



**Division for Research, Policy and Programs
U.S. Election Assistance Commission
1201 New York Ave. NW – Suite 300
Washington, DC 20005**

EAC PUBLIC HEARING – OCTOBER 14, 2010

**TESTIMONY OF WILLIAM BOEHM, DEPUTY DIRECTOR FOR POLICY,
DIVISION FOR RESEARCH, POLICY AND PROGRAMS**

Commissioners and Mr. Wilkey, today I would like to discuss the Notice of Proposed Rulemaking (NPRM) containing EAC's proposals to amend its regulations applicable to the National Voter Registration Act of 1993 (NVRA). As you know, EAC authorized placement of the NPRM in the Federal Register via a Tally Vote on August 2, 2010. The NPRM was published in the Register on August 9, 2010. None of the changes proposed in the NPRM will be considered before the November 2010 election. There will be no changes to the national mail voter registration application form until after the election.

The purpose of the NVRA is to expand access to voter registration for all American citizens. In order to achieve this goal, the statute requires States to provide voter registration at motor vehicle agencies, at State public assistance offices and other state agencies designated by each state and through the mail. The Federal Election Commission (FEC) had original responsibility for the NVRA and issued the first regulations on June 23, 1994. The regulations have not been updated since that time.

In 2002, the Help America Vote Act (HAVA) transferred statutory responsibility for administering the NVRA from the FEC to EAC, including authority under section 9(a) of the NVRA to issue regulations for developing a national mail voter registration form. In 2003, the FEC, prior to the formation of the EAC, incorporated the HAVA requirements into the national mail voter registration form. In 2006, EAC, in consultation with the States, updated the State instructions to reflect HAVA requirements that became effective that year. However, until the regulations were formally transferred from the FEC to EAC, the EAC could not propose any changes to the regulations. A lack of a commissioner quorum at the FEC delayed this transfer of regulations until 2009. Both commissions published a notice in the Federal Register (74 FR 37520) announcing the transfer on July 29, 2009. The transfer became effective August 28, 2009.

According to the NVRA as amended by HAVA, EAC is charged with three major responsibilities: 1) providing information to the States with regard to their responsibilities under the Act, 2) developing a national mail voter registration form, and 3) submitting a biennial report to Congress following each federal election regarding the impact of the NVRA on the administration of elections for the two previous years. The NVRA limits EAC's regulatory authority to prescribing only those regulations as are necessary to design the national mail voter registration form and to submit the biennial report to Congress.

The Process

It is against this backdrop that EAC approved the NPRM in order to incorporate changes into the NVRA regulations that are consistent with HAVA. Prior to the issuance of the NPRM and in anticipation of its role related to updating the NVRA regulations, EAC held several public meetings and public hearings from 2007 through 2010 on NVRA issues. This is the second EAC public hearing on the NPRM.

In the NPRM, EAC established a lengthy public comment period of over ninety (90) days from the date of publication in the Federal Register. The deadline for comment is 5 p.m. (EST) on November 23, 2010. The extended comment period is based on the testimony received by the Commission at its NVRA public hearing in 2007. The majority of those testifying called for a “robust” comment period. From the date of its publication in the Register until November 23rd, EAC invites input regarding the proposals and requests for comment contained in the NPRM from chief State election officials, local election administrators, advocacy groups, and the public.

EAC will receive comments via regulations.gov, e-mail, and postal mail. All submissions must include the commission’s name and regulation title (*i.e.* “EAC” and “National Voter Registration Act”) for this information and collection recordkeeping requirement. All comments received will be publicly posted, including any personal information provided. The EAC will post comments without change unless the comment contains profanity or material that is prohibited from disclosure by law.

Also, EAC will conduct at least one more public hearing such as this one during the comment period at which the Commission can receive input from the public. The details of each hearing are available on the EAC’s website as they become available. Public testimony received during the hearings will be posted on our website as well as Regulations.gov.

Once the comment period closes, all of the comments and testimonies that EAC has received will be reviewed and considered as the Commission moves into the next phase of the process which will end in the issuance of a Final Rule most likely in January 2011. As the NPRM indicates, EAC may consider the issuance of more than one Final Rule – one that pertains to HAVA requirements and an additional rule pertaining to non-HAVA requirements.

After publishing the Final Rule, the Commission, based on public comments and available evidence, may consider alterations to the design of the national mail voter registration form. The Commission would consult with the chief State election officials on any redesign of the national mail voter registration form, as required by the statute.

The Notice of Proposed Rulemaking (NPRM)

The NPRM includes several proposed changes to the NVRA regulations. The proposed changes are within the limited scope of authority granted to EAC and address HAVA-related requirements. To be clear, the proposed modifications to the regulations reflect changes to the Federal form that the FEC made in 2003 to reflect HAVA’s requirements.

The primary objective of the NPRM is to modify the NVRA regulations to make them consistent with HAVA requirements and the HAVA changes already made to the Federal form. The proposed changes to the regulations fall into the following categories: HAVA requirements, HAVA-related requirements, and Technical Amendments. A secondary objective is to ask for public comment on other issues of interest to EAC.

The **HAVA requirements** are the a) Inclusion of questions and checkboxes asking applicants to indicate whether or not they are U.S. Citizens and eighteen, (18) years of age, in accordance with section 303 (b)(4)(A) (i); b) Inclusion of a statement advising applicants that if they checked ‘no’ in response to either of the aforementioned questions, they should not complete the form; and, c) Addition of a statement informing applicants that if they are registering for the first time,

the required voter identification information should be submitted with the national mail voter registration form to avoid the additional identification requirements upon voting for the first time. All of the foregoing are specific requirements of the Help America Vote Act.

In addition to the statutory HAVA requirements addressing what must be on the Federal form, there are procedures which result from other HAVA requirements that EAC proposes to include in the regulations. These **HAVA-related requirements** include:

1. Authorizing in the regulations the statement now appearing under the question and checkbox pertaining to age. This statement appears on the form to alert applicants that their State might allow individuals under age 18 to vote in primaries that precede the general election or in those States that allow under age 18 pre-registration.
2. A change in the format for the Federal form. The current regulations prescribe a card format for the form that makes it impossible for voters to submit the HAVA-required identification documents via the mail. The NPRM proposes modifying the regulation to allow the form to be printed on paper stock and mailed in an envelope to the appropriate address. This proposal gives voters the option of avoiding additional identification requirements upon voting for the first time by allowing them to mail the identification with the completed national mail voter registration form, which is consistent with HAVA. This practice has been used for the last several years.
3. Clarification of the State-specific instructions regarding State voter identification requirements. HAVA exempts voter registration applicants who will be voting for the first time and registering by mail from enclosing identification documents under certain conditions that could vary from State to State.

EAC is also proposing several **technical amendments** to update the regulations. These include ensuring that there are no existing references to the FEC in the regulations; adding references to HAVA where a requirement is contained in both the NVRA and HAVA, eliminating internal references to dates that no longer have any relevance such as the beginning date for States to certify the information for the first biennial report to Congress, and adding an amendment that requires a Privacy Act notice on the national mail voter registration form.

Finally, there are other possible issues that can be addressed in the regulations but are not required or addressed by HAVA. But because they are not required by HAVA, EAC asks for public comment on them but does not propose them as amendments to the NVRA regulations in the NPRM.

These issues include asking for public comments on the use of an electronic, web-based form; a proposal to add additional information on the form such as the applicant's e-mail address and boxes for the applicant to check to indicate whether the applicant is an overseas citizen or military voter covered by the Uniformed and Overseas Citizen Absentee Voting Act; and, changing the deadline for States to certify information to the EAC for the NVRA report to Congress from March 31 to 90 days after the date of each regularly scheduled general election for Federal office. This is the deadline required by UOCAVA for the certification of UOCAVA information and obtained by EAC through the same Survey instrument.

I am happy to answer any questions you may have at this time.