



DEBRA BOWEN | SECRETARY OF STATE | STATE OF CALIFORNIA
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October 9, 2008

County Clerk/Registrar of Voters (CC/ROV) Memorandum #08295

TO: All County Clerks/Registrars of Voters

FROM: 
Chris Reynolds, Deputy Secretary of State, HAVA Activities

RE: Administrative: Election Assistance Commission (EAC) Guidance
on Use of HAVA Funds

Attached please find copies of guidance the Secretary of State received from the EAC received on October 6, 2008, regarding the allowable use of Help America Vote Act of 2002 (HAVA) funding. The guidance was provided in response to requests from the Secretary of State.

Poll Worker Training and Voter Education Activities

Per EAC guidance, poll worker training activities may be conducted using HAVA funds on a one-time basis when implementing a new voting system. Ongoing expenses related to poll worker training are not allowable.

Other poll worker training activities are limited to the minimum requirements payment funding amount provided for in the Section 301 Voting System upgrade contract.

Voter education activities may be conducted using HAVA funds in three circumstances:

- To conduct a voter education program that is specific to the use of a paper-based or central count voting system, so voters using such a voting system can detect overvotes and/or correct errors in ballots before ballots are cast and counted (including receiving a replacement ballot to correct an error). However, HAVA funding is provided on a one-time basis and counties will, at some point, bear full responsibility for the costs of complying with applicable provisions of HAVA.
- For posting voter information at polling places that was not required to be posted prior to HAVA. For example, providing instructions on how to vote on a new voting system, or providing instructions to first-time voters who

registered by mail would be new, HAVA-related expenses. Costs for providing voters with information on requirements that existed under state or federal law prior to HAVA, or any requirements for posting information not required by HAVA, are not allowable. Once again, HAVA funding is provided on a one-time basis and counties will, at some point, bear full responsibility for the costs of complying with applicable provisions of HAVA.

- To implement educational programs for poll workers and voters when a new voting system is implemented. Once again, these expenses should be one-time in nature because HAVA funds are not to be used for ongoing election administration expenses.

This guidance is consistent with the advice previously provided to counties by the Secretary of State and will guide review of claims submitted by counties.

Voting System Expenditures

The August 3, 2007, approval of voting systems issued by the Secretary of State required some counties to restrict the use of direct-recording electronic (DRE) voting equipment in polling places. As a result, some counties reported incurring additional expense for modifying the deployment strategy for voting systems. Counties asked whether those voting system expenses, including ancillary costs for voting booths or ballot boxes, are allowable expenses.

On March 20, 2008, the EAC adopted a new policy on replacement of voting equipment that allows the use of HAVA funds to replace voting systems previously purchased with HAVA funds. The attached guidance clarifies that costs for peripheral equipment to ensure the security and privacy of voting are allowable.

If you have any questions about this memorandum or the attached EAC guidance, please feel free to contact me at (916) 651-7837. Thank you.



U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

October 6, 2008

Chris Reynolds
Deputy Secretary of State
Office of the California Secretary of State
1500 11th Street
Sacramento, CA 95814-2974

Re: Advisory Opinion – FAO-08-011

Dear Mr. Reynolds:

The purpose of this letter is to inform you that the Commissioners of the United States Election Assistance Commission (EAC) have considered your advisory opinion request, AOR-08-021. On September 25, 2008, the Commissioners voted 3-0 to issue an advisory in response to your request. The advisory was issued on September 26, 2008.

The advisory opinion adopted by the EAC Commissioners, FAO-08-011, is attached. Please contact me at (202) 566-3126 if you have any questions about this matter.

Sincerely,

A handwritten signature in cursive script that reads "Edgardo Cortés".

Edgardo Cortés
Acting Director, Division of HAVA Payments and Grants

Attachment: U.S. EAC Funding Advisory Opinion FAO-08-011

cc: California Secretary of State



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

Funding Advisory Opinion
FAO-08-011

Date Issued:

September 26, 2008

Requestor:

Office of the California Secretary of State (AOR-08-21)

Question:

Are poll worker training and voter education considered part of the Help America Vote Act's (HAVA) Title III requirements and can they be paid for using HAVA Section 251 funds, regardless of a certification filed under HAVA Section 251(b)(2)?

Answer:

Section 251 funds may not be used for poll worker training unless the state has submitted a certification under HAVA Section 251(b)(2).

Voter education may be funded with Section 251 funds, regardless of a certification filed under HAVA Section 251(b)(2), in only three circumstances as described below.

Discussion:

Poll worker training

If a State has filed a certification under Section 251(b)(2), Section 251 funds may be used for training election officials, election volunteers, and poll workers as an activity to improve the administration of elections for Federal office.

Voter Education

Voter education may be funded with Section 251 funds, regardless of a certification filed under HAVA Section 251(b)(2), in only the following three circumstances:

1) Pursuant to HAVA Section 301(a)(1)(B), States using a paper ballot voting system or central count voting system (including mail-in absentee ballots and mail-in ballots) may establish a voter education program. This voter education program must be specific to the voting system used in the jurisdiction, notifies voters of the effect of over-voting, and provides instructions to voters on how to correct a ballot before it is cast and counted (including obtaining a replacement ballot).

2) States must post voter information at each polling place on Election Day pursuant to HAVA Section 302(b). Voter information, as defined by HAVA Section 302(b)(2), means a sample ballot, the date of the election and the hours which polling places will be open, instructions on how to vote, instructions for mail-in registrants and first-time voters



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under Section 303(b), general information on voting rights under applicable Federal and State laws, and general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

3) States may conduct an educational program for poll workers and voters when they implement a new voting system that complies with the requirements of Title III of HAVA. However, this is a one-time training expenditure and does not include expenses to train poll workers prior to each election for state, local and/or federal office.

If a State has filed a certification under Section 251(b)(2), Section 251 funds may be used for educating voters on voting procedures, voting rights, and voting technology as an activity to improve the administration of elections for Federal office.



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WASHINGTON, D.C. 20005

October 6, 2008

Chris Reynolds
Deputy Secretary of State
Office of the California Secretary of State
1500 11th Street
Sacramento, CA 95814-2974

Re: Advisory Opinion – FAO-08-010

Dear Mr. Reynolds:

The purpose of this letter is to inform you that the Commissioners of the United States Election Assistance Commission (EAC) have considered your advisory opinion request, AOR-08-020. On September 25, 2008, the Commissioners voted 3-0 to issue an advisory in response to your request. The advisory was issued on September 26, 2008.

The advisory opinion adopted by the EAC Commissioners, FAO-08-010, is attached. Please contact me at (202) 566-3126 if you have any questions about this matter.

Sincerely,

A handwritten signature in black ink that reads "Edgardo Cortés". The signature is written in a cursive style.

Edgardo Cortés
Acting Director, Division of HAVA Payments and Grants

Attachment: U.S. EAC Funding Advisory Opinion FAO-08-010

cc: California Secretary of State



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

Funding Advisory Opinion
FAO-08-010

Date Issued:

September 26, 2008

Requestor:

Office of the California Secretary of State (AOR-08-20)

Question:

Does the Election Assistance Commission's (Commission) March 20, 2008 policy regarding replacement of voting systems purchased with Help America Vote Act (HAVA) funds allow HAVA funds to be used for reimbursement of the costs of optical scan and peripheral equipment, as shown below, needed to replace DRE's (direct-recording electronic voting machines) previously purchased with HAVA funds?

1. High-speed, central-count, optical scan tabulators.
2. Precinct-based optical scan tabulators.
3. Voting booths (polling place booths to ensure that voters can mark paper ballots in private).
4. Paper-ballot processing carts (to assist with storing, moving, sorting and processing paper ballots).
5. Ballot boxes (to securely store ballots at the polling place and for transport to central tabulation facilities).
6. Privacy sleeves (to ensure the secrecy of the marked box).

Answer:

States may use either Section 101 or Section 251 funds to replace voting systems previously purchased with HAVA funds as long as the replacement system meets the requirements for voting systems identified in Title III of HAVA.

Discussion:

The Commission's March 20, 2008 policy on replacement of voting systems says that:

... the Commission determines that it is "reasonable" pursuant to the OMB [Office of Management and Budget] circulars for state governing jurisdictions to use HAVA funds to replace voting systems purchased with HAVA funds, as long as such purchases comply with HAVA. States will have the flexibility and opportunity to use HAVA funds to meet the requirements of title III or to improve the administration of elections for Federal office.



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Based on this policy, States may use either Section 101 or Section 251 funds to replace voting systems previously purchased with HAVA funds as long as the replacement system meets the requirements for voting systems identified in Title III of HAVA. In this regard, voting systems include the components of a voting system and the peripheral equipment necessary to meet the voting system standards for security and privacy, such as voting booths and ballot boxes.