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Comment from Bipartisan Policy Center

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General Comment

Please see attached comments from the Bipartisan Policy Center (BPC) Elections Project and members of BPC's Task Force on Elections.

Attachments

BPC Elections Project and Task Force EAVS comments

Public Comment on 2024 Election Administration and Voting Survey (EAC-2023-0008)

January 15, 2024

Attn: EAVS
Election Assistance Commission
633 3rd Street NW
Suite 200
Washington, DC 20001

We appreciate the opportunity to provide comments on the 2024 Election Administration and Voting Survey (EAVS). The Bipartisan Policy Center (BPC) is committed to making election policy recommendations that are based on evidence and data. EAVS and its companion survey, the Election Administration Policy Survey (EAPS), provide a crucial source of this data.

Electronic ballot marking, delivery, and return each carry unique risks and opportunities for election security and accessibility. To adequately monitor potential security vulnerabilities and ballot access concerns, we must start with an understanding of how electronic ballot transmission tools are currently being used in each state and by different groups of voters. EAVS and EAPS collect critical data on how military and overseas voters (who have rights under UOCAVA, the Uniformed and Overseas Citizens Absentee Voting Act) leverage the electronic voting options made available to them. But the current versions of the surveys do not capture sufficient information to evaluate each state's progress toward security and accessibility best practices, particularly when it comes to electronic ballot transmission usage by non-UOCAVA citizens.

The suggestions contained herein are endorsed by BPC's [Elections Project](#) and the following members of BPC's [Task Force on Elections](#), a geographically and politically diverse group of state and local election officials devoted to making meaningful improvements to United States elections. Our suggestions are informed by the task force's 2022 report, [Balancing Security, Access, and Privacy in Electronic Ballot Transmission](#).

- Karen Brinson Bell, Executive Director, North Carolina State Board of Elections
- Tommy Gong, Deputy County Clerk-Recorder, Contra Costa County, California
- Joseph Kirk, Election Supervisor, Bartow County, Georgia
- Brianna Lennon, County Clerk, Boone County, Missouri
- Nick Lima, Registrar / Director of Elections, City of Cranston, Rhode Island
- Brian McKenzie, County Clerk, Davis County, Utah
- Charles Stewart III, Kenan Sahin Distinguished Professor of Political Science, MIT (Task Force advisor)
- Michelle K. Tassinari, First Deputy Secretary, Director and Legal Counsel, Elections Division, Office of the Secretary of the Commonwealth of Massachusetts

Suggestion 1: Ask about the circumstances under which voters may return voted ballots electronically.

To ensure that electronic ballot transmission does not compromise election security and auditability, the Task Force's [report](#) recommends limiting electronic ballot delivery and return to only the pool of voters who need it.

In Q32, the current version of EAPS asks about the circumstances under which a voter could “receive” an unvoted ballot through an electronic format. Transmission of unvoted ballots does pose some security risks, and it is good that EAVS asks about the conditions under which a voter may receive an unvoted ballot electronically. But election officials and cybersecurity experts agree that the electronic *return* of a voted ballot poses a greater risk to election security and auditability, as voter choices may potentially be intercepted, read, or altered. *We therefore recommend that the following question be added to the survey. (It is mostly a duplication of Q32, with minor changes to focus on electronic return.)*

Q33. For the November 2024 general election, under which circumstances will domestic civilian (non-UOCAVA) voters be able to return their ballots through an electronic format, such as email, fax, online via your state’s online voter registration portal, or through a mobile phone app? (Select all that apply.)

- ☐ Domestic civilian voters cannot return their ballots electronically under any circumstances.
- ☐ During an emergency situation (such as a natural disaster) that hinders in-person voting
- ☐ When a replacement ballot is needed
- ☐ Voters with a specific disability
- ☐ Voters with any disability
- ☐ Voters may receive a ballot electronically for any circumstance.
- ☐ Other (please describe): _____

The existing Q32d asks whether a voter with a disability may return their ballots electronically. We believe that our above suggestion about the new Q33 makes this question redundant. *Therefore, we recommend that Q32d be removed from the survey if our above comment on the new Q33 is accepted.*

Suggestion 2: Ask about how states determine that a voter is eligible to return a ballot electronically.

Our report recommends that, “to ensure that only voters with disabilities that interfere with the reading, writing, or use of printed material are able to use electronic ballot transmission, states should provide a self-attestation tool that gives voters the option to attest under penalty of the law that they meet the criteria for electronic ballot transmission.” There may be non-disability-related circumstances when it may be desirable to require a voter to attest they are eligible to vote electronically—such as during an emergency situation (such as a natural disaster) that prevents them from voting in-person or by mail. In order to better determine whether and how states are ensuring

that electronic voting is extended only to those voters who need it, we suggest a set of changes to EAPS. *We recommend adding a note under the new Q33 that, if the respondent indicates that some voters in their state are eligible to return their ballot electronically, the survey respondent should also answer the following sub-question:*

Q33a. How does your state determine whether a domestic civilian (non-UOCAVA) voter is eligible to return a ballot electronically?

- ☐ The voter attests that they are eligible, under penalty of the law
- ☐ The voter attests that they are eligible, not under penalty of the law
- ☐ No attestation is required
- ☐ Other (please describe): _____

Suggestion 3: Collect more granular data on how ballots are returned electronically by UOCAVA voters.

EAVS questions B9-B12 collect data on the number of absentee ballots returned by UOCAVA voters by mail, email, or “other”—including fax and web-based portal. Our 2022 report makes a distinction between fax and web-based portals, but EAVS lumps these categories together into “other.” *We recommend breaking out the current “other” category into “fax,” “online portal,” and “other.”*

Suggestion 4: Collect information on the number of ballots returned electronically by non-UOCAVA voters.

The current version of EAVS includes questions B5-B17, which ask about the number of postal and electronic UOCAVA ballots transmitted, returned, and counted. It does not collect this information for domestic civilian (non-UOCAVA) voters, but there are circumstances under which a non-UOCAVA voter can receive and return a ballot electronically. Tracking the number of electronic ballots transmitted, returned, and counted for non-UOCAVA voters will allow election administrators and policymakers to understand the degree to which voters are leveraging electronic ballot transmission in each state. *We recommend replicating questions B5-B17 but for non-UOCAVA voters. This may be partially redundant with existing questions in Section C: Mail Voting; we recommend attempting to eliminate redundancies in order to prevent needless work by survey respondents.*