

KRIS W. KOBACH
Secretary of State



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STATE OF KANSAS

August 2, 2013

Ms. Alice Miller
Acting Executive Director
Election Assistance Commission
1201 New York Ave., NW
Washington, DC 20005

Dear Ms. Miller:

I am in receipt of your letter, dated July 31, 2013, in which you informed our office that the Election Assistance Commission (EAC) is unable, due to a lack of quorum on the Commission, to process the requests previously made by my office for a modification of the instructions relative to Kansas on the national mail voter registration form (Federal Form). Certain portions of your letter lead me to believe that the EAC has misunderstood the position of my office regarding Kansas's responsibility to "accept and use" the Federal Form.

Your letter suggests that Kansas will not "accept and use" the Federal Form. That is incorrect. Indeed, I have specifically instructed county election officers in Kansas to accept the Federal Form without proof of citizenship. However, for the time being a voter who uses the Federal Form and fails to provide proof of citizenship will only be eligible to vote in *federal* elections. As you are no doubt aware, 42 U.S.C. § 1973gg-4(a)(1) requires Kansas to "accept and use the [Federal Form] for the registration of voters *in elections for Federal office*."

Therefore, Kansas will accept and use Federal Form registrations submitted without proof of citizenship documents to register voters for elections for Federal office *until the EAC adds the Kansas-specific instruction that our office has requested to the Federal Form or until Kansas is otherwise relieved of that duty by a court of competent jurisdiction*. When the Kansas-specific instruction is added, applicants using the Federal Form (with documentation proving citizenship) may register for *both* federal and state elections. I have attached a copy of the email that my office recently sent to Kansas election officers in that regard.

In addition, I wish to remove a possible ambiguity in the language of our proposed Kansas-specific instruction as contained in my June 18, 2013, letter to your office. To help clarify our requested instruction, we suggest the following modification to our proposed instruction: "To cast a regular ballot an applicant must provide evidence of U.S. citizenship prior to the ~~first~~ election day ~~after applying to register to vote~~." I hope this modification clarifies the nature of our proposed Kansas-specific instruction.

There is no lawful reason why the staff of the Division of Research, Policy, and Programs of the EAC should not approve the addition of our requested Kansas-specific instruction to the Federal Form. Please confirm as soon as possible that you now understand how Kansas will treat the use of the Federal Form without proof of citizenship until the EAC modifies the Kansas-specific instructions to the Federal Form. I very much appreciate your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris W. Kobach". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Kris W. Kobach
Secretary of State
Office of the Kansas Secretary of State

Attachment