



U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

December 5, 2007

MEMORANDUM

TO: EAC Commissioners

CC: Tom Wilkey, Peggy Sims, Julie Hodgkins, Gavin Gilmour, Jeannie Layson, Tamar Nedzar

FROM: Edgardo Cortés, Election Research Specialist

SUBJECT: Close of Public Comment Period and Next Steps for NVRA Regulations

The following motion concerning National Voter Registration Act (NVRA) regulations was passed by a unanimous vote of the EAC Commissioners during the September 6, 2007 public meeting in Washington, DC:

“I move that the EAC direct its staff to work with the FEC to enter into a joint rule making to transfer the FEC regulations on the National Voter Registration Act to the EAC and that the EAC staff be further directed to take whatever steps are necessary to establish a CFR site for EAC, to obtain the concurrence of the FEC, and to post notice for a 30 day public comment procedure regarding the transfer of these regulations to EAC¹.”

I provided a memo on September 18, 2007 (Attachment 1) detailing proposed staff actions to carry out the directive given by the Commissioners. Since that time, the Election Administration Support Division has been working to implement these steps, consulting with the Executive Director and the Office of General Counsel as needed. This memo serves as an update of our progress implementing the Commissioners’ directive and a discussion of options for Commission action.

Accomplishments:

Obtain a Code of Federal Regulations (CFR) Site:

The Executive Director has established EAC’s CFR site at 11 CFR, Chapter 2, parts 9400-9499. The EAC has a draft CFR organizational structure and anticipates that the regulations issued under Section 9 of the NVRA will be codified in Parts 9430 and 9431.

¹ Language of vote provided by Stacie Fabre, Special Assistant to Vice Chair Rodriguez. Ms. Fabre was responsible for taking notes during the meeting for preparation of the meeting minutes.

Issue Request for Public Comment Regarding Potential Transfer of the Previously Adopted FEC Regulations to the EAC:

The EAC issued a Request for Public Comment in the *Federal Register* on Friday, November 2, 2007 (72 FR 62224). The EAC sought public comment on whether the agency should administratively transfer regulations previously adopted and maintained by the FEC regarding the NVRA, currently located at 11 C.F.R. 8, and then substantively amend those rules. The EAC did not seek substantive comment on the content of the existing regulations or potential modifications to the regulations. The public comment period closed at 4 pm EST on Monday, December 3, 2007.

Five comments were received during the public comment period. Four comments supported the transfer of FEC regulations and one comment opposed the transfer. All comments received are included as Attachment 2.

The comment opposing the transfer of the FEC regulations was based on general opposition to government action in this area.

Four comments generally supported the transfer of the previously adopted FEC regulations, as long as there will be an opportunity for notice and comment on substantive changes to the content of the regulations. However, there was a general misunderstanding regarding the technical address change for the agency described in the Federal Register Notice. The address which will be changed refers to the address listed in 11 CFR 8.7(a) related to the submission of state reporting information to the EAC for the biennial report to Congress. The address change discussed in the Request for Public Comment does not, as some commenters interpreted, deal with changes to the state instructions of the National Mail Voter Registration Form regarding state mailing addresses.

Next Steps:

Consistent with a determination made by the EAC Office of General Counsel, the Commissioners have two options for proceeding with this matter.

Option 1 – Approve Administrative Transfer:

If the Commissioners approve an administrative transfer of the previously adopted FEC regulations, the transfer will not be effective immediately. The EAC has to enter into a joint rulemaking process with the FEC. It is not yet clear how long this process will take. The next steps for implementing an administrative transfer of the NVRA regulations are:

1. Coordinate with the FEC to issue and publish a notice of joint rule making.
2. Draft a notice of joint rule making to transfer existing FEC regulations to the EAC. This notice must be consistent with the requirements of the Administrative Procedures Act and other relevant statutes. This will require coordination between the EAC Election Administration Support Division, the EAC Executive Director, the EAC Office of General Counsel, the FEC Office of General Counsel, and the FEC Regulations Committee.

3. Publish the notice of joint rule making which officially transfers the existing regulations to the EAC.
4. Adopt an internal procedure for processing state requests to change the Federal form in a uniform, transparent, and timely fashion.
5. Enter into full rule making to amend the EAC's NVRA regulations to make the regulations HAVA-compliant and to make any additional changes determined to be appropriate by the EAC Commissioners. Please refer to the attached timeline (Attachment 3) for a comprehensive description of the rulemaking process.

Option 2 – Reject Administrative Transfer:

If the Commissioners do not approve an administrative transfer of the previously adopted FEC regulations, the EAC must begin the process of full rulemaking. As noted above, a timeline regarding the rulemaking process is contained in Attachment 3.



U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

September 18, 2007

MEMORANDUM

TO: EAC Commissioners

CC: Tom Wilkey, Peggy Sims, Julie Hodgkins, Gavin Gilmour, Jeannie Layson, Tamar Nedzar

FROM: Edgardo Cortés, Election Research Specialist

SUBJECT: Follow-up to the September 6, 2007 EAC Public Meeting Concerning NVRA

The following motion concerning NVRA regulations was passed by unanimous vote during the September 6, 2007 public meeting:

“I move that the EAC direct its staff to work with the FEC to enter into a joint rule making to transfer the FEC regulations on the National Voter Registration Act to the EAC and that the EAC staff be further directed to take whatever steps are necessary to establish a CFR site for EAC, to obtain the concurrence of the FEC, and to post notice for a 30 day public comment procedure regarding the transfer of these regulations to EAC¹.”

The language of the vote is somewhat unclear, particularly in terms of what order the steps are to be taken. To ensure that we clearly understand your vote, this memo describes how the staff interprets the directive given by the Commissioners and outlines the steps necessary to implement the directive. To further assist the Commissioners, this memo also includes information about the resources required to implement the directive.

Based on the language above, there is one goal of this vote: “to work with the FEC to enter into a joint rule making to transfer the FEC regulations on the National Voter Registration Act to the

¹ Language of vote provided by Stacie Fabre, Special Assistant to Vice Chair Rodriguez. Ms. Fabre was responsible for taking notes during the meeting for preparation of the meeting minutes.

EAC.” This goal is to be accomplished by the following tasks: 1) taking whatever steps are necessary to obtain the concurrence of the FEC; 2) taking whatever steps are necessary to establish a CFR site for EAC; and 3) taking whatever steps are necessary to post notice for a 30-day public comment procedure regarding the transfer of these regulations to EAC.

Prior to implementing these steps, the staff requests feedback within a week from the Commissioners confirming the staff’s understanding of the Commission’s vote. If this memo does not correctly represent the Commission vote, then we respectfully request that a tally vote be initiated by one or more of the Commissioners to clarify the language of the vote and to provide additional guidance on how the staff should proceed.

PROCESS:

1. **Obtain a CFR Site:** Clearly, the vote directs staff to obtain a CFR site. EAC staff has already initiated the process of securing a site in the Code of Federal Regulations (CFR) through the National Archives and Records Administration’s (NARA) Office of the Federal Register (OFR). Based on our preliminary discussions with OFR, the EAC will be located in Title 11, Chapter 2. The Federal Election Commission (FEC) is located in Title 11, Chapter 1. The FEC and EAC are the only federal agencies located in Title 11, Federal Elections.

The CFR site must be secured before the EAC can publish any regulations, since any rule making notice needs to indicate the specific part of the CFR where a rule will be located. In addition, the EAC needs to plan out its entire CFR structure and reserve all sections in the site prior to publishing NVRA regulations. Timetable: The entire process of establishing and structuring a CFR site will take approximately 2-3 months to complete. This process has already been initiated. A contractor has been engaged to assist with securing and organizing a CFR site for EAC. We anticipate receiving a proposed CFR organization by the beginning of November 2007.

2. **Issue a Notice for Public Comment Regarding EAC’s Intent to Transfer the Regulations:** The next step in the process, pursuant to the Commissioners’ directive, is

Attachment 1

to issue a notice for a 30-day public comment period about whether EAC should transfer the FEC regulations as a purely administrative action under 5 U.S.C. 553(b)(3)(B). The wording of the vote, “to post notice for a 30 day public comment procedure regarding the transfer of these regulations to EAC,” indicates EAC will ask for comments from the public regarding the proposal to transfer the regulations, not the content or substance of the regulations. The request for comments would not deal directly with the actual substance of the regulations, as requesting comments of this nature would trigger the rule making process which would implicate all requirements of 5 U.S.C. 553 as well as the Paperwork Reduction Act. Timetable: The public comment period regarding an administrative transfer would take approximately 3 months to complete based on the steps required.

The following details the steps and timeline for the public comment period concerning whether EAC should transfer the FEC regulations as a purely administrative action.

- a. Development of public comment portal – EAC would need to set up a comment function on the website that will allow comments to be posted and simplify the review of comments by staff. Setting up this function would take approximately 3-4 weeks and would be done by EAC’s Web site host, Humanitas.
- b. Staff must develop the public notice – The notice must include an explanation of why EAC is requesting comments on the transfer. This notice will be prepared by staff and will take two weeks or less to draft. It must be approved by the Commissioners so the total time it takes to issue will be dependent on the review time required. This can be done concurrently with the establishment of the public comment portal, but cannot be completed until the public comment portal is established so that specific information can be included in the notice about the public comment portal as the appropriate location for submitting comments.
- c. The public notice must be published in the *Federal Register* – Publication in the *Federal Register* takes approximately 2-3 business days. The vote taken at the September meeting requires a 30-day public comment period. Since this notice is not required by law and is requesting comments on agency procedure and not the

Attachment 1

substance of the regulations, it can be issued before a CFR site is established since the CFR site does not need to be included in the notice.

- d. Review of public comments – EAC staff must review all public comments submitted, summarize the comments, and recommend the disposition of each public comment to the Commissioners. We believe few comments will be received on the topic of an administrative transfer and estimate the review time to take about 2-4 weeks. However, the actual timeline for this will be dependent on the number and type of comments received.
- e. Commissioner action – Commissioners must decide whether to follow the staff recommendations for disposition of comments or take an alternative action. A Commission vote would be required on staff’s recommended handling of comments.

3. **Administrative Transfer or Rule Making:** Finally, after review of the public comments, the Commission must decide whether to administratively transfer the regulations or initiate the rule making process under 5 U.S.C. 553. If the Commissioners vote to proceed with the administrative transfer, then EAC staff would contact FEC to begin the process of joint rulemaking to transfer the existing regulations to EAC. It is not clear how long this process will take since it is not known whether the FEC will require a vote to enter into joint rulemaking. EAC staff will make some preliminary inquiries to FEC prior to this step but will not engage in discussing the transfer of regulations until the EAC Commissioners decide how they want to proceed. The steps necessary to complete this option are:
- o Draft a notice of joint rule making to transfer existing FEC regulations
 - o Obtain FEC concurrence in issuing and publishing the notice of joint rule making
 - o Publish the notice of joint rule making

If EAC decides not to administratively transfer the FEC regulations, it would have to begin the process of full rulemaking as I described during the public meeting. The steps necessary to carry out the entire rule making process were outlined in my presentation at the September 2007 public meeting, which I have included as an attachment.

TOTAL TIMELINE:

If the Commissioners decide to transfer the existing NVRA regulations from FEC following the process above, it will take approximately 3-4 months until the regulations are effective for EAC. This means EAC could have NVRA regulations in place by late January 2008. EAC would then need to proceed with the adoption of additional policies to implement the regulations governing changes to the state specific instructions on the National Mail Voter Registration Form. In addition to the transfer, EAC will also have to enter a full rule making process to amend these regulations.

If the Commissioners decide, after seeking comment on whether to transfer, to proceed with full rulemaking and not transfer the regulations previously created by FEC, the process described above would add about 4 months to the timeline I proposed during my presentation at the public meeting. This means new NVRA regulations would probably be in place in June 2010.

RESOURCES:

As I discussed during my presentation at the public meeting, the FEC had four full time program staff and two full time attorneys working on the NVRA regulatory process. Currently, EAC has no full time staff dedicated to NVRA. I recommend that EAC immediately begin the process necessary to hire another full time employee for the Election Administration Support Division (formerly Programs and Services) and a full time attorney for the Office of the General Counsel. Whether full rule making begins after this initial 30-day comment on transferring the regulations or shortly thereafter, these resources are necessary to effectively carry out the NVRA regulatory process. Without these additional staff resources, the timelines discussed above will be significantly lengthened.

In addition to staff resources, financial resources will be required for *Federal Register* publications and EAC public meetings addressing NVRA. Given the fluid state of the Commission's future actions regarding NVRA, it is difficult to give accurate estimates of the financial costs at this time. Our initial estimate of the timeline I previously proposed for the creation of new NVRA regulations is \$275,000. This does not include salaries and benefits of full time staff working on this project.

"barbara sachau"

[REDACTED]

11/03/2007 02:50 PM

To HAVAIinfo@eac.gov, eacwebmaster@humanitas.com,
americanvoices@mail.house.gov, comments@whitehouse.gov
cc

Subject comment on below federal register notice attacheed in full and in entirety
attention edgardo cort (spelling garbled)

the help america vote act - what american can trust washington sin city politicians anymore since they label the bill with nice terms, and the inside little type rips off americans these days. the titles are always wonderful. the political skullduggery reflected in teh bills themselves are ruining america.

this change probably will NOt help us vote honestly. i oppose this transfer. i oppose this amdment. our votes used to be counted honestly. the bush gore election with the supreme court getting underhanded in it shows just how corrupt the system is now. i dont think changing it with nicely worded actually deceptive bills will change the corruption that is endemic in washington dc sin city these days.

b. sachau

[REDACTED]

----- Forwarded message -----

From: [REDACTED]
Date: Nov 2, 2007 9:00 AM
Subject: comment - corrupt voters
To: [REDACTED]

[Federal Register: November 2, 2007 (Volume 72, Number 212)][Notices] [Page 62224-62225]From the Federal Register Online via GPO Access [wais.access.gpo.gov][DOCID:fr02no07-39]

-----ELECTION ASSISTANCE COMMISSION[Notice 2007-42]Consideration of Administrative Transfer of national Voter Registration Act RegulationsAGENCY: Election Assistance Commission.ACTION: Notice: Request for Public Comment.-----
-----SUMMARY: The Help America Vote Act of 2002 (Pub. L. 107-252, 116 Stat. 1727, 42 U.S.C. 15532) transferred authority to promulgate regulations under the National Voter Registration Act of 1993 (NVRA) (Pub. L. 93-31, 197 Stat. 77, 42 U.S.C. 1973gg-1 et. seq. at 41 U.S.C. 1973gg-7(a)) from the Federal Election Commission (FEC) to the Election Assistance Commission (EAC). The EAC is presently considering the administrative transfer of NVRA regulations previously adopted and maintained by the FEC. These regulations are currently located at 11 CFR Part 8. In accordance with the Administrative Procedures Act (APA), this administrative transfer of the regulations would make no substantive changes to the FEC regulations and would be made without public comment. The only changes made would be technical, such as the address and contact information for the responsible agency. Following this administrative transfer of the regulations, the EAC would begin efforts to substantively amend the rules. This rulemaking process would include substantial public involvement, including public notice and comment pursuant to the APA. The EAC currently seeks public comment on whether the agency should administratively transfer regulations previously adopted and maintained by the FEC regarding the NVRA, currently located at 11 CFR Part 8, and then substantively amend those rules. Please note that the EAC does not seek substantive comment on the content of the existing regulations

or potential modifications to the regulations.DATES: Comments must be received on or before 4 p.m. on December 3, 2007.ADDRESSES: Comments must be submitted in either electronic or written form. Comments may be submitted online at <http://www.eac.gov>. Commenters are encouraged to submit comments electronically to ensure timely receipt and consideration. Written comments should be sent to: NVRA Comments, Election Administration Support Division, U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 1100, Washington, DC 20005.FOR FURTHER INFORMATION CONTACT: Mr. Edgardo Cort[acute]s, Election Research Specialist, (202) 566-3100 or toll-free (866) 747-1471.SUPPLEMENTARY INFORMATION: The National Voter Registration Act of 1993 (NVRA), Pub. L. 93-31, 197 Stat. 77, 42 U.S.C. 1973gg-1 et. seq, at 42 U.S.C. 1973gg-7(a) required the Federal Election Commission (FEC) to issue regulations to develop a national mail voter registration form for elections to Federal office, and to submit to Congress no later than June 30 of each odd-numbered year (beginning June 30, 1995) a report that assesses the impact of the NVRA and recommends improvements in Federal and State procedures, forms, and other matters affected by the NVRA. The FEC published an Advance Notice of[[Page 62225]]Proposed Rulemaking in connection with the NVRA rulemaking on September 30, 1993 (58 FR 51132), and Notice of Proposed Rulemaking on March 10, 1994 (59 FR 11211). Following a public notice and comment rulemaking, the FEC issued rules implementing these requirements on June 23, 1994. 59 FR 32323.Section 802 of the Help America Vote Act of 2002 (HAVA), Pub. L. 107-252, 116 Stat. 1727, 42 U.S.C. 15532, transferred the FEC's responsibilities under the NVRA to the Election Assistance Commission (EAC) but it did not transfer the FEC's previously adopted regulations. In order to carry out the functions listed in section 9(a) of the NVRA [42 U.S.C. 1973gg-7(a)], the EAC must promulgate regulations. The EAC currently seeks public comment on whether the agency should administratively transfer regulations previously adopted and maintained by the FEC regarding the NVRA. The administrative transfer would move the existing FEC regulations (11 CFR Part 8) to the EAC's Code of Federal Regulations site and only make technical changes to the mailing address and contact information for the agency. EAC believes that good cause exists for adopting the FEC rules as final EAC rules without public notice and comment under 5 U.S.C. 553 because this rule only reflects an administrative transfer of functions required by HAVA. No substantive changes will be made to the rules, which have already been subject to public notice and comment. Similarly, because this final rule is a recodification of existing regulations, it would not be subject to the effective date limitation of 5 U.S.C. 5539d). After the proposed administrative transfer of the regulations, the EAC would take steps to substantively amend the rules, which would significantly involve the public and include an opportunity for public notice and comment pursuant to the Administrative Procedures Act (APA).Again, the EAC is seeking comment on its proposed plan to first administratively transfer and then substantively amend the NVRA rules located at 11 CFR Part 8. At this time, the EAC does not seek comment on the substance of the regulations. As such, this notice and request for public comment is not required by or made pursuant to the APA.After review of the public comments received pursuant to this notice, the EAC will decide whether to administratively transfer the regulations and then substantively modify them, as described above. If this process is not adopted, the EAC will alternatively initiate a rule making process under 5 U.S.C. 553 independent of the FEC rules. In either scenario, EAC will follow all the rulemaking requirements of the APA, which allows for extensive public comment and transparency in the regulatory process.Thomas R. Wilkey,Executive Director, U.S. Election Assistance Commission.[FR Doc. 07-5447 Filed 10-30-07; 9:30 am]BILLING CODE 6820-KF-M

See what's new at <http://www.aol.com>

Attachment 2

Donna Farrar/EAC/GOV
12/04/2007 10:24 AM

To Edgardo Cortes/EAC/GOV@EAC
cc
bcc
Subject Fw: Comments re: administrative transfer of NVRA regulations

Donna J. Farrar

----- Forwarded by Donna Farrar/EAC/GOV on 12/04/2007 10:23 AM -----



"David Becker"
<dbecker@pfaw.org>
12/03/2007 03:27 PM

To HAVAINfo@eac.gov
cc
Subject Comments re: administrative transfer of NVRA regulations

To Whom It May Concern:

People For the American Way Foundation supports the proposal to administratively transfer to the U.S. Election Assistance Commission (EAC) regulations previously adopted and maintained by the Federal Election Commission regarding the National Voter Registration Act (NVRA). We note that the EAC states that "this administrative transfer of the regulations would make no substantive changes to the FEC regulations and would be made without public comment. The only changes made would be technical, such as the address and contact information for the responsible agency." We support this approach.

While it is important to update address and contact information for the responsible agency, it would be completely inappropriate, without full public hearings, public comment, study of the issues, and full transparency, to make any substantive changes to the regulations or the state-specific instructions of the national voter registration form. Any change that could impact how the NVRA is enforced or interpreted, or whether a specific state is compelled to accept the national voter registration form, is clearly a "substantive" change, and not merely technical.

Therefore, while we support the administrative transfer of the regulations, and the updates of addresses or contact information, we believe it would be a disservice to the voters that the EAC serves for it to adopt any changes that could possibly be interpreted as "substantive," as indicated above. Thank you for the opportunity to comment on this proposal.

David J. Becker

Director, Democracy Campaign
People For the American Way Foundation
2000 M Street, NW, Suite 400
Washington, DC 20036
(202) 467-2360 -- Direct
(202) 293-2672 -- Fax
dbecker@pfaw.org -- www.pfaw.org

Comments of

Wendy Weiser,
Deputy Director, Democracy Program

and

Myrna Pérez,
Counsel, Democracy Program

Brennan Center for Justice at NYU School of Law

Regarding Administrative Transfer of National Voter Registration Act Regulations

submitted to the

Election Assistance Commission

December 3, 2007

The Brennan Center for Justice at NYU School of Law thanks the EAC for seeking public comment on whether the EAC should transfer the regulations adopted and maintained by the Federal Election Commission (FEC) in connection with responsibilities originally delegated to the FEC under the National Voter Registration Act of 1993, 42 U.S.C. 1973gg-1 et seq. (NVRA). The regulations at issue, pertaining to the format and contents of the national mail voter registration form and the biannual report to Congress, have implications important to the voting rights of Americans.

The Brennan Center understands that the EAC proposes to administratively transfer the regulations previously adopted and maintained by the FEC regarding the NVRA to the EAC's code of Federal Regulations site and only to make technical changes to the mailing address and contact information for the responsible federal and state agencies. The Brennan Center supports such a transfer and urges the EAC to act to correct as necessary the EAC and state addresses and contact information.

The Help America Vote Act (HAVA) wholly transfers the FEC's responsibilities and obligations with respect to the national mail voter registration form to the EAC. When, as in the current situation, (a) the regulations sought to be transferred were properly adopted under the underlying statute and the Administrative Procedure Act (APA), and (b) the entirety of the issuing agency's entire rulemaking responsibility under the statute has been transferred to a new agency, the transferring of the regulations poses little concern and need not invoke a lengthy

rulemaking process. On the other hand, failure to transfer the regulations could cause unnecessary public confusion.

In this case, it is especially appropriate to expeditiously transfer the NVRA regulations and to correct the address and contact information for the federal and state agencies in order to effectuate the statute's purpose of facilitating voter registration. When Congress enacted the NVRA, it set forth its primary purpose as establishing procedures that will increase the number of eligible citizens who register to vote in elections for Federal office. Elections are looming in the months ahead and incorrect addresses on the mail registration form could cause prospective eligible voters to be disenfranchised, thus impeding Congress' primary purpose.

To be clear, providing the public with notice and an opportunity to comment on EAC activity, in addition to being required by law in numerous instances, may present the EAC with valuable insight as to the legality, practicality, and consequences of its activities. Not only should the EAC exercise restraint in seeking to invoke the statutory exceptions under the APA to the notice and comment requirements for rulemaking, but the EAC should voluntarily provide notice and comment opportunities even when doing so is not required by law and does not invoke unreasonable costs in terms of time and expense.

The Brennan Center is concerned, however, with any suggestion that the EAC may make other "technical" changes to the mail registration form and the accompanying state instructions. Although the correction of addresses and contact information is a ministerial change, virtually all other changes to the form and instructions are substantive in nature and must be subject to the formal APA notice and public comment process. To the extent that the EAC would like to classify other categories of changes as "technical" or ministerial, it should provide public notice of, and opportunity to comment on, its proposed procedures.

We again thank the EAC for seeking comments on this topic.



**ADVANCEMENT
PROJECT**
December 3, 2007

**VIA FAX (202) 566-3127
AND ELECTRONIC MAIL
TO HAVAinfo@eac.gov**

NVRA Comments
Election Administration Support Division
U.S. Election Assistance Commission
1225 New York Ave, NW, Suite 1100
Washington, DC 20005

Re: Comments on Proposed Administrative Transfer of NVRA Regulations from the
Federal Election Commission to the Election Assistance Commission

To Whom It May Concern:

On behalf of Advancement Project,¹ I submit this letter in response to the Commission's request and invitation for public comments regarding its proposed administrative transfer of the Federal Election Commission (FEC)'s National Voter Registration Act (NVRA) regulations, currently located at 11 C.F.R. Part 8, to the Election Assistance Commission.

Pursuant to Section 802 of the Help America Vote Act (HAVA) (42 U.S.C. § 15532), Congress transferred to the Election Assistance Commission (EAC) the responsibility to promulgate regulations under Section 9 of the National Voter Registration Act of 1993 (42 U.S.C. § 1973gg-7). Originally, prior to the enactment of HAVA, the FEC exercised that responsibility. As we understand it, the Commission proposes, by way of this administrative transfer, to adopt and re-codify the FEC's existing NVRA regulations without making any substantive changes to them at this time. The only proposed changes to the FEC's current regulations would be technical in nature, such as the substitution of the responsible agency's address and contact information for receiving the required biennial reports from chief state election officials pursuant to 11 C.F.R. § 8.7(a). Once that administrative transfer of the FEC's regulations is completed, the Commission would then proceed to consider substantive amendments to those regulations. Any such proposed substantive changes would be subject to full public notice and comment, as required by the Administrative Procedures Act.

Insofar as the Commission's proposed administrative transfer of the regulations is limited *solely* to adopting and re-codifying the FEC's existing regulations verbatim, except for the technical substitution of the responsible agency's address and contact information, Advancement Project would not be opposed to such action. The Commission has not proposed any other "technical" changes to the FEC's existing regulations in its notice and request for comment, an

1730 M Street, NW • Suite 910 • Washington, DC 20036 • 202.728.9557 • 202.728.9558 fax
ap@advancementproject.org • www.advancementproject.org

LA Office: 1545 Wilshire Boulevard • Suite 508 • Los Angeles, CA 90017 • 213.989.1300 • 213.989.1309 fax

¹ Advancement Project is a policy, communication, and legal action organization that supports organized communities in their struggles to achieve universal opportunity and a just democracy. Voter protection is a central component of our Power and Democracy program, which supports community-based organizing efforts that increase civic participation, improve election administration, and remove structural barriers to electoral participation in low-income and minority communities.

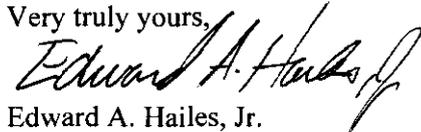
Advancement Project does not believe that any further “technical” changes to the FEC’s existing regulations would be appropriate by way of the Commission’s proposed administrative transfer.

In the event that the Commission decides to consider substantive changes to the NVRA rules after the completion of the administrative transfer, Advancement Project looks forward to full participation, by way of public comments and testimony, in that important next phase of the Commission’s work with respect to the NVRA. We previously submitted public comments on September 6, 2007, encouraging the Commission to establish clear, uniform, and easily understandable *national* guidelines to the states regarding their responsibilities under the NVRA, as a way of facilitating full and consistent implementation of the NVRA by state and local election officials. We described, in those comments, several ways that inconsistent implementation of the NVRA by several states is frustrating the NVRA’s essential goals and purposes to increase voter registration and enhance voter participation by eligible citizens by eradicating needless barriers to the voter registration process. Importantly, we encouraged the Commission, in any of its future rulemaking with respect to NVRA regulations, to take an approach that rejects and disavows additional barriers and burdens of proof on voters and voter registration groups and to remember the specific findings of Congress that “the unfinished business of registration reform is to reduce ... obstacles to voting to the *absolute minimum* while maintaining the integrity of the electoral process” and that “Congress should assist in *reducing barriers, particularly government-imposed barriers*, to applying for registration wherever possible.” H.R. Rep. No. 103-9 (emphasis added).

Finally, in light of the earlier voter registration deadlines that will necessarily accompany the decision of many states to advance their presidential preference primaries to the beginning of 2008 (many in January and February), Advancement Project strongly urges the Commission to take immediate steps to update the state-specific instructions on the National Mail Voter Registration Form so that they include the most-current addresses in each state where applicants should mail their completed voter registration applications. These minor updates to the National Form are vitally important to ensure that eligible citizens’ applications are timely directed to, and received and processed by, applicable state or local election officials.

As always, Advancement Project appreciates the opportunity to submit public comments and insight on these and other important issues that the Commission considers.

Very truly yours,



Edward A. Hailes, Jr.
Senior Attorney



LEAGUE OF WOMEN VOTERS®
OF THE UNITED STATES

December 3, 2007

President
Mary G. Wilson
Albuquerque, New Mexico

By Electronic Mail

Vice Presidents
Marlys Robertson
Boulder, Colorado

Sarah Diefendorf
San Francisco, California

NVRA Comments
Election Administration Support Division
U.S. Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005

Secretary-Treasurer
Elaine Wiant
Dallas, Texas

To the Attention of Mr. Edgardo Cortés, Election Research Specialist:

Directors

Judith Davis
Memphis, Tennessee

The League of Women Voters of the United States is pleased to support the proposal to administratively transfer to the U.S. Election Assistance Commission (EAC) regulations previously adopted and maintained by the Federal Election Commission regarding the National Voter Registration Act (NVRA).

Judy Duffy
Birchwood, Minnesota

We appreciate that the EAC has sought public comment on this proposal because we believe that providing the opportunity to comment helps builds understanding and support for the work of the EAC, leads to better decision-making in the long term, and is provided by law.

Xandra Kayden
Los Angeles, California

Section 802 of the Help America Vote Act transferred to the EAC all the authority under the NVRA exercised by Federal Election Commission. Thus, the League supports the proposed transfer of the appropriate regulations. We note that “this administrative transfer of the regulations would make no substantive changes to the FEC regulations.” We support the approach of making no substantive changes.

Donna Lauffer
Overland Park, Kansas

Odetta MacLeish-White
Gainesville, Florida

In addition, the proposal states that “the only changes made would be technical, such as the address and contact information for the responsible agency.” The League strongly supports the proposal to allow the responsible agency in each state and the EAC to update the single address to which voter registration applications forms should be submitted or to which requests for information should be directed. It is important that the public have the current address of the appropriate agency and that the state-specific portions of the mail voter registration application form contain this information. We believe that the EAC should update the address and contact information on a regular, periodic basis and that the chief State election official should provide that address and contact information to the EAC as part of that official’s responsibilities under Section 10 of the NVRA.

Elisabeth MacNamara
Atlanta, Georgia

Carolie Mullan
Lubbock, Texas

Carol Reimers
New York, New York

Executive Director
Nancy E. Tate

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We do not support, however, the approval of any additional unspecified changes that might be deemed to be “technical.” It is unclear what criteria or indicators the EAC, the staff, or the states might use to differentiate a “technical” change from other types of changes. In voter registration, “technical” requirements quickly become barriers to participation, and we see no authority for the EAC to approve such barriers without public notice and comment on a specific proposal. We do not support an indefinite, general or open-ended category of changes.

The League believes that the supplementary description in the proposal, quoted below, best summarizes the proposal, and we support it:

“The agency should administratively transfer regulations previously adopted and maintained by the FEC regarding the NVRA. The administrative transfer would move the existing FEC regulations (11 C.F.R. 8) to the EAC’s Code of Federal Regulations site and only make technical changes to the mailing address and contact information for the agency.”

As stated above, we support the proposal to transfer the regulations and to allow for the updating of state agency and EAC address and contact information.

Respectfully submitted,

/ s /

Mary G. Wilson
President

Attachment 3

EAC Efforts Regarding Its Responsibilities under the NVRA

GENERAL DISCUSSION OF RESOURCES:

When the National Voter Registration Act (NVRA) first passed, the Federal Election Commission (FEC) had four full time staff working on NVRA implementation. In addition, at least two attorneys from the Office of the General Counsel worked on promulgating the initial regulations. After 13 months, the FEC published final rules in the *Federal Register*. Five months later, the FEC created the National Voter Registration Form. However, we do not have a record of the financial resources FEC utilized during this process.

NVRA is the responsibility of the EAC's Election Administration Support Division, which also handles the management of HAVA funds, the Help America Vote College Program, and the EAC Language Accessibility Program. Currently, the EAC has no full time staff allocated to NVRA issues.

NVRA REGULATIONS/FEDERAL FORM (*Total time: 18 – 28 Months*). The NVRA (as amended by HAVA) tasks the EAC to (1) develop a Federal, uniform voter registration form that must be accepted and used by states, and (2) publish regulations as necessary to develop the Federal Form and report to Congress on the impact of the NVRA. The following are the steps EAC staff believes are needed to carry out EAC's regulatory authority and responsibilities under the NVRA.

1. **Scope of Regulations (1- 2 Months)**. The FEC originally took a limited approach in exercising its NVRA regulatory authority. It limited its regulations to those steps needed to gather information from states. The voter registration landscape has changed considerably since the passage of NVRA. States are passing legislation impacting this area beyond voter eligibility requirements (i.e. proving eligibility and regulating voter registration groups).
 - a. Policy Issues (what should EAC do)
 - b. Legal Authority Issues (what can EAC do)
 - c. Practical Issues (what is EAC capable of doing)
2. **Development of Code of Federal Regulations (CFR) Site Plan (1 - 2 Months)**. The EAC must develop its CFR cite. We have begun the process of securing its CFR cite, which will probably be Title 11 (Federal Elections), Chapter 2.
3. **Advanced Notice of Proposed Rule Making (3 Months)**. The Advanced Notice of Proposed Rule Making (ANPRM) allows the public to provide comments to EAC prior to the development of proposed rules. The ANPRM would provide a discussion of the scope of the proposed regulations determined by the Commission and would coincide with the initial information gathering and research phase.
4. **Contract for Managing Comments and Web Portal (.5 – 2 Months)**. The EAC will need assistance in the collection, organization, management and review of comments. This would include an electronic, web-based means of collecting comments (per previous EAC experience).

Attachment 3

EAC Efforts Regarding Its Responsibilities under the NVRA

- 5. Research/Information Gathering/Working Groups/Hearings (4 – 7 Months).** EAC must initiate an inclusive, transparent process to gather information on state needs, the concerns of voter registration groups, and the interests of voters. The production of formal and expedient research in this area, including surveys and data collection, would also be helpful. Holding hearings throughout the country (6-8) over a three-month period would greatly benefit the process by getting public input from election officials, advocacy groups, and members of the public that would not normally be able to travel to Washington to participate in the process. Finally, getting working groups consisting of election officials, advocacy groups, and other interested parties together to talk with staff in an open, small group environment regarding specific issues would be essential.
- 6. Reassess Proposed Scope of Regulations (1- 2 Months).** After the initial research period, we would need to reassess the regulations' purpose, scope and goals. The process should reflect the information gathered in the steps above and provide staff with a clear objective and outline for the drafting process.
- 7. Drafting Proposed Regulations (2 - 3 Months).** EAC staff will need to take all information gathered during the process and the scope determined by the Commissioners and produce concise and explicit regulations for NVRA.
- 8. Consult with Chief State Election Officials (1 -2 Months).** The NVRA requires the EAC to consult with chief state election officials before issuing regulations. This may be done by sending each a draft and soliciting written comments or convening a conference on the subject. Another alternative is conducting a virtual meeting on our Web site.
- 9. Paperwork Reduction Act (PRA) Process (3 -5 Months).** As we collect information from the States (for the report to Congress) and the public (through the voter registration form), the PRA applies. It is important to note that the FEC is exempt from the PRA and this made it easier for them to make changes to the form and collect information from states in a timely manner. EAC is not exempt from the PRA, which is why which means we must add at least an additional 3 to 5 months to the entire process.
- 10. Publication for Public Comment (3 – 4 Months).** Rule making requires a public comment period. EAC should expect this period to be at least 90 days, given the importance of the issue. During this period, EAC may want to hold additional public hearings regarding the proposed regulations.
- 11. Review of Comments & Re-write of Regulation (2 – 3 Months).**
- 12. Publication of Final Rule.** Final rules are usually effective 30 days after they are published in the *Federal Register*.
- 13. New National Voter Registration Form (1 Month).** Based upon EAC determinations in revised regulations, staff must create a new federal form incorporating those revisions.

Attachment 3

EAC Efforts Regarding Its Responsibilities under the NVRA

The EAC must be able to sufficiently describe or outline the form (beyond the regulatory requirements) such that it may be able to contract for its final design.

- 14. Professional Design (2 – 4 Months).** Must contract with graphic experts to ensure the form is accessible, practical, efficient, and readable.
- 15. Public Input/Chief State Election Official Input (2 – 6 Months).** Similar to the processes above, the EAC shall create a plan to gather feedback on the draft form. NVRA requires feedback from Chief State Election Officials. Hearings, publications, and meetings may be used to seek input from the public and interest groups.
- 16. Paperwork Reduction Act Process for the Federal Form (3 – 5 Months).** The Federal Form collects data from citizens, thus the form must be cleared pursuant to the PRA.
- 17. Design of Web Based Form.** With little additional effort, the EAC could create a web based, electronically fillable form.

NVRA GUIDANCE (*Total time – 8-12 Months*). The NVRA requires the EAC to provide information to states regarding their responsibilities under the statute. NVRA was passed well over a decade ago. As time passes and new legislation (like HAVA) is implemented, the focus of the election community has moved away from the NVRA. At the same time, the requirements of HAVA (such as the statewide voter registration databases) impacts how NVRA is administered. Following in the footsteps of the FEC, the EAC should develop guidance on implementing the NVRA. EAC's guidance should reflect both NVRA and HAVA requirements and provide guidance for the proper administration of the voter registration process.

- 1. Scope of Guidance (1-2 Months).** This will be determined by the scope of the regulations created by EAC. The guidance should give states a clear understanding of how to properly implement the new regulations and how new regulations may differ from previously set federal policy on specific issues.
- 2. Research/Information Gathering/Working Groups/Hearings (6-8 Months).** The research and production of guidance should happen simultaneously with the development of new regulations. This is very important so that the lag time between the issuance of final regulations and guidance on how to implement those new regulations is shortened as much as possible.
- 3. Publication of Final Guidance.**