



U.S. ELECTION ASSISTANCE COMMISSION
1335 East West Highway – Suite 4300
Silver Spring, MD 20910

Policy Regarding Authority to Issue Funding Decisions on Use of HAVA Funds
Adopted May 28, 2015

SUMMARY

The U.S. Election Assistance Commission (EAC) is adopting a new policy to provide a means for persons and entities to have legal or factual questions related to the implementation of HAVA considered by Commissioners outside of EAC's audit resolution process. The policy is intended to replace the Advisory Opinion Process originally adopted by the EAC on April 16, 2008. The policy is not intended to replace or disrupt the role of the Office Grants Management, which is responsible for issuing guidance, support and, when appropriate, approval/denial of certain expenditure of Federal funds under HAVA and the relevant Office of Management and Budget Circulars found in 2 C.F.R. Parts 220, 225, 215, and 230.

Policy

The Commissioners may consider any request related to questions of law and factual issues related to HAVA when:

- (1) The legal issue is novel, complex and pertains to an unsettled question of law or interpretation of the HAVA statute; or
- (2) The issue relates to an expenditure of HAVA funds that has not been previously addressed by OMB, the grant provisions or the EAC and for which it is determined to have significant policy implications for the implementation of HAVA; or
- (3) There has been intervening legislation, rulemaking, or litigation since the EAC last considered the issue; or
- (4) The request is contrary to or otherwise inconsistent with prior EAC matters dealing with the same issue.

The request must specify the question of law or fact at issue and why it is subject to Commissioner consideration. It should discuss, when appropriate, any relevant court or other decisions, and any other analysis of the issue that may assist the Commissioners in its decision-making. If it is a request for reconsideration, the request should document prior EAC matters raising the same issue. The Grants Office will direct all requests to the EAC's General Counsel who will determine, in consultation with the Commissioners, if the question is eligible for consideration. The General Counsel will prepare a recommendation and circulate the recommendation to the Commissioners for consideration. In the event of an objection, subject

to a Commission Tally Vote, the matter shall be placed on a future meeting agenda consistent with the Sunshine Act, 5 U.S.C. 552b(g). Extensions days will be granted at the discretion of Commissioners.

Commissioners have complete discretion in determining what issues they will take up for consideration.

All decisions will be posted to the EAC website within 15 days of final passage.

To ensure Commissioners continue to have up-to-date information on issues related to the expenditure of HAVA funds at the State and local level, this policy also requires EAC Office of Grants Management to keep Commissioners informed of any significant new issues or requests that arise related to use of HAVA funds as they are presented.

Action Taken

The Commission adopted this policy that ensures only substantive questions with policy implications from HAVA stakeholders are routed through the General Counsel's office to Commissioners for consideration and possible response.

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