting system used in federal elections meets uniform national standards for accuracy and accessibility, while decertification provides a controlled, evidence-based mechanism to remove systems that no longer comply with those standards.

States have built their entire election infrastructure around this framework, relying on its consistency to determine what systems may be purchased, deployed, and lawfully used in elections.¹⁶ That reliance is widespread and well-documented. According to the EAC's own research, 11 states and Washington, D.C. require by statute or regulation that all voting systems used within their jurisdiction be federally certified.¹⁷ The EAC has long acknowledged this dependence and has administered a federal certification program intentionally designed for this purpose. By abruptly signaling to states that federally certified systems may suddenly lose their approval, the EAC destabilizes that framework and risks recreating the very inequities HAVA was enacted to prevent. The impact will not be evenly felt: under-resourced and historically marginalized communities would again face longer lines, malfunctioning equipment, and reduced ballot access.¹⁸ Jurisdictions with limited budgets could be forced to scramble for replacement machines or delay planned upgrades, while wealthier counties with deeper resources will adapt more easily. Moreover, unanticipated decertifications could trigger widespread administrative confusion at the state and local levels. If certifications are withdrawn or cast into doubt before major elections, the result could be catastrophic.

Moreover, HAVA's history underscores the importance of stability and transparency in the certification process.¹⁹ Section 206 requires the EAC to publicly release information about its work on an ongoing basis, stating:

“In carrying out its duties, the Commission shall, on an ongoing basis, disseminate to the public (through the Internet, published reports, and such other methods as the

¹⁵ See U.S. Gov't Accountability Off., GAO-B-333826, Election Assistance Commission—Use of Grant Funds for Security Services (April, 27 2022); see also *Help America Vote Act (HAVA): An Explainer*, Rock the Vote (Dec. 19, 2022)(last updated: Oct. 16, 2025)

<https://www.rockthevote.org/explainers/help-america-vote-act-hava-an-explainer/>.

¹⁶ U.S. Election Assistance Commission, State Requirements and the U.S. Election Assistance Commission Voting System Testing and Certification Program, (Aug. 3, 2023), <https://tinyurl.com/2x9zd6at>.

¹⁷ *Id.*

¹⁸ *Voter Suppression During the 2018 Midterm Elections*, Center of American Progress (Nov. 20, 2018) <https://www.americanprogress.org/article/voter-suppression-2018-midterm-elections/>.

¹⁹ U.S. Election Commission Assistance, *History of the National Clearinghouse on Election Administration*, <https://web.archive.org/web/20191228001136/https://www.eac.gov/assets/1/28/History%20of%20the%20National%20Clearinghouse%20on%20Election%20Administration.pdf>.

Commission considers appropriate) in a manner that is consistent with the requirements of chapter 19 of title 44, United States Code, information on the activities carried out under this Act.”²⁰

These transparency mandates were intentionally designed to prevent back-channel decision-making and to ensure that election officials, manufacturers, and the public can understand and meaningfully respond to any concerns about a voting system’s performance or compliance.

B. Breach of the VVSG Framework

Recognizing the need for predictability in election administration, the EAC has long maintained a continuity policy for certified systems. HAVA further anchors certification and decertification decisions to the VVSG.²¹ Although the VVSG are formally designated as “voluntary” because states are not required to participate in the federal certification program, they function as the controlling standards within that program: any voting system seeking to obtain or maintain EAC certification must be tested and found compliant with the applicable VVSG requirements.²²

Critically, the EAC has never determined that updates to the VVSG, including updates made between VVSG 1.0 (2005)²³, VVSG 1.1 (2015)²⁴, and VVSG 2.0 (2021)²⁵, invalidate earlier certifications.²⁶ The EAC’s own “VVSG Migration” webpage affirms that systems certified under earlier VVSG versions “will continue to be certified,” absent evidence of failure or security noncompliance.²⁷ The VVSG framework therefore promotes administrative stability: newer standards apply prospectively, while previously certified systems retain their status absent documented noncompliance.

Congress deliberately imposed this process to prevent rushed, opaque, or policy-driven changes to national voting-system standards. The EoL initiative appears to directly violate this framework.

²⁰ See HAVA at 206.

²¹ Voluntary Voting System Guidelines, U.S. Election Assistance Commission (Jan. 31, 2025), <https://www.eac.gov/voting-equipment/voluntary-voting-system-guidelines>.

²² *Id.*

²³ Voluntary Voting System Guidelines, Volume 1, Version 1.0, U.S. Election Assistance Commission (2005), https://www.eac.gov/sites/default/files/eac_assets/1/28/VVSG.1.0_Volume_1.PDF.

²⁴ Voluntary Voting System Guidelines, Volume 2, Version 1.1, U.S. Election Assistance Commission (2015), https://www.eac.gov/sites/default/files/eac_assets/1/28/VVSG.1.1.VOL.2.FINAL.pdf.

²⁵ Voluntary Voting System Guidelines, Volume 2, U.S. Election Assistance Commission (2021), https://www.eac.gov/sites/default/files/TestingCertification/Voluntary_Voting_System_Guidelines_Version_2_0.pdf.

²⁶ Rachel Orey & William T. Adler, What are the Federal Voluntary Voting System Guidelines, Bipartisan Policy Center (Aug. 6, 2025), <https://bipartisanpolicy.org/explainer/what-are-the-federal-voluntary-voting-system-guidelines/>, (“A new version of VVSG does not decertify existing systems or indicate that older systems are insecure or unreliable.”).

²⁷ Voluntary Voting System Guidelines (VVSG) Migration, U.S. Election Assistance Commission (July 17, 2025), <https://www.eac.gov/election-officials/voluntary-voting-system-guidelines-vvsg-migration>.

By treating manufacturer support, software age, or product “end of life” status as *per se* grounds for withdrawing or questioning certification, the EAC is attempting to establish by guidance document a new, extra-statutory criteria that appears nowhere in HAVA.

C. EAC Testing and Certification Manual

Consistent with HAVA’s design, the EAC’s Testing and Certification Program Manual (“Manual”) operationalizes a permissible decertification pathway.²⁸ Section 7 details how this decertification must proceed: (1) the EAC must first receive credible information from a source who has used, tested, or observed a voting system and believes it may be noncompliant with the VVSG or with procedural requirements; (2) the Program Director must conduct an informal inquiry to verify accuracy; (3) if that inquiry confirms potential noncompliance, the EAC must open a formal investigation; (4) the resulting investigation report must be publicly posted; (5) the manufacturer must receive a notice of noncompliance and a fair opportunity to cure; and (6) only then may a final decertification decision be issued and published, with a 20-day right to appeal.²⁹

This step-by-step process is central to HAVA’s legislative intent: to prevent arbitrary or politically motivated decisions and ensure that any decertification action is rooted in factual, system-specific evidence. Only after completing the steps outlined may the EAC decertify a system, and only on three qualifying grounds: 1) the systems do not to meet applicable VVSG, 2) the systems have been modified or changed without following the requirements of the manual, or 3) the manufacturer has failed to follow the procedures outlined and “the quality, configuration, or compliance of the system is in question”.³⁰

By proposing to reclassify or effectively withdraw certification based on “end of life” status, criteria that are not evidence of VVSG noncompliance, the initiative bypasses every step of the Manual’s mandatory process. It does not require credible evidence of system failure. It does not require an inquiry. It does not require an investigation. It does not require a public report, notice, or an opportunity to cure. Instead, it attempts to impose an across-the-board policy determination that applies to entire categories of machines regardless of their actual performance, security posture, or compliance history. HAVA and the Manual expressly forbid this. Congress designed HAVA’s certification framework to be grounded in specific findings tied to defined standards, not generalized or speculative concerns.

By disregarding the Manual’s exclusive, mandatory decertification pathway, the EoL initiative creates an unlawful procedural shortcut that HAVA explicitly bars. It replaces evidence with

²⁸ Voting System Testing and Certification Program Manual Version 3.0, U.S. Election Assistance Commission, https://www.eac.gov/sites/default/files/TestingCertification/Testing_and_Certification_Program_Manual_Version_3_0.pdf.

²⁹ *Id.* at 47.

³⁰ *Id.*

policy preference, replaces investigation with assumption, and replaces due process with administrative fiat. The EAC has no authority, statutory or procedural, to undertake such sweeping action.

D. Unlawful Substantive Rulemaking

Compounding these issues, if the EoL initiative does, in fact, result in the withdrawal or decertification of voting systems outside the prescribed procedures, it may amount to unlawful substantive rulemaking under the Administrative Procedure Act (APA).³¹ The APA draws a distinction between interpretive guidance and binding legislative rules.³² When an agency action establishes new, enforceable obligations, changes existing standards, or limits previously available rights without undergoing notice-and-comment, it exceeds its authority. By creating new binding obligations without notice-and-comment, the EoL initiative may constitute an unlawful legislative rule.³³ The APA prohibits agencies from imposing new standards or limiting existing rights without formal rulemaking.³⁴ The initiative therefore exposes the EAC to significant APA vulnerabilities for exceeding its delegated authority.

Conclusion

The EoL initiative marks a fundamental departure from the legal boundaries Congress imposed on the EAC. By introducing new criteria for withdrawing or conditioning certification outside the VVSG and without adherence to the EAC's mandated procedures, the initiative shifts the EAC from a neutral, evidence-based certifier to a discretionary policymaker—an outcome HAVA expressly prohibits.

The EAC's strength lies in its credibility as a neutral arbiter of election integrity. At a time when voting rights and election administration are under unprecedented political pressure, the agency cannot afford to blur that line. Given the statutory and administrative concerns outlined above, we request that the Inspector General investigate: (1) whether the EoL initiative complies with HAVA's limitations on EAC authority; (2) whether the initiative conforms to the procedural

³¹ See 5 U.S.C. § 553. The APA defines "agency" as "each authority of the Government of the United States, whether or not it is within or subject to review by another agency."; see also *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015).

³² *Id.* ("After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation.").

³³ See *Nat'l Mining Ass'n v. McCarthy*, 758 F.3d 243, 251 (D.C. Cir. 2014) ("An agency action that purports to impose legally binding obligations or prohibitions on regulated parties—and that would be the basis for an enforcement action for violations of those obligations or requirements—is a legislative rule. An agency action that sets forth legally binding requirements for a private party to obtain a permit or license is a legislative rule.").

³⁴ See *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (Congress can by statute prohibit or limit an agency's existing ability to issue rules by removing or amending the relevant grant of statutory authority).

requirements of the Commission's Testing and Certification Program Manual; (3) whether any individuals or offices exceeded delegated authority in directing or approving the initiative; and (4) whether adequate consideration was given to the operational, fiscal, and equity impacts on state and local election administrators. We further request that the OIG issue findings and recommendations to ensure that all Commission actions remain consistent with statutory authority, transparent procedures, and the integrity of the federal certification process.

/s/

Ambassador Norman Eisen (ret.)
Executive Chair and Founder
Democracy Defenders Fund

/s/

Virginia Canter
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