

# **U.S. ELECTION ASSISTANCE COMMISSION**

## **Annual Report Fiscal Year 2003**



**U.S. Election Assistance Commission  
Washington, DC 20005  
April**

# **U.S. Election Assistance Commission**

## **Commissioners**

DeForest B. Soaries, Jr., Chairman  
Gracia M. Hillman, Vice Chair  
Paul S. DeGregorio, Commissioner  
Ray Martinez III, Commissioner

## **Statutory Officers**

(Vacancy), Staff Director  
(Vacancy), General Counsel  
(Vacancy), Inspector General

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# U.S. ELECTION ASSISTANCE COMMISSION ANNUAL REPORT FISCAL YEAR 2003

## EXECUTIVE SUMMARY

The U.S. Election Assistance Commission (EAC) is pleased to submit its first annual report, as required by the Help America Vote Act of 2002 (HAVA). EAC was not established until December 13, 2003 and therefore did not operate in FY 2003. For that reason, this report summarizes HAVA-related activities that occurred during FY 2003 and describes EAC activities for the first part of FY 2004. It also provides recommendations to Congress for actions necessary to fully achieve the goals established by HAVA.

## Highlights

HAVA creates new mandatory minimum standards for States to follow in several key areas of election administration<sup>1</sup>. HAVA provides funding to help States meet these new standards, replace outdated voting systems, and otherwise improve election administration. Among its provisions, the statute calls for the establishment of a new federal agency, the Election Assistance Commission (EAC) which is required to:

- Distribute Title II “requirements payments” to States and certain other grants to improve election administration;
- serve as a clearinghouse for information on the administration of elections;
- conduct studies on matters affecting election administration;
- promulgate voluntary guidelines for election equipment, in consultation with the National Institute of Standards and Technology;
- develop a national testing program for voting systems, in consultation with the National Institute of Standards and Technology;
- provide guidance to States on the administration of elections.

HAVA required that EAC be established in February 2003, but the appointment of EAC Commissioners did not occur until December 13, 2003. While other federal agencies and the States carried out their responsibilities under HAVA, the delay in establishing

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<sup>1</sup> Under HAVA, reference to States includes American Samoa, District of Columbia, Guam, Puerto Rico and the U.S. Virgin Islands.

EAC meant that certain HAVA mandated activities could not be completed in a timely fashion, including :

- Guidance on the implementation of the uniform and nondiscriminatory election technology and administration requirements in HAVA Title III, including voting systems standards, computerized statewide voter registration lists, and information on provisional voting, voter education, and for voters who register by mail;
- a report on human factors research applicable to voting systems;
- a report on the feasibility of providing free or reduced postage for the mailing of absentee ballots.

The FY 2004 appropriation of \$1.2 million is not sufficient to support EAC's necessary start up costs and ongoing operations. This budget constraint has forced EAC to limit or postpone the following HAVA mandated activities:

- Provide grants for election technology improvements and for pilot programs to test election technology and equipment;
- convene the EAC Standards Board, the EAC Board of Advisors, and the Technical Guidelines Development Committee;
- develop updated voluntary voting system guidelines and a national voting system testing program;
- appoint the Executive Director, General Counsel and Inspector General;
- produce several reports, including those that address military and overseas voting, issues that arise with the incorporation of telecommunications technology into the election process, and a variety of other election administration issues.

Additionally, the National Institute of Standards and Technology (NIST) did not receive funding to support the support the work it is to do with EAC in the development of updated voluntary voting system guidelines, the accreditation of national laboratories to test voting systems and equipment, and the distribution of grants for voting technology improvements and pilot programs for testing election technology and equipment.

The implications of these delays are likely to include continued problems with election equipment; other unresolved election administration issues such as voter verifiable paper audit; and the likely inability of States and local election jurisdictions to meet HAVA requirements by statutory deadlines.

## Recommendations

The most serious obstacle to the full implementation of HAVA is insufficient funding to support programs and activities mandated and authorized by the statute. With that in mind, EAC offers the following recommendations for Congressional action:

- Appropriate \$2 million in FY 2004 supplemental funding for EAC to enable EAC to carry out its responsibilities.
- Appropriate the full \$10 million requested by the President and authorized under HAVA Section 210 for FY 2005 to enable EAC to carry out its responsibilities.
- Take action to ensure that EAC receives extra funds, should the government operate under a Continuing Resolution in the early part of FY 2005.
- Authorize and appropriate FY 2005 funds that will enable EAC to fulfill requirements of HAVA Section 231 to contract with the National Institute of Standards and Technology to develop election equipment guidelines and establish and maintain a national testing program for voting systems.
- Appropriate the remaining funds authorized under HAVA Section 257 for requirements payments to States.
- Authorize and appropriate sufficient funds for EAC to continue to operate after FY 2005.
- Authorize and appropriate funds for grants for research on voting technology improvements and for pilot programs to test election equipment and technology for use in elections, per HAVA Sections 271 and 281.

Explanations for these recommendations are provided in Section 5 of this report, beginning on page 19.

## SECTION 1: INTRODUCTION

The Help America Vote Act of 2002 (HAVA) requires the establishment of an Election Assistance Commission (EAC) headed by four commissioners, who are appointed by the President. The commissioners serve staggered terms and no more than two of them may be of the same political party. HAVA Section 203(a)(4) required EAC to be established no later than 120 days after the enactment date of the law. HAVA was enacted on October 29, 2002; therefore, EAC should have been established by February 26, 2003. The commissioners were not appointed until December 13, 2003. This delay resulted in the appropriation of insufficient funds (\$1.2 million) in FY 2004 to support the start up and operational costs of EAC, which leaves the commission without the resources needed to fully meet HAVA's mandates.

Under HAVA, EAC is to submit annual reports to the Senate Committee on Rules and Administration and the House Committee on House Administration. EAC is pleased to submit herewith, its first annual report. EAC acknowledges that the reports are due no later than January 31 of each year, however the extenuating circumstances of EAC being established late with minimal resources precluded a timely submission of this FY 2003 annual report.

Pursuant to HAVA Section 207, each annual report is to detail the Commission's activities during the fiscal year that ended on September 30 of the previous calendar year, including:

- A detailed description of activities conducted under each HAVA program area, with information on each grant or payment;
- a copy of each report submitted to EAC by recipients of grants and payments;
- information on the voluntary voting system guidelines adopted or modified by EAC;
- all votes taken by EAC;
- such other information and recommendations as EAC considers appropriate.

EAC was established when the Senate confirmed and the President appointed the four Commissioners in December 2003 and therefore did not operate in FY 2003. For that reason, this report summarizes HAVA-related activities that occurred during FY 2003. It reports on EAC activities during the first quarter of FY 2004, including information about the duties of EAC, funds available for its operations, initial steps taken by EAC to establish the agency and challenges EAC faces as it moves forward to conduct HAVA-mandated programs and activities. This report also provides recommendations to Congress for actions necessary to fully achieve the goals established by HAVA.

## **SECTION 2: HAVA ACTIVITIES IN FISCAL YEARS 2003 AND 2004**

HAVA creates new minimum standards for States to follow in several key areas of election administration. The law authorizes funding to help States meet these standards, replace outdated voting systems, and otherwise improve election administration. HAVA established EAC as a new federal agency. EAC is to distribute Title II “requirements payments” to States, award grants to improve election administration, serve as a clearinghouse for information on the administration of elections, conduct studies on matters affecting election administration, promulgate voluntary guidelines for election equipment, oversee a national testing program for voting systems, and provide guidance to States on the administration of elections.

HAVA authorized the U.S. General Services Administration (GSA) to provide “early money” to States in FY 2003 for the replacement of punchcard and lever voting systems and for other election administration improvements. Additionally, the Federal Election Commission (FEC) was required to accept notification of appointments to the EAC Standards Board and, through the FEC Office of Election Administration, to perform certain other limited functions in the absence of EAC<sup>2</sup>. HAVA also authorizes the U.S. Department of Health and Human Services to distribute funds to States to help make elections accessible to persons with disabilities; designates the U.S. Department of Justice as the agency responsible for enforcing the statute; and augments the responsibilities of the U.S. Department of Defense for facilitating voting by uniformed and overseas citizens.

### **Fiscal Year 2003 Activities**

While waiting for EAC to be established, the federal agencies with HAVA responsibility and the States worked to implement their areas of the law, as noted below.

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|-------------------|---|
| October 29, 2002  | The President signed the Help America Vote Act of 2002 into law, Public Law 107-252.  |
| December 26, 2002 | The Federal Election Commission (FEC) sent notice to the chief election official of each State, reminding them that, no later than 90 days after the date of HAVA enactment (that is by January 27, 2003), they needed to notify the FEC Chair of the names of State and local election officials who had been chosen to serve on the EAC Standards Board, in accordance with HAVA Section 213. |

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<sup>2</sup> HAVA Section 803 mandates that the property, records and personnel of FEC’s Office of Election Administration be transferred to EAC.

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- February 20, 2003 The President signed Public Law 108-7, the Miscellaneous Appropriations Act of 2003, which included the first appropriations for implementing HAVA.
- March 7, 2003 The FEC published certifications for each State containing the names of the State and the local election officials appointed to the EAC Standards Board.
- March 19, 2003 The U.S. General Services Administration (GSA) notified States of the process to be used to distribute approximately \$650 million in HAVA Title I “early money,” which is to be used to improve the administration of elections (HAVA Section 101) or to replace punchcard and lever voting equipment (HAVA Section 102). Refer to Appendix B of this report.
- May 21, 2003 The U.S. Department of Health and Human Services (HHS) announced the availability of \$13 million for payments to States under HAVA Section 261, which were to be used to make polling places accessible to individuals with disabilities, to provide them with information on polling place accessibility, and to train election workers on how best to promote accessibility. Refer to Appendix B of this report.
- May 28, 2003 HHS announced the availability of \$1.86 million in HAVA Section 291 funds to State Protection and Advocacy Systems, which were to be used to ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places.
- May 31, 2003 By this date, GSA had distributed the HAVA Title I funds to the States (\$349 million in Section 101 funds to all States and \$300 million in Section 102 funds to 30 States).
- June 6, 2003 The President announced his intent to nominate Paul S. DeGregorio and DeForest B. Soaries as the two Republican EAC Commissioners.

- July 25, 2003 HHS announced the availability of \$140,000 in HAVA training and assistance grants. In accordance with HAVA Section 291(c), HHS had set aside this money for payments to eligible entities to provide training and technical assistance with respect to activities carried out under Section 291.
- September 12, 2003 The President announced his intent to nominate Gracia M. Hillman and Ray Martinez III as the two Democratic EAC Commissioners.

During this time, the U.S. Department of Justice and FEC posted pages on their websites providing information on HAVA. Justice also responded to various implementation questions from State and local election officials and related associations (<http://www.usdoj.gov/crt/voting/hava/hava.html>). Additionally, the Department of Defense provided information on HAVA, with emphasis on the Title VII requirements affecting the voting rights of military and overseas citizens. And, NIST posted a web page about its role in implementing HAVA provisions (<http://vote.nist.gov/index.html>) and initiated a review of human factors research designed to promote voting systems that are more accessible, user friendly and accurate. The results of this research will be included in an EAC report to Congress on the subject, originally due October 29, 2003, but which will be submitted in early May 2004. This is one of several report deadlines missed due to the delayed establishment of EAC.

In addition to the work of the federal agencies mentioned above, the States also began implementing their areas of responsibility as mandated by HAVA. States formed advisory committees and produced state plans to implement HAVA, submitted the plans to FEC, received HAVA Title I payments from GSA (for election administration improvements and the replacement of punchcard and mechanical lever voting equipment) and HAVA Title II payments from HHS to make elections more accessible to individuals with disabilities. States also worked to enact appropriate legislation and implement administrative regulations, and 44 States filed for a waiver of the January 1, 2004 deadline for implementing the uniform computerized statewide voter registration database required by HAVA Section 303(a).

## **Fiscal Year 2004 Activities**

- October 3, 2003 The President formally notified the Senate of his nomination of the four EAC Commissioners (Soaries, DeGregorio, Martinez and Hillman).
- October 28, 2003 The Senate Committee on Rules and Administration conducted a hearing on the nominations for EAC Commissioners and referred the matter to the Senate as a whole, with a recommendation to confirm.

December 9, 2003	The Senate confirmed all four EAC Commissioners unanimously by voice vote.
December 10-11, 2003	The National Institute of Standards and Technology (NIST) conducted its First Symposium on Building Trust and Confidence in Voting Systems to bring the election community and various technicians together to discuss NIST's role in the implementation of HAVA.
December 13, 2003	The President issued the proclamation officially appointing the EAC Commissioners.
December 27, 2003	EAC signed an agreement to have GSA provide initial administrative and legal support.
January 5, 2004	EAC Commissioners held a planning session and set timetables for the completion of various tasks.
January 23, 2004	The President signed Public Law 108-199, the FY 2004 Consolidated Appropriations bill, which included funds for HAVA implementation.
February 16, 2004	EAC announced its intent to publish State plans in the <i>Federal Register</i> and facilitate the distribution of \$2.3 billion to States for HAVA reforms.
February - March 2004	EAC Commissioners traveled to several States to observe the administration of elections during the Presidential primaries. Locations visited included California, Delaware, Florida, Georgia, Illinois, Missouri, New York, Oklahoma, Virginia, and Washington, DC.
March 23, 2004	EAC held its first public meeting. Commissioners discussed updates by on various administrative matters and timetables for future activities. The Commissioners elected DeForest B. Soaries as Chairman, and Gracia M. Hillman as Vice Chair. EAC announced that State plans would be published in the <i>Federal Register</i> on or about March 24, 2004, and that it would hold a public hearing within 45 days on the use, security and reliability of electronic voting systems.
March 24, 2004	EAC published all 55 State plans in the <i>Federal Register</i> , which began the HAVA required 45-day comment period, after which States are to self certify that they are in compliance with HAVA in order to receive Title II requirements payments.

- March 31, 2004 EAC submitted its FY 2005 budget justification to the Senate and House Appropriation subcommittees on Transportation, Treasury and General Government.
- April 1, 2004 The Determination Order was transacted to officially transfer property, files and personnel belonging to FEC's Office of Election Administration to EAC. This included approximately \$500,000 of unobligated funds for FY 2004.
- April 4, 2004 With support from GSA, EAC moved into its offices at 1225 New York Avenue, NW, Washington, DC

Since January 5, 2004, EAC Commissioners have met with various organizations representing State and local election officials, civil and voting rights advocacy groups, and several members of Congress and their staffs to discuss HAVA activities and EAC responsibilities.

## **SECTION 3: THE ELECTION ASSISTANCE COMMISSION**

### **Responsibilities of EAC**

HAVA requires EAC to serve as a national clearinghouse and resource for the compilation of information and the review of procedures relevant to the administration of federal elections. The Act also requires the Commission to:

- Develop and adopt voluntary voting system guidelines, and maintain information on the experiences of States in implementing the guidelines and the general operation of voting systems.
- Develop a program for the testing, certification, decertification, and recertification of voting system hardware and software.
- Conduct studies and other activities to promote the effective administration of federal elections.
- Produce voluntary guidance on the implementation of HAVA Title III requirements (voting systems standards, computerized statewide voter registration lists, and public information on provisional voting, voter education, and for voters who register by mail).

- Make requirements payments to States to help them meet the requirements of HAVA Title III.
- Administer grants for research on voting technology improvements and for pilot programs to test election equipment and technology.
- Administer one time grant to the National Student and Parent Mock Election.
- Develop and implement the Help America Vote College Program.
- Disseminate to the public, on an ongoing basis, information on the activities carried out under HAVA. This will be done through the Internet, published reports, and other appropriate means.
- Publish such other information and recommendations as EAC considers appropriate.
- Submit an annual report, not later than January 31 of each year beginning in 2004, to the Senate Committee on Rules and Administration and the House Committee on House Administration, detailing its activities during the fiscal year that ended on September 30 of the previous calendar year.
- Assume responsibilities previously assigned to the Federal Election Commission under Section 9(a) of the National Voter Registration Act of 1993, 42 U.S.C. 1973gg-7(a), which includes providing States with information on their responsibilities under the law, developing and maintaining the National Mail Voter Registration Form, and reporting to Congress every two years on the impact of the law on the administration of federal elections.
- Make available the results of State reports on the combined number of absentee ballots transmitted to absent uniformed and overseas voters for each general election for federal office, and the combined number of such ballots returned and cast in the election.

HAVA provides for EAC to appoint an Executive Director, a General Counsel, an Inspector General, and other staff (Sections 204(a) and 812). The law also permits EAC to procure the temporary and intermittent services of experts and consultants (Section 204(b)) and to obtain the services of personnel from other agencies or departments on a reimbursable basis (Section 204(c)).

## Funding for EAC Responsibilities

Several sections of the Help America Vote Act authorize funding for each of the Fiscal Years 2003 through 2005 to support HAVA implementation. The following charts display the amounts authorized and appropriated for major components of HAVA administered by the EAC. Refer also to Appendix B. In many instances, amounts appropriated were less than the amounts authorized.

Sections 210 and 503 authorize funding for EAC operations and for the development of the Help America Vote College Program.

<b>Program</b>	<b>Amounts Authorized</b>	<b>Amounts Appropriated</b>
Title II – Election Assistance Commission (Operating Fund)	Maximum: \$10 million-FY03 \$10 million-FY04  \$10 million-FY05	\$2 million-FY03 <sup>3</sup> \$1.2 million+\$800,000 <sup>4</sup> for the FEC’s Office of Election Administration-FY04
Title V – The Help America Vote College Program	\$5 million-FY03 Such sums as may be necessary for succeeding fiscal years	\$1.5 million-FY03 <sup>5</sup> \$750,000-FY04 <sup>6</sup>

HAVA Sections 271 and 281 require the EAC to administer grants for research, testing of voting systems and pilot programs to support HAVA implementation.

<b>Program</b>	<b>Amounts Authorized</b>	<b>Amounts Appropriated</b>
Title II – Voting Technology Improvement Research Grants	\$20 million-FY03	\$0
Title II – Grants for Pilot Programs to Test New Voting Systems	\$10 million-FY03	\$0

<sup>3</sup> EAC was not formed in time to use these funds.

<sup>4</sup> Upon the April 1, 2004 transfer of the Office of Election Administration from FEC to EAC, remaining funds of approximately \$500,000 were also transferred for EAC use in FY 2004.

<sup>5</sup> EAC was not formed in time to use these funds.

<sup>6</sup> A subsequent federal rescission affecting FY04 funds reduced this amount by \$4,425. These funds are available through September 30, 2004.

Section 295 requires the EAC to administer grants to the National Student and Parent Mock Election organization.

<b>Program</b>	<b>Amounts Authorized</b>	<b>Amounts Appropriated</b>
Title II – Grants to the National Student and Parent Mock Election Organization	\$200,000-FY03 Such sums as may be necessary for each of the succeeding 6 fiscal years	\$0-FY03 \$200,000-FY04 <sup>7</sup>

Section 251 requires EAC to make requirements payments to States.

<b>Program</b>	<b>Amounts Authorized</b>	<b>Amounts Appropriated</b>
Title II –Payments to States to meet Act’s Requirements (including voting equipment procurement, training poll workers, providing voter education, and improving administration of elections)	\$3 billion, as follows: \$1.4 billion-FY03 \$1 billion-FY04 \$600 million-FY05	\$830 million-FY03 <sup>9</sup> \$1,489,360,620- FY04 <sup>10</sup>
Minimum Payment to States	.5% of amount appropriated	
Minimum Payment to Territories	.1% of amount appropriated <sup>8</sup>	

<sup>7</sup> A subsequent federal rescission affecting FY04 funds reduced this amount by \$1,180. These funds are available through September 30, 2004.

<sup>8</sup> Subsequent appropriations legislation limited the Territories to receiving no more than the minimum amount.

<sup>9</sup> Funds not disbursed remain available regardless of fiscal year, per Section 257(b).

<sup>10</sup> Of the \$1.5 billion appropriated, \$1.5 million is for the two Help America Vote student programs, \$200,000 is for the National Student/Parent Mock Election, and \$100,000 is for GSA administrative expenses. A subsequent federal rescission affecting FY04 funds reduced the requirements payments by \$8,839,380.

## SECTION 4: EAC PROGRAMS & ACTIVITIES IN FY 2004

As previously described, EAC has a budget of approximately \$1.7 million to support its operations in FY 2004. HAVA mandates that EAC perform specific functions, conduct certain programs and produce specific reports. As previously noted in this report, delays in establishing EAC and its current budget constraints have restricted its ability to conduct many HAVA mandated activities within prescribed timelines.

Although some deadlines for various EAC actions have been missed, EAC Commissioners understand that missing deadlines does not change the fact that the requirements of HAVA must be implemented. Therefore, within the context of its budget constraints, EAC has made significant progress on the following:

- Coordinate with GSA in accordance with HAVA Section 255(b) to publish 55 state plans in the *Federal Register* and distribute almost \$2.3 billion in Title II requirements payments to those States that self-certify that they are in compliance with HAVA Section 253.<sup>11</sup>
- Establish an EAC web site to report on commission activities and serve as a resource that posts EAC publications and provides updated information on HAVA, in accordance with HAVA Section 206.
- Hold public hearings on various voting technologies and systems. The first hearing is scheduled for May 5, 2004, on use, security and reliability of electronic voting machines.
- Conduct limited programmatic activity with regard to:
  - formation and convening of HAVA mandated 110-member Standards Board, 37-member Board of Advisors, and 15-member Technical Guidelines Development Committee;
  - initial development of Title III guidance (voting systems standards, computerized statewide voter registration lists, and public information on provisional voting, voter education, and for voters who register by mail).
- Initial development of clearinghouse information and other “best practices” guidance to State and local election administrators, in accordance with HAVA Section 202, which will focus on the use of various voting system technologies, including electronic, optical scan, lever, and punchcard voting systems.

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<sup>11</sup> EAC did not have funds to pay for this activity; therefore, GSA paid the cost of publishing the State plans in the *Federal Register*, a prerequisite to issuing the requirements payments.



- Develop the Help America Vote College Program, as provided under HAVA Section 503.
- Administer the \$200,000 grant appropriated under HAVA Section 295 for the National Student and Parent Mock Election program.
- Develop EAC human resource capacity and administrative infrastructure, including the payment of salaries and benefits of four Commissioners, four professionals transferred from the FEC's Office of Election Administration and a small number of critical support staff; basic telephone service, IT support, and other administrative services required to run an agency; and EAC public meeting expenses.<sup>12</sup>
- Contract with GSA and other federal agencies for limited human resource, financial and legal services.
- Pay for limited travel to observe Presidential primary elections.
- Respond to inquiries from Congress, the media, and the public.
- Mount a national initiative to address poll worker recruitment, training, and deployment.
- Participate in activities that may be organized by the federal government to address any terrorist activities that could disrupt the November 2004 general election.
- Continue consulting with government officials and advocates interested in improving election administration.
- Continue responding to inquiries from Congress, the media, and the public.
- Conduct briefings on the U.S. electoral process for numerous foreign delegations expected to visit the United States this year.
- Assume duties previously assigned to FEC under the National Voter Registration Act of 1993, in accordance with HAVA Section 802.
- Assume responsibilities previously assigned to FEC's Office of Election Administration, in accordance with HAVA Section 801.

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<sup>12</sup> EAC delayed the appointment of three statutory officers (Executive Director, General Counsel, and Inspector General) and other staff critical to EAC's basic operations due to FY04 budget constraints. Additionally, EAC would not have been able to rent office space, have email capacity or maintain a website and LAN without GSA's approval of a rent waiver (in accordance with 41 C.F.R. 102-85.130) and other support it has provided.

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- Submit a report on human factors research relevant to voting systems, as required by HAVA Section 243 and in consultation with NIST.
- Publish results of State reports on the combined number of absentee ballots transmitted to absent uniformed and overseas voters for each general election for federal office, and the combined number of such ballots returned and cast in the election, in accordance with HAVA Section 703.
- Submit annual report to Congress, in accordance with HAVA Section 207.

## Missed Deadlines Caused By The Delay In The Appointment Of EAC Commissioners

EAC has missed several HAVA deadlines, primarily because it was not established until mid-December 2003. EAC continues to be challenged to meet these deadlines due to FY04 budget constraints. Further, EAC's ability to make up for lost time in meeting these and its ability to meet other responsibilities is fully dependent on receiving the \$10 million that is requested in the President's budget submission for FY 2005.

<b>Statutory Deadline</b>	<b>Action Required by the EAC</b>
October 1, 2003	Adopt recommendations and voluntary guidance on HAVA Section 302 requirements for provisional voting and voting information (HAVA Section 311(b)(2))
October 1, 2003	Adopt recommendations and voluntary guidance on HAVA Section 303 requirements for computerized statewide voter registration databases and for persons who register by mail (HAVA Section 311(b)(3))
October 29, 2003	Submit a report to Congress, after consultation with NIST, assessing the human factors research that could be applied to voting products and system design to ensure usability and accuracy (HAVA Section 243). This report will be submitted to Congress by May 7, 2004.
October 29, 2003	Submit a report to Congress, after consultation with the U.S. Postal Service, on the feasibility and advisability of reducing or waiving postage for absentee ballots submitted by voters in the general elections for federal office (HAVA Section 246)
January 1, 2004	Adopt voluntary guidance and recommendations relating to the implementation of HAVA Section 301 voting system standards (HAVA Section 311(b)(1))

<b>Statutory Deadline</b>	<b>Action Required by the EAC</b>
April 29, 2004	Submit to the President and Congress a report on military and overseas voting and recommendations for facilitating such voting (HAVA Section 242)
June 29, 2004	Submit to Congress a report on the issues and challenges presented by incorporating communication and Internet technology into the election process (HAVA Section 245)

## **Additional Programs, Studies, and Activities Likely To Be Delayed Or Limited In Scope**

### ***Voting Systems Issues***

- Convene the Technical Guidelines Development Committee, in accordance with HAVA Section 221.
- Develop voluntary voting systems guidelines, in accordance with HAVA Sections 221 and 222.
- Develop a national voting systems testing program under EAC authority, in accordance with HAVA Section 231.
- Provide grants for research on voting technology improvements and for pilot programs to test election equipment and technology, in accordance with HAVA Sections 271 and 281.<sup>13</sup>

The delay in the development of voting system guidelines already has had an adverse impact on the States. State plans submitted as required by HAVA indicate that a large portion of federal funds received by the States will be used to replace outdated voting equipment. Some States and local election jurisdictions have already moved forward with this effort, without updated guidelines from the EAC. Others are waiting for new guidelines and guidance from EAC. Any further delay is likely to jeopardize States' abilities to meet mandatory voting system standards by January 2006, in accordance with HAVA Section 301(d).

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<sup>13</sup> HAVA authorized \$20 million in FY03 for voting system improvements research and \$10 million for pilot projects. These funds were never appropriated.

## ***Election Administration Issues***

Without adequate funding, EAC will not be able to develop best practices or issue guidance to States and local election jurisdictions on the following critical topics:

- Methods and mechanisms of election technology and voting systems used in voting and vote counting including the over-vote and under-vote notification capabilities of such technology and systems.
- Ballot designs for Federal elections.
- Methods of voter registration and the maintenance of secure and accurate lists of registered voters.
- Methods of conducting provisional voting.
- Methods of ensuring accessibility to the election process including limited English proficiency.
- Nationwide statistics and methods of identifying, deterring and investigating voter fraud.
- Identifying, deterring and investigating methods of voter intimidation.
- Methods of recruiting, training, and improving the performance of poll workers.
- Methods of educating voters about voter registration, voting, operating voting mechanisms, locating polling places and other aspects of participation.
- Feasibility and advisability of alternative methods for voting, alternative days for voting (making election day public holiday, etc.), alternative places and hours of voting, including uniform poll closing times.
- Federal and State laws governing the eligibility of persons to vote.
- Methods by which the Federal government can best assist State and local authorities to improve election administration and what levels of funding would be needed for such improvements.
- State laws and procedures governing recounts, including the need for more consistency among State laws, contested elections and best practices, standards of what constitutes a vote on the different types of voting systems.
- Technical feasibility of providing voting materials in 8 or more languages.

- Matters relevant to voting and election administration in rural and urban areas.
- Methods of voter registration for uniformed and overseas voters.
- Best methods for establishing voting system performance benchmarks, expressed as a percentage of residual vote.
- Broadcasting false information related to the location or times of operation of polling places.
- Any other subjects relating to election administration that EAC deems appropriate.

## **SECTION 5: RECOMMENDATIONS**

The most serious obstacle remaining to the full implementation of the Help America Vote Act is insufficient funding. For this reason, EAC offers the following recommendations for Congressional action:

### **RECOMMENDATION 1: Appropriate \$2 million in supplemental FY 2004 funding to enable EAC to carry out its responsibilities.**

As has been noted throughout this report, EAC is operating within dire budget constraints and needs additional funding for start up costs and to support basic agency functions. Without this funding, EAC cannot meet its statutory obligations. EAC is prepared to discuss its priorities for the use of any supplemental funds that may be appropriated by Congress in FY 2004.

The requested \$2 million supplemental funding would bring EAC to an operating level of less than \$4 million for FY 2004 but would help EAC hire critical staff and begin its work on voting system standards earlier than current funding permits.

### **RECOMMENDATION 2: Appropriate the full \$10 million requested by the President and authorized under HAVA Section 210 for FY 2005 to enable EAC to carry out its responsibilities.**

The President's FY 2005 budget requests the \$10 million authorized by HAVA for EAC operating expenses. EAC will need the full \$10 million appropriation so that it can meet its FY 2005 obligations in a timely manner and catch up on deadlines that were missed due to its late start up date and FY04 budget constraints. EAC submitted its FY 2005 budget justification to the Senate and House Appropriations Subcommittees on Transportation, Treasury and General Government on March 31, 2004.

### **RECOMMENDATION 3: Take action to ensure that EAC receives extra funds, should the government operate under a Continuing Resolution in the early part of FY 2005.**

EAC would not be able to function in FY05 at the FY04 appropriated rate of \$1.2 million.

**RECOMMENDATION 4: Authorize and appropriate FY 2005 funds that will enable EAC to fulfill requirements of HAVA Section 231 to contract with the National Institute of Standards and Technology to develop election equipment guidelines and establish and maintain a national testing program for voting systems.**

HAVA Section 231 directs EAC to work with the National Institute of Standards and Technology (NIST) to develop election equipment guidelines, establish and maintain a national testing program for voting systems, and select recipients of grants for voting technology improvements and pilot programs for testing equipment and technology for use in elections. Yet, funds were not appropriated to support these programs in FY 2004. EAC needs these funds in order to implement these HAVA requirements.

Congress has appropriated over \$3 billion dollars to the States for election reform, much of which will be used for the replacement of punchcard and lever machines. Failure to provide EAC adequate funds to develop election equipment guidelines will cause States to have to make these critical purchases without the benefit of guidelines and the testing of voting systems equipment under professional standards.

**RECOMMENDATION 5: Appropriate the remaining funds authorized under HAVA Section 257 for requirements payments to States.**

HAVA Section 257 authorized \$3 billion in payments, from FY 2003 through 2005, to help States meet the requirements of HAVA Title III (voting systems standards, computerized statewide voter registration lists, and public information on provisional voting, voter education, and for voters who register by mail). EAC supports the President's FY 2005 budget request of \$40 million for requirements payments to the States.

Congress appropriated \$830 million in FY 2003 and approximately \$1.5 billion in FY 2004. Without further authorization, the remaining \$600 million would not be available after September 30, 2005. EAC recognizes that many States developed their HAVA implementation plans on the basis that they would receive the amounts authorized by Congress. States are under serious budgetary constraints and need these funds to be able meet HAVA requirements, particularly for the development and maintenance of a uniform statewide voter registration database, which is costly but key to improving election administration.

**RECOMMENDATION 6: Authorize and appropriate sufficient funds for EAC to continue to operate after FY 2005.**

HAVA authorizes EAC funding through FY 2005. EAC recommends that funds be authorized and appropriated for subsequent fiscal years to allow EAC to continue to carry out its responsibilities. EAC work will need to continue beyond the end of FY 2005, especially given its late start, the fact that most States requested a waiver until January 2006 of the deadline for the uniform statewide voter registration database, and the decision of a number of States and local jurisdictions to delay procurement of updated voting system until EAC releases new voting system guidelines. Failure to authorize appropriations beyond 2005 will hamper EAC's ability to plan HAVA implementation activities that will occur after September 30, 2005.

**RECOMMENDATION 7: Authorize and appropriate funds for grants for research on voting technology improvements and for pilot programs for testing equipment and technology for use in elections, per HAVA Sections 271 and 281.**

Although HAVA Sections 271 and 281 direct EAC to make grants for research on voting technology improvements and for pilot programs to test election equipment and technology, funds have never been appropriated for these programs. These programs have merit, are necessary to help answer questions about reliability and security of voting systems and need to be supported in the interest of improving the equipment that is available for the administration of elections.



## **Appendix A - Commissioner Biographies**<sup>14</sup>

### **DeForest B. Soaries, Jr., Chairman**

**Appointed to an initial four year term**, Dr. DeForest B. Soaries, Jr. was elected Chairman of the Election Assistance Commission at the agency's first public meeting on March 23, 2004.

In February 2003, Dr. Soaries was appointed by President Bush to serve as a public director of the Federal Home Loan Bank of New York. He was a member of the affordable housing committee of the bank.

From January 12, 1999 to January 15, 2002, Dr. Soaries served as New Jersey's 30th Secretary of State. Appointed by former Governor Christine Todd Whitman, he managed one of the premier departments of State government and served as a senior advisor to the governor on issues that transcended traditional departmental lines.

Dr. Soaries is also the Senior Pastor of the 7,000 member First Baptist Church of Lincoln Gardens in Somerset, New Jersey. A pioneer of faith-based community development, Dr. Soaries has led First Baptist in the construction of a new \$17 million church complex and the formation of many not-for-profit entities to serve the community surrounding the church.

Highlights of Dr. Soaries' work include: recruiting families to become foster parents to 300 abandoned babies; helping 45 children find adoptive parents; constructing 96 new homes for low and moderate income residents to own; creating the first faith-based Cisco Technology Academy in the country; operating the Central New Jersey STRIVE program for job readiness; serving hundreds of youth in an after school center and homework club; forming a youth entrepreneurship program and redeveloping commercial real estate.

Dr. Soaries earned a Bachelor of Arts Degree from Fordham University; a Master of Divinity Degree from Princeton Theological Seminary; and a Doctor of Ministry Degree from United Theological Seminary. He has also received six honorary Doctorate degrees from institutions of higher learning. Additionally, Dr. Soaries has taught courses at Princeton Theological Seminary, Drew University Theological School, Kean University and Mercer County College.

Dr. Soaries has received numerous awards for his leadership and community service. He was recently recognized by both houses of the New Jersey Legislature for his religious and community leadership.

Dr. Soaries is married to Margaret Donna Soaries and is the father of twin sons, Malcolm and Martin.

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<sup>14</sup> The four EAC commissioners were confirmed by the Senate on December 9, 2003, and appointed by the President on December 13, 2003.

## Gracia M. Hillman, Vice Chair

**Appointed to an initial two-year term**, Gracia M. Hillman was elected Vice Chair of the Election Assistance Commission at the agency's first public meeting on March 23, 2004.

Throughout her career, Commissioner Hillman has effectively handled both domestic and international issues. Her areas of expertise include nonprofit management, public policy and program development, political services, the interests and rights of women and minorities, community affairs and election related matters, including voting rights.

She has traveled extensively throughout the United States meeting with national and local groups and businesses; speaking at conferences, conventions and other public forums; and conducting a variety of training and development seminars. Through her international work, Commissioner Hillman traveled in Africa, Asia, the Caribbean and Europe. She conducted nonpartisan political training in Haiti and Kenya, and participated in UN sponsored conferences in Vienna, Beijing and at the United Nations in New York.

Prior to 2003, Ms. Hillman served as President and CEO of WorldSpace Foundation, a nonprofit organization that uses cutting edge digital satellite technology to deliver audio and multimedia education programs to Africa and Asia. Ms. Hillman also served the U.S. Department of State as its first Senior Coordinator for International Women's Issues where she was responsible for developing agency-wide strategies to ensure that U.S. foreign policy promoted and protected women's rights. She was the State Department's principal liaison with domestic nongovernmental organizations that are concerned with international women's rights and the role of women in development. In 1995, Ms. Hillman was a member of the official U.S. delegation to the United Nation's Fourth World Conference on Women held in Beijing.

Her work experience includes having served as Executive Director of the League of Women Voters of the U.S., the Congressional Black Caucus Foundation and the National Coalition on Black Voter Participation, which sponsored the popular nonpartisan grassroots program, Operation Big Vote. She also held positions as Executive Consultant to the Council on Foundations and Coordinator of the Voter Law Policy Project for the Joint Center for Political and Economic Studies.

Throughout the 1980's, Ms. Hillman championed many nonpartisan and bi-partisan efforts to ensure open access to the voting process for all citizens and the continued voting rights of minority Americans, including her work on the historic 25 year extension of the national Voting Rights Act. Her political experiences include paid and volunteer work on numerous local, state-wide and national campaigns, including having served as a Senior Advisor with responsibility for Congressional and constituent relations for the 1988 Dukakis for President Campaign.

Ms. Hillman began her long time commitment to public service and the nonprofit sector in 1970, when she worked for a community action program in her home state of Massachusetts. She also held management positions in Massachusetts State government. She has served on the boards and advisory committees of numerous local and national organizations concerned with public service, citizen participation and the development of public policy. Ms. Hillman has one son and currently resides in Washington, DC.

## Paul S. DeGregorio, Commissioner

**Appointed to an initial two-year term**, Paul D. DeGregorio served as the Executive Vice President and Chief Operating Officer of the International Foundation for Election Systems (IFES), a leading institution involved in the promotion of democracy world-wide, where he was responsible for the day-to-day operation of this non-profit with over 400 employees in 23 countries. He also represented IFES at many domestic and international venues focused on democracy-building. DeGregorio has provided technical assistance in election administration in many countries including: Russia, Kazakhstan, Moldova, Ukraine, Romania, Albania, Macedonia, Bosnia-Herzegovina, China, Slovakia, Georgia, Cambodia, Thailand, Indonesia, Sierra Leone, the Democratic Republic of Congo, Nigeria and Japan. At IFES, DeGregorio also provided leadership on U.S. election reform initiatives and led a team that supplied technical advice in Florida and Missouri for the November 2002 election.

From 1985 to 1993, DeGregorio served as chief administrator of the election authority of Missouri's largest county. During his tenure as Director of Elections of St. Louis County, a jurisdiction of one million people, he instituted major improvements in voter registration, training, disability access, counting and management procedures. He was successful in prosecuting voter fraud and in drafting legislation to improve the electoral process and was widely-recognized for his achievements.

In 2001 he was appointed by Missouri Secretary of State Matt Blunt to serve as the Co-Chair of the Missouri Election Reform Commission. Working with the commission and Secretary Blunt, DeGregorio helped to craft an important election reform law which was passed by the Missouri General Assembly in 2002. A member of the International Association of Clerks, Recorders, and Election Officials (IACREOT) since 1986, during his tenure as Chairman of the Education and Training Committee DeGregorio was credited with initiating the University of Missouri Chancellor's Certificate in Public Administration program for IACREOT members.

Serving needs in higher education was important in DeGregorio's career as he served for 8 years as Director of Outreach Development for the University of Missouri-St. Louis, where he initiated and had oversight for four off-site campuses that served nearly 4000 students. He also served as a Research Associate with the University's Center for International Studies. DeGregorio was a Special Assistant in President Ronald Reagan's administration and served as an assistant to John Ashcroft during his first term as Missouri Attorney General.

A native of St. Louis, Missouri, DeGregorio, 51, received his degree in Political Science from the University of Missouri-St. Louis. He is married to Kerry DeGregorio, who is Director of Constituent Services for Missouri Congressman Todd Akin. The DeGregorio's are the proud parents of Katie, Annie, Debbie and Emily.

## Ray Martinez III, Commissioner

**Appointed to an initial four year term**, Ray Martinez III was a practicing attorney in Austin, Texas, focusing primarily on regulatory and administrative law matters, as well as government affairs representation of county governments to the Texas Legislature. Concurrent with his law practice, Martinez also served as executive director and legal counsel of the *Every Texan Foundation*, a non-partisan voter registration and education effort dedicated to increasing voter participation in Texas.

Mr. Martinez began his law practice after serving as Deputy Assistant to the President for Intergovernmental Affairs at the White House. In this position, Martinez was responsible for assisting former President Bill Clinton with various policy issues involving the nation's governors and other statewide elected officials. Before serving as Deputy Assistant to the President, Martinez was Regional Director for the U.S. Department of Health and Human Services in Dallas, where he served as the Department's principal liaison with federal, State and local officials in a five-state region.

From 1995 through the end of President Clinton's first term, Martinez served in the White House as a Special Assistant to the President, frequently traveling with the President and assisting with various policy matters affecting a 13-state Western region of the country. Mr. Martinez' Federal government service began in 1993 when he was appointed as White House Liaison to the U.S. Department of Health and Human Services. Prior to his service in the Federal government, Martinez worked as a legislative liaison for the Texas Attorney General's office, and as the legislative director for State Representative Sylvester Turner of Houston.

A native of Alice, Texas, Martinez, 39, received his law degree from the University of Houston Law Center and his bachelor's degree from Southwestern University. He currently resides in Arlington, Virginia with his wife, Beth Stanley Martinez, a clinical social worker, and their two children.

**Appendix B - Help America Vote Act of 2002 Authorizations & Appropriations**

<b>Program</b>	<b>Amounts Authorized</b>	<b>Amounts Appropriated</b>	<b>Amounts Disbursed</b>	<b>Administering Agency</b>
<p>Title I – Payments to States for:</p> <ul style="list-style-type: none"> <li>• Election Administration Improvement (Section 101)</li> <li>• Punchcard and Lever Machine Replacement (Section 102)</li> </ul> <p>Minimum Aggregate Amount Guaranteed to Each State Minimum Aggregate Amount Guaranteed to Each Territory</p> <p>(Amounts unobligated as of September 2003 transferred to EAC for Requirements Payments)</p>	<p>\$650 million, as follows:</p> <p>\$325 million \$325 million</p> <p>\$5 million \$1 million</p>	<p>\$650 million in FY03, as follows:</p> <p>\$325 million \$325 million</p> <p>(GSA was permitted to take \$500,000 of the total for administrative expenses)</p>	<p>\$650 million in FY03, as follows:</p> <p>\$349,182,262 \$300,317,738</p> <p>(GSA took \$500,000 of the total for administrative expenses)</p>	<p>General Services Administration</p>
<p>Title II – Payments to States to meet Act’s Requirements (including voting equipment procurement, training poll workers, providing voter education, and improving administration of elections – Section 257(a))</p> <p>Minimum Payment to States Minimum Payment to Territories</p>	<p>\$3 billion, as follows:</p> <p>\$1.4 billion-FY03 \$1 billion-FY04 \$600 million-FY05</p> <p>.5% of amount appropriated .1% of amount appropriated<sup>15</sup></p>	<p>\$830 million-FY03<sup>16</sup> \$1,489,360,620- FY04<sup>17</sup></p>	<p>\$0 FY03</p>	<p>Election Assistance Commission</p>

<sup>15</sup> Subsequent appropriations legislation limited the Territories to receiving no more than the minimum amount.

<sup>16</sup> Funds not disbursed remain available regardless of fiscal year, per Section 257(b).

<sup>17</sup> Of the \$1.5 billion appropriated, \$1.5 million is for the two Help America Vote student programs, \$200,000 is for the National Student/Parent Mock Election, and \$100,000 is for GSA administrative expenses. A subsequent federal rescission affecting FY04 funds reduced the requirements payments by \$8,839,380.

<b>Program</b>	<b>Amounts Authorized</b>	<b>Amounts Appropriated</b>	<b>Amounts Disbursed</b>	<b>Administering Agency</b>
Title II – Voting Technology Improvement Research Grants (Section 273)	\$20 million-FY03	\$0	\$0	Election Assistance Commission, in consultation with NIST
Title II – Grants for Pilot Programs to Test New Voting Systems (Section 283)	\$10 million-FY03	\$0	\$0	Election Assistance Commission, in consultation with NIST
Title II – Election Assistance Commission (Operating Fund – Section 210)	Maximum: \$10 million-FY03 \$10 million-FY04  \$10 million-FY05	\$2 million-FY03* \$1.2 million+\$800,000 for OEA -FY04*	\$0 in FY03	Election Assistance Commission
Title II –Payments to States and Units of Local Government to Improve Access to Individuals with Disabilities (Section 264)	\$100 million, as follows:  \$50 million-FY03 \$25 million-FY04 \$25 million-FY05	\$13 million-FY03 \$10 million-FY04	\$13 million-FY03	Health and Human Services
Title II – Payments to State Protection and Advocacy Systems To Ensure Full Participation of Disabled Individuals in Electoral Process (Section 292)	\$40 million, as follows:  \$10 million-FY03 \$10 million-FY04 \$10 million-FY05 \$10 million-FY06	\$2 million-FY03 \$5 million-FY04	\$2 million-FY03	Health and Human Services
Minimum Payments	\$105,000 (\$70,000 and \$35,000)			

\* These amounts cannot be carried over for use in subsequent fiscal years.

<b>Program</b>	<b>Amounts Authorized</b>	<b>Amounts Appropriated</b>	<b>Amounts Disbursed</b>	<b>Administering Agency</b>
Title II – Grants to the National Student and Parent Mock Election Organization (Section 296)	\$200,000-FY03 Such sums as may be necessary for each of the succeeding 6 fiscal years	\$0-FY03 \$200,000-FY04*	\$0 FY03	Election Assistance Commission
Title V – The Help America Vote College Program (Section 503)	\$5 million-FY03 Such sums as may be necessary for each succeeding fiscal year	\$1.5 million-FY03* \$750,000-FY04*	\$0 FY03	Election Assistance Commission
Title VI – Help America Vote Foundation (High School) (Section 601)	\$5 million-FY03 Such sums as may be necessary for each succeeding fiscal year	\$1.5 million-FY03* \$750,000-FY04*	\$0 FY03	Help America Vote Foundation

\* These amounts cannot be carried over for use in subsequent fiscal years. A subsequent federal rescission affecting FY04 funds reduced the grants to the National Student Parent Mock Election by \$1,180 and the funds for the Help America Vote College Program and the Help America Vote Foundation each by \$4,425.

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