

PROPOSED INTERIM PROCEDURE FOR UPDATING THE FEDERAL MAIL VOTER REGISTRATION FORM

Background. The National Voter Registration Act of 1993 (NVRA) requires the U.S. Election Assistance Commission (EAC) to develop a Federal Mail Voter Registration Application Form (42 U.S.C. §1973gg-7(a)(2)), which must be used and accepted by states “for the registration of voters in elections for Federal Office.” (42 U.S.C §1973gg-4(a)). The registration Form developed by the EAC for use by the states must be consistent with the content requirements and limitations found in Section 9 of the NVRA (42 U.S.C. §1973gg-7(b)). The NVRA also grants the EAC authority to prescribe regulations that are needed to carry out its responsibilities with respect to the Form. The EAC is presently in the process of transferring the regulations promulgated by its predecessor agency, the Federal Election Commission, which it will then work to amend.

Purpose. As the EAC works to develop its regulatory frame work, it has received and expects to continue to receive requests from states to update the Federal Form’s state specific instructions. The purpose of this document is to provide EAC staff with written, temporary procedures regarding the processing of state updates. This procedure deals only with a state’s request to update information already provided on the Form. It does not address any other type of state request. Any request requiring a policy determination is a matter that must be presented to the Commissioners and processed in accordance with EAC regulations and policies.

Roles and Responsibilities.

1. Director of Election Administration Support. The Director of Election Administration Support (formerly Programs and Services) shall be responsible for processing state requests to update the Federal Form. This includes reviewing, clarifying, and referring each request to update the Form.
2. Executive Director. The Executive Director will implement states’ requests to update the Federal Form.
3. General Counsel. The Office of the General Counsel shall provide counsel upon request to the Director of Election Administration Support and the Executive Director.

Update Defined. An update is a state request to bring up to date information that (1) is presently contained on the state specific instructions of the Federal Form, and (2) is information required by and consistent with Federal statute. These are changes where Federal mandate and practice leave no EAC implementation discretion. Changes that require a determination of policy or substantive exercise of discretion are NOT updates. For the purposes of this interim procedure, updates include requests to change the state specific instruction in the following areas:

1. State Voter Eligibility Requirements. This group includes any request for change based upon a state’s amendment to its constitutional or statutorily prescribed voter eligibility requirements. Voter eligibility requirements are standards which describe voter qualifications, not the procedures for demonstrating these qualifications. Voter eligibility

requirements traditionally include: voting age, citizenship, residence, mental capacity, criminal conviction, and oaths. The NVRA requires that the Federal Form specify each state's "eligibility requirements (including citizenship)." (42 U.S.C. 1973gg-7(b)). The EAC has no authority to set state voter eligibility requirements. Article I, section 2 and the Seventeenth Amendment to the U.S. Constitution grant states the sole authority to set requirements regarding voter qualifications.

2. State Contact Information. This includes requests to update a state's contact information and the state's address for the submission of registration Forms. This information is necessary for the proper processing of any voter registration Form and is purely administrative. No exercise of EAC discretion is necessary.
3. State Voter Registration Deadline. This includes requests to update the Form's state specific instructions to reflect changes in a state's deadline for accepting voter registration applications that are consistent with the requirements of the NVRA (42 U.S.C. §1973gg-6).
4. Voter Identification Numbers. This includes requests to update the Form's state specific instructions to reflect changes in state law regarding the collection of voter identification numbers that are consistent with the Help America Vote Act (42 U.S.C. 15483(a)(5)(a)).

Procedure.

1. Request for Changes. All state requests submitted to the EAC for updates to the state specific instructions of the Federal Form shall be forwarded to the Director of Election Administration Support for processing.
2. Processing. The Division of Election Administration Support shall be responsible for processing state requests. The Division shall:
 - a. *Review*. Intake and review each request received by the agency. The Division shall acknowledge receipt of each request in writing and ensure that each request is timely processed.
 - b. *Clarification*. Request additional information from the requesting state. If upon review of the request, division staff identifies a need for additional information or clarification, staff shall coordinate with appropriate state officials. All requests for additional information shall be made in writing. Requests shall not be referred for action until all necessary information has been obtained.
 - c. *Referral*. Refer, in writing, a complete request to the Executive Director for action. The Executive Director may request the Director of Election Administration Support to provide additional information or clarification as necessary.

3. Executive Director Action. Upon receipt of the referral, the Executive Director shall:
 - a. *Updates*. The Executive Director shall implement all state requests to update the Federal Form's state specific instruction consistent with applicable Federal statutory requirements. Changes shall be made to the Form and posted on EAC website as soon as practical. The state shall be notified in writing of the implementation.
 - b. *Other Matters*. This EAC interim procedure pertains only to updates as defined above. Any request for a change to the Federal Form's state specific instructions regarding registration procedures not identified as updates will not be processed by staff. These matters must be considered by Commissioners after the adoption or issuance of appropriate regulations and policies. The Executive Director shall refer all such matters to the Commissioners for action consistent with EAC regulations. The Executive Director shall inform states, in writing, of the referral.