

U.S. ELECTION ASSISTANCE COMMISSION

Voluntary Guidance on Implementation of Statewide Voter Registration Lists



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VOLUNTARY GUIDANCE ON THE IMPLEMENTATION OF STATEWIDE VOTER REGISTRATION LISTS

I. INTRODUCTION:

The Help America Vote Act of 2002 (HAVA) requires the Chief Election Official in each State to implement a “single, uniform, official, centralized, interactive computerized statewide voter registration list.” That list is to be “defined, maintained, and administered at the State level” and must contain the “name and registration information of every legally registered voter in the State.”

Congress mandated that the United States Election Assistance Commission (EAC) issue voluntary guidance to assist the States in implementing the provisions of HAVA relating to statewide voter registration list requirements. While it is the responsibility of the EAC to interpret and issue guidance on HAVA, civil enforcement of the statute is expressly assigned to the United States Department of Justice (DOJ).

The following interpretative guidance clarifies the meaning of certain portions of Section 303(a) of HAVA (42 U.S.C. 15483(a)). Specifically, this guidance serves to assist States in their efforts to develop and implement a single, uniform, official, centralized, interactive computerized statewide voter registration list. Moreover, the guidance also serves to encourage State and local election officials to work together to define and assume their appropriate responsibilities for meeting this HAVA requirement, and engage other relevant stakeholders in this process.

II. SCOPE AND DEFINITIONS

A. Is this guidance regarding statewide voter registration lists or Section 303(a) of HAVA mandatory?

No. The guidance issued here by the EAC is voluntary. This means that States can choose to adopt this guidance to assist in the implementation of HAVA's requirements for a statewide voter registration list or create their own policies. However, to the extent the policies below reiterate HAVA mandates, such requirements are not voluntary but are statutorily required.

B. What is a computerized statewide voter registration list?

A computerized statewide voter registration list is a single, uniform, centralized, interactive computerized voter registration list that is technically and functionally able to perform tasks described in Sections 303(a)(1)(A)(i) through 303(a)(1)(A)(viii) of HAVA. In essence, it is the one official list of lawfully registered voters within a State for all elections for Federal office and the only lawful source of Federal registration information for poll books or precinct registers on Election Day. The list must be centrally managed at the State level in a uniform and non-discriminatory manner. The list must be computerized and technically capable of providing immediate electronic access to appropriate State and local election officials; assigning unique identifiers; affording local officials expedited entry of voter registration information; allowing voter registration information to be verified with other State, local and Federal agencies; providing a means for list maintenance; tracking appropriate voting history; and ensuring appropriate system security.

C. Who would benefit from this guidance?

This guidance is targeted to assist the States and local governments in fulfilling their requirements under Section 303(a) of HAVA. This guidance may help election officials understand HAVA's establishment of a single, uniform statewide voter registration list and the responsibilities that HAVA places on all election officials to assure that the names and information contained in the statewide voter registration list are accurate, secure and complete.

D. To whom is Section 303(a) of HAVA applicable?

The provisions of Section 303(a) apply to all States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands except those that on or after the date of enactment of HAVA had no requirement for registration of voters with respect to elections for Federal office. Currently, only North Dakota has no voter registration requirement.

E. Does this guidance in any way alter, interpret, or affect the requirements of the National Voter Registration Act of 1993?

No. Nothing in this guidance should be construed to alter, interpret or effect, in any way whatsoever, the requirements of the National Voter Registration Act of 1993 (NVRA), including requirements and timeframes with respect to the administration of voter registration and/or the process States must follow in removing names of registrants from the voting rolls.

F. Who is a local election official?

For the purposes of this guidance, a local election official is a public employee who has, as a primary duty, the responsibility for collecting and processing voter registration information

for Federal elections or otherwise maintaining voter registration information pursuant to State mandates and the requirements of HAVA.

G. Who is the chief State election official?

The chief State election official is the highest ranking State official who has, as a primary duty, the responsibility to ensure the lawful administration of voter registration in Federal elections. Ultimately, it is the State's responsibility to determine the identity of this official. Each State should have previously identified their chief State election official as required by the NVRA (42 U.S.C. §1973gg-8).

H. Who is responsible for implementing the provisions of Section 303(a) of HAVA?

The State, through the State's Chief Election Official, is responsible for ensuring that the State has a single, uniform, official, centralized, interactive computerized Statewide voter registration list. This official is also responsible for defining, maintaining and administering this list. However, local election officials also have certain responsibilities outlined in Section 303(a) of HAVA, particularly with regard to entering voter registration information into the statewide voter registration list on an expedited basis. Local election officials may also be required to perform list maintenance activities pursuant to State mandates.

I. Will the EAC provide additional guidance on Computerized Statewide Voter Registration Lists?

Yes. The EAC and a working group of State and local election officials will continue to explore technical issues related to the maintenance and upgrade of these database systems, with assistance from the National Academies. The EAC also plans to work with public interest

groups to help ensure these guidelines serve all Americans. Additional guidance and/or best practices regarding statewide voter registration lists will be developed.

III. GUIDANCE ON STATEWIDE VOTER REGISTRATION LISTS

A. May a State create policies for Statewide Voter Registration Lists that go beyond HAVA's requirements?

Yes. Under Sections 304 and 305 of HAVA, the details of implementing Statewide Voter Registration Lists have been left to the States. HAVA requirements are minimum requirements. States are free to establish policies that provide stricter standards as long as such standards are not inconsistent with HAVA or other Federal Laws. States must ensure that their additional policies are indeed stricter than HAVA and do not create impermissible standards that fall below the statute's minimum requirements. In this way, a stricter standard, in terms of a provision that protects voter access, would be a standard that further enhances or expands such access. Similarly, a stricter standard, in terms of a provision that protects the integrity and security of the voting process, would be a standard that furthers that goal.

B. What types of databases meet the requirements of HAVA to generate a single, uniform voter registration list?

HAVA requires a State to define, maintain and administer one official and uniform statewide voter registration list. This computerized list must be accessible by local election officials for purposes of conducting voter registration and voting in an election for Federal office. *Generally, in order to meet HAVA's computerized list requirement, the State must define and have immediate, real-time access to all the data that serves as the State's official voter registration list. Moreover, the State must be able to control access to this data and perform HAVA mandated action on the information (such as coordinating with other databases for the*

purpose of performing voter registration verification and list maintenance). Finally, local election officials must have immediate access to this official list. While HAVA requires that both State and local election officials have immediate access to the voter registration list, ultimately the State must direct the degree of access and control any one official or class of officials have over the list's data.

A State database hosted on a single, central platform (e.g., mainframe and/or client servers) and connected to terminals housed at the local level (often referred to as a “top down” system) is most closely akin to the requirements of HAVA. However, other database systems may also meet the single, uniform list requirement as long as they function consistent with the general rule stated, above.

For example, a State database that gathers or uploads its information from local voter registration databases to form the statewide voter registration list (often referred to as a “bottom up” system) may serve to meet the single, uniform list requirement. This is true as long as the State database, the data and the data flow are defined, maintained, and administered by the State. Thus, the State database must house the only official list of registered voters; establish interactive and compatible software and user protocols that allow each local jurisdiction to seamlessly transfer data to and from the State; require local databases to routinely upload or electronically send registration information to the State; and ensure that the data that forms the official voter registration list is regularly downloaded or otherwise sent electronically to local officials so that they may have immediate access to the entire official list. It is important to understand that in a “bottom up” system the official statewide voter registration list is that list hosted on the State's database and downloaded to local jurisdictions. The list remains static until the State electronically provides the next, updated version. Registration information held solely

in a local database is not a part of the official registration list until it is electronically sent to the State and added to the official list. States must require local information to be uploaded and the official statewide voter registration list to be downloaded on a regular basis. In this way, both State and local election officials will have immediate, real time access to the statewide voter registration list.

C. How frequently must the statewide voter registration list be synchronized with any local databases to assure that the statewide voter registration list is the single source for the names and registration information of all legally registered voters in the State?

If a statewide voter registration list is not hosted on a single, centralized platform, States must ensure that all information contained on local, satellite databases is uploaded (synchronized) into the statewide voter registration database routinely, such that the State database can be viewed as the sole, official list of registered voters. Similarly, States must assure that the data comprising the official list (maintained by the State database) is downloaded or sent electronically to local systems on a regular basis so that local officials may have immediate access to the official list. At a minimum, the statewide voter registration list should be synchronized with local voter registration databases at least once every 24 hours to assure that the statewide voter registration list contains the names and registration information for all legally registered voters in the State. In the same way, the State must electronically send or download the appropriate information in its database to local election officials at least every 24 hours, so that they have immediate electronic access to the official voter registration list.

D. How should the statewide voter registration list be coordinated with other agencies?

In order to ensure the completeness and accuracy of statewide voter registration lists, HAVA requires timely coordination between various Federal, State and local agencies.

Generally, there are three forms of coordination required under HAVA: coordination with voter registration agencies, coordination to verify voter registration information (e.g. motor vehicle authorities and Social Security Administration), and coordination necessary to perform list maintenance (e.g. death and felony records).

1. Voter registration agencies. HAVA makes accurate and complete voter registration lists a priority. States must coordinate the statewide voter registration list with other State agency databases that collect, correct or update voter registration information. These agencies must include State motor vehicle agencies and voter registration agencies as defined by NVRA (i.e. State public assistance and disability agencies). Proper coordination with these databases is essential for ensuring that statewide voter registration lists are complete. As such, the chief State election official shall:

a. Establish policies and provide adequate support to local election officials to ensure that registration applications or other registration information is entered into the State voter registration list on an expedited basis. (See HAVA Section 303(a)(1)(A)(vii)). This responsibility includes the obligation to create requirements that ensure election officials will receive registration information from voter registration agencies promptly; and

b. Establish policies that ensure information will be coordinated accurately, securely and efficiently. The EAC recommends that voter registration information be transmitted electronically. Further, to the greatest extent allowed by State law and available technologies, this electronic transfer between statewide voter registration lists, State motor vehicle agencies and voter registration agencies should be accomplished through direct, secure, interactive and integrated connections.

2. Verification of voter registration. Generally, Section 303(a) of HAVA requires that registration applications include either a valid driver's license number or, if none, the last four digits of a social security number.¹ States are prohibited from accepting or processing registration applications that do not have this information (with the exception of individuals who do not possess either identifier). Moreover, HAVA requires States to match information received on voter registration forms against driver's license and social security databases for the purpose of verifying the accuracy of the information received from all new voter registrants. Under Section 303(b), such validation provides an exemption to the voter identification requirement for first-time registrants by mail if the information matches. States must take steps to ensure that this matching or verification process is accomplished promptly and performed in a uniform and non-discriminatory manner. Ultimately, States are required to determine if the information provided in a registration application meets the above verification requirements pursuant to State law. States must take great care in formulating these policies, taking into consideration the different ways databases may record information and the possibility of errors within a database. Consistent with this task, States should:

a. Create matching or verification protocols to ensure that properly filed registration applications from eligible voters are not rejected due to a database error or inflexible database coordination or matching rules. States must have a documented plan that specifies how election officials will identify and deal with a variety of outcomes that may result from the matching process (such as a mismatch, partial match, multiple match or failed match). States should avoid proffering protocols that automatically reject all registration applications that do not result in a perfect match with a verification database,

¹ Some States may require use of a registration applicant's full Social Security Number pursuant to 42 U.S.C. §15483(a)(5)(D).

as such procedures may be impractical, unrealistic and result in the rejection of a large number of eligible voters.

b. Use additional databases (beyond driver's license and social security databases) to assist in the verification process, when such use would be effective and efficient. When the outcome of the verification process is unclear or suspect, use of other databases may help identify data errors and allow for appropriate corrections to be made to a database.

c. Make every effort to ensure that a voter registration application is not rejected as unverifiable until the State has given the individual an opportunity to correct the information at issue and attempted to validate the accuracy of the government information contained in its databases. This does not mean that States should accept or add unverified registration applications to the statewide list. Rather, it means only that election officials should make certain efforts before an application is determined to be unverifiable and finally rejected. The EAC recommends that in the event a State determines that the information provided in a registration application does not match the information contained in a verification database, States contact the individual in order to: (1) inform him or her of the disparity, (2) provide a meaningful opportunity for the applicant to respond or provide the correct information and (3) explain the consequences of failing to reply. In the event the voter registration applicant informs election officials that the information provided in the application was correct, steps should be taken to ensure that the information contained in the verification databases was accurate.

d. Ensure that the coordination of information in the verification process is accurate and efficient. Verification of voter registration information shall be

accomplished through electronic transmission. Further, to the greatest extent allowed by State law and available technologies, this electronic transfer between statewide voter registration lists and coordinating, verification databases should be accomplished through direct, secure, interactive and integrated connections.

e. When the verification process indicates the possible commission of an election crime (such as the submission of false registration information), such matters should be timely forwarded to local, State and Federal law enforcement authorities for investigation.

3. List maintenance. HAVA requires that election officials perform computerized list maintenance in order to remove duplicate names and the names of ineligible voters. HAVA specifically requires coordination with State death and felony record databases to meet this requirement. States should also coordinate with relevant federal databases, such as the U.S. Postal Service National Change of Address and Social Security Death Index databases, as well as criminal conviction records from U.S. Attorneys and the U.S. District Courts. It is essential that States regularly coordinate with these databases to ensure their statewide voter registration lists are current and accurate. In meeting this goal, chief State election officials shall:

a. Ensure State procedures for removing names from the statewide voter registration list are consistent with the provisions of the NVRA (42 U.S.C. § 1973gg-6). The NVRA contains certain requirements regarding the removal of names from official voter rolls. It requires States to conduct a program that removes individuals from voting registration lists who have died or changed residence (42 U.S.C. §1973gg-6 (a)(4)). These requirements include the notification of individuals (in certain circumstances such as a change of residence) prior to their removal from the list (42 U.S.C. §1973gg-6 (d) &

(e)). It also requires the removal of individuals who have moved outside of a given registration jurisdiction, have been sent proper notice, have failed to respond to such notice and have not voted in two consecutive general elections for Federal office (42 U.S.C. §1973gg-6 (d)(1)(B)). The statute additionally requires election officials to complete any systematic programs to remove ineligible voters not later than 90 days before a Federal election (42 U.S.C. §1973gg-6 (c)(2)).

b. Create “provisions” that include “[s]afeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.” (HAVA Section 303(a)(4)). HAVA requires States to create procedures that recognize the fallibility of databases and ensure that only ineligible voters are removed from a statewide voter registration list. States shall create procedures and requirements to ensure that:

(i.) The removal process and list maintenance program is transparent, non-discriminatory and uniform. To this end, the EAC recommends that States perform list maintenance regularly and over the list as a whole. In any event, States should avoid the appearance of impropriety associated with performing maintenance on limited geographical jurisdictions unless a specific need has been identified in a particular jurisdiction.

(ii.) All databases used to determine an individual’s voting eligibility (e.g. agency records on felony and death) or otherwise maintain the statewide voter registration list are accurate, up-to-date and secure. Moreover, States may rely conclusively on such databases only to the extent they provide all the information necessary to determine voter eligibility. To the extent coordination with a given database is not dispositive of a voter’s eligibility, States must consult additional

sources or databases before taking action. For example, if a State maintains felony records and records on the restoration of voting rights in different databases, both must be consulted during the maintenance process.

(iii.) Adequate safeguards are created to ensure that properly registered and otherwise eligible voters are not removed from the statewide voter registration list in error. As such, the EAC recommends that when information on a coordinating database matches only in part with data contained on a statewide voter registration list or there are otherwise indications that some data may be unclear, incomplete or untrustworthy; election officials should coordinate with other State databases. This should be done in order to verify data and ensure the information contained on the statewide voter registration list and the coordinating database are accurate and refer to the same individual. States should make efforts to correct databases when necessary.

The EAC further recommends that States contact individuals prior to removing their names from the statewide voter registration list. This will allow the public to serve as a further check in the maintenance process. In the event a State has identified a name on the voter list that it believes is either a duplicate name or an ineligible voter, election officials should contact the individual. Such contact should inform the individual (1) that the official intends to remove them from the registration list, (2) the basis for their removal (i.e. ineligibility factor or duplicate name), (3) how and to whom they may respond if they believe the basis for the removal is unfounded and (4) the timeframe they have to respond. While contacting the registrant often provides him or her added protection against being

mistakenly removed from the registration list, in some circumstances it may be unnecessary. Where contacting the registrant is not required by the NVRA, election officials may consider foregoing the step if it is clear that no further information is required to correctly determine a registrant's voting eligibility. In such cases, election officials are obligated to assess the accuracy and completeness of any information that will serve as the basis for removal of a name from the voter registration list. Officials must be confident that no additional safeguards are needed to protect the registrant. For example, if election officials identify duplicate voter registration entries and all information contained in the entries is complete and identical, the State may reasonably determine that contacting the registrant is unnecessary.

c. Establish policies that ensure information will be coordinated accurately and efficiently. The EAC recommends that the coordination necessary to perform list maintenance be accomplished through electronic transmission. Further, to the greatest extent allowed by State law and available technologies, this electronic transfer between statewide voter registration lists and coordinating, maintenance databases should be accomplished through direct, secure, interactive and integrated connections.

E. Must States track a registrant's voting and registration history?

Yes. While a registrant's voting and registration history are not specifically mandated to be a part of the statewide voter registration list, the tracking of this information is required in order to meet NVRA and HAVA requirements regarding the removal of names from voter rolls and voter identification requirements. This voter-specific information must be accessible and available to the appropriate election officials so these provisions may be timely met. The most

efficient and effective means to track voter and registration history information is through a State's statewide voter registration list. As such, the EAC recommends that databases housing statewide voter registration lists should be capable of tracking the following information in order to comply with NVRA and HAVA:

1. Registration by mail. States must track whether an individual registered to vote by mail, as registering in this way triggers Federal identification requirements. 42 U.S.C. §15483(b)(1).

2. Voting history. States must also track an individual's voting history. This is necessary to:

a. Meet NVRA requirements regarding the removal of names from voter rolls.

Under the NVRA, if a registrant has moved from a registration jurisdiction, failed to respond to required NVRA notice, and failed to vote in two consecutive Federal general elections, the person's name may be removed from the list of eligible voters. (42 USC 1973gg-6).

b. Meet HAVA identification requirements. Under HAVA, individuals who register by mail and have not previously voted in an election for Federal office are subject to Federal identification requirements. (42 U.S.C. §15483(b)(1)(B))

3. Identification and verification information for first time voters who register by mail.

States must track whether first-time voters who registered by mail provided appropriate identification (i.e. a copy of a valid photo identification or current utility bill) or verification information (i.e. verified driver's license number or last four digits of a social security number²) in their registration applications under 42 U.S.C. §15483(b)(3)(A) & (B), sufficient to exempt

² Some States may require use of a registration applicant's full Social Security Number pursuant to 42 U.S.C. §15483(a)(5)(D).

him or her from HAVA's voter identification requirements (42 U.S.C. §15483(b)(2)). If such registrants failed to provide this identification or verification information during the registration process, they will be required to present it in person, at the polls. This should also be tracked by election officials.

4. Individuals entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). (42 U.S.C. §1973ff-1 *et seq*). States must identify registrants who are entitled to cast an absentee ballot under UOCAVA as they are exempt from HAVA's 42 U.S.C. §15483(b)(2) identification requirements. Furthermore, UOCAVA, as amended by HAVA, requires States to report to the EAC the individual and combined numbers of absentee ballots transmitted to uniformed services voters and overseas citizens, as well as the individual and combined number of such ballots returned and cast by such voters. (42 U.S.C. 1973ff-1(c))

5. Individuals entitled to vote otherwise than in person under the Voter Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee-1(b)(2)(B)(ii)) or any other Federal law. States must identify registrants who are entitled to cast an absentee ballot under such statutes as they are exempt from HAVA's 42 U.S.C. §15483(b)(2) identification requirements.

F. What obligations do election officials have concerning the security of the statewide voter registration list?

HAVA makes election officials responsible for ensuring that statewide voter registration lists are accurate, complete and technologically secure.

1. Technological Security. HAVA requires election officials to provide adequate, technological database security for statewide voter registration lists that prevent unauthorized access. Such computerized security must be designed to prevent unauthorized users from

altering the list or accessing private or otherwise protected information contained on the list. Access may be controlled through a variety of tools including network or system-level utilities and database applications (such as passwords and “masked” data elements). Special care must be taken to ensure that voter registration databases are protected when linked to outside systems for the purposes of coordination.

2. Access Protocols. Election officials must also create clear policies and protocols to make statewide voter registration lists secure. These protocols must identify appropriate classes of authorized users and clearly delineate the members of each class, when they have access, what data they have access to and what level of access each class holds. It is essential to security that the authority to remove a name from the voter registration list be properly limited and documented. Access protocols should also provide physical security requirements to further limit unauthorized access to a system.

3. Transactional Recordkeeping. The EAC recommends that systems housing statewide voter registration lists have the capability to track and record transactions which add or remove names or otherwise alter information contained in the voter registration list. This includes documenting the identity of the individuals who initiate such transactions. This capacity will allow the system to be audited, providing a means to hold authorized users accountable for their actions. Such accountability can serve as an important security measure by deterring unlawful or inappropriate use of the statewide voter registration list.

4. Backup, Recovery and Restoration Capabilities. Due to the important nature of the information stored on the statewide voter registration list, State election officials must ensure that the systems storing the list have adequate backup, recovery and restoration capabilities. These capabilities must be routinely tested. Officials must be confident that the system is properly

backed up and that the data may be timely and accurately recovered and restored when needed. Further, the EAC recommends that statewide voter registration list backups occur regularly on an automated basis and that the backup system be housed in a physical location separate from the primary database. Moreover, backup systems should be protected by technological security to the same degree as primary systems.

G. Do record retention requirements apply to statewide voter registration databases?

Yes. States must adhere to all State and Federal law (e.g. 42 U.S.C. § 1974 and 42 U.S.C. § 1973gg-6(i)) applicable to voter registration document retention. Such requirements must be applied to all records contained in or produced by statewide voter registration databases.

H. Should the public be granted access to their information on the computerized statewide voter registration list?

While not required by HAVA, the EAC encourages States to set-up accessible, secure means by which members of the public may verify their registration status and records. This type of public access could provide many benefits, it would serve to (1) enhance openness and voter confidence in the registration system, (2) encourage self-identification of database errors and duplications and (3) decrease instances of multiple registrations as a result of an individual's inability to recall registration status.

Further, States could use public access portals to provide other information to voters, such as the location of their proper polling place, important election dates and contact information for registration queries and updates. However, any public access portal must be protected with strong security measures to prevent unauthorized access.