



UNITED STATES ELECTION ASSISTANCE COMMISSION

TESTIMONY 2006 APPROPRIATIONS REQUEST

APRIL 14, 2005

PRESENTED TO THE SUBCOMMITTEE ON
TRANSPORTATION, TREASURY, HOUSING
AND URBAN DEVELOPMENT, THE
JUDICIARY, AND INDEPENDENT AGENCIES
OF THE HOUSE APPROPRIATIONS
COMMITTEE



Good morning Mr. Chairman and Members of the Subcommittee. Seated before you today are the four members of the U.S. Election Assistance Commission (EAC): Gracia Hillman, Chair; Paul DeGregorio, Vice Chairman; Ray Martinez, III; and DeForest B. Soaries, Jr. Our biographies are attached to this statement. (Appendix 1)

We are pleased to be here this morning to discuss the current and anticipated accomplishments of EAC in Fiscal Year 2005 as well as its anticipated work and budgetary needs for Fiscal Year 2006. In our testimony, we will review the country's progress in implementing the Help America Vote Act of 2002 (HAVA), the improvements in election administration that HAVA has afforded, and EAC's plans to continue the implementation of HAVA in 2006.

HAVA marks the first Federal program of its kind in the history of voting in this country. It is the first time that the Federal Government has funded an election reform effort. HAVA's changes to the voting process in Federal elections are substantial. States were required to meet the first HAVA deadlines on January 1, 2004. This was less than one month after the EAC Commissioners were appointed and confirmed. Even though work on the implementation of HAVA has been ongoing for a relatively short period of time, we are pleased to report that HAVA has resulted in positive changes to election administration. But, there is substantial work left to be done to fully realize HAVA's goals and objectives.

We appreciate the vested interest that this Subcommittee has in our work. We recognize the importance of what you have done for America as the appropriators of HAVA and look forward to today's discussions.

INTRODUCTION

The Help America Vote Act represents a comprehensive and balanced approach to election reform. HAVA focuses not only on voter access, but also on deterring fraud. It recognizes the historic and significant roles that state and local governments play in running elections, while requiring additional programs and procedures for the administration of Federal elections. HAVA further balances these mandated activities with the appropriation of Federal funding to assist the States in meeting those requirements. Toward the goal of improving the administration of Federal elections, HAVA requires that States implement the following new programs and procedures:

- | | |
|---|---------------------------------------|
| ✓ Provisional Voting | ✓ Statewide Voter Registration Lists |
| ✓ Voting Information | ✓ Voter Identification Procedures |
| ✓ Updated and Upgraded Voting Equipment | ✓ Administrative Complaint Procedures |

Provisional voting is a "fail safe" voting procedure for persons who believe themselves to be eligible, registered voters, but whose names do not appear on the precinct list. These persons can cast a provisional ballot, preserving their intentions and selections in each of the Federal



racers, while allowing election officials additional time to verify their eligibility to vote. The ballots of those persons subsequently determined to be registered and eligible to vote will be counted. HAVA's voting information requirement prescribes that information regarding the process of voting, voters' rights, and instructions on how to file a complaint about voting shall be provided in the polling places on election day. States must also develop administrative complaint procedures whereby voters can file and have heard complaints regarding election administration, particularly the implementation of HAVA requirements in Federal elections. HAVA requires election administrators to implement, in Federal elections, a system of identifying and verifying the identities of first time voters. Voters are required to provide identifying information at the time of registration, and if not provided, are required to present additional identification at the polling place on election day. States must have complied with these requirements by January 1, 2004.

HAVA also mandates significant technological changes to the voter registration and voting processes. First, States must develop and implement a "single, uniform, official, centralized, interactive computerized statewide voter registration list." This list comprises the official and complete list of registered voters and must be verified for accuracy and validity by comparing the names on the central list to other available government information, such as information regarding deceased persons maintained by the Bureau of Vital Statistics, identification information maintained by the Social Security Administration, and, where applicable, lists of convicted felons. Second, States must replace punch card and lever voting machines with voting systems that allow a voter to change his or her selection prior to casting a ballot, create a paper record with manual audit capability, and allow disabled voters the same opportunity for access and participation in the voting process as that afforded to able voters. States must comply with these technological changes by January 1, 2006.

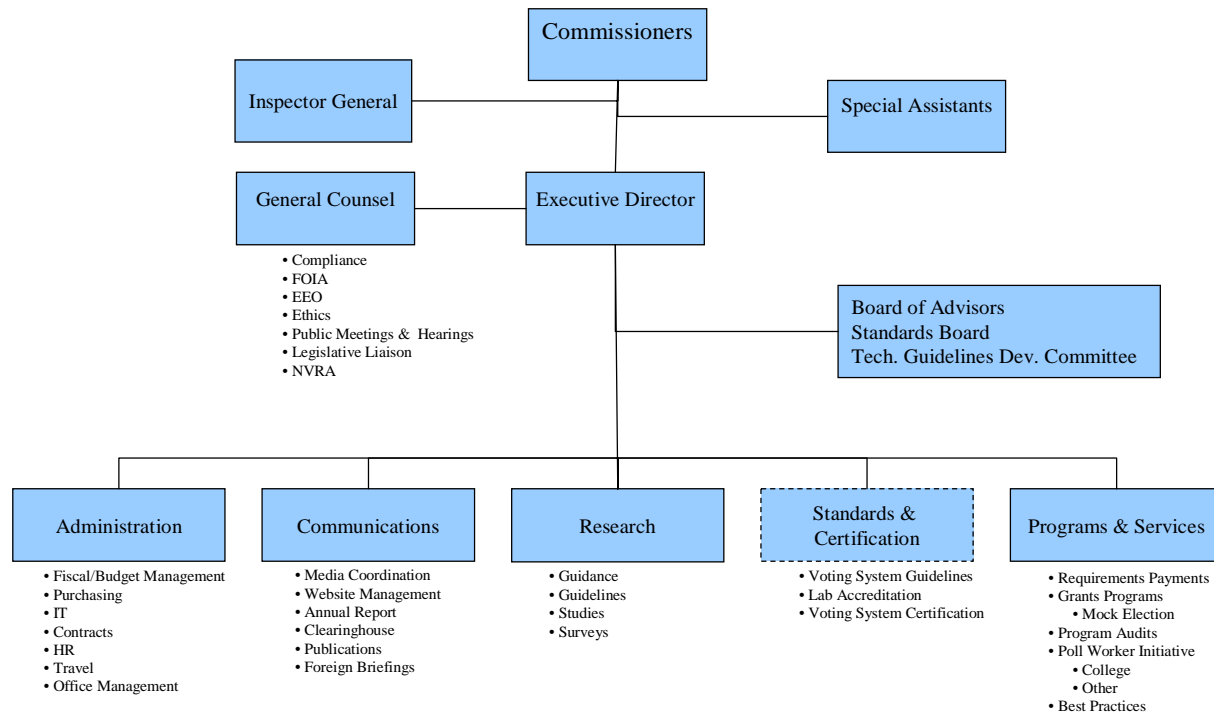
HAVA also created a new Federal commission, the United States Election Assistance Commission (EAC) and charged this agency with assisting the states to meet the requirements of HAVA. EAC is responsible for:

- distributing the funding appropriated by Congress to fund the HAVA programs,
- managing the States' uses of those funds,
- providing guidance to the States on the interpretation of HAVA and its requirements,
- administering the National Voter Registration Act (NVRA),
- serving as a clearinghouse of information to the States, Congress and the public on a variety of election administration issues, and
- providing for the certification, decertification and recertification of voting systems by accredited laboratories.

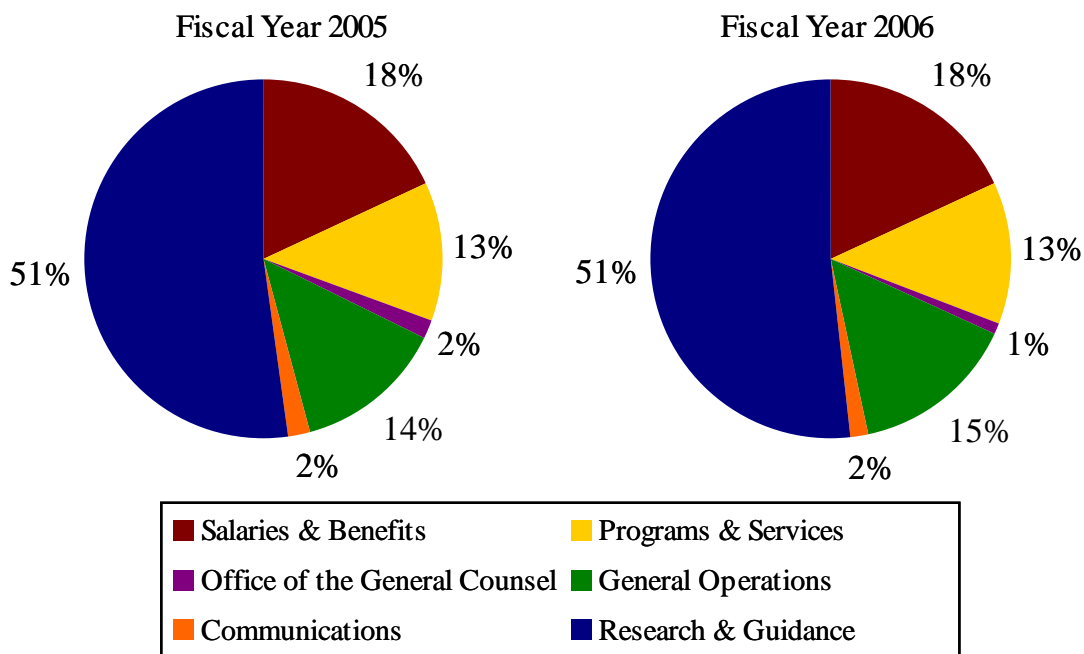
With a staff of only 22 persons, EAC efficiently executes these duties and responsibilities.



U.S. Election Assistance Commission 2005 Organizational Chart



To date, there have been many successes involved with the implementation of HAVA, including the implementation of provisional voting and voting information requirements, updating the country's voting equipment, and beginning the implementation of statewide voter registration lists. In 2005, EAC received significant and much needed funding to begin, in earnest, its work to assist the States with these important election reform efforts. Over fifty percent of EAC's 2005 budget has been allocated to its research program. That program is responsible for developing voluntary voting system guidelines; voluntary guidance on provisional voting, voter registration databases, voting information and identification requirements; and gathering the data and information that will be distributed as a part of the clearinghouse function. A large portion of EAC's 2005 appropriation is focused on EAC's programs and services, which includes distributing funding to the states and monitoring the use of that funding through reporting and auditing programs. As can be seen from the charts on the next page, more than two-thirds of EAC's funding is directed to assist the States with implementing HAVA.



In 2006, EAC will continue to focus its efforts on helping the States meet the January 1, 2006 deadlines for HAVA implementation. More than two-thirds of EAC's appropriations will be applied to developing a complete set of voluntary voting system guidelines, accrediting testing laboratories, certifying voting machines, and giving additional guidance and informational resources to the States in their efforts to improve the administration of Federal elections. The sections below will describe the work of EAC during FY 2005 and its anticipated efforts in FY 2006.

HAVA DELIVERS RESULTS IN FY 2005

On Election Day 2004, the EAC Commissioners traveled to Florida, Ohio, California, New York, New Jersey, Illinois and Missouri to observe first-hand the events, successes and problems that occurred in the polling places of America. The Commissioners saw many of HAVA's successes as well as areas of needed improvement. For example, they saw polling places where informational signs were posted and polling places where the required signage was missing. They saw voters enjoying the benefits of upgraded and technologically advanced voting machines as well as voters who cast their ballots on machines that were decades old. They saw polling places that operated with the utmost of efficiency and precincts where voters stood in line for hours to exercise their right to vote. Considering everything, HAVA has proven to be a success, allowing persons who would otherwise have been turned away to cast ballots through provisional voting and at the same time helping to prevent fraud through the use of new voter identification requirements as well as verification processes in voter registration.



Voting System Procurement

The States are well underway with their efforts to purchase HAVA-compliant voting systems to meet the 2006 deadlines. For example, in Georgia, Maryland, Florida and the District of Columbia, voters in the November 2004 election used new electronic or optical scan voting equipment funded by HAVA. Nevada spent a portion of its HAVA funds not only to upgrade voting equipment to touch screen voting systems but also to outfit its voting units statewide with devices that would produce a contemporaneous paper record of the votes cast on each voting machine. EAC research, as well as reports by other sources such as media, trade associations, and non-governmental research agencies, shows that five of the States have used HAVA money to either fund or reimburse statewide purchase and implementation of updated voting equipment to meet the requirements of Title III. Many other States are in the process of issuing Requests for Proposals (RFPs) for the procurement of updated voting equipment.

Voter Registration Databases

Many States opted to waive compliance with HAVA's requirement to implement the use of statewide voter registration lists until January 1, 2006. However, States like Michigan and Kentucky used central voter registration lists to maintain the names of registered voters in their states prior to the 2004 elections. Seventeen States in all implemented statewide voter registration databases in time for the November 2004 election. Twenty-one other States have entered into agreements for the development of a database and that process is ongoing. Nine others have RFPs pending, but have not made final decisions on those proposals.¹

Provisional Voting

Provisional voting was created as a response to the number of persons who believed that they were registered to vote in 2000 but who were turned away from the polling places when their names did not appear on the poll lists. Provisional voting was not a new concept to all States. Twenty-two States administered some form of provisional or affidavit voting prior to HAVA.

As with most of the provisions of HAVA, the details of the implementation of provisional voting were left to the States. Understandably, this resulted in various positions on what HAVA meant by "jurisdiction" and how provisional voting should be implemented. This lack of uniformity in implementation strategy is what caused provisional voting to be such a lightning rod in the 2004 elections. Despite the attention, both positive and negative, that was given to provisional voting, overall it can be seen as an effective election reform measure required by HAVA.

¹ Electionline.org Briefing: The 2004 Election (December 2004), p 12.



To fully understand the impact of provisional voting, one must first recognize the climate in which it was introduced. On the average, voter registration was up approximately 9% since the November 2000 election. Many of these registrations came late in the 2004 cycle and close to the deadlines for submitting voter registration applications. These voluminous registrations at the end of the cycle taxed local election officials in their efforts to ensure that all eligible voter names appeared on the precinct lists. The solution to that problem, envisioned by the framers of HAVA, was provisional voting. Even if those names were not entered in time to appear on the voter registration list, those persons would be able to vote by provisional ballot and have their eligibility verified after the election.

In the November 2004 election, more than 1,500,000 voters took advantage of the opportunity to cast a provisional ballot. More than 1,000,000 of those provisional ballots were counted. In simplest terms, more than 1,000,000 eligible voters voted in November 2004 who would have been disenfranchised were it not for provisional ballots.

Voter Information

Section 302(b) of HAVA requires each polling place to display informational posters and sample ballots. These posters must include information regarding:

- the date and hours of the election
- instructions on how to vote
- special instructions for first time voters and voters who registered by mail
- general information regarding voting rights and state and Federal laws prohibiting fraud and misrepresentations in elections.

States were required to display this voter information at polling places during Federal elections as of January 1, 2004.

For the first time in 2004, voters could anticipate the type of information that would be made available to them at the polling places. They could expect not only to have a sample ballot with the names and offices of the candidates, but also information on how to vote using the voting equipment in place in that precinct. Persons who were first time voters or who registered by mail were given information on the types of identification that were accepted to verify the voter's identity. Further, if a voter experienced a problem in voting, the informational posters identified their voting rights, the laws that governed fraud and misrepresentation, and how to contact appropriate election officials if the voter felt his/her rights had been violated.

These informational pieces were printed in dozens of languages so that persons whose primary language is not English could understand them. In addition, accommodations were made for sight impaired voters by printing these materials in Braille and in some cases by making an audio recording of the text. It appears that where these posters were properly displayed, voters were more informed about their franchise and how to exercise it.



Administrative Complaint Procedures

HAVA required States to establish an administrative complaint procedure that allows voters to report and file complaints regarding voting and violations of HAVA. Most States developed these complaint procedures as a part of their state plans, which have been filed with EAC and published in the Federal Register. The procedures must include a process whereby voters make complaints that are notarized for validity, have the opportunity to request and have a hearing of the complaint, and can expect a resolution to the complaint within 90 days of the date of filing. If resolution cannot be reached, the complaint must be referred to a process of alternative dispute resolution and completed within 60 days of the referral.

While some States previously had some type of formal or informal dispute resolution regarding election complaints, HAVA created the requirement for a uniform procedure that would cause voter complaints to be taken seriously and resolved in a timely manner. These administrative complaint procedures were not specifically designed to adjudicate complaints of fraud or ill-practice, but this forum will undoubtedly shed light on complaints of fraud and will hopefully prevent these acts from being ignored. At the time of this hearing, the 90-day period for resolution of early-filed complaints is just ending. Now that the hearing phase has ended, it would be useful for EAC to collect data regarding the number, types and resolutions to administrative complaints that were filed under this procedure.

Poll Worker Recruitment Programs

Poll workers are the backbone of the American electoral system. They staff the polling places and dedicate countless hours to learning the laws, rules and technologies associated with running elections. However, the number of persons willing to undertake this civic duty decreases annually. This problem is compounded by the introduction of new technology and the need to learn and understand the operation of increasingly complex voting equipment. EAC administered two poll worker recruitment programs to assist States in recruiting, training and retaining qualified poll workers for the 2004 election.

Under Title V of HAVA, EAC developed the first Federal program to recruit and train poll workers. The HAVA College Poll Worker Program was designed to encourage students at institutions of higher education to serve as nonpartisan poll workers or assistants. The program further encourages local governments to use the services of students participating in the program. In Fiscal Year 2004, the HAVA College Program disbursed \$627,000 in grant payments to 15 grantees. These grantees were chosen from among 88 applicants and represented a variety of community colleges, four year colleges and universities, and non-profit organizations with a national and regional focus. A breakdown of the grant awards is shown in the table on the following page.



Grantees	Location of Grantees	Amount Requested	Amount Awarded
Asnuntuck Community College	Enfield, CT	\$91,344	\$30,000
Assoc. Students, Inc. (Cal State Univ.)	Long Beach, CA	\$41,912	\$25,000
Eastern Michigan University	Ypsilanti, MI	\$54,356	\$25,000
Florida Memorial College	Miami Gardens, FL	\$149,911	\$50,000
Golden Key International Honor Society	Atlanta, GA	\$148,250	\$130,000
Illinois Central College	East Peoria, IL	\$14,785	\$12,000
Los Angeles Conservation Corps	Los Angeles, CA	\$22,310	\$20,000
Northampton Community College	Bethlehem, PA	\$26,857	\$25,000
Northern Kentucky University	Highland Heights, KY	\$45,273	\$25,000
Roxbury Community College	Boston, MA	\$70,470	\$30,000
Rural Ethnic Institute	Rapid City, SD	\$149,537	\$50,000
University of Baltimore	Baltimore, MD	\$149,350	\$70,000
University of Maryland College Park	College Park, MD	\$67,270	5,000
University of North Texas	Denton, TX	\$149,280	\$80,000
Wiley College	Marshall, TX	\$31,978	\$30,000
	Totals:	\$1,212,883	\$627,000

Combined, the 15 grantees recruited, trained, and placed 1,700 students as poll workers or poll assistants.

To further assist States and local election officials in recruiting poll workers, EAC launched a National Poll Worker Initiative in June 2004. EAC sought and gained the involvement of corporations and private organizations in encouraging people to serve as poll workers on November 2. To further shed light on the need to recruit, train and retain poll workers, EAC used its September 2004 meeting to focus the attention of the country on the shortage of poll workers. EAC's efforts spurred corporations like Citigroup and agencies like the Department of Agriculture to encourage their employees to participate in the electoral process as nonpartisan poll workers by adding that activity to its list of community involvements.



In some cases, employers agreed to allow employees to serve as poll workers using approved, paid leave other than the employee's vacation.

EAC continues to receive inquiries regarding its poll worker initiatives. Universities and student groups are interested in continuing the program to recruit and train students as poll workers and election assistants. In addition, members of the public regularly express interest in serving as poll workers. In 2005, EAC is continuing its poll worker initiatives in order to pair willing volunteers with election officials that need poll workers.

HELPING STATES COMPLY WITH HAVA

Congress has appropriated over \$3,000,000,000 to help States meet the requirements of HAVA and improve the administration of Federal elections. Other HAVA programs such as the College Poll Worker program, the National Parent-Student Mock election, and the program to assure access for individuals with disabilities have been funded by Congress in the amounts of \$950,000, \$400,000, and \$33,000,000, respectively.

EAC, the General Services Administration, and the Department of Health and Human Services have distributed over \$2.3 billion to the States, the District of Columbia and the Territories since the enactment of HAVA. The following table shows the disbursement of funds by category and fiscal year.

State	Title I "Early Money"		Title II Requirements Payments (Section 251)		Title II Disability Access Grants (Section 261)		Total Disbursed to State**
	Section 101 Payments*	Section 102 Payments*	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	
AL	\$4,990	\$51	\$12,835	\$23,031	\$185	\$130	\$41,222
AK	\$5,000	\$0	\$0	\$0	\$100	\$100	\$5,200
AS	\$1,000	\$0	\$830	\$1,489	\$100	\$100	\$3,519
AZ	\$5,451	\$1,564	\$14,523	\$26,061	\$210	\$153	\$47,962
AR	\$3,593	\$2,570	\$7,729	\$13,869	\$109	\$100	\$27,970
CA	\$27,341	\$57,322	\$94,559	\$0	\$1,372	\$986	\$181,580
CO	\$4,860	\$2,177	\$12,362	\$22,183	\$178	\$129	\$41,889
CT	\$5,000	\$0	\$9,920	\$17,780	\$143	\$100	\$32,943
DE	\$5,000	\$0	\$4,150	\$0	\$100	\$100	\$9,350
DC	\$5,000	\$0	\$4,150	\$7,447	\$100	\$100	\$16,797
FL	\$14,448	\$11,581	\$47,417	\$85,085	\$687	\$493	\$159,711
GA	\$7,816	\$4,740	\$23,171	\$41,578	\$335	\$242	\$77,882
GU	\$1,000	\$0	\$0	\$0	\$100	\$100	\$1,200
HI	\$5,000	\$0	\$4,150	\$0	\$100	\$100	\$9,350
ID	\$5,000	\$0	\$4,150	\$7,447	\$100	\$100	\$16,797
IL	\$11,129	\$33,806	\$35,283	\$63,312	\$511	\$359	\$45,805
IN	\$6,230	\$9,522	\$17,372	\$31,173	\$251	\$175	\$64,723
IA	\$5,000	\$0	\$8,495	\$15,244	\$122	\$100	\$28,961



U.S. Election Assistance Commission
 Testimony Before the Subcommittee on Transportation, Treasury,
 Housing and Urban Development, the Judiciary, the District of Columbia,
 and Independent Agencies of the House Appropriations Committee

April 14, 2005

State	Title I "Early Money"		Title II Requirements Payments (Section 251)		Title II Disability Access Grants (Section 261)		Total Disbursed to State**
	Section 101 Payments*	Section 102 Payments*	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	
KS	\$5,000	\$0	\$7,662	\$13,748	\$110	\$100	\$26,620
KY	\$4,699	\$469	\$11,773	\$21,126	\$170	\$121	\$38,358
LA	\$4,911	\$7,352	\$12,549	\$22,518	\$181	\$127	\$47,638
ME	\$5,000	\$0	\$4,150	\$0	\$100	\$100	\$9,350
MD	\$5,637	\$1,638	\$15,201	\$27,277	\$220	\$157	\$50,130
MA	\$6,590	\$1,519	\$18,688	\$33,534	\$270	\$191	\$60,792
MI	\$9,207	\$6,531	\$28,257	\$0	\$409	\$287	\$44,691
MN	\$5,314	\$0	\$14,020	\$25,158	\$202	\$145	\$44,839
MS	\$3,673	\$1,778	\$8,023	\$14,396	\$115	\$100	\$28,085
MO	\$5,875	\$11,473	\$16,073	\$28,842	\$232	\$164	\$62,659
MT	\$5,000	\$0	\$4,150	\$0	\$100	\$100	\$9,350
NE	\$5,000	\$0	\$4,920	\$0	\$100	\$100	\$10,120
NV	\$5,000	\$0	\$5,785	\$10,381	\$100	\$100	\$21,366
NH	\$5,000	\$0	\$4,150	\$7,447	\$100	\$100	\$16,797
NJ	\$8,141	\$8,696	\$24,358	\$0	\$352	\$248	\$41,795
NM	\$5,000	\$0	\$5,110	\$9,170	\$100	\$100	\$19,480
NY	\$16,494	\$49,604	\$0	\$0	\$796	\$559	\$67,453
NC	\$7,888	\$893	\$23,431	\$42,046	\$339	\$240	\$74,837
ND	\$5,000	\$0	\$4,150	\$0	\$100	\$100	\$9,350
OH	\$10,385	\$30,668	\$32,562	\$58,430	\$143	\$328	\$132,516
OK	\$5,000	\$0	\$9,898	\$17,761	\$472	\$101	\$5,573
OR	\$4,204	\$1,823	\$9,962	\$0	\$143	\$102	\$16,234
PA	\$11,323	\$22,917	\$35,993	\$64,586	\$521	\$364	\$135,704
PR	\$3,151	\$0	\$830	\$1,489	\$151	\$104	\$3,406
RI	\$5,000	\$0	\$4,150	\$7,447	\$100	\$100	\$16,797
SC	\$4,652	\$2,168	\$11,602	\$20,819	\$167	\$120	\$39,528
SD	\$5,000	\$0	\$0	\$0	\$100	\$100	\$5,200
TN	\$6,005	\$2,474	\$16,546	\$29,690	\$241	\$169	\$55,125
TX	\$17,207	\$6,270	\$57,505	\$0	\$834	\$602	\$82,418
UT	\$3,091	\$5,727	\$5,893	\$10,574	\$100	\$100	\$25,485
VT	\$5,000	\$0	\$4,150	\$7,447	\$100	\$100	\$16,797
VA	\$7,106	\$4,527	\$20,573	\$0	\$298	\$212	\$32,716
VI	\$1,000	\$0	\$830	\$1,489	\$100	\$100	\$1,200
WA	\$6,098	\$6,799	\$16,889	\$30,307	\$244	\$175	\$60,512
WV	\$2,977	\$2,349	\$5,476	\$9,827	\$100	\$100	\$20,829
WI	\$5,694	\$1,309	\$15,411	\$27,653	\$185	\$158	\$50,410
WY	\$5,000	\$0	\$4,150	\$7,447	\$100	\$100	\$16,797
Total	\$349,180	\$300,317	\$765,970	\$952,076	\$12,998	\$9,941	\$2,390,482

* Figures rounded to nearest thousand.

** Excludes payments made under section 291 by the U.S. Department of Health and Human Services to States for protection and advocacy systems.



As can be seen from the Table above, all States, Territories and the District of Columbia have received Title I, Section 101 funds for use in improving the administration of Federal elections. Thirty States received Section 102 funds for replacing punch card and lever voting systems. Forty-one States have requested and received all of the Title II funds available to the State under HAVA. Thirteen States have received partial Title II funding and have the opportunity to receive additional funds upon providing the certification required by HAVA and requesting those funds. Three States have received no Title II funds. Certifications for funding have been received from Guam, Michigan, New Jersey and South Dakota. These certifications are pending final approval. As for the states that have not yet certified for FY 2003 and/or FY 2004 HAVA funds, financial difficulties in appropriating the State matching funds and delays in the political process mark the two most common reasons that funding has not yet been requested. In 2005, EAC will continue to distribute funding to eligible States upon their certifications that they have met the requirements to receive HAVA funds.

Under Title II of HAVA, each State must match those Federal funds at a rate of five percent. Each State that has received HAVA funding under Title II must certify that its appropriation has been made. Thus, over \$86 million in State funds have been paired with Federal dollars to meet the requirements of HAVA.

RESPONSIBLE STEWARDSHIP OF HAVA FUNDS

EAC must ensure that States are good stewards of the Federal funds with which they have been entrusted. States have already received over \$2.3 billion in Federal funds. To monitor the use of these funds, EAC and GSA made certain restrictions applicable to these funds which require regular reporting and annual auditing. What is more, HAVA granted EAC additional, special audit authority. EAC will use these tools to review the States' spending of HAVA funds.

Reporting

Reports on Title II Funds

HAVA Section 258 requires States to submit reports to EAC on the activities conducted with Title II HAVA dollars during the Federal fiscal year. This report must include:

- a list of expenditures made with respect to each allowable category of activities described in Title III for the use of these funds;
- the number and types of voting equipment obtained with the funds; and
- an analysis and description of:
 - the activities funded to meet HAVA requirements; and
 - how such activities conform to the submitted State plan.



This report covers the Federal fiscal year and is due no later than six months after the end of each fiscal year. Accordingly, reports of States that received a requirements payment by September 30, 2004, were due to EAC on March 30, 2005.

Reports on Title I Funds

Unlike the reporting required for Title II requirements payments, HAVA does not explicitly require reports from the States on HAVA Title I funds. Nevertheless, given the reporting and audit responsibilities of the EAC, it is prudent and necessary for the EAC to request information on the use of Title I funds.

In a July 2003 letter to the States, GSA noted that the first reports on HAVA Title I "early money" were due to GSA by January 21, 2004. Since its formation, EAC has assumed the responsibility for receiving reports regarding these Title I funds, in accordance with the agency's assumption of its audit responsibilities under HAVA, Section 902. In January 2005, EAC sent a letter to the chief state election officials, directing the State to:

- file all subsequent reports regarding Title I funds with EAC, annually, beginning February 28, 2005;
- disclose, in separate reports for section 101 and 102 funds, the financial activity for the previous calendar year on a Standard Form 269; and
- provide the same detail on the expenditures that is required for the reports on Title II requirements payments.

EAC has begun an initial review of these reports to assure that they are complete and contain all required information. A more detailed review of these reports will follow to validate that the expenditure of HAVA funds was in keeping with the requirements of HAVA and the state plans filed by the States and territories.

Auditing

Section 902 of HAVA gives EAC and other agencies audit authority over HAVA funds. A regular audit of Federal funds is required by Section 902(b)(1). This audit will be conducted initially through the Single Audit program, wherein state auditing agencies conduct a single audit of all Federal funds expended by covered state and local entities. HAVA also provides for two other means of extraordinary audit power. First, HAVA establishes that the funds shall be subject at least once during the term of the program to an audit by the Comptroller General. Second, section 902(b)(6) of HAVA allows EAC to conduct a "special audit" or "special examination" of the funds which are subject to regular audit under Section 902(b)(1). This special audit covers every HAVA program, including funds distributed under Section 101, 102, Title II, and programs administered by the Department of Health and Human Services.



While HAVA grants audit authority to various agencies, only the Comptroller General has authority to recoup funds on behalf of the United States. Funds can be recouped when the Comptroller General finds that the recipient is out of compliance with the requirements of the program under which the funds are provided or when an excessive payment has been made to the recipient.

HAVA offered no guidelines under which a special audit should be conducted. Thus, on January 27, 2005, EAC adopted a policy and procedure for exercising its special audit authority. That policy included the following elements:

- Regularly review single audits and reports filed by States as well as other credible information on States' HAVA spending.
- When a discrepancy or potential lack of compliance is revealed, analyze the risk to HAVA funds. The analysis should identify the source of any threat as well as the severity of the threat.
- Determine the need for additional review and information. If additional information is needed, consider conducting a special audit. If the discrepancies are evident and are sufficiently identified by the existing information, then EAC will refer the discrepancy to the appropriate enforcement agency, whether that is the U.S. Department of Justice, the Comptroller General, or other appropriate State or Federal enforcement agency.
- When a decision is made to conduct a special audit, EAC will define the scope and type of audit. The audit may take on one or more of the three types of audits: financial, compliance, and/or agreed-upon terms. The scope of the audit should include the term of the audit (e.g., from the time of receipt to present, a particular fiscal year, or other terms established by the Commission) and the funds that will be audited (e.g., Section 101, Section 102, Title II).
- Develop a plan for the audit through a scope of work for the Inspector General, a contractor, or another Federal Government agency who will conduct the audit on behalf of EAC.
- Upon completion of the audit and report, if the findings reveal that the recipient is out of compliance with the requirements of the HAVA program(s), then EAC would refer the audit and the recipient to the Comptroller General with a request to take action to recoup funds on behalf of the United States. If potential voting rights, civil rights, or criminal violations are identified by the special audit report, EAC would refer the audit and recipient to the Department of Justice or another appropriate state or Federal law enforcement agency.

In 2005, EAC will use its resources and its authority under HAVA to validate the proper uses of HAVA funds by States and grantees. The money distributed under HAVA belongs to the United States. EAC will regularly review Single Audit reports as well as state-filed reports on the uses of HAVA funds to ensure that HAVA funds are properly spent. In addition, where the circumstances warrant, EAC will consider the use of its special audit authority to protect the public fisc.



Inspector General Services

Pursuant to Section 812 of HAVA, EAC is required to obtain and use the services of an Inspector General (IG). The IG will conduct and/or manage internal and external audits as well as investigating allegations of improper activity. EAC is actively searching for another government agency or an outside firm to assist with the provision of these required services. By the end of FY 2005, EAC expects that an IG program will be in place and operating as a part of the agency.

PROVIDING RESOURCES AND INFORMATION

HAVA establishes EAC as a clearinghouse of information. As such, EAC gathers and makes available information on a range of issues such as best practices in election administration, hours and places for voting, and election data to State and local election officials, Congress, and the public at large. In order to accomplish this task, EAC has developed and distributed surveys and collected data related to the November 2004 election as well as empanelling working groups of election officials to assemble compilations of Best Practices in election administration.

Best Practices

One of the most significant EAC efforts in 2004 was to develop a HAVA Tool Kit, a best practices compilation focused around HAVA requirements with deadlines in 2004. EAC developed this best practices document with the help of a group of state and local election officials. They met in Washington, DC, to discuss their policies, procedures and practices involved with implementing the 2004 provisions of HAVA. The election officials shared personal experiences as well as discussed practices and procedures used by their colleagues. These ideas along with information presented at an EAC public meeting formed the basis of this work. The result was a 62-page document that compiled practices on topics such as provisional voting, voter information, and voter registration. This HAVA Tool Kit is available on EAC's website, www.eac.gov. In addition to the Best Practices Tool Kit, EAC in conjunction with the Department of Defense issued a Best Practices Report on Voting by Uniformed and Overseas Citizens. EAC also worked with the National Institute for Standards and Technology (NIST) to develop a report on "human factors" in voting.

Even though EAC's focus for 2005 is to issue voluntary guidance, work on best practices documents fits within the research agenda to capture those topics where additional information would be helpful to the States, such as the process for procuring voting machines.



Election Surveys

The establishment of EAC has given the Federal Government an opportunity to collect and study a wide range of data related to the November 2004 election. EAC has developed three surveys: the Election Day Survey, the Military and Overseas Absentee Ballot Survey, and the Voter Registration Survey. These survey instruments collect data on both a county and state level regarding a litany of voting administration issues, including ballots cast and counted, voting systems, military and overseas citizens' voting, and voter registration. Copies of the Election Day Survey, Military and Overseas Absentee Ballot Survey, and Voter Registration Survey are attached. (Appendixes 2, 3, and 4)

This information will, in some cases, serve as the basis for evaluating future elections and future election administration. Gathering data from the first Federal general election under HAVA was a critical effort by EAC to establish a baseline of data that can be used to evaluate later elections. Further, the data gathered through these surveys will be an invaluable addition to EAC's work as a clearinghouse of information to be shared among the States.

EAC BUILDS THE FRAMEWORK FOR EXCELLENCE FY 2005

HAVA places substantial responsibility with EAC to assist States with effectuating its intended election reforms. Having received funding for its research program in FY 2005, EAC has been able to begin this assistance work. Fiscal Year 2005 has seen dedicated work by EAC to improve the quality of voting systems by developing testable voting system guidelines that can be used by States to assure the accuracy and integrity of their voting machines. EAC has also begun a rigorous and aggressive research and guidance agenda to gather information and develop guidance that will be helpful to state and local election officials as well as other groups and individuals who are interested in election administration issues.

Voluntary Voting System Guidelines

One of EAC's most important mandates is the testing, certification, decertification and recertification of voting system hardware and software. Fundamental to implementing this key function is the development of revised voluntary voting system guidelines, which will prescribe the technical requirements for voting system performance, security, and auditability, and identify testing protocols to determine how well systems meet these requirements. Another important element is the accreditation of testing laboratories to ensure that competent resources are available to perform testing. The final element is the process of reviewing the system test reports to validate that systems have met the standards and therefore can be declared certified for use in Federal elections. Each of these elements is discussed below.



Technical Guidelines Development Committee and the Guidelines Development Process

HAVA Section 221 calls for the establishment of a Technical Guidelines Development Committee (TGDC)² to assist EAC in the development of voluntary voting system guidelines (previously referred to as voting system standards). These guidelines are characterized as voluntary because EAC does not have the regulatory authority to issue mandatory standards. Consequently, each State and Territory retains the prerogative of deciding whether to adopt these guidelines for the procurement of voting systems.

The first meeting of the TGDC was held on July 9, 2004. The members created three sub-committees: Computer Security and Transparency, Core Requirements and Testing, and Human Factors and Privacy. Each of these sub-committees is responsible for developing high level resolutions or guiding principles regarding the scope and content of the voting system guidelines. When these resolutions are approved by the TGDC, they are passed to the National Institute of Standards and Technology (NIST) with tasking to conduct research, evaluate existing standards, or revise or write new guidelines as required to implement each resolution. The resulting NIST work product will be guideline statements or a specification for a guideline that needs to be developed, as well as a description of the test protocols for verifying compliance. A total of 32 resolutions have been passed by the TGDC. (Appendix 5)

The TGDC will deliver its initial set of recommendations for the voluntary voting system guidelines to EAC in April, 2005. The Voluntary Voting System Guidelines, Version 1 will consist of some revision and correction of the 2002 Voting System Standards and augmentation in selected areas. These include software distribution and setup validation procedures, use of wireless technology, accessibility and usability, voter verified paper audit trail, and other system security and auditability guidance. The focus of the April report is providing States improved information to evaluate voting systems on the market today, including new functionalities such as paper receipts and wireless interfaces that are not covered in the 2002 Standards. It will also include a revised and updated glossary of terms.

Accreditation of Voting System Testing Laboratories

HAVA Section 231 requires EAC and NIST to develop a national program for accrediting voting system testing laboratories. The National Voluntary Laboratory Accreditation

² The Chairman of the TGDC is the Director of the National Institute of Standards and Technology (NIST). The committee is comprised of the Director and fourteen other individuals appointed jointly by EAC and the Director. HAVA Section 221 prescribes the composition of the TGDC membership to include members of the EAC Standards Board, members of the EAC Board of Advisors, members of the Architectural and Transportation Barrier Compliance Board, a representative of the American National Standards Institute, a representative of the Institute of Electrical and Electronics Engineers, two representatives of the National Association of State Election Directors, and other individuals with technical and scientific expertise relating to voting systems and voting equipment.



Program of NIST will provide for the initial screening and evaluation of testing laboratories. They will also perform periodic re-evaluation to verify that the labs continue to meet the criteria. When NIST has determined that a lab is competent to test systems against the voting system guidelines and other established criteria, the Director of NIST will recommend to the EAC that a lab be accredited. The EAC will consider the recommendation and make the determination to accredit the lab. Once this decision has been made, the EAC will issue an accreditation certificate to the lab. EAC will maintain a register of accredited labs and will also publish this information on the EAC website. NIST will begin receiving applications from labs in April 2005. They estimate that their evaluation of applicants will be completed within 12 to 18 months, at which point recommendations will be made for consideration by the EAC.

In the interim period, laboratories that have been accredited through the National Association of State Election Directors (NASED) program as Independent Testing Authorities (ITAs) will be grandfathered by the EAC. Any currently accredited ITA that wishes to be considered for grandfathering must submit a Letter of Intent to the EAC. The EAC expects to complete this processing by the Summer of 2005. ITAs will be grandfathered until June 2008. After that date all testing labs must be accredited through the NIST evaluation process.

Voting System Certification Process

The Voting Systems Board of NASED has been qualifying voting systems since 1992. Shortly after its founding, NASED decided to create a voluntary program to provide for conformance testing of voting systems by independent labs using the 1990 Voting System Standards. States could then receive these test reports for consideration in their process of certifying systems for use in their States. EAC anticipates transitioning this process from NASED by the Summer of 2005.

There are several implementation considerations that arise in transferring this responsibility from a volunteer board of a professional organization to a Federal agency. For example, the peer reviewers who review the system test reports will be under contract and paid for their services. Their performance will be subject to periodic evaluation. In addition, the process will be subject to various Federal laws governing the openness and fairness of government activities, such as the Freedom of Information Act and the Administrative Procedures Act. The EAC will introduce more structure and transparency to the system certification process. Documentation on certified systems will be provided on EAC's website.

Software Validation

In July 2004, EAC and NIST jointly established a part of the National Software Reference Library (NSRL) specifically for voting systems. The Commission encouraged voting system vendors to submit copies of their certified system software to NSRL so that election officials could validate that the software they were using matched the certified version. Five vendors subsequently provided their software for this purpose. Currently, election officials can validate that the software, prior to installation, is the version that was submitted to NSRL. In



2005, EAC and NIST will develop procedures with election officials and vendors to confirm that the version of software that is delivered for installation in a new shipment of voting machines is the same as the version that was tested and submitted to NSRL. Additional work will be required in 2006 to expand the program to allow election officials to determine that software, once installed on a voting machine has not been altered and is in fact the same software that was tested and submitted to NSRL.

Research and Voluntary Guidance

Section 311 of HAVA requires EAC to develop guidance to assist the States in the implementation HAVA mandates. HAVA further requires EAC to conduct a number of studies and allows the Commission considerable latitude to identify other election administration issues for review and research. EAC has developed an aggressive research and guidance agenda that will seek to provide the States with needed information, guidance and explanation of HAVA's requirements, as well as helpful information and resources to assist with their administration of elections for Federal office.

With the appropriation of its 2005 budget, EAC has received the money it needs to make a financial as well as a programmatic commitment to providing research and guidance to the States. EAC has allocated more than 50% of its 2005 budget to research and guidance efforts.

The Commission has identified and prioritized a number of areas requiring research for the purpose of developing Title III guidance to the States. This includes guidance on:

- [Statewide Voter Registration Databases](#)
- [Provisional Voting](#)
- [Impact of Voter Identification Requirements](#)
- [Voting Information](#)

This work will involve review and analysis of State legislation and administrative procedures, identification of issues, and development of recommendations for application in the 2006 elections. In addition, EAC will conduct studies, as mandated by HAVA, regarding

- [Free absentee ballot postage](#)
- [Electronic \(internet\) voting](#)

Finally, EAC will review and update the [National Voter Registration form](#) and the instructions that accompany that form.

Statewide Voter Registration Databases

Section 303 of HAVA requires States to develop a single, uniform, interactive voter registration list. States must have these systems in place by January 1, 2006. Many States have



requested assistance and guidance on the implementation of voter registration databases. EAC began its efforts toward developing voluntary guidance on statewide voter registration databases by holding a meeting on December 14, 2004, wherein election officials from Michigan, Kentucky, South Carolina, and North Carolina, States where statewide voter registration databases have been implemented, testified about their experiences.

In order to ensure that its guidance would address the needs, concerns and questions of its constituency, EAC empanelled a voter registration database working group to identify questions, issues and problems that should be addressed by the final guidance. In addition, EAC has entered into a contractual relationship with the National Academy of Sciences (NAS) to provide technical assistance to the working group and to consider the technological issues that face states in the development, implementation, maintenance and upgrading of statewide voter registration systems. The working group met in Washington, DC on March 30 and 31 to consider the policy questions that emerge from the HAVA requirement to implement a "single, uniform, official, centralized, interactive computerized statewide voter registration list." In the next few days, EAC will unveil its initial draft guidance on these policy issues. This guidance is intended to be initial and provide the States with the information that they need to begin the process of purchasing and implementing statewide voter registration databases. This guidance will be available to the public and EAC will seek public comment on its draft guidance through a Federal Register comment period as well as through a public hearing that will be held on April 26 in Cambridge, Massachusetts. It is EAC's goal to have this initial guidance finalized in June 2005.

Provisional Voting

On February 22, 2005, EAC held a public hearing to gather information on provisional voting. State and local election officials, academics, and representatives of the advocacy community testified concerning the successes and failures of provisional voting during the 2004 Federal elections. Several panelists identified problems related to the varying interpretations of who was entitled to receive a provisional ballot. Court decisions rendered in the days and weeks prior to the 2004 election made educating election workers and the public regarding provisional voting difficult, if not impossible. Several panelists pointed to the need for uniform state procedures and education on those procedures. Other panelists challenged the limitations of provisional voting and supported a more expansive use of provisional ballots by defining the voting jurisdiction more broadly and by allowing provisional ballots to be used where absentee ballots failed to reach voters that requested them.

In the coming months, EAC will engage in extensive research on the way that provisional voting was implemented in 2004, including a review of the statutes and procedures that were used throughout the country. EAC will also research the litigation that further defined the uses of provisional voting to determine whether nation-wide principles concerning provisional voting can be gleaned from the opinions. Draft guidance will be developed from this research and from further conversations with election officials and public interest groups. This guidance will be available for public comment in June 2005. As with all guidance documents, EAC will obtain the comments and input of its Board of Advisors and Standards Board during the public



comment period. EAC will finalize this guidance in October 2005 so that it will be available to the States and local governments for their use in running their provisional voting programs for the Federal elections in 2006.

Voter Identification

HAVA requires identification of first-time voters whose identities have not been verified through the voter registration process. This process can take the form of presenting an accepted identification card, a government issued check, a utility bill, paycheck, bank statement or other government document. Many questions linger about what types of identification are acceptable in the various states and counties, how the HAVA identification program interplays with existing state laws that require varying degrees of identification, and how to implement alternative identification processes when the voter does not possess a government issued identification card that is accepted by the State.

As a part of its research agenda, EAC will study and review the various state requirements for identification, the types of identification cards that are accepted, as well as the procedures in place for alternative identification. From this research, EAC hopes to identify some common threads and establish guidelines for States to use when establishing policies on voter identification. Draft guidance will be available for public comment in July 2005 and EAC plans to finalize that guidance in time for the States to be able to use it in preparing for the Federal elections in 2006.

Voting Information

While States were required to post informational posters in the 2004 elections, reports and first-hand experiences with the posting of these documents revealed that the quality of these pieces was not consistent. Posters used by different States displayed significantly different information and had varying readability. Some of these posters were placed in prominent areas where they could be easily read by voters, while others were placed in less accessible areas. Similarly, the font sizes on the different posters affected the ability for both able and disabled voters to read the text. The States also had varying success in assuring that all precincts actually posted the information. In some instances, this disparity occurred in precincts within the same county.

In 2005, EAC will work with state and local election officials as well as community advocate organizations to develop guidance that will identify best practices in developing and posting information in the polling place. The States will be provided guidance on what types of information should be included, the size of font that ensures readability by both physically able and physically disabled voters, and education programs that will assist the States in making sure that this requirement is met in each and every precinct.

Draft guidance on voter information will be available for public comment in June 2005. That guidance will be subject to a comment period, during which time election officials and other members of the public will be encouraged to provide comments and suggestion to make the



guidance more effective and user friendly. Guidance on voter information will be finalized in time for the States to use it in preparation for the 2006 Federal elections.

Studies Required by HAVA

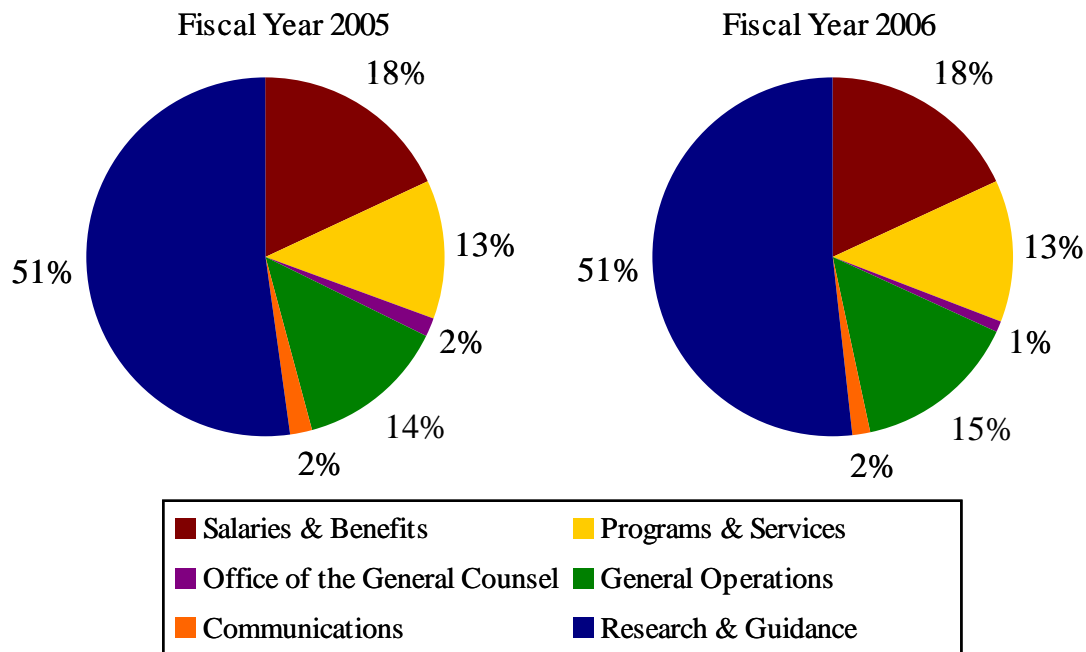
HAVA requires EAC to conduct a number of studies, including studying best practices for facilitating military and overseas voting, registration by mail, use of social security information and electronic voting, and the effect of free absentee ballot postage. EAC completed the first of these studies, best practices in military and overseas voting, as a part of its work in 2004.

In 2005, EAC will focus on the free absentee ballot postage study and the study on the use of electronics in the electoral process. Initial planning discussions with the U. S. Postal Service regarding the study of no-cost absentee ballot postage were conducted in March 2005. EAC's report on free absentee ballot postage will be available by September 2005. The study regarding the use of electronics in the electoral process, especially internet voting, will require substantial work on technical issues such as security and access. This work will begin in 2005 and continue into 2006. The final report on electronic and internet voting will be available in 2006.

The studies on registration by mail and use of social security information must be completed by July 2007; thus the beginning of this work will be conducted in 2006.

CLOSING IN ON THE IMPLEMENTATION OF HAVA FY 2006

EAC has requested an appropriation of \$17.6 million for FY 2006. This represents the needed salaries and related operating expenses to carry out EAC functions and activities required by HAVA, including establishing voluntary voting system guidelines, developing voluntary guidance on Title III requirements, administering and auditing the use of HAVA funds, reviewing State reports concerning the use of HAVA funds, maintaining a clearinghouse for election administration, and providing for the testing, certification and recertification of voting systems. EAC previously submitted a budget justification document which details the differences between its FY 2005 appropriation and its FY 2006 appropriation request. As can be seen in the charts below, EAC will apply the requested increase in funding proportionately across budget categories and maintaining, if not decreasing the percentage of overhead costs of the agency.



In the sections that follow, we will discuss in detail the budget categories and activities that will be funded by the \$17.6 million requested for FY 2006.

Programs & Services

In 2005, the programs and services activity primarily covered the distribution and monitoring of HAVA funds, a function performed by two staff members. However, in 2006, the programs and services category will be greatly expanded. EAC not only will continue to distribute and monitor funding, but also will need to certify voting systems and assist States with HAVA Title III mandates through the implementation and interpretation of guidance issued during 2005. In addition, EAC will continue its efforts to assist the States with recruiting, training and retaining qualified poll workers.

A total of \$2.2 million of the \$17.6 million request will be dedicated to programs and services work. In order to complete the planned programs and services efforts, EAC will need a total of six staff members. Those personnel will be used to manage the voting system certification process and to assist with the increased funds management needs. Salaries and benefits for the personnel that will be tasked with those duties are contained in that budget category.



HAVA Funding

Through the end of FY 2005, EAC anticipates that the vast majority of all available funds under Title II and all other HAVA funding programs will have been distributed to the States. EAC further expects that the vast majority of the funds will be spent by the States in FY 2005 and in the first quarter of FY 2006. As such, EAC will have an increased need for personnel and resources to review reports file by States on the use of those funds and to audit the HAVA funds.

➤ *Distributing HAVA Funds*

If HAVA funding has not been fully distributed to the eligible States by the end of FY 2005, EAC will continue to disburse funds to eligible States upon their certification of having met the requirements for funding under HAVA. Each State and territory that receives funding must submit a state plan that establishes the uses of those funds. To the extent that additional funding or lack thereof would impact the previously submitted state plans, States will need to revise and resubmit their plans. Thus, EAC will continue to work with the States to modify their State Plans for use of HAVA funds and to publish those plans in the Federal Register for public review and comment as required by HAVA.

EAC also recognizes that State and local governments seek full funding of HAVA to meet its mandates. Should Congress provide additional funds to any of the HAVA programs administered by EAC, as proposed by many Members, EAC will be prepared to distribute those funds to the appropriate States or grantees.

➤ *Reporting on the Use of HAVA Funds*

In each instance when funds have been distributed to the States under HAVA, EAC has made the distribution of those funds subject to certain reporting requirements. Reports on the use of Title I funds are due at the end of February of each year and cover the calendar year period that precedes the date of submission (i.e., a report due on February 28, 2006 would cover the period January 1, 2005 through December 31, 2005). For funds distributed under Title II of HAVA, reports are due on March 30 of each year and cover the prior Federal fiscal year.

EAC has recently received the reports on the uses of HAVA funds in 2004 and has developed a policy and protocol for reviewing those reports. While a small percentage of the HAVA funds were expended in FY 2004, EAC expects that the vast majority of these funds will be expended in FY 2005 and in the first quarter of FY 2006 in order for States to replace voting systems, implement statewide voter registration databases, and institute voter registration verification by the deadlines in CY 2006. Funds spent in FY 2005 will be reported in FY 2006. Thus, the reports that EAC will receive in January and March of 2006 will be more extensive and detail many more transactions than reports received this year. EAC needs additional resources in 2006 to review those reports and verify that HAVA funds were spent in keeping with the principles and provisions of HAVA.



➤ ***Auditing the Use of HAVA Funds***

HAVA empowers the EAC to conduct regular audits of the States' uses of HAVA funds. In addition, HAVA grants EAC the authority to conduct special audits upon a vote of the Commission. Other auditing functions are given to the Comptroller General of the United States, including a one-time audit of the HAVA program and the ability to recoup funds from the States when HAVA funds have been overpaid or misspent. EAC has begun its implementation of an audit program to fulfill these auditing and oversight requirements.

EAC anticipates receiving the first Single Audit reports on the States' uses of HAVA funds in June 2005. However, based on the relatively small amount of money expended by each State to implement HAVA, these funds will not be given significant review in the Single Audit process. EAC must be prepared to implement additional audit protocols that will ensure that appropriate attention and focus are given to these Federal funds. Unlike other State programs, the Secretaries of State have had little experience with the management of Federal funds. Furthermore, the one-time nature of these funds and the relatively small amount of funds (in comparison to other Federal programs) will not guarantee the type of attention and review that is needed to assure that these Federal dollars are properly spent. EAC is prepared to recommend and adopt a program of random audits of a certain percentage of the States each year to ensure that the funds have been spent properly and to ensure that appropriate attention is given to this important program.

EAC has also adopted an auditing protocol for special audits, which is discussed in detail on page 13 of this testimony. In January 2005, EAC voted to audit the State of California's use of Title I funds. EAC anticipates that the audit will be completed prior to the end of the 2005 fiscal year. However, EAC also expects that review of reports submitted by the States, single audit reports, and audits conducted by State or local government auditors will identify other situations in which consideration of a special audit will be warranted.

Auditing efforts are expensive and labor intensive. EAC estimates that the average cost of an audit will be between \$50,000 and \$100,000. Audits require countless man-hours reviewing contracts, invoices, and other documents to ensure that the financial records are accurate and that HAVA funds were spent properly. While EAC fully expects to contract for some of these services with other Federal government agencies or outside firms, there will still be a need for in-house staff to review reports from states, single audit reports, and audits conducted by state or local government entities to determine when a special audit is necessary. Further review of any special audit reports will be needed to determine whether a recommendation and request of recoupment of funds through the Comptroller General is required. Therefore, two additional staff members and additional financial resources are necessary to complete the needed review of reports, determine when audits are warranted and supervise those audits.



➤ ***Inspector General Services***

By the end of FY 2005, EAC anticipates having the regular services of an Inspector General to conduct and manage the auditing functions described above as well as to conduct investigations of any improper activity. EAC is required to have an Inspector General. In 2006, that individual and his/her staff will continue to assist with reviewing Single Audit reports, evaluating when a special audit is warranted, supervising those audits, as well as investing any complaints of improper activity.

Voting System Certification

EAC will become the agency responsible for certifying that voting machines meet the applicable voting system standards or guidelines in Summer 2005. A peer review panel will review testing reports from accredited testing laboratories and will make recommendations to EAC as to which systems should be certified. Prior to assuming these duties, EAC has had very little to do with the voting system certification process. Thus, EAC will need additional resources and additional personnel to manage this process, maintain documentation of certifications, and interact with voting system vendors, testing laboratories and members of the public regarding the certification process.

Research and Voluntary Guidance

EAC's 2006 research agenda will focus on continuing the development of voluntary voting system guidelines, conducting studies and research mandated by HAVA, beginning work on other studies and reports requested by HAVA, and fulfilling its role as a clearinghouse of election information. EAC will use \$8.29 million of its \$17.6 million appropriations request to fund research and guidance efforts in 2006.

Voluntary Voting System Guidelines

By the end of FY2005, EAC expects to adopt the Voluntary Voting System Guidelines, Version 1, which will be based on the recommendations provided by the TGDC in April 2005. Version 1 will consist of some revision and correction of the 2002 Voting System Standards with augmentation of requirements in selected areas related to system security, auditability, and accessibility. The Version 1 materials are particularly aimed at providing information that will be of most immediate assistance to States as they prepare to upgrade or replace their voting equipment to meet the January 2006 deadline.

The next version of the Guidelines will consist of a complete restructuring of the 2002 Voting System Standards document into a more logical arrangement of subject matter. The requirements statements will be revised to be expressed in a manner that more closely relates to testing methodologies. There will be considerable work on identifying and defining objective test



methods and protocols. Additional work will be done to complete the requirements for system security, auditability, and accessibility.

The focus of NIST's work in FY2005 and early 2006 is to develop a complete set of requirements and initial test specifications for direct recording electronic voting machines. In FY2006 NIST will continue to research and develop test methodologies to incorporate into the Guidelines. Ongoing work will also be needed to further expand the Guidelines to keep pace with developments in technology. For example, the National Defense Authorization Act of 2005 tasks the Department of Defense to conduct an electronic voting demonstration project after the EAC has established guidelines for Internet voting. The EAC has asked NIST to begin this work in FY2006.

EAC has budgeted \$2.8 million for NIST in FY2006. Most of that funding will go towards the continuing work on the Voluntary Voting System Guidelines. The remainder will reimburse NIST activities related to accrediting voting system testing laboratories and further developing validation methods for voting systems software. These topics are discussed below. EAC will incur additional costs in FY2006 to turn the TGDC and NIST recommendations into final adopted guidelines. HAVA mandates a specific process for vetting and soliciting comments on the proposed Voluntary Voting System Guidelines. This includes a 90-day period for review and comment by the Board of Advisors and the Standards Board, a public comment period through Federal Register publication, a public hearing on the guidelines, and publication of the final adopted guidelines in the Federal Register. The printing costs associated with this process are described below under Printing.

Test Laboratory Accreditation

In FY 2005, NIST through its National Voluntary Laboratory Accreditation Program (NVLAP), will have advertised and sought applications from testing laboratories that wish to be accredited under the NVLAP and EAC program. From solicitation to accreditation, the process will take approximately 12 to 18 months. NIST began accepting applications for accreditation in the third quarter of FY 2005. Thus, much of the evaluation process that will be undertaken by NVLAP will be conducted in FY 2006. A portion of the \$2.8 million that will be transferred to NIST out of the EAC appropriation will be used to fund this program.

Voting System Certification

HAVA requires EAC to provide for the certification, decertification, and recertification of voting systems. By the end of FY 2005, EAC will have established a peer review program to review voting system test reports and to recommend to EAC which systems should be certified. Since many states are entering into contracts in FY 2005 to purchase new voting equipment, it is anticipated that there will be a high demand for system certification work in FY 2006. Several States are including clauses in their contracts that require their vendors to make whatever system modifications may be required to confirm to the new voluntary voting system guidelines. All modification work will also require certification.



Work will also be needed in FY 2006 to develop a policy and process for decertification and recertification of voting systems. Such a policy will cover when a review for decertification is warranted and establish criteria for conducting such a review.

Software Validation

In 2005, EAC and NIST are working to develop processes and procedures for States to test software that is delivered for installation against that version of the software that was certified and submitted to the National Software Reference Library (NSRL). However, more work is required to meet the needs of the State and local election officials. Election officials also must have the ability to determine whether software has malfunctioned or been tampered with after it has been installed on a voting machine. A process for making such a comparison does not currently exist. In 2006, EAC and NIST will work together to develop a program, procedure and process for comparing installed software against the version of software that was certified and submitted to NSRL.

Management Guidelines for Voting System Installation and Operation

In the first quarter of FY 2006, EAC will finalize work on management guidelines or best practices that will accompany the Voluntary Voting System Guidelines. These management guidelines are aimed at providing States and local election officials with helpful information and protocols for accepting, implementing, and maintaining a new voting system. This work will be done as a joint project between EAC and the National Association of State Election Directors (NASED) and will provide information on the myriad of election administration issues including acceptance protocols, ballot layout and design, procedures for programming voting systems, and best practices on storage and maintenance of voting equipment. EAC and NASED will have a first version of this document available to the States by November 2005, so that this information can be used as the States implement new voting systems to meet the January 1, 2006 deadline and in the upcoming 2006 Federal elections. Subsequent work to revise and expand these management guidelines will be ongoing in FY 2006, with a goal toward having a complete set of management guidelines by the end of calendar year 2006.

Statewide Voter Registration Databases

EAC will provide initial guidance to the States on voter registration databases in FY2005. This work will continue through 2005 and into 2006 with the assistance of National Academy of Sciences (NAS) to consider the technical issues related to the implementation, maintenance and upgrading of these databases. NAS, EAC, and the working group³ will conduct an additional meeting in May 2005 to begin developing this guidance with a goal of completion by the end of the first quarter FY 2006. Continuing developments in technology combined with evolving

³ The working group is comprised of a representative of the Department of Justice, state and local election officials, and their technical staffs.



requirements for these databases will create a need to further upgrade and modify these systems in the future. EAC will continue to work with the National Academies of Science to develop voluntary guidance regarding long-term maintenance and technology refresh alternatives that will emphasize smooth transition and minimize the disruption to operations that system modifications often entail.

Provisional Voting and Voter Information

Guidance on provisional voting and voter information will be available to the States at or around the end of FY 2005. States will be conducting provisional voting and posting voter information in 2006 as a part of the primary and general elections for Federal office. Following these elections, EAC will collect data regarding provisional voting, the degree to which EAC guidance was adopted by the States, the types and forms of voter information provided, and the relative success of EAC guidance in assisting the States with the provisional voting and voter information requirements.

Studies

HAVA mandates various studies to be conducted. A study of the use of social security information in voter registration and a study of impact of Section 303(b) on voter registration must be completed by July 1, 2007. EAC will begin its work in studying these topics in FY 2006 in order to meet the requirement to report to Congress on these issues in July 2007.

In addition, HAVA identifies 19 other study topics in Section 241 for EAC to research. Those studies include:

➤ *Providing Information to Election Officials*

- Issue guidance for recruiting and training poll workers.
- Issue guidance for educating voters about registering to vote and voting, voting mechanisms, polling places and all other aspects of participating in elections.
- Compile Federal and State laws governing the eligibility of persons to vote.
- Deliver assistance to improve the administration of elections for Federal office along with necessary funding levels.
- Develop best practices for the laws and procedures used by each State that govern—
 - recounts of ballots cast in elections for Federal office;
 - determinations regarding whether votes are counted in such elections; and
 - standards that define what will constitute a vote on each type of voting equipment used in the State to conduct elections for Federal office.
- Determine the most effective election technology methods and voting systems used in voting and counting votes in elections for Federal office, including the over-vote and under-vote notification capabilities of such technology and systems.



➤ ***Protecting and Informing Voters***

- Ensure the accessibility of voting, registration, polling places, and voting equipment to all voters, including individuals with disabilities (including the blind and visually impaired), Native American or Alaska Native citizens, and voters with limited proficiency in the English language.
- Ensure that members of the uniformed services and overseas voters receive timely ballots that will be properly and expeditiously handled and counted and that they have the ability to register to vote.
- Research the technical feasibility of providing voting materials in eight or more languages for voters who speak those languages and who have limited English proficiency.
- Investigate broadcasting practices that may result in the broadcast of false information concerning the location or time of operation of a polling place.
- Ensure that registered voters appear on the voter registration list at the appropriate polling place by developing best practices for maintaining secure and accurate lists of registered voters (including the establishment of a centralized, interactive, statewide voter registration list linked to relevant agencies and all polling sites).
- Identify, investigate and deter voting fraud in elections for Federal office.
- Identify, investigate and deter voter intimidation.

➤ ***Assisting with Election Administration***

- Provide ballot designs for elections for Federal office.
- Distribute guidelines for provisional voting.
- Study the feasibility of conducting elections for Federal office on different days, at different places, and during different hours, including the advisability of establishing a uniform poll closing time and establishing—
 - a legal public holiday under section 6103 of title 5 as the date on which general elections for Federal office are held;
 - the Tuesday next after the 1st Monday in November, in every even numbered year, as a legal public holiday under such section;
 - a date other than the Tuesday next after the 1st Monday in November, in every even numbered year as the date on which general elections for Federal office are held; and any date described in previous subparagraph as a legal public holiday under such section.
- Provide assistance and guidance regarding voting and administering elections in rural and urban areas.

Obviously, there are many more topics to research and study in Section 241 than could possibly be accomplished in a single year. EAC will prioritize these research items based upon factors such as needs and issues identified by our research in FY 2005, questions identified by stakeholders, and advice of the Board of Advisors and Standards Board.



A Clearinghouse of Information

As the EAC continues its mandate under HAVA to issue voluntary guidance on issues relating to the administration of federal elections, those findings will be catalogued in one central location known as the clearinghouse, projected for completion in FY 2006. It will be a comprehensive collection of issues, resources and guidance that will serve election officials, voters and other individuals and groups interested in the administration of fair and accurate elections. The clearinghouse, the entire contents of which will be accessible to the public, will be readily available through the EAC website as well as in hard copy form.

Election officials will find the clearinghouse as a repository for election administration best practices and research reports, and it will include all data collected by EAC's surveys as well as the analysis reports. The clearinghouse will maintain a register of accredited testing laboratories and documentation regarding the qualification of voting systems. It will also be the authoritative source for the latest materials on voting system standards and interpretations of those standards that are made in the course of system qualification testing.

Voters will be able to use the clearinghouse to get information about registering to vote, becoming a poll watcher and participating in the college poll worker program. It will offer links to help voters identify their elected representatives and locate polling hours in their local precincts. It will also provide details about absentee voting and provisional ballots, as well as resources for voters with disabilities.

One significant resource that EAC will continue to provide to Congress, election officials, and the public is the collection of data related to the administration of Federal elections. In FY 2005, EAC has collected an unprecedented amount of information from the States related to election day, voter registration and military and overseas voting issues. This information was collected in 2005 through the use of three separate survey instruments, which were developed through an expedited process using the Paperwork Reduction Act. As with any new survey instruments, EAC has found that questions were interpreted differently by different states and local election officials and that responses to certain questions were not equivalent. In FY 2006, EAC will review each of these survey instruments with an eye toward consolidating them into one or two survey documents and formulating questions that will produce equivalent responses across the States. The data produced by these surveys will continue to provide the Federal Government with an unmatched compilation of information regarding the administration of Federal elections, will serve as a means of evaluating the success of Federal elections, and inform Congress regarding needed changes to the election process.

We anticipate that the clearinghouse will be the most comprehensive of its kind and will provide much needed guidance and information about administering federal elections as well as voting in America's elections.



Office of the General Counsel

The General Counsel's office will continue to support all elements of EAC. All guidance documents will be developed in conjunction with the legal division to ensure that they are in compliance with HAVA and meet legal requirements for publication and dissemination. Further, the legal staff will continue to assist with determining what are allowable and allocable expenses of HAVA funds. All contracts and legal documents will continue to be prepared and reviewed by the legal division. The General Counsel's office will provide needed advice and opinions to the Commission and its staff on matters related to the program goals as well as the day-to-day operations of the agency. Last, the General Counsel's office will continue its role in administering the public meetings and public hearings conducted by EAC.

Similarly, EAC's Office of the General Counsel will continue to serve as the point of contact for responding to inquiries and requests by Members of Congress; State and local elected officials; and the White House. In this role, the General Counsel's office will continue to serve EAC by assisting other government agencies with questions or concerns related to the implementation of HAVA and other election administration issues. Testimony and other communications with Congress will continue to be developed by and in conjunction with the Office of the General Counsel.

In 2006, EAC will use \$215,000 of its \$17.6 million appropriations request to fund its public meetings and hearings, legal services and legislative liaison functions. EAC will maintain the same number of FTEs dedicated to these functions as in 2005.

Communications

Communications plays a vital role in any organization. This is especially true of the communications function at EAC. In 2005 and 2006, EAC will develop guidance and provide information to the States on the implementation of HAVA and the administration of Federal elections. Once guidance documents are developed, the communications staff will ensure that they are effectively and efficiently communicated to its stakeholders.

In 2006, EAC will continue to provide information through its website, the Federal Register, as well as direct communications with State and local election officials, Members of Congress and the public at large. Approximately \$290,000 of the \$17.6 million requested will be used to fulfill the communications needs of EAC. These efforts will be maintained by the same number of personnel currently assigned to those tasks.

Salaries & Benefits

In 2006, EAC will use approximately 18 percent of its requested \$17.6 million to fund salaries and benefits for its full-time and part-time staff. This represents the same percentage of



funding allocated to these functions as was allocated in the 2005 budget. With this request, EAC will increase the number of full-time equivalents to 26, using additional personnel to staff the new voting system certification program, to assist with monitoring and auditing the use of HAVA funds, as well as assisting with the development and provision of guidance to the States on the implementation of HAVA's requirements. This request also includes the costs of government pay increases.

General Operations

The General Operations budget category represents the costs of rent, equipment and supplies for the day to day operation of the agency. EAC's 2006 request of \$2.7 million in general operating funds represents a slight increase to allow for the upgrade its information technology equipment, for increases in the price of rent, and for the operational costs associated with housing and equipping four additional personnel.

Printing

HAVA requires EAC to publish a number of items in the Federal Register. For example, prior to distributing funds under Title II of HAVA, EAC must publish the plan submitted by the State as well as the Administrative Complaint Procedures developed by the State. In addition, any time that a State makes a material change to the content of its state plan, EAC is required to publish that change in the Federal Register. Other documents that are required to be published in the Federal Register are:

- All Title III guidance documents;
- The Voluntary Voting System Guidelines;
- Processes for certification, decertification and recertification of voting systems
- Other policies and procedures developed by EAC

In most cases, the documents listed above require publication in proposed and final form. As such, EAC has allocated \$1,625,000 of its FY 2006 budget to Federal Register printing costs. The budget activities described above reflect this printing cost, allocating the needed funding to publish the documents produced by each respective activity.

CONCLUSION

Mr. Chairman, as we conclude today's testimony, we observe that significant improvement in the administration of Federal elections has been accomplished under HAVA. This has occurred in a climate of intense scrutiny and we observe that a significant amount of work remains.

Today, more than half of the States are in the process of upgrading their voting technology. Most States are working to implement statewide voter registration databases. And,



all States are working to improve their processes for implementing the provisional voting and voter identification requirements of HAVA. The work required to get all of this right will continue for at least the next few years.

EAC will fulfill its role to provide assistance to help the States meet these requirements and insure that there is full compliance with the Help America Vote Act. And, we can be sure that the climate of intense scrutiny will continue.

The coming months and years will be critical as America looks for full implementation of HAVA's principles and reforms. Congress has made needed and wise investments in election reform through its HAVA appropriations. With continued support from Congress, EAC will continue to work to assure that HAVA's full potential is realized.