



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

**U.S. Election Assistance Commission**  
**Funding Advisory Opinion**  
**FAO-08-006**

**Requestor:**

Illinois (AOR-08-007)

**Question:**

May an election jurisdiction sell Help America Vote Act (HAVA)-funded voting equipment which will be replaced and use the revenue from the sale to finance costs of the new equipment or other items as provided for in Sections 101 or 251 of HAVA?

**Determination:**

Election jurisdictions may use the revenue from the sale<sup>1</sup> of HAVA-funded equipment to pay for the cost of the replacement equipment. Further, if there is a balance of revenue after financing the cost of replacement equipment, the remaining revenue may be used to fund other items/activities authorized by Sections 101 or 251 of HAVA.

These actions are consistent with the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments*.<sup>2</sup> In particular, the Code of Federal Regulations [41 CFR 105-71.132(c)(4)] states that:

When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

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<sup>1</sup> A policy clarification approved and issued by Commissioners on March 20, 2008 determined that “it is ‘reasonable’ pursuant to the OMB [Office of Management and Budget] circulars for state governing jurisdictions to use HAVA funds to replace voting systems purchased with HAVA funds, as long as such purchases comply with HAVA. States will have the flexibility and opportunity to use HAVA funds to meet the requirements of title III or to improve the administration of elections for Federal office.” Thus, there will be situations where election jurisdictions sell HAVA-funded voting equipment as part of a replacement effort, or when the equipment is no longer functional.

<sup>2</sup> The General Services Administration and the Election Assistance Commission informed States upon the award of Help America Vote Act funds that the funds were subject to the requirements contained in the “Common Rule.” The Common Rule contains the uniform administrative requirements for grants and cooperative agreements with states and local governments. As EAC has not yet published the Common Rule in the Code of Federal Regulations (CFR), it refers states to 41 CFR Part 105-71, which contains GSA’s publication of the Common Rule. The document is referred to as the Common Rule because all Federal agencies use the same or common administrative requirements that were contained in OMB Circular A-102.

In regard to acquisition of equipment, the Election Assistance Commission (EAC) waived the requirement for pre-approval of voting equipment that complies with Section 301 of HAVA and for any computer equipment used solely for the purpose of developing or operating the statewide voter registration list. Consistent with that policy, EAC will not require states to obtain pre-approval for the sale or trade-in of said equipment from which the revenue will be used to finance new equipment of other HAVA-authorized activities. However, election jurisdictions must keep records to demonstrate the cost of new equipment, such as contracts, vendor invoices, and payment vouchers. When equipment is sold, as opposed to traded-in, records such as sales agreements, cancelled checks, and/or records of deposits of revenue from the sale into an election fund must be maintained to document the amount of sales revenue.

See FAO-08-007 for EAC policy on the disposition of equipment purchased with HAVA funds.