



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

Interpretation of Material Changes per HAVA Section 254(a)(11)

Background

The Help America Vote Act (HAVA) assigned the Election Assistance Commission (EAC) the responsibility of providing information and training to recipients on the management of federal funds received under HAVA (HAVA Section 202(4)). Since the initial distribution of HAVA funds to State governments, a recurring question posed to the EAC from the States has been the interpretation of a material change in the administration of the State plan (material change) as referenced by HAVA Section 254(a)(11). Per this Section, a material change requires a State to amend the State plan in accordance pursuant to HAVA Sections 254, 255, and 256.

This interpretation is part of EAC's ongoing attempts to clarify the requirements for management of federal funds and to provide helpful tools for States to use in administering their HAVA programs. The EAC understands that the examples provided below may not be applicable in all circumstances nor does the EAC expect that the examples are the only specific instances of material changes. The State and its State plan development committee must determine when and if specific examples are applicable to the State. As such, the EAC anticipates continuing to receive and respond to questions regarding the interpretation of material changes. However, the EAC encourages States to use this interpretation and the examples provided as an initial checklist for self-assessing the State's need to amend its State plan.

Interpretation

The EAC considers a material change in the administration of the State plan (material change), as referenced by the Help America Vote Act (HAVA) Section 254(a)(11), as occurring in four



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different circumstances identified below. Notwithstanding this interpretation, all State plans must be developed and amended in accordance with the requirements contained in Office of Management and Budget Circular A-102, *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* (also known as the Common Rule).

(1) New or revised Federal laws or regulations affecting HAVA implementation.

New or amended Federal statutes or regulations, including appropriations statutes, that result in a change in scope, purpose, budget, or period of availability of funds related to HAVA.

Examples:

- (a) Congress passes legislation to amend the Title III requirements of HAVA.
- (b) The Office of Management and Budget amends an existing Federal regulation that applies new requirements for monitoring subgrant recipients that impacts how the state will monitor requirements payments distributed to units of local government, as required under HAVA Section 254(a)(2).

(2) New or revised State law, organization, or policy affecting HAVA implementation.

New or amended State statutes, organization, or policy resulting in a change in scope, purpose, budget, or period of availability of funds related to HAVA.

Examples:

- (a) State legislation is passed that changes the voting equipment requirements for the State, thus changing the method of implementation of Title III Voting Systems requirements.
- (b) The responsibility for implementing the plan that was previously with the State Attorney General has changed to the Secretary of State and the Secretary of State wishes to revise the scope, purpose, or budget of the State plan.

(3) A revision in the scope or objective of the project.

A change in the means a State plans to achieve the HAVA objectives, including method of achieving compliance and budget of HAVA funds.



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Examples:

- (a) The State decides to purchase equipment at the State level in lieu of sub-granting to the counties or local jurisdictions.
- (b) The State decided to change the development of the Computerized Statewide Voter Registration List from a bottom-up system to a state-centralized system.
- (c) The State has implemented the requirements of Title III and intends to use the requirements payments to carry out other activities to improve the administration of elections for Federal office, and did not account for, either in the budget or general description of activities, post-Title III compliance activities in the original State plan, as required by HAVA Sections 254(a)(1) and 254(a)(6)(C).
- (d) The State changes the type of voting system originally planned for use in Title III compliance; the State decides to use an optical scan system with ballot marking devices instead of a direct recording electronic (DRE) system.

(4) The current State plan does not account for all available funds.

An increase in the amount of funding authorized under HAVA appropriated to the State not provided for in the original State plan or funds remaining in a fiscal year not covered by the original State plan requires an amended State plan.

Examples:

- (a) A new requirements payment is appropriated for a fiscal year not covered by the budget provided in the State plan.
- (b) The State has funds from a previous fiscal year's requirements payment remaining in a fiscal year not provided for under the current State plan.