



EAC Best Practices: Provisional Voting

Helping America Vote

Background

Section 302 of the Help America Vote Act (HAVA) creates the right for potential voters to cast provisional ballots in the event their names do not appear on the registration list or the voters' eligibility is questionable or challenged. The issuance of a provisional ballot is best described as a safety net or fail safe for the voter, in that:

1. It maintains the person's intent to vote and selections until election officials determine that the person does or does not have the right to cast a ballot in the election.
2. It allows the determination of the voter's eligibility to be made at a time when more perfect or complete information is available either from the voter or from the election jurisdiction.

HAVA expanded and standardized the use of provisional voting as a way to cast a ballot when:

- The voter's registration status cannot be verified at the time of voting
- There is some indication that the voter may have already cast another ballot (e.g., by mail)
- The voter's eligibility to vote in an election is challenged

Provisional ballots are kept separate from other election ballots and, depending on whether election officials can verify the provisional voter's eligibility per state law in the days following the election, are fully counted, partially counted, or rejected. The provisional ballot process ensures each qualified voter casts only one ballot that is counted and allows the voter additional time to prove their eligibility to vote if necessary.

Five states—Idaho, Minnesota, New Hampshire, Wisconsin, and Wyoming—are exempt from HAVA's provisional ballot requirements because they allowed for Same Day Registration (i.e., the ability to register to vote and cast a ballot on the same day) at the time the law was enacted. North Dakota is exempt from this HAVA provision because it does not require citizens to register to vote. Regardless of whether a state is required to offer provisional ballot voting per HAVA, it may still opt to use provisional ballot voting in certain circumstances.

Voters cast provisional ballots for a variety of reasons. For federal elections, HAVA outlines the two circumstances under which states must provide provisional ballots: (1) if the voter's name does not appear on the list of eligible voters or an election official asserts the voter is not eligible and (2) if a judge extends polling hours, all voters casting ballots during the extension must cast provisional ballots. Many states have created additional applications for fail-safe ballots. The following examples illustrate some state-mandated reasons for using a provisional ballot:

- A voter's name does not appear on the official list of eligible voters at the polling location on Election Day during a non-federal election
- A voter changes his or her name or moves within the jurisdiction or state and fails to update his or her registration before the election
- Another person challenges a voter's qualifications, and the poll worker cannot resolve the challenge
- A voter does not have proper identification



- A voter was issued a mail ballot, chooses to vote on Election Day instead, and does not have the ballot to surrender to poll workers
- A voter is not a resident of the precinct in which he or she is attempting to vote
- A voter has been convicted of a felony, and the jurisdiction has no record of the restoration of voting rights
- A voter has registered to vote on Election Day (i.e., “Same Day Registration”)

Additionally, some states allow unregistered voters to cast provisional ballots. The wide variation in uses for provisional ballots leads to wide variations in the number of provisional ballots issued, and ultimately counted, in each state during an election cycle.

Provisional balloting prevents the possible unintentional disenfranchisement of voters. However, the policies and procedures for administering provisional voting vary from state to state. Local election officials evaluate provisional ballots following voter eligibility standards established in state and federal law, including age, citizenship, and residence requirements. Many states have developed statewide standards and rules for processing provisional ballots to ensure local election officials or canvass boards count provisional ballots in a uniform and timely manner. A consistent approach within each state is key to ensuring that all voters are treated equally.

Although provisional ballots are an important tool for fail-safe voting, it is important to remember they take additional time to process. Each provisional ballot must be reviewed, and election officials must determine whether a voter was eligible and did not already vote. Research may require coordination with other elections offices. In states that allow it, there may also be additional time needed for voters to provide required information. Finally, a detailed audit trail must be maintained, documenting every step in the process. By recommending these practices, the EAC offers informed advice while respecting diversity among the states.

Best Practices

Efforts to improve provisional voting may be most effective as part of a broader effort by state and local election officials to strengthen their overall voting process. Collecting and analyzing data about election procedures enables states to identify which aspects of the registration and electoral system cause most voters to cast provisional ballots.

The recommendations provided below are organized by the following categories:

- Communication
- Laws, Policies and Procedures
- Staff and Poll Worker Training
- Managing Election Day
- Evaluating Voter Eligibility and Counting Provisional Ballots
- Post-Election Statistical and Systems Analysis

Communication

For many voters, the idea of casting a provisional ballot is a negative. There is an assumption that provisional ballots do not count or are only counted if a race is close. However, this is untrue. Provisional ballots allow voters who are eligible, but for whatever reason unable to cast a regular ballot, to vote. The following are best practices election officials can use when communicating and educating voters on provisional voting in their jurisdictions:

- Use elections office web and social media sites to provide helpful information to voters including how they can verify whether they are registered to vote; how they can update their registration for changes of name, address, or party; polling locations; requirements for identification; and other helpful information that will facilitate voter registration and voting. In addition, provide a toll-free number that voters can use to contact their election offices directly with questions. Officials can also educate the public about the most common reasons voters must vote provisionally to reduce the number of provisional ballots cast.
- Take advantage of mandated mailings (i.e., sample ballots and/or voter registration mailings) to further notify voters of the need to update their voter registration record to reflect a change in name, address, or party affiliation. In states where sample ballots are not required, include information about how to verify registration status with other mailings to voters.
- In states that require voters to provide identification in every election, inform voters about the different types of acceptable identification they must be provided before voting, and what to do if they do not have the proper identification.
- Provide clear, straightforward information about the process for re-enfranchising people with felony convictions on the elections office website, in handouts to law enforcement agencies and to organizations that work with citizens within the justice system.
- Assess the usefulness and clarity of information provided to voters. After certification, publish statistics on provisional voting with the final election results. The number of provisional ballots counted and rejected is an important part of the story of the election. These statistics can also highlight needed voter education topics. For example, if an elections office sees an influx of provisional ballots cast by voters in the wrong precinct, it may indicate voters were confused about where to vote. Election officials can then focus efforts toward educating voters on how to find their polling location.

Laws, Policies and Procedures

Federal and state requirements inform the procedures election officials develop to guide supplying, issuing, tracking, and canvassing provisional ballots. Prior to every election:

- Review federal and state laws to ensure that procedures to issue and count provisional ballots are up-to-date and accurate.
- Review state guidance and regulations to ensure that local procedures align with statewide practices.
- Inform voters of laws regarding provisional voting by prominently posting and widely distributing provisional voting and administrative complaint procedures before, during, and after each election. This will ensure that voters know their provisional voting rights, how and ways to provide evidence to cure the provisional ballot, and what to do if they believe their right to vote was denied.
- For first-time voters who did not provide the required identification per HAVA, monitor the number of voters that must show identification on Election Day, and take proactive steps to collect this data prior to Election Day.



Staff and Poll Worker Training

Staff and poll workers need to understand the forms provisional voters must complete. Failure to properly complete a provisional affidavit may result in the rejection of the provisional ballot. Election officials must train staff and poll workers to identify provisional voters, the steps to confirm the need for a provisional ballot, provide the correct ballot style, assist with completing necessary forms or affidavits, and maintain the chain of custody of provisional ballots. Training should also include procedures for the post-election review and canvass of provisional ballots, including procedures for curing, reviewing, and counting provisional ballots.

- Develop written standard operating procedures (SOPs) that include the handling of provisional ballots from plans to supplying the ballots through retaining provisional ballots and envelopes after certification. SOPs should reflect the policies the elections office follows in allocating ballots, supplies, and staffing.

At training:

- Review the necessary forms and information the provisional voter must complete and provide poll workers samples of properly completed forms. Include actual forms election officials expect poll workers to complete on Election Day, including forms reconciling the number of provisional ballots cast with the provisional voters checked in. Emphasize the methods of securing and returning provisional ballots to the elections office.
- Train poll workers on how to discuss provisional voting with voters. Training materials should include instructions on the options available to provisional voters.
- Educate poll workers on the provisional process, so they can respond to provisional voters' concerns with accurate information, including how to cure the provisional ballot and check the status of their provisional ballot using a free access system.
- In jurisdictions that use traditional precinct polling locations, poll workers should be trained to determine whether the voter is in the correct polling location and, if not, to direct the voter to the correct location. Provide maps or databases with instructions on how to find polling locations for voters who show up at the wrong polling location.
- In states that require voters to provide identification in every election, train staff and poll workers about all the types of identification that are acceptable, including examples of seldom used types of identification they may encounter.
- Emphasize poll workers should look over provisional voters' forms to ensure completeness.

Managing Election Day

Issuing provisional ballots that interfere with the normal processing of voters can create confusion and delays, especially on Election Day. Many states set requirements for the number of provisional ballots to send to Election Day polling locations and provide the form for provisional envelopes and affidavits. Elections that tend to produce more provisional ballots will also require more poll workers and office staff to handle Election Day.

- Providing dedicated poll workers or election officials to assist provisional voters decreases wait times and ensures consistency and efficiency in administering provisional voting at every polling location.



- Jurisdictions that typically offer hand-marked paper ballots for provisional voters should also be trained to offer the accessible ballot marking device for provisional voting.
- For jurisdictions that provide information in multiple languages, maps and other provisional voting material should be available in the alternative languages.
- Provide poll workers with color-coded supplies, informational handouts, and checklists to aid in processing provisional voters. Example: To avoid confusion while processing provisional voters, produce provisional ballot instructions, envelopes and supplies with a color that is unique from other instructional materials, so they are easily identifiable.
- Ensure that each polling location has sufficient supplies for all provisional voters, i.e., ballots, envelopes, handouts, etc. States may provide guidelines for estimating the provisional supplies needed at each polling location. It is also helpful to review provisional ballot statistics in prior elections, to inform supply quantities.

Review the layout and staffing level of all polling locations, particularly multi-precinct polling locations. If possible, provide greeters who can assist voters who need help finding their correct polling location, or understanding their voting options.

- For states that require voters to appear at their assigned precinct polling location, make sure voters know the importance of voting within their own precincts and ramifications of voting in another precinct. Involve the voter in deciding whether to go to the correct precinct polling location or vote provisionally for only the higher offices at the top of the ballot.
- Provide voters with printed information explaining how to check to see if their provisional ballot was counted. Handouts should describe the procedures for evaluating provisional ballots and steps voters can take to determine if their ballot was counted.
- Establish a clear chain of custody for handling provisional ballots throughout Election Day. In jurisdictions that allow in-person early voters to cast provisional ballots, track the number of provisional ballots cast each day of early voting and secure them in a limited-access location for post-election review. Similarly, after the polls close on Election Day, maintain chain of custody to reconcile the number of provisional ballots cast and secure the ballots or memory devices for their return to the elections office.
- Poll workers should be encouraged to call the elections office or Election Day command center for additional assistance if they are unsure about proper procedures.

Evaluating Voter Eligibility and Counting Provisional Ballots

After Election Day, election officials must review every provisional ballot cast to determine whether it will count in the official results. Election officials should be transparent with all aspects of provisional ballot verification and counting. Transparency includes proactive information sharing with the public about the administrative complaint procedures available to those voters who believe that election officials wrongly rejected their



provisional ballots. Election officials should inform the public of the timelines for counting provisional ballots, including any period during which provisional voters can present additional information to validate their ballots.

- Refer to federal, state, and local rules in examining each provisional ballot. With any additional information gathered, election officials or the canvass board can apply the rules to each provisional ballot and determine if a provisional ballot is eligible to be counted.
- Prepare written procedures and checklists to identify and track the reason why provisional ballots are accepted, partially accepted, or rejected.
- Develop a process to ensure that at least two people are reviewing the information provided by the voter and the applicable law to determine whether a provisional ballot is rejected.
- In states that allow it, timely notify voters if they are eligible to cure their provisional ballots. Use multiple communication methods to notify voters, if allowable by law.
- Perform a precinct-by-precinct accounting of the provisional ballots cast. The number of provisional ballots accepted for counting plus the number rejected should equal the number of provisional voters checked by precinct.
- Before the results are certified, ensure the number of provisional ballots tallied matches the number accepted for counting.
- After the election is certified, provisional ballots and related materials should be securely stored during the retention period.
- In states that allow it, notify voters regarding whether their provisional ballots are counted. Provide information to enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

Post-Election Statistical and Systems Analysis

After every election, review any issues with provisional voting administration. Review the completeness of the chain of custody and reconciliation documents. If there are any gaps, revise procedures or poll worker training as necessary.

- Collect data systematically on the provisional voting process to permit consistent evaluation of state and local procedures and assess changes from one election to the next. Example: review the number of provisional ballots cast by jurisdiction; reasons why provisional ballots were cast; number counted and not counted, by category; measures of variance among jurisdictions; and time required to process and research provisional ballots.
- Analyze the provisional voting process to ensure the methods used to distribute, collect, record, and tally provisional ballots are seen as procedurally legitimate by the public and stakeholders.
- Evaluate whether the provisional voting process is sufficiently structured to perform well under the pressure of a close election when ballot evaluation will be under scrutiny.



- Determine if the provisional ballot process facilitates a cost-efficient, accurate and timely operation, and if the administrative requirements are reasonable given the availability of staff and other resources.
- The U.S. Election Assistance Commission (EAC) compiles provisional voting data in its biennial Election Administration and Voting Survey (EAVS). While provisional ballot usage varies widely across the country, election officials at the local, state, and federal levels can use the results of this survey to identify successes, potential improvements in election administration, and to learn from other states' best practices.

Conclusion

Provisional ballots protect eligible voters' right to vote by allowing investigation prior to the decision whether to count the questionable ballot. Before every election where provisional ballots are offered, election officials must adequately prepare their staff and poll workers to administer provisional voting. Recognize that the first step to improving quality is to see provisional voting as a process and to take a systems approach of regular evaluation through standardized metrics with explicit goals for performance. Remember, every provisional ballot counted represents a voter who may have been turned away before the implementation of HAVA's provisional ballot requirements.

