



U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

Funding Advisory Opinion
FAO-09-01

Date Issued: December 3, 2008

Requestor:

Acting Director, Help America Vote Act (HAVA) Payments and Grants Division, U.S. Election Assistance Commission (AOR -08-022)

Question:

Are State expenditures of Section 251 funds (requirements payments) to improve the administration of elections for Federal office allowable costs if the expenditures are made prior to a State submission of certifications pursuant to HAVA Section 251(b)(2)? In that regard, Section 251 (b)(2) allows a State to use requirements payments to improve the administration of elections for Federal office if it certifies that:

- “(A) the State has implemented the requirements of title III; or
- (B) the amount expended with respect to such other activities does not exceed an amount equal to the minimum payment amount applicable to the State under section 252(c).”

Answer:

Certifications filed under Section 251(b)(2) are applicable to periods prior to the submission of the certifications. However, if a State files a type (A) certification, the costs incurred for improving the administration of elections for Federal office prior to submitting the certification may not exceed the minimum payment amount. Any amounts in excess of the minimum payment amount would be unallowable.

Discussion:

As noted above, for states to use requirements payments to improve the administration of elections for Federal office, they must file one of the two types of certifications. Furthermore, it is only after a State has implemented the requirements of Title III that it may use its balance of Section 251 funds for the improvement of administration of elections for Federal office. In this regard, a state must be able to demonstrate when it became compliant with the requirements of Title III.

A certification under HAVA Section 251(b)(2)(B) does not require that the state meet any condition before it may submit the certification. Therefore, subsequent to a Section 251(b)(2)(A) certification, a state may use up to the minimum payment for allowable expenditures incurred from the date of receipt of its first Section 251 requirements payment until the date all Section 251 funds and applicable interest are expended. Although there is no requirement to file a



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certification prior to making these other expenditures, EAC urges States to file a certification as soon as possible after recognizing that a portion of the requirements payments will be for other activities.

The cumulative minimum payment amount for the 50 States and the District of Columbia is currently \$12,171,803. The cumulative minimum payment amount for American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands is currently \$2,434,361. States should keep records to document the amount of Section 251 funds expended under the authority of a Section 251(b)(2)(B) certification to determine when they reach the minimum payment amount. These minimum payment amounts are based on the total funding appropriated for requirements payments in Federal fiscal years 2003, 2004, and 2008.

Documentation is not required to be attached and submitted to EAC with a certification. However, States must maintain appropriate records available for review by the EAC, the EAC Office of Inspector General, or the General Accountability Office.