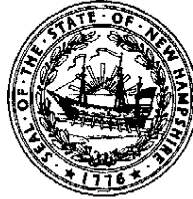


NEW HAMPSHIRE
DEPARTMENT OF STATE

William M. Gardner
Secretary of State



Robert P. Ambrose
Senior Deputy Secretary of State

David M. Scanlan
Deputy Secretary of State

January 6, 2009

The Honorable Rosemary Rodriguez, Chair
The Honorable Donetta Davidson, Vice Chair
The Honorable Gracia Hillman
The Honorable Gineen Beach

U.S. Election Assistance Commission
1225 New York Avenue NW – Suite 1100
Washington, DC 20005

Re: EAC Advisory 09-001
Maintenance of Effort Funding

Dear Commissioners:

We are writing to comment on the above referenced draft policy. We question the use of the term “grant” where it should properly read “payment” or be omitted in the following text contained in that draft policy (emphasis supplied in bold):

III. “State election offices in each of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and American Samoa (“States”) are the **grant** recipients of Requirements Payments. As the **grant** recipients, State election offices are required to meet the MOE requirements and maintain appropriate supporting documentation.”

VII. “If a State sub-awards **grants** to county or local units of government for a specific activity...”

If a State sub-awards **grants** to a subrecipient for a non-specific activity...”

VIII. “As a **grant** recipient, the State is ultimately responsible for ensuring compliance...”

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We cannot agree that HAVA requirements payments are grants. It is confusing in a policy statement such as this to see requirements payments presented as grants, since grants and payments are identified and dealt with separately in HAVA.

In enacting HAVA, Congress expressly used the terms “payments” and “requirements payments.” See Sections 101, 251, and 261. Congress also used the term “grants” and authorized the EAC to award “grants” under Section 271, 281 and 295. Congresses’ use of the term “payments” in Sections 101, 251 and 261, and not in Section 271, 281 and 295 is significant. In Section 902 of HAVA, where Congress authorizes the “office” making a grant or payment under this Act to “audit and examine any recipient of a grant or payment...”, an express categorical distinction is made between “grant” and “payment.”

Had Congress meant to subject states to the requirements applicable to “grants,” it would have used the term “grants” as it did elsewhere in HAVA.

In the December 2, 2008 written Statement of (EAC) Vice Chair Donetta Davidson on the subject of Maintenance of Effort (MOE) Policy, footnote #1 reads as follows:

“In April 2008 and September 2008, EAC met with the Office of Management and Budget (OMB). OMB advised EAC that HAVA Requirements Payments should be considered grants, that states are grantees, and clarified the applicability of Federal circulars on the management of Federal Funds. At the September 18, 2008 public meeting, Commissioner Hillman detailed key points agreed upon by the Commissioners following the OMB meetings.”

We have read the section of the transcript from the September 18, 2008 EAC meeting in which Commissioner Hillman reported on the latest OMB meeting. Would you please share with us any written documents that the EAC has received from the OMB which bear on whether the term “payment” in HAVA Sections 101, 251 and 261 should be considered a “grant”?

Thank you for your assistance.

Sincerely yours,



David M. Scanlan
Deputy Secretary of State