

U.S. ELECTION ASSISTANCE COMMISSION

QUICK START MANAGEMENT GUIDE ON PROVISIONAL BALLOTS

The Quick Start Management Guide on Provisional Ballots is part of a series of brochures designed to highlight and summarize the information contained in the chapters of the U.S. Election Assistance Commission's (EAC) [Election Management Guidelines \(EMG\)](#). The goal of the EMG is to provide a collection of election management guidelines, consolidated into one document, to assist State and local election officials effectively manage and administer elections. These guidelines are solely designed to serve as a source of information for election officials and not as requirements by which they must abide.

The content of the EMG and the Quick Start Management Guides has been developed in collaboration with State and local election officials and other election professionals who have first-hand experience managing elections. The EAC is grateful for their participation and ensuring the guidelines are practical and applicable for jurisdictions regardless of their size and resources. The EMG and the Quick Starts are available online at www.eac.gov.

Introduction

Section 302 of the Help America Vote Act (HAVA) of 2002 establishes the right for a voter to cast a provisional ballot if their name is not listed on the registration list or the voter's eligibility is challenged by an election official. The ability to cast a provisional ballot is often referred to as "fail safe voting" in that it provides an opportunity for the voter to cast a provisional ballot without being turned away from voting, and allows election officials an opportunity to review each provisional voter's information and determine eligibility following extensive research at the central election office. Furthermore, Sections 302(a)(5)(A) and 302(a)(5) (B) of HAVA require that the appropriate State or local election official establish a free access system for voters to use to learn whether their vote was counted, and, if it was not counted, the reason why it was not counted; it also requires that voters be provided written information regarding this free access system at the time they cast their provisional ballot.

Laws for administering provisional ballots vary from State to State, and election officials have to make decisions on whether to count provisional ballots based on voter eligibility standards established in State and Federal law, including age, citizenship, and residence requirements.¹ For example, in some states a voter may cast a provisional ballot in any precinct in the State regardless of where the person is registered and have

¹ On September 13, 2005, the EAC issued "EAC Advisory 2005-2006: Provisional Voting and Identification Requirements." This advisory reviews the plain language of HAVA Section 302, examines the differences between traditional and provisional ballots and analyzes the implementation of provisional voting under HAVA Section 303(b). This advisory also addresses the impact of a state's authority to create stricter standards than prescribed by HAVA upon HAVA's provisional voting requirements. A copy of this advisory is available on the EAC's Web site at <http://www.eac.gov/election/advisories%20and%20guidance>.

the provisional ballot counted. In other States, a voter must cast a provisional ballot in the precinct they are eligible to vote in order to have the ballot counted, and other States count the portion of the ballot that the voter would have been eligible to vote if they had voted in the correct precinct.

Following are recommendations to consider regarding the general management of provisional ballots.² The recommendations contained in this publication should be vetted with Federal, State, and local laws, regulations, and relevant case law to ensure they are properly and lawfully implemented. Election officials should contact their State officials when there is a question as to whether a practice is permitted or prohibited under State law.

Educating the Public

Education efforts regarding provisional ballots should be conducted on an on-going basis; provisional balloting should be considered not only during the weeks or days prior to an election but also throughout the election cycle. The number of provisional ballots issued may be reduced by planning in advance and keeping voters informed of requirements that impact their eligibility to register and vote. Consider these recommendations:

- Define what a provisional ballot is and how it is used in your State, and provide answers to the most frequently asked questions that may lead a voter to be issued a provisional ballot, for example:
 - Am I registered to vote? Where?
 - What is the deadline to register to vote?
 - What is my party affiliation?
 - Where is my polling place?
 - Is identification required at the polls? If yes, what are acceptable forms of identification?

Make this information readily available on your Web site, informational/education publications, media announcements, etc. Partner with other counties and your State's election offices to develop uniform and consistent messages regarding provisional ballots. Talk with your State's election office to learn what voter education activities they are or will be conducting in your State and how your office can participate.

- Develop educational materials on provisional voting that are clear, simple, and easy to use. Use these materials to inform the media, candidates, and the voters regarding the purpose, process, and procedures for managing provisional ballots. Develop these materials in formats that are accessible to all voters, including voters with disabilities, Native American and Alaska Native, and voters with limited proficiency in the English language; work with representatives from these

² In 2006, the EAC published *Best Practices on Provisional Voting*. This document provides additional recommendations regarding provisional voting beyond those mentioned in this brochure, and it is available on the EAC's Web site at <http://www.eac.gov/election/practices>. Please note that several of its key recommendations have been reiterated in this brochure as they are still applicable.

groups to ensure the information is clear, accurate, and accessible. Make sure to post this information on your agency's Web site and encourage community groups to link to this information.

Tip: Be sure to reinforce that all provisional ballots eligible to be counted will be included in the final official vote totals.

- Prominently post and widely distribute provisional voting and administrative complaint procedures before, during, and after each election to ensure that voters know their provisional voting rights and what to do if they believe their right to vote was denied.
- Take advantage of mandated mailings (e.g. sample ballots and/or registration certificates) to educate voters about provisional ballots and notify them of the need to update their voter registration record to reflect a change in name, address, or party affiliation. In states where voter guides and sample ballot publications are required, include additional information about the use of provisional ballots and how they are processed.
- Inform voters about Federal and State laws regarding voter identification. In states that require voters to provide identification in every election, educate the voters and train poll workers on the various types of acceptable identification.
- Publicize changes in polling locations to voters, candidates, and the media. Consider mailing notices to voters informing them of their polling place location prior to every election cycle. Post this information on your local jurisdiction's Web site and utilize an interactive voice response (IVR) phone system to provide this information to voters.

Tip: Develop a public access portal on your jurisdiction's Web site, allowing a voter to determine if they are registered to vote, view their polling place location, and to view and print their sample ballot. For ideas on how to develop a voter portal, contact your State's election office to explore what resources exist at the State level that can be of assistance to your county or how you can partner with them in this effort. Several State and local jurisdictions have already developed public access portals and these can serve as models for your own; do not be afraid to contact these election officials and ask them about their lessons learned and best practices.

- Develop specific media and voter outreach efforts for primary elections to educate voters about your State's law on party affiliations (e.g. open, closed, and modified primaries), which may impact a voter's eligibility to vote. Keep in mind that these rules vary from State to State and voters are often caught off guard if they have recently moved to your State.
- Notify the media and candidates that if the vote totals are close in any race or question on Election night, the provisional ballots may impact the final outcome of the race/question. Remind the media and candidates that Election Night results are unofficial; inform them that the provisional ballots are processed after

Election night and prior to the canvass where the vote totals are declared “Official Final Results.”

Training Poll Workers and Staff

- Provide hands on training to poll workers on how to issue and process provisional ballots. Utilize real Election Day scenarios so the poll workers may have an opportunity to think through the procedures and policies and actually complete the necessary paperwork prior to an actual election.

Tip: Consider training and assigning specific poll workers to manage provisional ballots on Election Day.

- In States where provisional ballots are counted ONLY when cast in the voter’s own precinct, train poll workers to direct voters to the correct precinct, explaining the consequences of not doing so. However, if it is not possible for the voter to go to the correct polling place or he still wishes to cast his vote at the incorrect site, ensure that the poll workers issue the voter a provisional ballot and inform the voter of how to find out if their ballot was counted.
- Remind poll workers that voters have a right to request assistance when voting, including when casting provisional ballots.³
- Review and evaluate the forms and tools provided to polling places for processing provisional ballots. Make every effort to develop forms that are easy to use and understand – for both the poll workers and the voters.

Tip: Produce provisional ballots and envelopes with a design and/or color that is different from a regular ballot.

- Recognize that countywide street indexes can be confusing and difficult for poll workers to use; consider providing laptop computers or palm pilots at polling places for use in looking up addresses to quickly direct voters to the correct polling place.

Managing Election Day

- Staff a call center with trained temporary employees who have access to the voter registration software to lookup the voter information to answer the routine questions: Am I registered to vote? Where do I vote?
- Ensure that each polling place has sufficient supplies for conducting provisional voting (e.g. ballots, envelopes, handouts, etc). Have a strategy in place for deploying additional materials to polling places in cases of emergencies or shortage of ballots.

³ Under Section 208 of the Voting Rights Act, any voter that requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of the employer or officer or agent of the voter's union.

- Review the layout and staffing level of all polling places, particularly polling places where multiple precincts are assigned. Place greeters at the polling place entrance and provide them maps so they may help voters determine if they are in their correct polling location and/or provide them directions.
- Prominently post easy-to-read voter information about provisional ballots, voter ID requirements, and other related topics at the polling place. For jurisdictions that provide information in multiple languages and/or formats, ensure the translated materials and/or formats are also prominently displayed next to the English or original materials.
- Have a plan in place in each polling location that permits regular voters to continue to be processed while managing provisional voters at a separate table or location within the polling place. *Tip: Consider setting up a separate area for processing provisional voters. Immediately direct those voters to that table. Provide a separate provisional ballot sign in sheet, booklet, or roster and separate voting area (booth and/or voting machine) and/or ballot box for provisional ballots only.*
- Important: The secrecy of a provisional voter's cast ballot must be safeguarded at all times.
- Provide a place for the voter to complete their provisional ballot in privacy.
- Be sure that provisional ballots are not co-mingled with regular voted ballots.
- Provide an informational handout to the voter describing provisional ballots and notifying the voter how to find out if their ballot was counted.

Researching and Processing Provisional Ballots

- Begin by auditing the provisional ballots for each polling place. Suggested steps would include, but not be limited to:
 - Count the number of sealed provisional ballots from each polling place and balance that number to the provisional signature sheet, booklet, or roster signed by the provisional voters.
 - Confirm that the correct polling place and precinct number are written on each provisional envelope.
 - Note and resolve any discrepancies before moving the provisional ballots to a central staging area.
- Count the number of provisional ballots cast and publicize the number by district, if possible.
- Establish a work flow for processing the provisional ballots. The following is an example work flow:

- Verify eligibility – “Is the voter registered in your jurisdiction?”
- Determine if the voter cast their ballot in the correct polling place and/or precinct? “Did the voter vote the correct ballot style?” If not, does State law provide for counting a portion of the ballot that the voter would have been eligible to vote had they voted the correct ballot style?
- Did the voter move within your jurisdiction? If so, review State statutes regarding whether the ballot is eligible to be counted. Does State law require the voter to vote in the new precinct? Can the ballot be counted if the voter voted in his/her old precinct? Can a portion of the ballot be counted if the voter was given the wrong ballot style? If the voter voted at his/her new polling location, have you checked the roster of the old polling location to validate that the voter did not vote twice on Election Day?

Tip: Develop a checklist and train staff to process each provisional ballot by using the checklist. Staple the checklist to the front of each provisional ballot envelope to provide a history of the research process. Provide a space for staff initials to validate processing of each provisional ballot.

- Be sure to double check all of the provisional ballots deemed not eligible to be counted. These ballots should be reviewed and initialed by two staff members.
- Standardize procedures within each State. Consider developing a matrix to document the rules for counting and not counting provisional ballots. Cite each controlling State statute by reference within the matrix. Post the matrix on your local jurisdiction’s Web site and make it available at the canvass.

Reporting the Outcomes

- Provide a method for voters to determine the status of their provisional ballot. Remember that Section 302(a)(5)(A) of HAVA requires the establishment of a free access system for voters to use to learn whether their vote was counted, and, if it was not counted, the reason why it was not counted.
- Provide feedback to poll workers regarding how many provisional ballots were cast at their polling location and how many were able to be counted. This provides an opportunity for poll workers to understand that their actions on Election Day can impact whether a voter’s provisional ballot is eligible to be counted.

Collecting and Using Statistics

- Report statistics by type of provisional ballot voted, by precinct, and by polling place. Within these categories, report the number of ballots that were counted and not counted, including the reasons for rejection.

- Use this information during post-election debriefing sessions to review and make recommendations for changes or modifications in forms, supplies, poll worker training, processing procedures, and voter outreach.
- Provide a written summary of the provisional ballot statistics to your State election office. Collect and archive these statistics for every election. Use these statistics for forecasting future budgetary needs and for requesting changes in State and Federal election laws.

Tip: The systematic collection of Election Day statistics, including provisional ballots, allows you to consistently evaluate the effectiveness of your election procedures and helps you assess changes from one election to the next. It will also help you to easily produce and provide data that is frequently requested by the media, State and Federal agencies, and community groups.

- Track the total number of provisional ballots issued by category and quantity. Problem-solve the reasons and brainstorm solutions in an effort to reduce the number of provisional ballots.

For information regarding this publication or to request additional copies at no cost, please contact:

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The EAC is an independent bipartisan commission created by the Help America Vote Act of 2002 (HAVA). It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration.