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Notice of Non-Compliance

This correspondence serves as the Election Assistance Commission's (EAC) Notice of Non-Compliance for the EAC certified Unity 3.2.0.0 voting system as detailed in the EAC Formal Investigation Report on this system dated December 20, 2011. This notice is sent pursuant to the requirements of Section 7.6 of the EAC *Voting System Testing and Certification Program Manual* (Manual). This section states:

"If an allegation in a Formal Investigation is substantiated, the Decision Authority shall send the Manufacturer a Notice of Non-Compliance. *The Notice of Non-Compliance is not, itself, a Decertification of the voting system.* The purpose of the notice is to (1) notify the Manufacturer of the non-compliance and the EAC's intent to Decertify the system and (2) inform the Manufacturer of its procedural rights so that it may be heard prior to Decertification."

ES&S was provided with a copy of the Formal Investigation Report on December 20, 2011. The three substantiated allegations of non-compliance outlined in the report for the Unity 3.2.0.0 voting system are:

1. Intermittent screen freezes, system lockups and shutdowns that prevent the voting system from operating in the manner in which it was designed.
2. Failure to log all normal and abnormal voting system events.
3. Skewing of the ballot resulting in a negative effect on system accuracy.

If ES&S chooses not to remedy the three substantiated allegations noted above, and provide the remedies to affected jurisdictions currently using the EAC certified Unity 3.2.0.0 system, the EAC will be obligated to decertify the Unity 3200 voting system as required by Section 7.6.1.3 of the Manual.

In order to bring the voting system into compliance, the cause(s) of the anomalies noted above must be eliminated at the root cause level and a modification to the Unity 3.2.0.0 voting system must be submitted to the EAC and a VSTL via the process outlined in the Program Manual. ES&S must provide the EAC with detailed information describing the specific modifications made to the voting system and how these modifications will prevent the anomalies noted in the Formal Investigation from occurring in future versions of ES&S voting systems.

Finally, pursuant to Section 8 of the Program Manual, the EAC intends to conduct a manufacturing site review as part of ongoing quality monitoring. The EAC intends to focus this site review on quality control and assurance.

Under Section 7.6.2 of the Manual, ES&S has the right to:

- *Present Information Prior to Decertification Decision.* ES&S has the right to present any and all relevant information to the Decision Authority prior to a determination of Decertification.
- *Have Access to the Information That Will Serve as the Basis of the Decertification Decision.* ES&S has already been provided the Report of Investigation and will be provided any other materials that will serve as the basis of an EAC Decision on Decertification.
- *Cure System Defects Prior to the Decertification Decision.* ES&S may request an opportunity to cure within 20 calendar days of the receipt of this Notice of Non-Compliance.

Please note that The Decision Authority will not take action related to Decertification until ES&S has a reasonable opportunity to cure the non-compliant issues and submit information for consideration.



Mark Robbins, General Counsel and Acting Executive Director
United States Election Assistance Commission