September 22, 2021

Chair Don Palmer
Vice Chair Tom Hicks
Commissioner Ben Hovland
Commissioner Christy McCormick
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

Re: VVSG Lifecycle Policy

Dear Chair Palmer, Vice-Chair Hicks and Commissioners McCormick and Hovland,

The development of the federal Voluntary Voting System Guidelines (VVSG) and certification of voting systems to those standards are central responsibilities of the U.S. Election Assistance Commission (EAC), per the EAC's instituting legislation, the Help America Vote Act of 2002.

Following the adoption earlier this year of a new set of voting system standards, VVSG 2.0[1], the EAC published a document[2] with policy options for transitioning the certification process from VVSG 1.0 (2005) to VVSG 2.0. As experts in election system security, and organizations that represent citizen stakeholders in the election process, we urge the Commission to apply a lifecycle policy that incentivizes innovation and compliance with the new standards using a judicious and precise timeline, and to reject policies that would allow voting system vendors to continue to delay the transition from the outdated VVSG. Specifically, we find that three of the four proposed approaches for transitioning to the new VVSG 2.0 are inadequate and unacceptably lax, as detailed below.

We recognize that the transition must accommodate the reality that it will take time to accredit laboratories to test to VVSG 2.0, and that jurisdictions must be able to receive updates to patch existing systems. At the same time, history demonstrates

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[1] https://www.eac.gov/voting-equipment/voluntary-voting-system-guidelines
[2] Available at: https://www.eac.gov/sites/default/files/EAC%20VVSG%20Lifecycle%20Policy%20Conversation%20Draft.pdf

that without hard deadlines for transition, the voting system manufacturers will prefer the less rigorous, outdated standards and, if so empowered, they will delay the transition indefinitely.

When the EAC adopted VVSG 1.1, it initially set July 6, 2017[3] as the sunset date for VVSG 1.0. Voting system manufacturers objected, and the EAC did not enforce this policy. Instead, the EAC allowed vendors to make "modifications" to systems certified to VVSG 1.0, without imposing any limits on what constitutes a "modification."[4] As a result, vendors have made major changes to systems certified under VVSG 1.0—adding substantial code and features, introducing entirely new hardware components, and changing the operating systems—while implausibly claiming the new configuration represents a mere "modification." This flawed policy has permitted vendors to avoid more rigorous standards for six years, and not a single system has been certified under the 2017 rules.

Although individual states could theoretically require certification to newer standards, such state-by-state requirements have proven to be insufficient to induce vendors to offer upgraded systems. For example, North Carolina voting system certification rules require voting systems must be certified to the "most recent" version or versions of the VVSG.[5] However, because no voting system manufacturer has opted to certify a system to the most recent version of the VVSG, (VVSG 1.1), and because the EAC has not enforced a transition for newer systems to be tested to VVSG 1.1, in the last few years, North Carolina has been unable to purchase any system that meets its own state rules.

EAC VVSG Lifecycle Policy Conversation Draft

The EAC VVSG Lifecycle Policy Conversation Draft offers four potential approaches for the EAC testing and certification program to transition to VVSG 2.0. We view options 1-3 as unacceptably lax. These approaches will allow or facilitate further delay by the voting system vendors to transition to VVSG 2.0.

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[3] U. S. Election Assistance Commission, "Overview of Voting Technologies," Committee on the Future of Voting: Accessible, Reliable, Verifiable Technology, April 4, 2017.

[4] https://www.eac.gov/sites/default/files/eac_assets/1/6/NOC_17.01_NewSystem%28FINAL%297.18.17.pdf

[5] North Carolina Election Systems Certification Program, June 13, 2019.
https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2019-06-13/Voting%20System%20Certification/NCSBEVotingSystemsCertificationProgram_06132019.pdf

Only option #4 is sufficiently defined to ensure a timely transition to the VVSG 2.0. We elaborate on these concerns below.

1. *Allow modifications to currently certified systems indefinitely with a narrowed definition of what is allowed in a modification. The proposed narrowing would exclude the addition of new system components and would resemble the current de minimis change process but allow for additional testing.*

   Option #1 would de-incentivize innovation and delay the introduction of new systems and features that might better serve voters and election officials. Existing vendors could delay offering new systems that would need to be certified to VVSG 2.0 indefinitely, and under this proposition the EAC would have no ability to prevent it. We strongly oppose this approach.

2. *Allow modifications to currently certified systems indefinitely with no changes to the definition of a modification. This could include a requirement added to the Testing and Certification program manual that would prevent manufacturers from marketing VVSG 1.0 systems as "EAC certified" to new customers 24 months after implementation of VVSG 2.0. We propose that the meaning of "new customer" be analogous to "new implementation" but may need calibration to account for state certification and/or statewide implementations that may be in-progress.*

   Option #2 would replicate the same failed policy the EAC adopted for the transition to VVSG 1.1 which resulted in no voting system vendors certifying a system to VVSG 1.1 over the last six years.

   The suggestion that the Testing and Certification Manual could include a requirement that would prevent manufacturers from marketing VVSG 1.0 systems certified as "EAC certified" to new customers 24 months after the implementation of VVSG 2.0 is essentially meaningless. As election officials typically contract for new systems with their existing vendors, the provision creates an enormous loophole that would allow vendors to continue to sell outdated systems, as EAC certified, to existing customers. We strongly oppose this approach.

3. *Implement deprecation of the obsolete standards approximately 12 months after certification of the first voting system to VVSG 2.0. Modifications to voting systems certified under the obsolete standards would not be allowed; only de minimis changes could be applied.*

   Option #3 allows the voting system vendors, not the EAC, to control the start of the 12 month countdown period to deprecation of the older VVSG. It risks that vendors would indefinitely postpone seeking VVSG 2.0 certification, and thereby delay the implementation of VVSG 2.0 for years. This option puts an inordinate and improper amount of control over the deprecation of the obsolete VVSG into the hands of the voting system vendors. We oppose this approach.

4. *Implement deprecation of obsolete standards approximately 24 months after at least one VSTL is accredited to test against VVSG 2.0. Modifications to voting systems certified under the obsolete standards would not be allowed; only de minimis changes could be applied.*

   This is a sound and reasonable policy for sunsetting the obsolete VVSG on a firm and predictable timeline. It should be adopted.

The world of technology has changed significantly since 2005, when VVSG 1.0 was established: the iPhone had not yet been released, and movies were rented in DVDs. Transitioning to up-to-date voting system standards is long overdue. We are deeply concerned that the first three approaches put too much power in the hands of the voting system manufacturers and will allow these vendors to slow-walk the overdue transition to modern voting systems standards, repeating the EAC's failed policy to transition to VVSG 1.1. This is unacceptable. The EAC must embrace its authority and responsibilities to transition the voting system testing and certification process in a timely and responsible way.

We stand ready to assist in any way we can. Thank you for your consideration.

Sincerely,

Free Speech For People

Open Source Election Technology (OSET) Institute

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