

Thank you Madame Chair, Commissioners,

I am here to give some background information on HAVA funds and the process that EAC uses in responding to state requests for guidance. As you know, states have received over \$3 billion in federal funds so far under the Help America Vote Act. Of that amount, the EAC is responsible for providing oversight for approximately \$2.97 billion, with the remainder distributed and overseen by the U.S. Department of Health and Human Services. The EAC takes its oversight responsibility very seriously and is constantly working with states to make sure that federal taxpayer funds are used in accordance with all laws and regulations and properly accounted for. The Programs and Services Division, which is comprised of me and one other EAC staff person, is responsible for working with the states to provide information and training on the appropriate management and use of HAVA funds.

Over the past three years, EAC has answered hundreds, if not thousands, of questions from election administrators around the country regarding the appropriate use of HAVA funds. Prior to considering individual questions from states, there is some information that is fundamental to each of them and which covers the basic limitations on the uses of HAVA funds.

There are three sources of funding provided by HAVA for use to improve the administration of federal elections and to meet the requirements of Title III of HAVA (specifically to implement provisional voting, to improve voting technology, to develop and implement a statewide voter registration database, to provide information to voters, and to verify and identify voters according to the procedures set forth in HAVA). Those sources are Section 101, Section 102 and Section 251 funds.

The funds received by a state under Section 101 can be used for the following purposes:

- A. Complying with the requirements under title III.
- B. Improving the administration of elections for Federal office.
- C. Educating voters concerning voting procedures, voting rights, and voting technology.
- D. Training election officials, poll workers, and election volunteers.
- E. Developing the State plan for requirements payments to be submitted under part 1 of subtitle D of title II.
- F. Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.
- G. Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.
- H. Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter

registration status, specific polling place locations, and other relevant information.

Section 102 funds can be used ONLY for the purposes of replacing punch card and lever voting systems with voting systems that comply with Section 301(a) of HAVA.

Section 251 funds can be used to implement any of the Title III requirements, including purchasing compliant voting systems, implementing provisional voting, providing information to voters in the polling place, developing and implementing a statewide voter registration list, and identifying voters. In addition, states may use HAVA funds to improve the administration of elections for Federal office when one of two conditions is met: (1) the state certifies it has met the requirements of Title III; or (2) the state certifies its intention to use an amount not to exceed the amount of the minimum payment that the state either did or could have received under the Section 252 formula for that purpose. The State of Florida, pursuant to HAVA section 251(b)(2)(A), has certified that it has met all the requirements of Title III. This means that all remaining section 251 funds they have available can be used to improve the administration of elections for Federal office.

The uses of Section 251 funds (and Section 101 funds, when used to meet the requirements of Title III) must be accounted for in the state's plan as originally submitted or later amended. Any material change in the use of 251 funds (and Section 101 funds as specified above) from the approved state plan will require the state to revise its plan and submit the revisions to the EAC for publication and approval.

Florida's current request involves the use of section 251 funds.

In addition to the restrictions on the uses of funds imposed by HAVA, when these funds were distributed by either the General Services Administration (GSA) or the EAC, those funds were made subject to several circulars developed by the [Office of Management and Budget](#), specifically OMB Circulars [A-87](#) (governs the use of federal funds to purchase goods for state and local governments), [A-102](#) (governs the management of federal funds for state and local governments), [A-122](#) (governs the use of federal funds to purchase goods for non-profits) and [A-133](#) (dealing with audits). These circulars further restrict the appropriate uses of Federal funds requiring generally that costs paid for by HAVA funds are allowable, allocable (directly or through an indirect cost rate), and reasonable. Circular A-87 specifically charges federal agencies with the responsibility of approving any capital expenditures over \$5000 or for any expenditure related to the alteration of real property, such as remodeling office space.

A cost is allowable if it is necessary for the proper and efficient performance and administration of the federally sponsored program. Costs that fall within the specifically identified uses of HAVA funds in either Sections 101, 102 or Title III are allowable.

A state can allocate an expense by charging only a portion equal to the percentage of use for HAVA related purposes to the HAVA grant. This can be accomplished by either using only that percentage of HAVA fund per unit cost or by seeking reimbursement from the other departments within the state for their portion of the usage. The question of allocability arises

generally in one of two circumstances. First, is the cost allocable to the program to which it is billed? Just because a cost is allowable under one or more funding programs of HAVA do not mean that it is allocable to each and every program. For example, if an expense is not directly related to meeting any of the Title III requirements, it is allocable only to Section 101 funds and Section 251 funds pursuant to the provisions of Section 251(b) that allow for the use of Title II funds for the improvement of the administration of elections for federal office only up to the minimum payment amount. Second, is the cost allocable to benefit a Federal election? Most of the uses identified in HAVA require the funds to be used to benefit a Federal election. Thus, costs that strictly benefit a state or local election are not allocable to the HAVA funding programs.

A state must do some assessment as to whether the costs are reasonable. This is done by determining that the cost is justified based upon factors such as the frequency of use, leasing versus purchasing, and actual cost for the good or service. Florida's request deals, in large part, with the question of reasonableness.

The Programs and Services Division is responsible for responding to all state requests regarding HAVA funding issues, including any pre-approval of expenditures required under OMB Circular A-87. To give you an idea of the volume of requests we get from states, we can receive anywhere from 20 to more than 75 requests in a week, particularly when it is close to the annual state reporting deadline. The complexity of these questions ranges and responses can take anywhere from a few minutes to write a short email to several weeks of intensive research and analysis. We currently have about 65 requests from states awaiting a response from EAC. This does not include other questions we receive, for example, from members of Congress or dealing with our responsibilities under the National Voter Registration Act of 1993. The Programs and Services Division staff send out responses to state questions on a daily basis, consulting with the General Counsel's office when necessary.

On March 12, I received a phone call from Bob West, a legislative analyst for the Ethics and Elections Committee of the Florida House of Representatives. He wanted to know if Florida could use HAVA funds to replace DREs previously purchased by 15 of Florida's 67 counties. He requested a response by the end of the day but did not have all the information EAC would need to review the response and give a definitive answer. I offered to send him a copy of a response that was previously sent to Washington State concerning a very similar matter. I explained that if he wanted a formal response to his specific question that we would need to gather more information and it would take some time.

The following day, March 13, I received the same question from Amy Tuck, Director of the Division of Elections in the Florida Department of State. I forwarded the response I had sent to Bob West the previous afternoon and offered to set up a call with her if she had additional questions. On March 14, Julie Hodgkins, Jeannie Layson, and I had a phone conversation with Amy Tuck and Barbara Leonard, the HAVA Coordinator for the State of Florida, to discuss the issue and answer some additional questions she had. We explained that she could request an official response from EAC to Florida's question.

May 1, 2007 Public Meeting Testimony - Edgardo Cortés

On April 5, Ms. Tuck requested a written opinion from EAC on the several issues we had discussed via email and on the phone since her initial inquiry. We requested some additional information and then had a conference call on April 16 with Florida Secretary of State Browning, several staff members in his Division of Elections, and several staff from the Florida Legislature representing the House and Senate committees with elections oversight. Tom Wilkey, Julie Hodgkins, and I were present for the EAC. Secretary Browning sent additional information we requested later that day. He also sent additional information on April 25 and 30 in response to follow up questions by the EAC.

Thank you.