



U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

February 21, 2008

Honorable José E. Serrano
Chairman, House Appropriations Subcommittee on
Financial Services and General Government
Committee on Appropriations
1040 A Longworth House Office Building
Washington, D.C.

Dear Chairman Serrano:

Thank you for your letter of January 23, 2008.

In light of the recommendations by the House report accompanying the Financial Services and General Government Appropriations bill for Fiscal Year 2008 (H.Rept. 110-207), I am proposing that the Election Assistance Commission (EAC) revise its policy guiding the use of payments made to states under Sections 101 and 251 of the Help America Vote Act (HAVA). A copy of the proposed new policy (attached) will be made publicly available and the Commission will consider it at our next meeting on March 20, 2008 in Denver, Colorado.

I look forward to discussing this with you on February 27, 2008.

Best regards,

A handwritten signature in cursive script that reads "Rosemary E. Rodriguez".

Rosemary E. Rodriguez
Chair

Attachment

cc: Congressman Ralph Regula, Ranking Member of House Appropriations
Subcommittee on Financial Services and General Government
Congressman Jim Cooper, 5th District, Tennessee
EAC Vice-Chair Caroline Hunter
EAC Commissioner Donetta Davidson
EAC Commissioner Gracia Hillman
Curtis Crider, Inspector General, EAC
Honorable David M. Walker, Comptroller General

**FOR CONSIDERATION BY THE US ELECTION ASSISTANCE
COMMISSION AT ITS PUBLIC MEETING OF MARCH 20, 2008**

***PROPOSED POLICY CLARIFICATION ON THE
ALLOWABLE USES OF HELP AMERICA VOTE ACT FUNDS AUTHORIZED UNDER
TITLES I AND II***

This U.S. Election Assistance Commission (EAC) policy advisory clarifies the allowable uses of payments made to states under Sections 101 and 251 of the Help America Vote Act (HAVA). The EAC has determined that it is a reasonable use of HAVA funds to purchase any voting system regardless of whether the systems replaced were originally purchased with HAVA funds.¹ The basis for this policy advisory is explained in the following paragraphs.

Background

The funds received by a state under Section 101 may be used for the following purposes:

- A. Complying with the requirements under title III.
- B. Improving the administration of elections for Federal office.
- C. Educating voters concerning voting procedures, voting rights, and voting technology.
- D. Training election officials, poll workers, and election volunteers.
- E. Developing the State plan for requirements payments to be submitted under part I of subtitle D of title II.
- F. Improving, acquiring, leasing modifying or replacing voting systems and technology and methods for casting and counting votes.
- G. Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.
- H. Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations; obtaining general election

¹ The EAC had previously determined that the use of HAVA funds to replace voting systems purchased with HAVA funds was unreasonable and therefore not allowable.

information; and accessing detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

Section 102 funds can be used ONLY for the purposes of replacing punch card and lever voting systems with voting systems that comply with section 301(a).

Section 251 funds can be used to implement any of the Title III requirements including purchasing compliant voting systems, implementing provisional voting, providing information to voters in the polling place, developing and implementing a statewide voter registration list, and identifying voters. In addition, states and local governments can use HAVA funds to improve the administration of elections for Federal office when the state certifies that one of two conditions is met: (1) the state has met the requirements of Title III; or (2) the state notifies the EAC of the intent to use an amount not to exceed the amount of the minimum payment that the state either did or could have received under the section 252 formula for that purpose.

In addition to the restriction on the uses of the funds imposed by HAVA, the General Services Administration (GSA) and EAC informed States when the funds were distributed that the funds were subject to financial management controls governed by certain circulars developed by the Office of Management and Budget (OMB).² The applicable Circulars were A-87 (the principles for determining allowable costs) and A-102 (now referred to as the common rule and which governs the administrative requirements for Federal awards such as standards for accounting and purchasing), and A-133 (the standards for the audit of Federal funds expended by state and local governments).

In May 2007, the EAC responded to an inquiry from the State of Florida concerning the use of HAVA funds. Specifically, Florida asked whether it was permissible to use HAVA funds to purchase voting systems to replace existing HAVA-compliant voting systems that were also acquired with HAVA funds. The EAC response stated that it was not reasonable for a state to purchase a HAVA-compliant voting system with HAVA funds and then replace that system using HAVA funds (the "Florida guidance"). The EAC reply was based on the cost principles contained in OMB Circular A-87.

It has been the practice of this agency to have EAC staff make determinations that are applications of existing law and/or regulation and for the Commission to be involved in policy or discretionary interpretation of HAVA. The Commission received the Florida guidance from staff in a public meeting on May 1, 2007. If Florida had appealed the guidance, as with any other, the Commission would have become involved with the resolution as the final authority.

²GSA informed each recipient that Title I funds were subject to OMB Circulars A-87, A-102, A-133, and the Common Rule (uniform administrative requirements for grants and cooperative agreements with state and local governments). In a June 11, 2004 tally vote, EAC Commissioners approved the application of OMB Circulars A-87 and A-102 (the Common Rule), and A-133 to Title II funds.

Since that May 2007 decision, the Congress has provided further guidance on the use of HAVA funds in the House report accompanying the Financial Services and General Government Appropriation bill for Fiscal Year 2008 (H.Rept. 110-207), as follows:

...the Committee believes that ensuring accurate, reliable, and accessible voting is more than reasonable; it is essential. The Committee notes that the technology for voting equipment has improved in recent years, and states now have more experience with different technologies. States should have options and the flexibility to acquire better equipment, including equipment that will provide a durable, accessible, voter-verified paper ballot.³

By letter dated January 23, 2008, Subcommittee on Financial Services and General Government Chairman Serrano, Vice Chair Kilpatrick and subcommittee members Hinchey, Ruppertsberger, Wasserman Schultz, Visclosky and Schiff, placed the Florida guidance before the Commission by asking for a reversal of the staff opinion therein.

Conclusion

The EAC does not mandate, endorse or recommend one system over another. It is the spirit and intent of HAVA that the states make voting systems decisions based upon what will best serve the individual state.

By adopting this revised policy, the Commission reverses the staff guidance and asserts that it is "reasonable," pursuant to the OMB circulars for state governing jurisdictions to use HAVA funds to replace voting systems purchased with HAVA funds, as long as such purchases comply with HAVA. Therefore, states will have the flexibility and opportunity to use these funds to meet the requirements of title III or to improve the administration of elections for Federal office.

³ The language was ultimately adopted as part of the Joint Explanatory Statement accompanying the Consolidated Appropriations Act of 2008 which was enacted in December 2007.