



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

April 29 2008

MEMORANDUM

TO: EAC Commissioners

CC: Thomas Wilkey, Juliet Hodgkins, Gavin Gilmour, Jeannie Layson, Tamar Nedzar, Bryan Whitener

FROM: Edgardo Cortés, Acting Director, Election Administration Support Division

SUBJECT: Recommendations Regarding Pending State Requests to Change the Federal Form State Specific Instructions

There is currently one request for changes to the state specific instructions of the National Mail Voter Registration Form (Federal Form) that has been officially submitted to the EAC. The Chair has requested that I provide additional information regarding this new request. This memo details the new request and provides a recommendation for action.

Although the Election Administration Support Division is providing individual recommendations regarding pending requests, the Division continues to recommend that an internal policy be established prior to acting on state requests. A formally adopted policy would ensure transparent, uniform, and nondiscriminatory decisions on pending and subsequent requests to update the state-specific instructions of the Federal Form, while the EAC works to take more formal action. This position is supported by the EAC General Counsel opinion provided to the Commissioners in a February 5, 2008 memo.

Background: The current state instructions for Michigan have the following mailing address for the state: Michigan Department of State, Bureau of Elections, P.O. Box 20126, Lansing, MI 48901-0726.

Michigan has requested that the mailing address information be changed to remove the address for the Secretary of State (Michigan's chief state election official) and include the addresses for Michigan's 83 counties and 26 most populous cities. In addition, the state has requested the following text be included under the Mailing Address section:

“If you live within the city limits of one of the cities listed below, mail or hand deliver the application directly to the clerk of that city. If you do not live within one of the listed cities but you know or can locate the address of your city or township clerk, mail or hand deliver the application directly to that clerk. Otherwise, mail or hand deliver the application to your county clerk. (The addresses of Michigan's 83 county clerks are also listed below.) The county clerk will forward the application to your city or township clerk.”

Analysis: The current regulations governing the Federal Form were adopted by the Federal Election Commission (FEC) and are located in Title 11 of the Code of Federal Regulations (CFR). The EAC has voted to administratively transfer these rules from the FEC to the EAC. The rules promulgated by the FEC allow for the inclusion of a single address in each state designated to receive voter registrations submitted using the Federal Form. Specifically, 11 CFR 8.6(a)(5) requires the chief state election official to submit “*The state election office address where the application shall be mailed.*” (emphasis added). The requirement is to include a singular state address (the state address); the regulations do not allow for the inclusion of more than one state address.

The benefit of using one state address is that one entity is responsible for ensuring that voter registrations are processed in a timely fashion and routed correctly. The addition of 109 county and local jurisdiction addresses increases the points of contact and possible delays that result from several entities assuming responsibility for these functions. In addition, having more than one possible submission address increases the chance that voters incorrectly submit their registration forms, causing delay and confusion.

This change will also significantly lengthen the state instructions portion of the form, making the form less user-friendly and accessible. The Federal Form was created to facilitate the voter registration process. Listing 109 addresses for Michigan will increase the length of the Form, which in turn increases costs of printing the Form, and requires knowledge of Michigan's political subdivisions to properly route voter registrations. Further, should the EAC grant Michigan's request and other states followed suit, these problems would only become further highlighted. Ultimately, the Form could become so cumbersome and unwieldy that it would not be used by voters.

Listing the 109 addresses will also create significant administrative burdens for the EAC. Currently, the EAC maintains addresses for only 49 entities. If the EAC were to accommodate Michigan's request, it would then increase its' administrative burden by more than 200 percent. Taken to the extreme, if all states requested that EAC list their local addresses, the EAC could be in the position of maintaining and updating more than 6,000 addresses, all of which would be listed on the Form. Such a large amount of addresses and the associated administrative responsibilities might also make it difficult for chief state election officials and voter registration organizations to have the most up to date information available.

Finally, accepting the current request would increase administrative burdens on the chief state election officials who are required to make the Federal form available, pursuant to 42 U.S.C. 1973gg-4(b). The cost of making the Federal Form available would increase substantially if the length of the Form is increased as described above. In addition, it would be more difficult for chief state election officials to be sure they are making the most current version of the Federal Form available.

The EAC may choose to accommodate the state's request in other ways. The state specific instructions for Nevada already contain a statement which can serve as a model for this issue. The EAC could agree to put a statement under the current mailing address which reads:

"Local county addresses: You also may return completed applications to the county, city, or township clerk where you normally reside. A complete list is available on Michigan's website:

www.michigan.gov/vote.” Such a solution accomplishes Michigan’s goal of providing for more direct routing while not creating a cumbersome Form.

Recommendation: At this time, the Division cannot recommend approving Michigan’s request for a change in the mailing address. The Commission should table this matter until the next public meeting and authorize the Division Director to discuss the proposed accommodation, described above, with the state. The Division Director shall present the matter during the Commission’s next public meeting and make a recommendation for Commissioner action after discussion with the state. By allowing program staff to discuss the matter with the state, it may be possible to accommodate the state’s request rather than rejecting it.