



OFFICE OF THE INSPECTOR GENERAL
US ELECTION ASSISTANCE COMMISSION
633 3RD STREET, NW, SUITE 200
WASHINGTON, DC 20001

Via Electronic Transmission

February 5, 2021

The Honorable Bill Posey
2150 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

Dear Mr. Posey:

Set forth below are the responses to the questions you asked in your December 15, 2020 letter:

1. What error rates did EAC find when reviewing Dominion machines?

The EAC tests the version of the voting system for which the manufacturer has applied for certification against criteria identified in the version of the Voluntary Voting Systems Guidelines (VVSG) applicable to that system. Several versions of Dominion systems are listed as certified systems on the EAC website. According to an interactive map available on the Michigan Secretary of State's website¹, Antrim County uses the Dominion Democracy Suite 5.5. The VVSG applicable to that system was VVSG 1.0, which defined the acceptable error rate as follows "...the voting system shall achieve a target error rate of no more than one in 10,000,000 ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 ballot positions."

The test report for the Dominion Democracy Suite 5.5 states that the system successfully passed the accuracy test. The testing revealed errors; however, the report also states, "All deficiencies encountered during the Accuracy Test, which are noted in Attachment B, were successfully resolved"².

¹<https://michigan.maps.arcgis.com/apps/webappviewer/index.html?id=f3d6f6232f4f4ae3b0c74e661b599c2f>

² https://www.eac.gov/sites/default/files/voting_system/files/Dominion_Voting_Systems_D-Suite_5.5_Test_Report_Rev_B.pdf (document page numbered 46; PDF page 51)

VVSG 1.1 determined that expressing this benchmark in terms of votes instead of ballot positions provided a more precise metric for the evaluation of accuracy. VVSG 1.1, Volume 1, Section 4.1.1³ states, in part:

All systems shall achieve a report total error rate of no more than one in 125,000 (8×10^{-6})...The benchmark of one in 125,000 (8×10^{-6}) is derived from the “maximum acceptable error rate” used as the lower test benchmark in the 2005 Voluntary Voting System Guidelines Version 1.0. That benchmark was defined as a ballot position error rate of one in 500,000 (2×10^{-6}). The benchmark of one in 125,000 is expressed in terms of votes, however it is consistent with the previous benchmark in that the estimated ratio of votes to ballot positions is $\frac{1}{4}$.

The EAC does not currently have any voting systems certified to VVSG 1.1.

2. *Were taxpayer dollars used to purchase these machines in Michigan?*

Neither the Election Assistance Commission (EAC) nor the EAC Office of Inspector General (OIG) tracks information concerning the specific source(s) of funds for any particular purchase made by any state. EAC would only become aware of such details if they surfaced on a case-by-case basis as a result of EAC’s grant monitoring or OIG reports. States use combinations of Federal payments, State matching funds, and their own funds for their election administration costs, including systems purchases.

3. *What means does the EAC have to recoup U.S. taxpayer dollars used to purchase such equipment and what steps has the OIG taken to recoup such funds?*

HAVA requires each state to establish an election fund into which the state deposits the Federal payments and the state match. Therefore, if the EAC identifies ineligible costs through its grant monitoring procedures or disallows questioned costs from OIG reports, the Agency requires the affected state to deposit state funds into the election fund equal to the amount of costs disallowed.

4. *Did the OIG certify and re-certify these machines and software, including software updates; does the OIG conduct the certification themselves or rely on a third party and, if the latter, who is that third party; does the OIG review certifications?*

The EAC OIG does not certify, re-certify, or de-certify voting systems. That function is a mission activity of the EAC and its Testing & Certification unit. That unit is listed among the OIG’s auditable entities, meaning it is routinely considered for possible audit based on the OIG’s annual audit risk assessments.

³ https://www.eac.gov/sites/default/files/eac_assets/1/28/VVSG.1.1.VOL.1.FINAL1.pdf (Document page 79, PDF page 87)

5. *Was the exact software used in all voting machines on November 3, 2020, certified by the EAC?*

The versions certified by the EAC contain specific configurations of components and software that are subject to testing by EAC-accredited voting system testing laboratories (VSTLs).⁴ The specific configuration is defined in detail in the testing and certification documentation posted on EAC's website⁵. The EAC certification and certificate apply only to the specific voting system configuration(s) identified, submitted, and evaluated under the Certification Program. Any modification to the system not authorized by the EAC voids the certificate.

States are not necessarily required to use EAC-certified systems. Rather, requirements for voting systems in any given state are established by that state's laws, regulations, and/or policies. While some states require the use of EAC-certified systems, other states do not. According to information available on the EAC website⁶, Michigan requires its voting systems to be certified by an independent, federally-accredited laboratory, accredited by the National Association of State Election Directors (NASSED) and the Board of State Canvassers. Michigan law states:

An electronic voting system shall not be used in an election unless it is approved by the board of state canvassers...and unless it meets 1 of the following conditions: (a) Is certified by an independent testing authority accredited by the national association of state election directors and by the board of state canvassers. (b) In the absence of an accredited independent testing authority is certified by the manufacturer of the voting system as meeting or exceeding the performance and test standards referenced in subdivision (a) in a manner prescribed by the board of state canvassers. [MI Comp L § 168.795a (2019)]

In addition, even if a state purchases an EAC-certified system, a state may alter the certified configuration for state-specific requirements (such as straight-party voting or modem transmission of results). Each state performs its own system certifications, to include those state-specific requirements. For example, EAC believes Michigan may use modem transmission features in at least some of its Dominion voting systems. Dominion has not applied through EAC for certification of a voting system configuration that includes modem transmission, so if Michigan's Dominion systems use modem

⁴ The EAC accredits VSTLs, after the National Institute of Standards and Technology (NIST) National Voluntary Lab Accreditation Program (NVLAP) has reviewed their technical competence and lab practices to ensure the test authorities are fully qualified. Furthermore, EAC technical experts review all test plans and test reports from accredited laboratories to ensure an accurate and complete evaluation.

⁵ For example, <https://www.eac.gov/voting-equipment/democracy-suite-55>

⁶https://www.eac.gov/sites/default/files/TestingCertification/State_Requirements_for_Certification09042020.pdf (Document/PDF page 29)

transmission, their systems do not match the EAC-certified system configuration. However, Michigan would have certified its configurations of its systems in accordance with the state law cited above.

The states also define the configuration of their own *elections* within their voting systems. An election configuration or definition (as opposed to a system configuration) defines the candidates, ballot marking locations, etc. that are unique to the election being conducted. EAC would not be involved in certifying any state's individual election definitions; however, each state conducts rigorous testing of such definitions.

6. *Does the Inspector General's Office have investigators or do they rely on other federal agencies of Inspector General offices to conduct its investigations?*

The EAC OIG does not employ any investigators but relies instead on employing other OIGs when investigative services are required. The overall infrequency of the EAC OIG's need for investigative services makes the cost-benefit of employing a full-time investigator impossible to justify.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Patricia L. Layfield, Inspector General
U.S. Election Assistance Commission