



OFFICE OF INSPECTOR GENERAL

U.S. Election Assistance Commission

DATE: December 12, 2022

TO: U.S. Election Assistance Commission Interim Executive Director, Mark Robbins
U.S. Election Assistance Commission Acting General Counsel, Amanda Joiner

FROM: U.S. Election Assistance Commission Inspector General, Brianna Schletz

SUBJECT: Management Advisory 23-01: Define voter registration, voter education, and get-out-the-vote

We are issuing this Management Advisory to alert the U.S. Election Assistance Commission's (EAC's) Interim Executive Director and Acting General Counsel about an identified risk. Specifically, EAC may be inadvertently providing inconsistent guidance to grantees and there is a risk that unallowable activities may be taking place because the terms "voter registration," "voter education," and "get-out-the-vote" (GOTV) are not defined in the Help America Vote Act of 2002 (HAVA).¹ Also, EAC has not adopted its own formal definitions.

Background

Under HAVA, grantees are prohibited from using their grant funding for certain activities. While HAVA Section 303 says that states may implement a statewide voter registration list, it does not mention support for voter registration activities.² And, Section 101 HAVA funds are limited to "educating voters concerning voting procedures, voting rights, and voting technology."³

These restrictions are further described by EAC Funding Advisory Opinion FAO-08-005, which states that "[n]either Section 101 nor 251 funds may be used to conduct voter registration drives or get out the vote efforts; including advertising for the event, setting up booths, and paying salaries of employees who register new voters."⁴

The advisory opinion asks states with questions about allowable activities to provide their specific circumstances to EAC so it can determine if the state's proposed activity is voter education or GOTV.

¹ Pub. L. No. 107-252.

² Pub. L. No. 107-252, 116 Stat. 1666, 1708-14 (codified at 52 U.S.C. § 21083).

³ Pub. L. No. 107-252, 116 Stat. 1666, 1668-70 (codified at 52 U.S.C.A. § 20901(b)(1)(C)).

⁴ [U.S. Election Assistance Commission Funding Advisory Opinion FAO-08-005](#).

Identified Risks

Without clear definitions of “voter registration,” “voter education,” and “GOTV,” there is an increased risk of HAVA grantees using funds for unallowable activities. Since FY 2006, Office of Inspector General (OIG) [audits of HAVA grants](#) have resulted in 19 recommendations and just over \$1 million dollars in questioned costs related to GOTV and voter registration activities. Following are examples from those reports:

- Mississippi expended HAVA funds for GOTV and voter registration forms, which are not allowable under the award's terms and conditions or HAVA.⁵
- Florida charged salaries and benefits for poll workers serving at voter registration drives to HAVA grants, resulting in \$139,056 in questioned costs.⁶
- South Dakota spent \$1,474 in HAVA funds for letters containing a sample voter registration form to be distributed to K-12 students for voter education. Students in grades K-12 are not eligible voters, making the expense unallowable.⁷
- Colorado charged \$315,830 to its HAVA grant for contractual services associated with a voter registration campaign, which included only an incidental educational component. As a result, the charges were questioned.⁸

As recently as this year, OIG has received questions from Congress and other stakeholders about possible HAVA-funded GOTV and voter registration activities in other states. Not all stakeholders have agreed on past determinations of the allowability of expenses and what constitutes an incidental educational component.

Additionally, use of state-specific circumstances to determine if a voter registration activity is allowable—educational rather than GOTV—increases the risk and perception of human bias and error. Ad hoc decisions on the allowability of activities also risks inconsistency across grantees.

Based on a review of correspondence between EAC and one grantee, the direction that EAC has provided may have been inconsistent as it relates to denoting allowable voter registration activities under HAVA grants. One recent communication noted that “adding additional staff and purchasing equipment such as laptops for outreach tables ... to expand and increase the

⁵ EAC OIG, *Administration of Payments Received Under the Help America Vote Act by the Mississippi Secretary of State*, August 2017 ([E-HP-MS-01-16](#)).

⁶ EAC OIG, *Administration of Payments Received Under the Help America Vote Act by the State of Florida*, November 2008 ([E-HP-FL-02-08](#)).

⁷ EAC OIG, *Administration of Payments Received Under the Help America Vote Act by the South Dakota Secretary of State*, July 2017 (E-HP-SD-04-16).

⁸ EAC OIG, *Administration of Payments Received Under the Help America Vote Act by the Colorado Secretary of State*, January 2014 ([E-HP-CO-05-12](#)).

ability, and information related to registering/updating voter registrations” is an allowable activity under HAVA grants.

Next Steps

EAC should develop a plan to ensure that staff are providing consistent guidance and know when to seek General Counsel guidance when something requires interpretation. As part of this, EAC should adopt definitions of “voter registration,” “voter education,” and “GOTV” and ensure such definitions are publicly available and incorporated into EAC’s policies and procedures, in addition to HAVA grant guidance and certifications. EAC may consider leveraging definitions used in the Bipartisan Campaign Reform Act of 2002⁹ or in the subchapter of the Code of Federal Regulations¹⁰ issued by the Federal Election Commission (FEC) to implement the Federal Election Campaign Act of 1971,¹¹ as amended.

EAC Response

On November 18, 2022, we provided EAC with a draft of this management advisory for its review and comment. EAC provided context regarding its practices for providing guidance to grantees and said that it will consider this advisory as it continues to improve operations.

The full text of EAC’s response is included as Attachment 1.

⁹ Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81, 95-96 (codified at 52 U.S.C. § 30101).

¹⁰ 11 CFR. § 100.24(a) (2022).

¹¹ Pub. L. No. 92-225.



U.S. ELECTION ASSISTANCE COMMISSION
633 3rd St. NW, Suite 200
Washington, DC 20001

DATE: December 9, 2022

TO: Brianna Schletz, U.S. EAC Inspector General

FROM: Mark A. Robbins, U.S. EAC Interim Executive Director
Amanda Joiner, U.S. EAC Acting General Counsel

RE: Response to Inspector General's Management Advisory: Define Management Advisory: Define voter registration, voter education, and get-out-the-vote

Mark A. Robbins
Amanda Joiner

The Election Assistance Commission (EAC) appreciates the November 18, 2022 Management Advisory issued by the Inspector General which identified a potential risk in EAC guidance to Help America Vote Act (HAVA) grant recipients. Specifically, the advisory notes that the EAC and grantees may benefit from the formal adoption of definitions of the terms “voter registration,” “voter education,” and “get out the vote” or “GOTV.” The advisory also recommends a plan to ensure that staff provide consistent guidance and know when to seek General Counsel guidance when an issue requires interpretation. We value the feedback and perspectives of the Inspector General on these important matters and look forward to improving our operations accordingly.

Procedural History

In an effort to provide clarity to the established procedures for providing grantees guidance on allowable activities, I am enclosing the 2015 EAC Organizational Management Policy Statement and the 2015 Policy Regarding Authority to Issue Funding Decisions on Use of HAVA Funds. Taken together, these two controlling documents demonstrate the formal processes through which grantees seek guidance on allowable activities under HAVA.

2015 Policy Regarding Authority to Issue Funding Decisions on Use of HAVA Funds

In an exercise of their policymaking responsibilities under the 2015 EAC Organizational Management Policy Statement, the Commission issued the 2015 Policy Regarding Authority to Issue Funding Decisions on Use of HAVA Funds to provide a mechanism by which legal or factual questions concerning the use of HAVA funds can be routed to the Commissioners for consideration. This Policy replaced the original Advisory Opinion Process adopted by the Commission in 2008. The new Policy makes clear that the purpose of the document is not to replace or disrupt the role of the Office of Grants Management, which has the responsibility of issuing guidance, support, and approval/denial of expenditures of funds under HAVA and relevant federal authorities. In accordance with the Policy, requests which fall under at least one of the four enumerated circumstances are to be routed by the Office of Grants Management to the General Counsel to determine if the request is eligible for Commissioner review.

Current Guidance and Definitions

Pursuant to the controlling policies discussed above, the Office of Grants Management routinely

answers grantee questions, provides appropriate guidance, and communicates with grantees on a variety of issues relating to HAVA funding. In addition to the text of the Help America Vote Act, the Grants team also relies on federal authorities such as historic Office of Management and Budget Circulars, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards found at 2 CFR 200, legal determinations issued by the Government Accountability Office, and past precedent on matters previously addressed by the Commission in providing this support to grantees.

To that end, the Grants team has posted answers to several Frequently Asked Questions concerning the allowable use of HAVA funds, including the use of the funds for voter education, get out the vote (GOTV) efforts, and maintenance of a HAVA compliant voter registration system.¹ In particular, when providing guidance concerning GOTV to grantees the Grants team has adhered to the parameters of EAC Funding Advisory 08-005 which clarified that a GOTV effort is “encouraging citizens to vote on Election Day.” The Grants division routinely consults the Office of the General Counsel on novel or complex questions that arise during their communications with grantees and routes issues through the process outlined by the 2015 Policy as appropriate.

Next Steps

Due to the Election Security grant funding appropriated by Congress in 2018, 2020, and 2022, and the Coronavirus Aid, Relief, and Economic Security (CARES) Act funding appropriated by Congress in 2022, the Grants division has experienced a surge in requests for assistance from grantees on the use of these HAVA funds. In response to these requests, the Grants division has worked closely with the Office of the General Counsel to assess the applicability of existing guidance and identify areas which could benefit from an update. Grants and the Office of the General Counsel have already held one working meeting to discuss the need for clarifying definitions of certain terms, including and especially GOTV, in guidance provided to grantees. The EAC Clearinghouse division was also represented in this meeting in an effort to ensure definitions are utilized uniformly in all agency operations. The Grants division is currently canvassing their existing advisories to identify all relevant guidance and analyze how implementing standardized definitions of these and other terms may impact their operations.

Additionally, the EAC has taken numerous steps in the past two years to review and update all agency policies and procedures. These efforts have included close reviews of the standard operating procedures (SOP) of the Office of Grants Administration and how those procedures intersect with the program activities of the Grants division. The Grants team recently utilized a contractor to assist in updating their SOP and plans to analyze the potential impact of including new processes for consulting with the Office of the General Counsel in that SOP. Grants, along with all EAC divisions, continues this important work which will improve the agency’s ability to meet the mission of HAVA.

The EAC is appreciative of the work of the Inspector General to identify and provide feedback on these identified risks. The agency looks forward to incorporating these views into the ongoing plans to improve operations.

Enclosures: 2

¹ EAC Grants FAQs, [accessed December 8, 2022](#)

Adopted

2/24/15

**Election Assistance Commission
Organizational Management Policy Statement**

Purpose: The purpose of this statement is to define the Election Assistance Commission (“EAC” or “Commission”) organizational management policy with regard to leadership definition and statutory duties, policymaking and day-to-day operations, an order of succession in case of vacancy, and a procedure for ongoing operation of the Commission’s Boards and Technical Committee.

Effect on Other Documents: This document supersedes the Roles and Responsibilities Statement dated September 15, 2008; the EAC Order of Leadership Succession Memorandum dated January 3, 2012; the EAC FACA Board Activity Suspension Memorandum of January 12, 2012, and replaces any existing EAC policy or document that is inconsistent with its provisions.

Effective Date: February 24, 2015

Summary: Part I defines the Commission and its duties; Part II provides for the division of duties with regard to policy making and day-to-day operations; Part III establishes an order of succession in case of vacancy/ies in leadership and/or executive management; Part IV provides a procedure for ongoing operation of the Commission’s Standards Board, Board of Advisors and Technical Guidelines Development Committee.

I. The Election Assistance Commission

The U.S. Election Assistance Commission was established as an independent entity by the Help America Vote Act of 2002 (“HAVA”) 42 U.S.C. § 15321. The Commission consists of four members appointed by the President, by, and with the advice and consent of the U.S. Senate. 42 U.S.C. §15323.

The duties of the Commission are to serve as a national clearinghouse and resource for compiling information on and reviewing procedures with respect to the administration of Federal elections. 42 U.S.C. §15322. The Commission has no regulatory or rulemaking authority, nor is it authorized to impose any action or requirement on any State or unit of local government, except to the extent permitted under the National Voter Registration Act of 1993 (for the purpose of developing the mail voter registration application form for elections for Federal office). 42 U.S.C. §1973gg-7(a).

Any action of the Commission authorized by HAVA requires approval of at least three of its members. 42 U.S.C. §15328. As an agency defined by the Government in the Sunshine Act, 5 U.S.C. §522(b), deliberations resulting in official agency business must be properly noticed and conducted in public (with specific exceptions). 5 U.S.C. §522(b)(a)(2), (c)(1)-(10).

HAVA provides the Commission with a staff, including an Executive Director, General Counsel and other staff. 42 U.S.C. §15324. The Executive Director is appointed by the Commissioners, following the procedures established by HAVA, including taking into

consideration the recommendations of candidates nominated by the Standards Board and by the Board of Advisors (each established by HAVA, 42 U.S.C. §15341). 42 U.S.C. §15324. The General Counsel is appointed by the Commission and serves under the Executive Director. Id. Other Staff may be appointed by the Executive Director as he or she considers appropriate subject to rules prescribed by the Commission. Id.

II. Division of authority regarding policymaking and day-to-day operations

1. The Commissioners shall make and take action in areas of policy. Policymaking is a determination setting an overall agency mission, goals and objectives, or otherwise setting rules, guidance or guidelines. Policymakers set organizational purpose and structure, or the ends the agency seeks to achieve. The EAC makes policy through the formal voting process.

2. The Executive Director in consultation with the Commissioners is expected to: (1) prepare policy recommendations for commissioner approval, (2) implement policies once made, and (3) take responsibility for administrative matters. The Executive Director may carry out these responsibilities by delegating matters to staff.

III. Order of succession upon vacancy of all the Commissioners and the Executive Director

Pursuant to National Security Presidential Directive-51/Homeland Security Presidential Directive-20 (May 2007), and Department of Homeland Security Federal Continuity Directive (FCD) 1 (February 2008), an agency “is responsible for establishing, promulgating, and maintaining orders of succession to key positions As a minimum, orders of succession must do the following: 1. Establish an order of succession for the position of agency head. There should be a designated official available to serve as acting head of the agency until that official is appointed by the President or other appropriate authority, replaced by the permanently appointed official, or otherwise relieved.” (FCD 1 p. E-1)

Under the present organizational structure, upon a vacancy of all Commissioners and the Executive Director, the head of the agency shall assume the responsibilities of the Executive Director and the order of succession shall be as follows:

1. General Counsel
2. Chief Operating Officer
3. Chief Financial Officer
4. Communications & Clearinghouse Director
5. Voting Systems Certifications Director
6. Election Administration Research & Programs Director
7. Grants Administrator

Should any position in the order of succession be held by an individual in an “acting” capacity, that position is passed over in favor of the next in line. Once

position has been designated head of the agency in the order of succession, the succession does not revert back up the line when a vacant position (or position previously held by an individual in an acting capacity is replaced by a permanent employee in that position) is filled. Filling vacant positions passed over in the line of succession will only retroactively alter the exercise of the acting Executive Director responsibilities if done so by a majority vote of a quorum of Commissioners in the absence of a full time Executive Director.

IV. Procedure for ongoing operation of the Commission's Boards and Technical Committee

HAVA created two advisory boards and a committee ("boards") that serve to help inform and comment on various aspects of the EAC's policy development. 42 U.S.C. §§15341-15362. These boards were created because Congress recognized the importance of the Commission receiving feedback from the various stakeholder groups represented on the boards throughout the policy development and implementation processes.

The three boards are as follows:

1. Standards Board
2. Board of Advisors
3. Technical Guidelines Development Committee

Should the EAC again find itself in a position where a Commissioner departs the agency or all Commissioner positions become vacant, it is imperative that the boards remain constituted and functional. The following procedure shall be used to ensure the continued operation of the boards:

- The Chair of the Commission shall assign Commissioners to serve as Designated Federal Officers ("designee") to each of the boards.
- Prior to the departure of the Commissioner assigned as the EAC designee to a specific board, that Commissioner may designate another Commissioner to be the EAC required designee to the board. If there are no Commissioners remaining, then the departing Commissioner may designate the Executive Director or an appropriate staff member to serve as the official EAC designee to the board.
- Should a departing Commissioner assigned to a board fail to assign a replacement EAC designee to the board then the duties shall be assigned by the Chair to a remaining Commissioner. If all four Commissioner positions become vacant, and a designee has not been assigned to a board or boards, then the Executive Director may assign an appropriate designee to be the official EAC designee to a board or boards.

- If after a period when all Commissioner positions are vacant, the President appoints one or more Commissioners to fill a vacancy or vacancies on the Commission, the new Chair of the Commission may replace the Executive Director or staff member designee to a board with a Commissioner as the official designee.
- Membership of the Boards and Committee should continue within the parameters as defined by HAVA, 42 U.S.C. §15323 & 42 U.S.C. §15343.

Biannually, the Executive Director shall work with the Office of Personnel Management in consultation with the Commission to do an assessment of the agency's staffing needs to accomplish HAVA's requirements.

Should there be a change in the law that invalidates one provision of this document, the rest of the document remains in effect unless or until the Commission votes on a new document.



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

BEFORE THE ELECTION ASSISTANCE COMMISSION

In the Matter of)
)
Policy Regarding Authority to Issue Funding)
Decisions on Use of HAVA Funds)
)

CERTIFICATION

I, Christy A. McCormick, Chairwoman of the Election Assistance Commission, do hereby certify that on May 28, 2015 the Commission decided by a vote of 3-0. The following action(s) were taken:

1.

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

Commissioners Hicks, Masterson and McCormick approved the recommendation.

Attest:

5/28/2015
Date

Christy A. McCormick
Christy A. McCormick
Chairwoman



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

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: May 28, 2015, 1:00p.m.

BALLOT DEADLINE: June 1, 2015, 1:00p.m.

COMMISSIONERS: HICKS, MASTERSON AND MCCORMICK

SUBJECT: POLICY REGARDING AUTHORITY TO ISSUE FUNDING DECISIONS ON USE OF HAVA FUNDS

I approve the recommendation.

I disapprove the recommendation.

I object to the recommendation.

I am recused from voting.

COMMENTS: _____

DATE: 5/28/2015

SIGNATURE: Matthew V. Masterson

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairwoman. Please return the ballot no later than date and time shown above.

FROM ALICE P. MILLER, CHIEF OPERATING OFFICER & ACTING
EXECUTIVE DIRECTOR



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

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: May 28, 2015, 1:00p.m.

BALLOT DEADLINE: June 1, 2015, 1:00p.m.

COMMISSIONERS: HICKS, MASTERSON AND MCCORMICK

SUBJECT: POLICY REGARDING AUTHORITY TO ISSUE FUNDING DECISIONS ON USE OF HAVA FUNDS



I approve the recommendation.

()

I disapprove the recommendation.

()

I object to the recommendation.

()

I am recused from voting.

COMMENTS: _____

DATE: 5/28/15

SIGNATURE: *[Handwritten Signature]*

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairwoman. Please return the ballot no later than date and time shown above.

FROM ALICE P. MILLER, CHIEF OPERATING OFFICER & ACTING EXECUTIVE DIRECTOR



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

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: May 28, 2015, 1:00p.m.

BALLOT DEADLINE: June 1, 2015, 1:00p.m.

COMMISSIONERS: HICKS, MASTERSON AND MCCORMICK

SUBJECT: POLICY REGARDING AUTHORITY TO ISSUE FUNDING DECISIONS ON USE OF HAVA FUNDS

- I approve the recommendation.
 I disapprove the recommendation.
 I object to the recommendation.
 I am recused from voting.

COMMENTS: _____

DATE: 5/28/2015 **SIGNATURE:** Ching Shue

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairwoman. Please return the ballot no later than date and time shown above.

FROM ALICE P. MILLER, CHIEF OPERATING OFFICER & ACTING
EXECUTIVE DIRECTOR



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

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: May 28, 2015, 1:00p.m.

BALLOT DEADLINE: June 1, 2015, 1:00p.m.

COMMISSIONERS: HICKS, MASTERSON AND MCCORMICK

SUBJECT: POLICY REGARDING AUTHORITY TO ISSUE FUNDING DECISIONS ON USE OF HAVA FUNDS

- () I approve the recommendation.
- () I disapprove the recommendation.
- () I object to the recommendation.
- () I am recused from voting.

COMMENTS: _____

DATE: _____ **SIGNATURE:** _____

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairwoman. Please return the ballot no later than date and time shown above.

FROM ALICE P. MILLER, CHIEF OPERATING OFFICER & ACTING EXECUTIVE DIRECTOR



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

MEMORANDUM

TO: Commissioners Hicks, Masterson and McCormick

FROM: Alice P. Miller 
Chief Operating Officer & Acting Executive Director

DATE: May 28, 2015

RE: Policy Regarding Authority to Issue Funding Decisions on Use of HAVA Funds

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

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

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

The Grants Office will respond to day-to-day and routine HAVA questions that do not have policy implications. The Office of Management and Budget (OMB) Circulars, which were created to “*establish [the] principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally recognized Indian tribal*

governments typically provide the standard used by federal grants staff to answer these questions.

RECOMMENDATION:

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

Staff Recommendation Regarding the Advisory Opinion Process (Policy Regarding Authority to Issue Funding Decision on Use of HAVA Funds)

SUMMARY

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

Draft Policy

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

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

The request must specify the question of law or fact at issue and why it is subject to Commissioner consideration. It should discuss, when appropriate, any relevant court or other decisions, and any other analysis of the issue that may assist the Commissioners in its decision-making. If it is a request for reconsideration, the request should document prior EAC matters raising the same issue. The Grants Office will direct all requests to the EAC's General Counsel who will determine, in consultation with the Commissioners, if the question is eligible for consideration. The General Counsel will prepare a recommendation and circulate the recommendation to the Commissioners for consideration. In the event of an objection, subject to a Commission Tally Vote, the matter shall be placed on a future meeting agenda consistent with the Sunshine Act, 5 U.S.C. 552b(g). Extensions days will be granted at the discretion of Commissioners.

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

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

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

Recommendation

Rescind the "Policy Regarding the Use of HAVA Funds" adopted by the Commission on April 16, 2008, which established the current Advisory Opinion Process. Replace the rescinded policy. This new process ensures all substantive questions with policy implications from HAVA stakeholders are routed through the General Counsel's office to Commissioners for consideration and possible response.

DRAFT