

Panel Discussion of July 19, 2009 NASS Resolution on Help America vote Act of 2002 (HAVA) Grant and Payment Distinction

Notes from Remarks by EAC's Executive Director, and Director of Grants

Before EAC was created, the General Services Administration (GSA) awarded requirements payments to the States, stipulating that the Single Audit Act and Common Rule applied to use of the funds. Once the Commissioners came on board at the EAC, they voted that all pertinent Office of Management and Budget (OMB) Circulars apply to the requirements funds. In June 2004, EAC award letters to the States reiterated the Commissioners' vote that OMB Circulars were to be followed. In 2007, EAC Commissioners met with OMB officials. OMB informed the Commissioners that EAC is required to meet Federal standards such as the Common Rule, and that funds it distributes must be auditable. EAC's General Counsel, Grants Office, and Inspector General all concurred with OMB's guidance. In September 2008, GAO confirmed that the requirements payments are formula grants. In the FY 2009 explanatory language for the appropriation, Congress referred to the payments as "grants to states to help them meet HAVA requirements."

Congressional and OMB Intent

EAC relies not only on the HAVA Statute, but also the language found in the annual appropriation from Congress to determine how EAC's federal assistance should be administered. Beginning in FY 2004, the Appropriations Committees have repeatedly and consistently referred to the HAVA Section 251 requirements payments as grants.

FY 2004

- P.L. 108-199 and H.R. 2673 state, "That of the funds made available for providing **grants** to assist State and local efforts to improve election technology..."
- S. 108-146 reads, "The Election Assistance Commission is responsible for approving **grants** to assist State and local efforts to improve election technology and the administration of Federal elections...The Committee has provided \$499,000,000 for **grants** to State and local governments to ensure minimum voting standards are reached."
- House Conference Resolution 95 of that year states, "The funds would be issued to states in the form of **grants** to purchase modern voting equipment." Language explains that HAVA would provide funds, "...mostly for **grants** to States and localities to improve voting technology and election administration."
- House Report 108-243 in 2004 states, "This appropriation provides for election reform requirements payments...as well as other **grant** programs authorized by that Act."

FY 2005

- H.R. 108-498 states that EAC, "...is responsible for the oversight and disbursement of the federal **grants** to the states."

- H.R. 108-671 repeats the language in the previous year’s H.R. 108-243, “This appropriation provides for election reform requirements payments...as well as other **grant** programs authorized by that Act.”
- Senate Report 108-342 reads, “The EAC is also charged with awarding **grants** to improve election administration and enhancing election equipment.” Further, “This appropriation finances **grants** for requirements payments to State and local governments to meet minimum voting standards established under title III of HAVA and other grant programs authorized by the Act.”

FY 2006

- S. 109-109 reiterates, “The EAC is also charged with awarding **grants** to improve election administration and enhancing election equipment.”

FY 2007

- S. 109-293 reiterates, “The EAC is also charged with awarding **grants** to improve election administration and enhancing election equipment.”

FY 2008

- S. 110-129 reiterates, “The EAC is also charged with awarding **grants** to improve election administration and enhancing election equipment.”
- H.R. 110-207 reiterates, “This appropriation provides for election reform requirements payments to states under the Help America Vote Act of 2002 and for other **grant** programs authorized by that Act.”

FY 2009

- Per S.R. 110-417, “The EAC is also charged with awarding grants to improve election administration and to enhance election equipment.”
- H.R. 7323 states, “The bill provides \$106,000,000 for election reform programs. Included in this amount is \$100,000,000 for **grants** to states to help them meet HAVA requirements...”
- H.R. 110-920 reads, “Of this amount, \$110,000,000 is for **grants** available to States for assistance in meeting the requirements of HAVA...”

Office of Management and Budget, in the President’s Budget, has consistently referred to requirements payments as grants:

FY 2004

- EAC “is responsible for approving grants to assist State and local efforts to improve election technology and the administration of Federal elections.”
- “The Budget proposes \$500 million for grants to State and local governments to ensure minimum voting standards are reached...”

FYs 2005—2010

- In each of the above years, the President’s Budget states that EAC “is responsible for approving grants to assist State and local efforts to enhance election

- In FYs 2008 and 2009, OMB in the President’s Budget writes, “The...Budget does not seek additional resources for grant to States. To date, the Administration has supported over \$3.0 billion for election reform.”
- In FY 2010, “The Budget provides \$52.0 million in additional resources for election reform grants to States. The Election Assistance Commission is responsible for distributing this grant funding in accordance with the requirements of the Help America Vote Act of 2002, and for auditing the use of grant funding once it has been distributed.”

Audit of requirements payments

As Federal funds, the requirements payments are subject to audit and all other Federal restrictions on use of the funds. Per OMB Circular A-133, States expending more than \$500,000 per year of Federal funds are subject to Federal audit:

Subpart B—Audits

§ ____.200 Audit requirements. (a) Audit required. Non-Federal entities that expend \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in § ____.205.

The Catalog of Federal Domestic Assistance (CFDA)

The CFDA provides a full listing of the types of Federal assistance programs available to State and local governments (including the District of Columbia); federally-recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

The closest definition for the requirements payments is the Formula Grants definition. In addition, the definitions for 'payments' exclude aid to state entities; with funds instead going to individuals (e.g., pension benefits) or private entities for a very specific purpose (e.g., cash for clunkers or section 8 vouchers). Additionally, Payments require specific performance, which is not imposed by EAC.

Financial type assistance

- **Formula Grants (A)** – Includes allocations of money to States or their subdivisions in accordance with distribution formulas prescribed by law or administrative regulation, for activities of a continuing nature not confined to a specific project. Examples of this type of assistance include transportation and infrastructure grants designated by Congress, such as the Community Development Block Grant (CDBG).

- **Project Grants (B)** – Includes funding of specific projects for fixed or known periods. Project grants can include fellowships, scholarships, research grants, training grants, traineeships, experimental and demonstration grants, evaluation grants, planning grants, technical assistance grants, survey grants, and construction grants.
- **Direct Payments for Specified Use (C)** – Includes financial assistance from the Federal government provided directly to individuals, private firms, and other private institutions to encourage or subsidize a particular activity by conditioning the receipt of the assistance on a particular performance by the recipient. One example of this type of assistance is the Section 8 Housing Choice Voucher program.
- **Direct Payments with Unrestricted Use (D)** – Includes financial assistance from the Federal government provided directly to beneficiaries who satisfy Federal eligibility requirements with no restrictions being imposed on the recipient as to how the money is spent. Included are payments under retirement, pension, and compensatory programs.
- **Direct Loans (E)** – Includes financial assistance provided through the lending of Federal monies for a specific period of time, with a reasonable expectation of repayment, of which may or may not require the payment of interest.
- **Guaranteed/Insured Loans (F)** – Includes programs in which the Federal government makes an arrangement to identify a lender against part or all of any defaults by those responsible for repayment of loans.
- **Insurance (G)**– Includes financial assistance provided to assure reimbursement for losses sustained under specified conditions. Coverage may be provided directly by the Federal government or through private companies, and may or may not involve the payment of premiums.

The CFDA information on the HAVA Requirements Payments reiterates the EAC view that payments should be treated as formula grants and are not exempt from A-8t or other applicable circulars, a follows:

Authorization (040):

Help America Vote Act of 2002 (HAVA), Title II, Subtitle D, Part 1, Sections 251-258, Public Law 107-252, 42 U.S.C. 15401-15408.

Objectives (050):

HAVA Section 251 authorizes requirements payments to assist States (including the District of Columbia and U.S. Territories) in meeting the Uniform and Nondiscriminatory Election Technology and Administration Requirements in Title III of the Act (voting systems standards, provisional voting and voting information requirements, computerized statewide voter registration list requirements and requirements for voters who register by mail) and, under certain circumstances, for other activities to improve the administration of Federal elections.

Types of Assistance (060):

Formula Grants.

Uses and Use Restrictions (070):

HAVA Section 251(b) provides that these funds are to be used only to meet the requirements of HAVA Title III, except that States may use the payments to carry out other activities to improve the administration of elections for Federal office if the State certifies to EAC that: (1) the State has implemented the requirements of Title III; or (2) the amount to be expended with respect to such other activities does not exceed an amount equal to the minimum requirements payment amount applicable to the State. Section 251(c) also explains that a State may use a requirements payment: (1) as a reimbursement for costs incurred in obtaining voting equipment which meets the requirements of section 301 (voting systems standards) if the State obtains the equipment after the regularly scheduled general election for Federal office held in November 2000, notwithstanding the Act's maintenance of effort requirements; and (2) for any costs for voting equipment which meets the requirements of section 301 that were incurred pursuant to a multi-year contract on or after January 1, 2001, except that the amount that the State is otherwise required to contribute under the maintenance of effort requirements must be increased by the amount of the payment made with respect to such multiyear contract. Funds are available until expended.

Eligibility Requirements (080)**Applicant Eligibility (081):**

Section 253(d) provides that States may not file a statement of certification to receive a requirements payments until the expiration of a 45-day period (or, in the case of a fiscal year other than the first fiscal year for which a requirements payment is made to the State, a 30-day period) that begins on the date the EAC publishes the State plan in the Federal Register. State, or designee, in consultation with the chief State election official, to file with EAC a statement certifying that the State is in compliance with the conditions set forth in Section 253(b). The State may meet this certification requirement by filing the following statement: hereby certifies that it is in compliance with the requirements referred to in To receive funds for a fiscal year, HAVA Section 253 requires the chief executive officer of the State, or designee, in consultation with the chief State election official, to file with EAC a statement certifying that the State is in compliance with the conditions set forth in Section 253(b). For the purpose of this requirement, the chief State election official is the individual designated by the State under section 10 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-8) to be responsible for coordination of the States responsibilities under such Act. Section 253(b) requires the State to: have filed with EAC a State plan covering the fiscal year that the State certifies: contained each of the elements required to be in the State plan, according to HAVA Section 254, including how the State will establish a State Election Fund in accordance with Section 254(b); was developed in accordance with Section 255, which describes the process of

using a committee of appropriate individuals, including the chief election officials of the two most populous jurisdictions, other local election officials, stake holders (including representatives of groups of individuals with disabilities), and other citizens to develop the plan; and met the 30-day public notice and comment requirements of Section 256. have filed with the EAC a plan for the implementation of the uniform, non-discriminatory administrative complaint procedures required under Section 402 (or has included such a plan in the State plan), and have such procedures in place. If the State did not include such an implementation plan in the State plan, the Federal Register publication and the committee development requirements of Sections 255(b) and 256 apply to the implementation plan in the same manner as they apply to the State plan. be in compliance with each of the following federal laws: The Voting Rights Act of 1965; The Voting Accessibility for the Elderly and Handicapped Act; The Uniformed and Overseas Citizens Absentee Voting Act; The National Voter Registration Act of 1993; The Americans with Disabilities Act of 1990; and The Rehabilitation Act of 1973. to the extent that any portion of the requirements payment is used for activities other than meeting the requirements of title III, have provided that: the State's proposed uses of the requirements payment are not inconsistent with the requirements of title III; and the use of the funds under this paragraph is consistent with the requirements of Section 251(b); have appropriated funds for carrying out the activities for which the requirements payment is made in an amount equal to 5 percent of the total amount to be spent for such activities (taking into account the requirements payment and the amount spent by the State) and, in the case of a State that uses a requirements payment as a reimbursement for voting equipment under Section 251(c)(2), an additional amount equal to the amount of such reimbursement.

Beneficiary Eligibility (082):

Fifty States, the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands.

Credentials/Documentation (083):

Qualifying jurisdictions must follow the procedures set forth in the Help America Vote Act, 42 U.S.C. 15401 et. seq., entitled Requirements Payments.

Application and Award Process (090)

Preapplication Coordination (091):

None. This program is excluded from coverage under E.O. 12372.

Application Procedures (092):

HAVA Section 253 requires the chief executive officer of the section 253(b) of the Help America Vote Act of 2002. (with the blank to be filled in with the name of the State involved). In addition, the General Services Administration (GSA), which disburses the Title II requirements payments to States on behalf of EAC, requests that a representative

from each State contact Sharon Pugh (Sharon.Pugh@GSA.gov) or Brad Farris (Brad.Farris@GSA.gov) on (816) 823-3108 to provide information on State contact points, including name, telephone number, address and email address. GSA then contacts the State representatives to obtain banking information required for an Electronic Funds Transfer (EFT).

Award Procedure (093):

Based upon the certification statement filed by the State, EAC notifies GSA that a State is due receipt of its Title II payment for a particular fiscal year (i.e., either FY 2003 funds, FY 2004 funds, or both). GSA disburses the Title II funds for a particular fiscal year to the account specified by the State, and notifies the State and EAC of the disbursement in writing, specifying the amounts disbursed by fiscal year. EAC provides separate notification to States specifying the amount to be disbursed by GSA. All funds are disbursed via EFT.

Deadlines (094):

Not applicable.

Range of Approval/Disapproval Time (095):

Not applicable.

Appeals (096):

Not applicable.

Renewals (097):

Not applicable.

Assistance Consideration (100)

Formula and Matching Requirements (101):

GSA, on the behalf of EAC, calculates the amount of funding that each State receives under the guidelines specified in HAVA Section 252 and provisions in related Federal appropriations legislation. The sum of the funds allocated as a result of these steps is equal to the total amount appropriated for the fiscal year, less any federal rescission (\$830 million in FY03; \$1,489,360,620 in FY04; est. \$0 in FY05). Section 253(b)(5) requires the State to have appropriated funds for carrying out the activities for which the requirements payment is made in an amount equal to 5 percent of the total amount to be spent for such activities (taking into account the requirements payment and the amount spent by the State) and, in the case of a State that uses a requirements payment as a reimbursement for voting equipment under Section 251(c)(2), an additional amount equal to the amount of such reimbursement.

Length and Time Phasing of Assistance (102):

Not applicable.

Post Assistance Requirements (110)

Reports (111):

HAVA Section 258 requires States receiving these funds to submit a report to EAC on the activities conducted with the funds provided during the Federal fiscal year, which runs from October 1 through September 30 of each year. This report must include: (1) a list of expenditures made with respect to each category of activities described for the use of funds; (2) the number and type of articles of voting equipment obtained with the funds; and (3) an analysis and description of the activities funded to meet HAVA requirements and how such activities conform to the submitted State plan. This report is due no later than six months after the end of each fiscal year. States should submit Standard Form 269 as part of this report. This form may be found at http://www.whitehouse.gov/omb/grants/grants_forms.html.

Audits (112):

HAVA Title IX, Section 902, authorizes EAC to audit or examine books, documents, papers and records of any recipient that are deemed pertinent to the payment; stipulates that the provision applies to all recipients of payments under the Act; requires that all funds provided under the Act are subject to mandatory audit by the Comptroller General at least once during the lifetime of the program, with the same access to records as EAC; and requires that, if the Comptroller General determines that an excess payment has been made or the recipient is not in compliance, the recipient must pay the office that made the payment an amount that reflects the excess payment or the proportion representing noncompliance.

Records (113):

HAVA Title IX, Section 902, requires recipients of payments under the Act to keep records consistent with sound accounting principles to facilitate an effective audit and stipulates that the provision applies to all recipients of payments under the Act.

Financial Information (120)

Account Identification (121):

95-1650-0-1-808.

Obligations (122):

FY 07 est not reported; FY 08 est not reported; and FY 09 est not reported.

Range and Average of Financial Assistance (123):

Not applicable.

Program Accomplishments (130):

Not applicable.

Regulations, Guidelines, and Literature (140):

Part 1 of Subtitle D of Title II (Sections 251-258) and Title III of Public Law 107-252, the Help America Vote Act of 2002, Sections 301-305, and Sections 902 and 906. EAC has determined that the following Office of Management and Budget guidelines apply: A-87 - Cost Principles for State, Local and Indian Tribal Governments (Cost Principles);

A-102 - Grants and Cooperative Agreements with State and Local Governments (Administrative Requirements); Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Rule, Administrative Requirements, 53 FR 8087, March 11, 1988); and A-133 Audits of States, Local Governments, and Non-Profit Organizations (Single Audits, Audit Requirements). These guidelines may be found at <http://www.whitehouse.gov/omb/circulars/index.html>.

Information Contacts (150)

Regional or Local Office (151) :

Not applicable.

Headquarters Office (152):

Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington, DC 20005, Telephone: (1-866) 747-1471 (toll free) or (202) 566- 3100.

Website Address (153):

www.eac.gov.

Related Programs (160):

None.

Examples of Funded Projects (170):

Not applicable.

Criteria for Selecting Proposals (180):

None.