



# HAVA Compliance Manual

Guidance on implementing the  
**Help America *vote!* Act of 2002**



Issued by the Secretary of State on August 25, 2006

## CHAPTER 1

### VOTER REGISTRATION AND IDENTIFICATION REQUIREMENTS

The goal of this chapter is to provide guidance to elections officials relating to the federal laws requiring each state to establish a statewide voter registration database and the federal and state identification requirements for voter registration.

#### **HAVA Requirement for a Statewide Database**

Section 303(a) of HAVA requires each state having voter registration requirements for elections for federal office to implement, through the chief state elections official, a single, uniform, official, centralized, interactive computerized statewide voter registration list. This computerized list shall be coordinated with the databases of other state agencies, and must be accessible to any elections official in the state, including local elections officials. (HAVA § 303(a)(1)(A)(iv) and (v).) Local elections officials are responsible for entering voter registration into the computerized list on an expedited basis as soon as they receive the information. (HAVA § 303(a)(1)(A)(vi).) The state is to maintain the list, and ensure that individuals who are ineligible to vote are removed from the list. (HAVA § 303(a)(2).)

#### **State Implementation of HAVA Database Requirement**

The HAVA statewide voter registration database requirements became effective for California on January 1, 2006. As of that date, the statewide list became the official voter registration list for the State of California. California has complied with the HAVA requirements utilizing an enhanced Calvoter statewide voter registration system, pending development and completion of the new VoteCal statewide voter registration system.

Additionally, in December of 2005, the Secretary of State adopted emergency regulations, which established the database and set forth the procedure for processing voter registrations, including identification verification. The regulations further accomplish all of the following:

- Describe procedures for verifying voter identity and issuing unique voter identification numbers.
- Establish data exchange and data maintenance requirements.
- Describe the requirements of the elections management system and indicate the voter information to be included in that system.
- State the requirements for processing new (after December 31, 2005) voter registration applications.
- Set forth requirements and procedures to be utilized in updating, changing or canceling a voter's registration record.
- Provide guidance for comparing registration records with state death and felony status records.
- Establish requirements concerning duplicate registration records.

(Cal. Code Regs, Tit. 2, div. 7, ch, 2, §§ 20108-20108.80.)

Subsequent to each election, the county elections official is required to certify compliance with these regulations. (Cal. Code Regs, Tit. 2, div. 7, ch, 2, § 20108.80.)

### **Statewide Database Procedures**

Calvoter interfaces and shares information with each county's Election Management System (EMS). The EMS is required to maintain each voter's voting history, mailing list maintenance notices sent to the voter, the voter's status as an active or inactive voter, and other information pertaining to a voter's eligibility. New voter registrations and re-registration applications are also processed through the interface with the EMS, although if the elections official has previously verified the voter's driver's license number through Calvalidator and the EMS stores this information, this step is not required for re-registrations; see "Identification Requirements" below. The procedures contained in the regulations also require periodic duplicate checks and comparison of death and felony conviction records. These records are then uploaded into Calvoter via an automated batch process for most Elections Management Systems.

Additional procedures require Calvoter to be "frozen" from the 15-day close of registration through the end of the official canvass for any federal election. This is necessary to ensure that Calvoter will be the complete and accurate list of Californians eligible to vote in that election. Registrations received during the "freeze" period may be received and processed by each county elections official and go through the Calvalidator validation process, but will not be uploaded into Calvoter until the end of the official canvass for the pending election.

### **HAVA Voter Registration Identification Requirements**

Pursuant to Section 303 of the Help America Vote Act ("HAVA"), individuals registering to vote, by any means, must provide their current and valid driver's license number, or state identification number on the affidavit of registration, if they have such a number. (HAVA § 303(a)(5)(A)(i)(I).) If the individual does not possess a current and valid driver's license or state identification number, the individual is required to provide the last four digits of his or her social security number. (HAVA § 303(a)(5)(A)(i)(II).) If an applicant for voter registration has not been issued either a current and valid driver's license or state identification number or a social security number, the state must assign the voter a unique number, which shall serve to identify the voter for registration purposes. (HAVA § 303(a)(5)(A)(ii).) The state must verify the validity of the numbers provided by the registrant. (HAVA § 303(a)(5)(A)(iii).)

### **State Implementation of HAVA Voter Registration Identification Requirements**

To comply with the identification validation requirements of HAVA, county elections officials must verify the driver's license or state identification number through Calvalidator for all registrants whose affidavits are received after December 31, 2005. The driver's license or state identification number may not be sent to Calvoter until it is successfully checked through Calvalidator. In some instances, the inability to verify a number will require county elections officials to directly contact the registrant. However,

the county elections official may enter a driver's license or state identification number found through Calvalidator if the registrant did not provide it on the voter registration card and only one individual is found via Calvalidator that possesses the name and date of birth of that registrant.

If the county elections official has difficulty verifying the driver's license number or social security number of a registrant, that person's voter registration may be placed in "pending status." Registrants may also be placed in pending status if the registration record lacks substantive information required to determine the person's eligibility to vote.

Voters in pending status may vote on Election Day, but must do so by means of a provisional ballot until the identification verification is completed. Therefore, it is essential for anyone registering voters to ensure that each registrant completely fills out the voter registration affidavit, including his or her driver's license or state identification number and/or social security number, if the registrant has any of these numbers.

#### **Identification at the Polls (See Chapter 7)**

The regulations also set forth procedures relating to the identification of voters who are required to show identification at the polls. This is a related, but separate requirement of HAVA. Please see Chapter 7 for a detailed description of the requirements concerning identification at the polls.

## CHAPTER 2

### ABSENTEE, MILITARY AND OVERSEAS VOTERS

The goal of this chapter is to inform county elections officials of the federal and state law requirements concerning military and overseas voters who wish to vote absentee ballots in an election in a California jurisdiction.

#### **Federal Law Requirements**

Title VII of HAVA addresses the voting rights of military members and overseas citizens. The uncertainties of overseas mail service in politically unsettled areas or in remote locations in underdeveloped countries, where many American military and relief workers are deployed, have caused some votes by our nation's most dedicated citizens to go uncounted in past elections. HAVA sets forth guidelines and requirements for both military personnel and civilians to help ensure that every effort is made to include these voters in all future elections.

HAVA requires that the military appoint voting assistance officers who have sufficient time and resources to assist military personnel stationed overseas with matters related to elections and voting. HAVA charges the military with the responsibility to publicize the availability of registration and voting materials to both military personnel and their dependents and to disseminate information for returning registration forms, absentee ballot request forms, and completed ballots in sufficient time for local elections officials to process them in accordance with legally-mandated deadlines. (HAVA § 701.)

In addition, for voters in all states, HAVA requires that absentee ballot status for military and overseas voters remain in effect through two regularly scheduled general elections for federal office. (HAVA § 704.) HAVA also requires election officials to accept a standard federal oath rather than a state one, if an oath is required by state law. (HAVA § 705.)

To allow ample time for the receipt and processing of voter registration and absentee ballot applications, HAVA Section 706 requires that elections officials accept early submission of these forms from military and overseas voters. A state may not refuse to accept or process an otherwise valid registration application or absentee ballot application on the grounds that it was submitted prior to the first date on which the state otherwise accepts and processes such applications. (HAVA § 706(a).)

If, for any reason, the voter registration or the application for absentee ballot is not accepted, the elections official shall notify the voter of the reason for the rejection. (HAVA § 707.)

#### **State Law Requirements**

Under California law, electors who are military personnel or private citizens living outside the United States, as well as their spouses and dependents, are considered "special absentee voters." (Elec. Code, § 300(b).) When a voter who qualifies as a

special absentee voter under this statute applies for an absent voter's ballot, the application is deemed to be both an affidavit of registration and an application for permanent absentee voter status. (Elec. Code, §§ 3100, 3104, 3303.) A special absentee voter may also register to vote and apply for an absent voter's ballot via facsimile. (Elec. Code, § 3103(f).) A U.S. citizen living overseas should complete a "Federal Post Card Registration and Absentee Ballot Request," and mail it to his or her local county elections official. This form is available through a link on the Secretary of State's website, or by going directly to <http://www.fvap.gov/pubs/onlinefpca.pdf>.

If an elections official receives an application for an absent voter's ballot from a special absentee voter prior to the 60th day before the election, the official shall keep the application and process it on or after the 60th day prior to the election. (Elec. Code, § 3103(a).) If an application is rejected, the elections official shall return it to the applicant with the reason for rejection stated on it, together with a new blank application. (Elec. Code, § 3106.)

If the application is accepted and filed, the elections official shall immediately send the voter a ballot in a form prescribed and provided by the Secretary of State. (Elec. Code, § 3103(b).) Upon request of the special absentee voter, the elections official may send the ballot to the voter by mail, facsimile, or electronic transmission. (Elec. Code, § 3103(f).) The elections official shall send with the ballot a list of all candidates who have qualified for the ballot by the 60th day before the election and a list of all measures that are to be submitted to the voters and on which the voter is qualified to vote. The voter shall be entitled to write in the name of any specific candidate seeking nomination or election to any office listed on the ballot. (Elec. Code, § 3103(b).)

California Elections Code section 3103.5(a)(1) permits special absentee voters who are temporarily living outside the United States or the District of Columbia to return their ballots by facsimile transmission. To be counted, the elections official must receive the faxed ballot no later than the closing of the polls on election day. (Elec. Code, § 3103.5(a)(1).) The faxed ballot must be accompanied by an identification envelope containing all the information required by Elections Code section 3011. Although the faxed ballot will not, of course, be enclosed in the identification envelope, the statute requires that a copy of the completed envelope accompany the faxed ballot. Elections Code section 3011 requires that the following information accompany the faxed ballot:

- (a) A declaration, under penalty of perjury, stating that the voter resides within the precinct in which he or she is voting and is the person whose name appears on the envelope;
- (b) The signature of the voter;
- (c) The residence address of the voter as shown on the affidavit of registration;
- (d) The date of signing;

- (e) A notice that the envelope contains an official ballot and is to be opened only by the canvassing board;
- (f) A warning plainly stamped or printed on it that voting twice constitutes a crime;
- (g) A warning plainly stamped or printed on it that the voter must sign the envelope in his or her own handwriting in order for the ballot to be counted;
- (h) A statement that the voter has neither applied, nor intends to apply, for an absent voter's ballot from any other jurisdiction for the same election;
- (i) The name of the person authorized by the voter to return the absentee ballot pursuant to Section 3017;
- (j) The relationship to the voter of the person authorized to return the absentee ballot; and,
- (k) The signature of the person authorized to return the absentee ballot.

The faxed ballot must also be accompanied by an oath of voter as set forth in Section 3103.5(a)(1). Although this oath includes an acknowledgement of the potential waiver of the voter's right to a secret ballot, each elections official is required to adopt appropriate procedures to protect the secrecy of absentee ballots returned by facsimile transmission. (Elec. Code, § 3103.5(a)(2).) The ballots of special absentee and overseas voters shall otherwise be received and canvassed at the same time and under the same procedure as regular absent voter ballots. (Elec. Code, § 3102, 3310.) Accordingly, when the elections official receives a special absentee ballot by facsimile, the official determines the voter's eligibility to vote by comparing the signature on the returned ballot with the signature on that voter's registration affidavit. (Elec. Code, § 3103.5(a)(3).)

Finally, although a special absentee voter is permitted to return a voted ballot by facsimile transmission, he or she is encouraged to return the ballot by mail or in person if possible. A special absentee voter should return a ballot via facsimile only if doing so is necessary for the ballot to be received before the close of the polls on election day. (Elec. Code, § 3103.5(a)(4).)

Additional information useful to elections officials and military and overseas voters is available on the Secretary of State's website at [www.ss.ca.gov](http://www.ss.ca.gov), including the Statewide Voter Information Guide and a list of candidates for statewide office and the State Legislature, as well as candidates for federal office and Congress. The Voter Information Guide is provided to the counties by E-45, and is mailed to the voters starting on E-40. The list of elections officials also includes links to county web pages

and e-mail addresses for county elections officials. (Note that a few of the smaller counties do not have e-mail addresses or web sites.) In addition, military and overseas voters can contact the Secretary of State's office via e-mail at [MOV@ss.ca.gov](mailto:MOV@ss.ca.gov).



## CHAPTER 3

### ACCESSIBILITY

The goal of this chapter is to provide guidance to county elections officials regarding accessibility requirements for election-related activities.

#### **Background: State and Federal Law**

In 1968, the California Legislature enacted the California Disabled Persons Act, which declared that the physically disabled are entitled to the same right as the able-bodied to full and free use of streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places. (Civil Code, § 54, et seq.) The Act also declared that disabled persons are entitled to full and equal access, as are other members of the general public, to accommodations, advantages, facilities, and privileges of hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited. (Civil Code, § 54.1.) In 1979, the California Legislature enacted what is now numbered as Elections Code section 12280, which specifically requires polling places to be accessible to voters with disabilities.

In 1984, the United States Congress enacted the Voting Accessibility for the Elderly and Handicapped Act. (42 U.S.C. §1973ee, et seq.) The act specifically requires polling places for federal elections to be accessible to disabled and elderly voters. (42 U.S.C. §1973ee-1.) Finally, Congress enacted the Americans with Disabilities Act in 1990. (42 U.S.C. 12101, et seq.) Although comprehensive in its regulation of the treatment of disabled persons, the act specifically prohibits a public entity from discriminating against a qualified individual with a disability or excluding such a person from participating in services, programs, or activities of that entity. (42 U.S.C. §12132.)

#### **Accessible Voting System Requirements**

An important aspect of HAVA is to ensure voting accessibility to voters with disabilities, including the blind and visually impaired. Section 301(a) of HAVA requires each voting system used in an election for federal office to meet certain requirements. Section 301(a)(3)(A) provides that the voting system shall "be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters." In addition, Section 301(a)(3)(B) provides that States may satisfy this requirement "through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place."

Section 301(d) of HAVA requires each state and jurisdiction to comply with these accessibility requirements on and after January 1, 2006. However, all voting systems purchased with funds provided by HAVA after January 1, 2007, must be accessible to voters with disabilities.

In this regard, the responsibilities of county elections officials include providing at least one disabled-accessible voting machine per polling place to ensure that persons with disabilities may vote privately and independently. For the visually impaired, this means that the voting machine must have an audio capability so that the voter can hear the ballot information. For this purpose, a county elections official may utilize a direct recording electronic voting system or a ballot marking device that includes an audio interface. Any voting system used in this state must first be certified by the Secretary of State after being subject to vigorous testing.

Although an accessible voter-verified paper audit trail is not required by HAVA, California law requires that each direct recording electronic voting system contain this functionality. (Elec. Code, § 19250.) The voter-verified paper audit trail must be accessible to disabled persons, in that the information must be able to be conveyed to voters via an audio component.

### **Alternative Language Access**

HAVA requires a voting system to provide alternative language accessibility pursuant to the requirements of the Voting Rights Act of 1965. (HAVA Section 301(a)(4).) The Voting Rights Act of 1965 requires that bilingual voting materials – including registration notices, voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots – must be provided to voters in covered states or political subdivisions obligated to meet the requirements of the Act. See Chapter 4 for additional information concerning alternative language requirements.

### **Polling Place Accessibility Requirements – State Law**

The California Elections Code requires that in selecting polling places, an elections official must undertake necessary measures to ensure that polling places are accessible to the physically handicapped. (Elec. Code, § 12280.) California law also provides for “curbside voting”: if a polling place is not accessible, the precinct board member must take a regular ballot to the person with disabilities outside the polling place, and then return the voted ballot to the polling place. If it is impractical for a voter with disabilities to vote a regular ballot outside the polling place, then the voter should be provided with an absentee ballot, which should be voted and returned in the same manner as the regular ballot. (Elec. Code, § 14282(c).)

To facilitate compliance with the requirements of both state and federal law, the Secretary of State has developed a Polling Place Accessibility Checklist to be used in evaluating California polling places for access by voters with disabilities. The accessibility standards used in this survey comply with Title 24 of the California Code of Regulations as well as the Americans with Disabilities Act Accessibility Guidelines. The survey focuses on evaluating areas of a facility to be used as a polling place to ensure that all voters, including those with disabilities, will be able to vote. These include 1) parking for voters; 2) a drop-off, public transportation stop, or loading area; 3) the entrance to the polling place; and 4) the pedestrian routes, including sidewalks,

hallways, ramps, elevators, and lifts (both exterior and interior), that voters use. The checklist may be accessed on the Secretary of State's website at [http://www.ss.ca.gov/elections/final\\_ppas\\_supp\\_0317.pdf](http://www.ss.ca.gov/elections/final_ppas_supp_0317.pdf).

In addition, a disabled voter may also receive assistance from another individual in marking his or her ballot. Elections Code section 14282(a) provides that "When a voter declares under oath, administered by any member of the precinct board at the time the voter appears at the polling place to vote, that the voter is then unable to mark a ballot, the voter shall receive the assistance of not more than two persons selected by the voter, other than the voter's employer, an agent of the voter's employer, or an officer or agent of the union of which the voter is a member." The precinct officers are required to keep a list of the voters who have been assisted in marking their ballots, and to return the list to the elections official to be preserved with other election materials and records. (Elec. Code, § 14283.)

Finally, the Secretary of State must also ensure that blind and visually impaired voters are provided with access that is equivalent to that provided to sighted individuals, including the ability to cast and verify votes by both visual and nonvisual means. (Elec. Code, § 19227(a).) There must be at least one voting unit at each polling place that provides access to blind or visually impaired voters. (Elec. Code, § 19227(b).)

### **Other Resources**

ADA Checklist for Polling Places

<http://www.usdoj.gov/crt/ada/votingck.htm>

Secretary of State's Voter Complaint Form:

[http://www.ss.ca.gov/elections/elections\\_fraud.htm](http://www.ss.ca.gov/elections/elections_fraud.htm)

Voting Rights Act of 1965 – Section 203:

[http://www.usdoj.gov/crt/voting/sec\\_203/activ\\_203.htm#coverage](http://www.usdoj.gov/crt/voting/sec_203/activ_203.htm#coverage)

The United Spinal Association, a national veterans service and disability rights organization, has produced a booklet entitled *Disability Etiquette*. This booklet was designed to help its readers in becoming more aware of what is appropriate conduct when interacting with a person with a disability:

<http://www.unitedspinal.org/pdf/DisabilityEtiquette.pdf>

## CHAPTER 4

### LANGUAGE REQUIREMENTS

The goal of this chapter is to assist county elections officials and the public in determining whether the alternative language accessibility requirements of federal and state law are applicable to their jurisdictions and in complying with those requirements.

#### **Alternative Language Accessibility – Federal Requirements**

Section 301(a)(4) of HAVA requires that a voting system “shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).” HAVA defines a “voting system” to include the equipment used to cast and count votes and report results, as well as the practices and documentation used to test and maintain the system and provide materials to voters, such as notices, instructions, forms or ballots. (HAVA § 301(b).)

Under the Voting Rights Act, a covered state or political subdivision (county) is required to provide voting materials in the language(s) of the applicable minority group(s), as well as in English. Where the minority language is oral or unwritten, the state or political subdivision is only required to furnish oral instructions, assistance or other information relating to registration and voting. (42 U.S.C. 1973aa-1a(c).)

The term “voting materials” means registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots. (42 U.S.C. 1973aa-1a(b)(3)(A).) Voting materials also include such items as voter registration forms, applications for absentee ballots, ballot pamphlets, polling place signs, and voting system instructions.

A “covered state or political subdivision” is one in which the census data indicates that one of the following is true:

- more than 5 percent of the citizens of voting age of the State or political subdivision are members of a single language minority and are limited-English proficient;
- more than 10,000 of the citizens of voting age of the political subdivision are members of a single language minority and are limited-English proficient; or
- in the case of a political subdivision that contains all or any part of an Indian reservation, more than 5 percent of the American Indian or Alaska Native citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient. (42 U.S.C. 1973aa-1a(b)(2)(A)(i); 28 C.F.R. 55.6.)

In addition, the illiteracy rate of the citizens in the language minority as a group must be higher than the national illiteracy rate. (42 U.S.C. 1973aa-1a(b)(2)(A)(ii); 28 C.F.R. 55.6.)

For purposes of the Voting Rights Act, the terms “language minorities” or “language minority group” mean persons who are either American Indian, Asian American, Alaskan Natives, or of Spanish Heritage. (42 U.S.C. 1973aa-1a(e); 28 C.F.R. 55.1.)

### **Alternative Language Accessibility – State Requirements**

The California Elections Code expresses the Legislature’s intent that non-English-speaking citizens should be encouraged to vote, and that obstacles to registration by non-English-speaking citizens should be minimized. (Elec. Code § 2103(c).) If a county elections official finds that non-English-speaking citizens comprise 3 percent or more of the voting age residents of a precinct, the elections official shall make reasonable efforts to recruit deputy registrars who are fluent in the language used by those citizens. (Elec. Code § 2103(d).) In addition, if the number of residents of voting age in each county and precinct who are members of a single language minority equals 3 percent or more of the voting age residents of a particular county or precinct, election materials, including facsimile ballots, must be posted in the applicable language at the affected polling places. (Elec. Code § 14201(c).) However, in those precincts where ballots printed in a language other than English are available for use by voters at the polls, the posting of a facsimile ballot in that particular language is not be required. (Elec. Code, § 14201(e).)

Similar to HAVA, section 14105.3(a) of the Elections Code also provides that voting information must be publicly posted at each polling place on the day of each election for federal office. The Secretary of State shall print posters and other appropriate materials setting forth the voter rights listed in Section 2300, and the posters shall be printed in as many languages as the Secretary of State determines are necessary, but, at a minimum, in sufficient languages to comply with Section 14201 and the federal Voting Rights Act. (Elec. Code, § 14105.3(b).)

### **Covered Political Subdivisions in California**

Based on the applicable provisions of the federal Voting Rights Act, the State of California itself is a covered state based on its citizens of Spanish heritage. All voting materials for federal elections in this state must, therefore, be provided in Spanish as well as English. In addition, the following California counties are covered political subdivisions with the noted language requirements:

- **Alameda:** Chinese, Spanish
- **Colusa:** American Indian (Wintun), Spanish
- **Contra Costa:** Spanish
- **Fresno:** Spanish
- **Imperial:** American Indian (Yuman), Spanish
- **Kern:** Spanish
- **Kings:** Spanish
- **Los Angeles:** Chinese, Tagalog, Japanese, Korean, Vietnamese, Spanish

- **Madera:** Spanish
- **Merced:** Spanish
- **Monterey:** Spanish
- **Orange:** Chinese, Korean, Vietnamese, Spanish
- **Riverside:** Central or South American Indian, Spanish
- **Sacramento:** Spanish
- **San Benito:** Spanish
- **San Bernardino:** Spanish
- **San Diego:** Tagalog, Spanish
- **San Francisco:** Chinese, Spanish
- **San Joaquin:** Spanish
- **San Mateo:** Chinese, Spanish
- **Santa Barbara:** Spanish
- **Santa Clara:** Chinese, Tagalog, Vietnamese, Spanish
- **Stanislaus:** Spanish
- **Tulare:** Spanish
- **Ventura:** Spanish

(28 C.F.R. 55; updated at 67 Fed.Reg. 48872-48873 (July 26, 2002).)

Accordingly, these jurisdictions are required to provide election materials in the applicable languages in order to comply with HAVA, other federal laws, and California state law.

The Secretary of State's website provides additional resources [for more information on the language requirements for election materials.](#)

## CHAPTER 5

### VOTER EDUCATION

The goal of this chapter is to provide guidance to elections officials and the public concerning the voter education requirements of HAVA, and California's implementation of those requirements.

#### **PART 1: CONTRACTS WITH COUNTIES FOR VOTER EDUCATION**

##### **HAVA Requirements**

As a condition of receiving federal funds, HAVA requires each state to file with the Election Assistance Commission (EAC) a plan for compliance with HAVA. (HAVA § 253(b).) The state plan must include a description of "how the State will provide for programs for voter education. . . ." (HAVA § 254(a)(3).) Accordingly, California's state plan, filed with the EAC by the Secretary of State in 2003, includes plans for voter education and outreach to meet the requirements of title III of HAVA (§§ 301-312). (For the full text of the plan, see [http://www.ss.ca.gov/elections/HAVA\\_finalplan\\_12-03.pdf](http://www.ss.ca.gov/elections/HAVA_finalplan_12-03.pdf).)

##### **State Law Requirements**

California law provides that the Secretary of State may provide grants to local elections officials, non-profit corporations, and unincorporated associations to conduct voter outreach and education programs, in accordance with the requirements of HAVA. (Elec. Code, § 2131(a).) Accordingly, the Secretary of State has determined that HAVA funds shall be disbursed to county election officials for voter education, to be provided by contract with each county and as reimbursement for expenses incurred to educate voters regarding the requirements of HAVA and the use of new voting equipment.

A copy of the contract to be executed with each county for the purpose of funding voter education programs is attached.

##### **Voter Education Plan**

In connection with the contracts entered into between the Secretary of State and the counties, each county is required to submit a plan to be reviewed and approved by the Secretary of State and incorporated into its contract in order to receive reimbursement for the voter education program. The contracts provide that the Secretary of State shall develop the criteria for the plans. Accordingly, the Secretary of State has determined that the plan for the program must meet certain minimum requirements, including the following:

1. Must identify the HAVA requirements targeted by the plan, including:

- ◆ Voter registration requirements (provide California Driver's License, California Identification Number, or the last four digits of the Social Security Number)
- ◆ Identification requirements for first-time voters
- ◆ Provisional voting rights
- ◆ Federal voting rights generally (which are incorporated by reference into HAVA)
- ◆ Rights of voters with limited English proficiencies
- ◆ Rights of voters with specific needs (or disabilities)
- ◆ Complaint procedures
- ◆ Use of voting systems, instructions, procedures
- ◆ Use of voting systems – procedures to detect errors on ballot
- ◆ Use of voting system – detection of an over vote

2. Must identify and use tangible, quantifiable methods to deliver education program. Acceptable methods for delivery of information include:

- ◆ Development of materials (brochures, Public Service Announcements, advertising) --- measured by type and quantity; distribution
- ◆ Work with community interest groups (gathering and maintaining databases/ mailing lists; postage; hosting regional multi-group conferences -- measured by number and attendance
- ◆ Public service announcements ---measured by air time
- ◆ Paid advertising for television, radio, or print --- measured by air time, print dates
- ◆ Incremental cost of including information in sample ballots --- measured by number of sample ballots printed
- ◆ Polling place materials, including written instructions, posters --- measured by use of materials on Election Day
- ◆ Posting materials on Internet website
- ◆ Deployment of information on a toll-free hotline

3. Must identify the timeframes for critical milestones such as production of materials, planning and scheduling for community events, and timeframes or dates and descriptions of community events and the role of the county, consultant or contractor (if known).

- ◆ The plan should also include a log for tracking activities as they occur (e.g., community group meeting; newspaper run of ad; submission of PSA to local media; etc.).

4. Must be supported by past actual costs or by methodology to determine incremental costs; plan should identify estimated cost.

- ◆ Methodology for incremental cost should take into account the amount of time or resources expended on HAVA related activities as a percentage of time spent on the overall activity (e.g., 40% of time for established voter education program



expended on HAVA requirements; or 15% of sample ballot devoted to HAVA requirements).

- ◆ Actual time (as documented by employee or contractor timesheets) expended for HAVA related activities will be the basis for reimbursement.
- ◆ Invoices for production of materials must be provided to receive reimbursement
- ◆ Tear sheets, audio recordings or visual recordings of advertising should be retained for audit purposes.

5. Must meet other terms and conditions of contract

- ◆ Scope of work and use of funds provisions
- ◆ Administrative requirements for payment of claims
- ◆ Contracting provisions required by state law
- ◆ Auditing provisions and restrictions on use of funds
- ◆ Requirements for keeping and retaining records of the program
- ◆ Prohibition on partisan activity with federal funds, or political activity in the workplace
- ◆ Other provisions as stated in the contract or in communications from the Secretary of State to county election officials clarifying contract requirements and conditions
- ◆ Other terms and conditions of the contract

Suggested Plan outline:

- I. HAVA requirement targeted (identify each)
- II. Assessment of need (including the involvement of an advisory group or groups, if any)
- III. Method of voter education program delivery (identify each)
- IV. Estimated timeframe for implementation of plan (may be incorporated throughout)
- V. Estimated cost of activity
- VI. Activity log sheet to track implementation
- VII. Contact person

(See CCROV 05338, November 17, 2005.)

**PART 2: VOTER EDUCATION PROGRAMS FOR USE OF VOTING EQUIPMENT  
(INSTRUCTIONS TO VOTERS)**

**HAVA Requirements**

Section 301(a) of the Help America Vote Act requires that each voting system used in a federal election, as of January 1, 2006, must:

1. Permit the voter to verify, in a private and independent manner, his or her vote selections before the ballot is cast and counted;
2. Provide the voter the opportunity to change or correct, in a private and independent manner, any error before the ballot is cast and counted (this shall include the opportunity for a “replacement” ballot if the voter is otherwise unable to make this change or correction);
3. Notify the voter of any “over votes” on his or her ballot and the effect of casting too many votes for the office;
4. Provide the voter the opportunity to correct any “over votes” before the ballot is cast and counted.

In addition, this section of HAVA specifies that a county that uses a paper ballot voting system may meet the requirements in #3 and #4 above by:

- (A) Establishing a voter education program that informs voters about over votes, and:
- (B) Provides voters with instructions on how to correct or replace with a new ballot a ballot that is over voted.

“Voting system,” as used in this section, is defined very broadly in Section 301(b) as “the total combination of mechanical, electromechanical, or electronic equipment Including software, firmware and documentation required to program, control, and support the equipment) that is used to define ballots, to cast and count ballots, to report or display election results, and to produce and maintain any audit trail information.” In addition, the definition includes the practices and documentation used to identify system components, to test the system, to maintain records, to determine changes needed to improve the system, and “to make available any materials to the voter (such as notices, instruction, forms, or paper ballots).”

Section 301(c)(2) indicates that, for purposes of #1 above, the term “verify” may not be defined in a manner that makes it impossible for a paper ballot voting system to meet the verification requirements. Section 301 further requires that any notice to the voter regarding over votes or other voting errors preserve the privacy of the voter and the confidentiality of the ballot.

### **State Law And Requirements**

Elections Code section 19201 requires that all voting systems receive approval from the Secretary of State prior to use in California elections. Section 19205 further requires that the Secretary of State establish specifications and regulations for voting systems. Certification of each voting system includes adoption for the approved use of that voting system. These procedures include a definition of ballots with an “over vote.”

Elections Code section 19225, et seq. requires that “individuals who are blind or visually impaired” have the right to “cast and verify their ballots independently.” Section 19227 further requires that each polling place have at least one voting unit that provides “access to individuals who are blind or visually impaired” if sufficient funds are available from HAVA and Proposition 41 to implement this requirement. “Access” is defined as “the ability to receive, use, select, and manipulate data and operate controls included in voting technology and systems.” Compliance for voting systems in use before 2003 “shall be achieved at the time of procurement of an upgrade or replacement to existing voting equipment or systems.”

Elections Code section 14272 requires that voters receive instruction on the proper use of voting equipment prior to voting at a polling place, and permits voters to ask for additional instruction from poll workers. In addition, Elections Code section 14288 requires that a voter who “spoils” a ballot at a polling place may request up to two replacement ballots. Similarly, Elections Code section 3014 permits absentee voters to request a replacement ballot if they provide a statement, signed under penalty of perjury, that they did not receive, have lost, or destroyed the first ballot sent to them.

### **Education And Instruction Program**

Section 301(a)(1) addresses two minimum requirements for voting systems. Specifically, it states that every voting system, whether it is paper ballot, touch screen, or any other form of voting, is required to:

- (1) Permit the voter to verify his or her selections and to correct them prior to the ballot being cast and counted.
- (2) Notify the voter if he or she has over voted, alert the voter as to the effect of an over vote, and provide instructions to the voter as to how to correct the over vote or replace the ballot before the ballot is cast and counted.

HAVA does not specifically require or permit an education program to address (1) above, but does permit a county that uses a paper-based voting system to meet the requirement of (2) with an education program and instructions to the voter.

The requirement for a voting system to provide notice to voters about over votes applies to absentee and all-mail ballots as well as polling place voting systems. In practical terms, this means that every county must have to develop and implement an education program --- at least for absentee voters and, if a paper-based system is also used for voting at polling places, for voters at polling places.

### **Required Elements Of An Education And Instruction Program On Over Votes**

If a county meets the requirements of Section 301(a)(1)(A)(iii) by establishing a voter education and instruction program, that voter education and instruction program must, at a minimum:

- A. Notify each voter of the effect of casting multiple votes for an office;
- B. Instruct the voter on how to correct an over voted ballot before it is cast and counted, and;
- C. Instruct the voter on how to obtain a replacement ballot if the voter is otherwise unable to change the ballot or correct any error.

**Possible Methods For Providing Voters With Education And/Or Instruction On Over Votes**

HAVA does not specify the methods through which an election official may provide education and instruction on over votes to voters. The education program may include any or all of the following:

1. **PRE-ELECTION PUBLIC INFORMATION** --- Election officials may use a variety of means prior to an election to educate to public about over voting, including press releases and public demonstrations of voting equipment. Public demonstrations offer the opportunity for “hands on” experience with a voting system, and should specifically address the issue of over voting and what a voter can do to correct his or her ballot before the ballot is cast and counted.
2. **EARLY VOTING** --- “Early voting” in community locations offers the opportunity for hands on voter experience and educating voters about over voting.
3. **POLL WORKER TRAINING** --- Information on over voting should be included in training materials for poll workers so that they understand, and can communicate to voters at polling places, information and answers concerning over voting. Oral assistance at the polling place can be combined with written information (see “posters” and “hand outs” below).
4. **WEB SITE** --- Information concerning over voting can be accessible to voters on the county web site.
5. **SAMPLE BALLOT** --- Elections officials may include information on over voting in sample ballots mailed to each voter. This can be included in the section on how to use the voting equipment and/or a separate page or notice.

6. **ABSENTEE VOTING** --- Elections officials may include information regarding the requirements of HAVA in mailings of absentee and/or all-mail ballots to voters.
7. **POSTER AT POLLING PLACE** --- An educational or instruction poster at polling places could be an important mechanism for communicating with voters about the nature and effect of over votes. This could be a separate poster, or the information could be combined with other materials indicating how to use voting equipment. In either case, the information concerning over voting should be prominent and clear to voters.
8. **HAND OUT AT POLLING PLACE** --- A county may choose to provide handouts to voters at the polling place.
9. **MILITARY AND OVERSEAS VOTERS** --- Military and overseas voters have a special need for information and instruction regarding over votes generally and more specifically about how to obtain a replacement ballot should they not receive or need to replace their original ballot. Information and instruction should be included in materials sent to military and overseas voters.

### **Best Practices**

Program Monitoring and Metrics --- A program to monitor the number (and percent) of over votes at each election can be correlated with the methods used to provide voters with educational and instructional materials. Establishing metrics of this nature for over voting will permit elections officials to measure whether the rate of over voting is high or low, increasing or decreasing, and whether there is a need to alter the education and instruction program.

In addition to statistics gathered by a county and compared against statistics for that same county from prior elections, the Secretary of State can request over voting statistics from each of the 58 counties, organize them by voting system, and thereby permit each county to evaluate whether they need to improve or alter their education and instruction program.

Translation --- Informational posters, handouts, and other materials must be translated into languages required in the jurisdiction by the Voting Rights Act of 1965, as amended, but may be translated into other languages as determined by the elections official to ensure that all voters receive and can understand the educational and instructional materials.

Persons With Disabilities --- Information and instruction provided on county web sites should meet basic accessibility design requirements for persons who are blind or visually impaired.

### **Additional HAVA And State Requirements For Providing Information To Voters**

Section 302 (b) of HAVA and Elections Code section 14200 require that election officials post certain materials in polling places on Election Day. These requirements are in addition to state requirements. The following information is a summary of what HAVA requires to be provided to voters at each polling place.

- A. A sample version of the ballot;
- B. Information on the date of the election and the hours during which polling places will be open;
- C. Instructions on how to vote, including how to vote provisionally;
- D. Instructions regarding ID requirements for those voters who registered to vote for the first time by mail and who have not previously voted in the state;
- E. General information on voting rights under state and federal law, including the right of an individual to cast a provisional ballot and instructions on how to contact election officials, and;
- F. General information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation.

In addition, Elections Code section 14105(q) and 14105.3 requires that the Secretary of State provide, and the county post at each polling place, the "Voter Bill of Rights", the contents of which are specified in Elections Code section 2300.

## CHAPTER 6

### POLL WORKER TRAINING

The goal of this chapter is to provide guidance to county elections officials for training of poll workers. The information provided in this chapter is intended as a starting point for county poll worker training programs and is not meant to take the place of county poll worker training materials or resources.

#### **Poll Worker Training – Federal Requirement**

Section 254(a) of the Help America Vote Act (“HAVA”), requires that the state prepare a HAVA state plan detailing what it will do to implement the new federal mandates, including a description of how each state will use HAVA Title II funds to educate elections officials and poll workers. California’s HAVA State Plan states:

“ensure that any training provided to poll workers cover at least the following topics:

- The proper operation and maintenance of voting systems and technology;
- The rights of voters to cast provisional ballots, the proper processing and counting of those ballots, and how provisional voters can determine whether their votes were counted and, if not, why not;
- The non-discriminatory application of HAVA’s identification requirements for certain voters who register by mail;
- Identifying and assisting voters with disabilities, including psychiatric disabilities, in order that such voters can participate fully in the voting process independently and privately;
- The rights of minority language voters in jurisdictions covered under Section 203 of the Voting Rights Act of 1965 to receive language assistance at the polling place” (*“My Vote Counts: The California Plan for Voting in the 21st Century”*, page 20).

#### **Poll Worker Training – State Requirement**

Senate Bill 610 (signed into law October 2003) added California Elections Code section 12309.5 to adopt uniform standards for the training of precinct board members (poll workers), based upon the recommendations of the Task Force on Uniform Poll Worker Training Standards created by the Secretary of State. The Task Force made its recommendations available for public review and comment prior to submitting their recommendations to the Secretary of State in 2005.

#### **Poll Worker Training Guidelines**

Poll Worker Training Guidelines were developed from the recommendations of the Task Force and can be found on-line at [www.ss.ca.gov](http://www.ss.ca.gov).

The subject of poll worker training is not so much a science as it is an art. The guidelines will be adapted, improved and supplemented in the future as lessons are learned from field experience and voting systems change in this constantly evolving field.

The guidelines are meant to establish a set of requirements which poll worker training sessions and materials should meet and to set a standard by which local programs should be measured.

### **Poll Worker Training Methods and Materials**

The goal of training is to ensure that poll workers are prepared to perform their duties correctly. Training sessions help them retain as much information as possible on Election Day. Studies have shown that poll workers, like all adult learners, learn best by short, interactive training sessions.

### **Suggested Practices**

Following is a list of suggested practices developed by the Task Force on useful methods and materials for poll worker training. The elections official should tailor these practices according to the needs of voters.

## **1. Ensuring the Rights of Those Seeking to Vote**

### **A. *Poll Workers Should be Aware of the Rights of Voters***

- *Poll workers should be instructed that before the polls open, they should connect and test any attachments to voting machines that provide accessibility to the disabled. (Some poll workers may then need to disconnect the attachments since some certified voting systems do not display anything on the screen if an audio device is attached.) Connecting and testing attachments allows poll workers to become familiar with the devices, and enables them to re-attach them quickly in the event they are needed.*
- *During training, it is often useful to have both a voter with a disability, and a voter with limited proficiency in English, relate to the class (either in person or via video) a prior bad experience trying to cast a vote. Hearing from someone directly can have a tremendous impact.*
- *Poll workers, bilingual or not, should be equipped with and trained to prominently display badges, nametags, stickers or ribbons identifying which languages they speak.*
- *Poll workers should understand that no matter what language a voter speaks, there are often simple ways to communicate effectively with the voter (e.g. hand signals, pantomimes, drawing pictures, etc.) if there is no one who speaks the voter's language.*
- *Role-playing is an effective technique to use in explaining to poll workers that they do not have to use English to explain to a voter how to vote. It is also an effective technique to make poll workers more comfortable dealing with voters with special needs.*



## **B. Poll Workers Should Be Trained in Cultural Sensitivity**

- *Counties should provide one hotline dedicated to poll workers and one hotline designed for voters to receive assistance in various languages.*
- *Use role-playing in training to reinforce cultural sensitivity.*
- *Counties should broaden their poll worker recruitment to recruit workers who are diverse in age, ethnicity and language ability.*
- *Provide a customer feedback form for voters to comment on the experience at the polling place. Allow voters to turn it in at the polling place or mail it back to the county elections office.*

## **C. Poll Workers Should Be Trained in How and When to Assist Voters with Disabilities or Any Specific Need**

- *Providing poll workers a demonstration or opportunity to actually sit in a wheelchair, enter a mock polling place blindfolded, or try to communicate with someone when they are only mouthing words, can give poll workers a much better understanding of the obstacle that voters with disabilities can face at a polling place if poll workers are not counseled in how to be sensitive and aware.*

## **D. Poll Workers Should Know Exactly What Their Responsibilities and Authority Are and the Appropriate Limits Relating to Them**

- *Some counties designate a specific private phone line for poll workers to call if they need language or any other type of assistance.*
- *Poll workers should have printed cards with phone numbers and other contact information to give to voters.*
- *Roving inspectors should have an evaluation tool, like a checklist, to ensure that every polling place is following the rules regarding voting, including providing assistance to voters with disabilities or language challenges and using provisional ballots.*
- *Poll workers should have a written, laminated instruction sheet to give to poll watchers and they should be instructed to have a place designated for poll watchers to stand or sit.*

## **2. Election Challenge Procedures**

- *If a disruption occurs, avoid direct confrontation. It is also best to move the parties involved outside and to a safe distance from the polling site so that the polling place can continue to process voters.*

- *Training for poll workers should include role-playing to provide poll workers with the chance to experience situations where they will have to confront challengeable behavior under different scenarios. This can also be done using a film or video to expose poll workers to various situations and have them see the appropriate responses.*

### **3. Operation of Voting Equipment**

- *There should be adequate machines in the training facility to ensure at least a 1:5 ratio of machines to poll worker students, enabling each student to receive adequate time learning to use the voting system.*
- *Poll workers often want to spend more time practicing how to use a voting system. Counties may wish to have additional optional workshops for poll workers, or have frequent “office hours” at several locations in the weeks before an election, so poll workers who feel tentative or uncomfortable with the system can come in and gain more experience assembling, dismantling, and operating the voting system.*

### **4. Preventing, Detecting and Addressing Problems with Voting Systems**

- *Training should include first hand observations of mock attempts to tamper with a system, either via video or through role-playing.*
- *Training should include a hands-on walk through of all of common issues. If poll workers might need to fix a problem on Election Day, then they should practice fixing that problem in training.*
- *If possible, training should include some role-playing or demonstration of unusual situations and how poll workers should observe and record the unusual events.*

### **5. Poll Hours**

- *Poll workers should be instructed to arrive at polling places before the polls open to give them adequate time to set up and ensure that polls are ready for operation promptly at 7 a.m. Allowing poll workers to practice setting up equipment can show them how long they will need for set-up so they can plan accordingly.*
- *Signs should be posted outside of polling places that provide information about what voters should do if their polling place is not open on time.*

### **6. Relevant Election Laws and Procedures**

- *Poll workers should be instructed to contact their county election office if they think they have a reason to challenge a voter’s eligibility.*
- *Training on ballot reconciliation, whether from a DRE printout or by counting paper ballots, is critical. Reconciling the numbers with the roster signatures is an important post-election procedure that seems to confuse many poll workers. Walking through it*

*during the training can help poll workers understand the importance of making sure they get the roster signatures right in the first place.*

- *Training materials should be designed in chronological order (i.e., the order in which poll workers will face the issue or task during Election Day) so that poll workers can easily find the answers to their questions.*
- *Language used in training materials should avoid technical, legal and system jargon. Simple words and phrases should be used, or if not, should be explained or defined several times, including a glossary of terms at the end of the materials.*

## **7. Procedures for Certain First-Time Voters, Provisional Voting, Absentee Voting, and other Miscellaneous Situations**

- *Poll workers should be trained to process and assist all voters with a customer service mentality in order to make their experience as positive as possible. Congratulating a first-time voter for voting also sends a positive message*
- *Place a sign or placard near the roster informing voters, and reminding poll workers, that voter's have the right to request a provisional ballot if their name is not on the roster and poll workers must provide a provisional ballot to people who request one.*
- *Counties should review the performance of each poll worker's performance with a post-election survey of their fellow poll workers. Poll workers should be evaluated on key areas so that they can improve based on feedback on their performance, and so counties can remove poor workers and reallocate the best workers to serve in the busiest precincts or to become troubleshooters.*
- *Poll workers should be instructed to minimize voter confusion by checking to confirm they are providing the correct sample ballots and ballots to voters, particularly those voters casting provisional ballots.*
- *Counties should review the performance of each poll worker's performance with a post-election survey of their fellow poll workers. Poll workers should be evaluated on key areas so that they can improve based on feedback on their performance, and so counties can remove poor workers and reallocate the best workers to serve in the busiest precincts or to become troubleshooters.*

## CHAPTER 7

### VOTER IDENTIFICATION REQUIREMENTS

The goal of this chapter is to provide guidance to county elections officials to determine when identification is required by federal law and/or state law for election-related activities.

#### **Voter Registration – Federal ID Requirement (See also Chapter 1)**

Pursuant to Section 303 of the Help America Vote Act (“HAVA”), individuals registering to vote, by any means, must provide their current and valid driver’s license number, or state identification number on the affidavit of registration, if they have such a number. If the individual does not possess a current and valid driver’s license, the individual is required to provide the last four digits of his or her social security number. If an applicant for voter registration has not been issued either a current and valid driver’s license or a social security number, the state shall assign the voter a unique number, which shall serve to identify the voter for registration purposes.

#### **Voter Registration – State ID Requirement (See also Chapter 1)**

SB 1016 (signed into law in October 2005 and effective January 1, 2006) amends California Elections Code section 2150(7) to conform California’s voter registration requirements to the requirements of HAVA. Now, under both federal law and state law, voters must provide their driver’s license number if they have a valid and current driver’s license or the number provided on a California state identification card issued by the Department of Motor Vehicles. If they do not, they are required to provide the last four digits of their social security number. If they do not have a driver’s license number, state identification number or social security number, the state will assign them a unique number, which will be their identifier for purposes of voter registration.

#### **Voter Registration – By Mail**

If a voter registers in a jurisdiction for the first time by mail, the voter must provide proof of identity prior to voting in a Federal election.

For purposes of applying this provision of HAVA, the following definitions apply:

- ◆ Registration by Mail is limited to registration affidavits that bear a United States Postal Service postmark. If the registration affidavit does not have a postmark because it was delivered by a third party, the affidavit is not a “registration by mail”;
- ◆ Federal Election means any general, special, primary or runoff election for any Federal office (President, Vice President, U.S. Senator or U.S. Representative), including presidential preference primaries. (Title 2 California Code of Regulations, Section 20108.1(j).)

### **Proof of Identity Required**

Proof of identity may be provided prior to an election or at the polling place on Election Day. The following provide examples of when the proof of identity requirement has been satisfied:

- ◆ The applicant provided satisfactory proof of identity with the voter registration application or otherwise provided satisfactory proof of identity prior to voting in a Federal election (Title 2, California Code of Regulations, Section 20108.38(a)(i)); or
- ◆ The applicant's California driver's license or state identification number, or the last four digits of the applicant's social security number, was verified with Calvalidator or the California Department of Motor Vehicles (Title 2, California Code of Regulations, Section 20108.38(a)(ii)); or
- ◆ The applicant provided satisfactory proof of identity at the polling place when he or she went to vote; or
- ◆ The applicant provided satisfactory proof of identity with his or her absentee ballot.

If the applicant has provided proof of identity pursuant to any of these provisions, the voter shall be exempt from providing further proof of identity for the purpose of voting in a Federal election. In addition, an applicant who registers by mail is not required to provide proof of identity prior to voting if:

- ◆ The applicant is registered to vote under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), or is entitled to vote other than in person under the Voting Accessibility for the Elderly and Handicapped Act, or any other Federal law (Title 2, California Code of Regulations, Section 20108.38(a)(iii)); or
- ◆ The applicant has previously registered to vote in California and the elections official has determined, after researching the applicant's voting history in the county election management system and Calvoter, that the applicant has previously voted in a Federal election in the State (Title 2, California Code of Regulations, Section 20108.38(a)(iv)).

If the applicant has **not** provided proof of identity in any manner suggested above, and the applicant is not otherwise exempt from the proof of identity requirement, the applicant's record shall be so indicated on the roster in a non-pejorative manner to indicate that the voter must provide proof of identity the first time the voter votes in a Federal election. An individual who registered by mail and desires to vote in person, but who has not provided or will not provide proof of identity, shall be permitted to cast a **provisional ballot**, which shall be processed in accordance with California Elections Code Section 14310. *See also Chapter 8.* An individual who registered by mail and

desires to vote by mail or absentee ballot, but who has not provided or will not provide proof of identity, shall be permitted to cast his or her ballot by mail and the ballot shall be treated as a **provisional ballot**. See also Chapter 8.

### **Satisfactory Proof of Identity**

Satisfactory proof of identity means that the applicant provided either a current and valid photo identification or other document deemed, by regulation, to be satisfactory proof of identity.

Title 2, California Code of Regulations, Section 20107(d)(1) defines “photo identification” as a document prepared by a third party in the ordinary course of business that includes a photograph and name of the individual presenting it, including a:

- A. driver’s license or identification card of any state;
- B. passport;
- C. employee identification card;
- D. identification card provided by a commercial establishment;
- E. credit or debit card;
- F. military identification card;
- G. student identification card;
- H. health club identification card;
- I. insurance plan identification card.

Title 2, California Code of Regulations, Section 20107(d)(2) lists “Other Documents” that satisfy the proof of identity requirement. These other documents will be sufficient if the document includes the name and address of the individual presenting it, and is dated since the date of the last general election, unless the document is intended to be of a permanent nature such as a pardon or discharge. Other documents include a:

- A. utility bill;
- B. bank statement;
- C. government check;
- D. government paycheck;
- E. document issued by a governmental agency;
- F. sample ballot issued by a governmental agency;
- G. voter notification card issued by a governmental agency;
- H. public housing identification card issued by a governmental agency;
- I. lease or rental statement or agreement issued by a governmental agency;
- J. student identification card issued by a governmental agency;
- K. tuition statement or bill issued by a governmental agency;
- L. insurance plan card issued by a governmental agency;
- M. discharge certificate, pardon, or other official document issued to the voter in connection with the resolution of a criminal case, indictment, sentence, or other matter;

- N. public transportation authority senior citizen discount card issued by a governmental agency;
- O. identification document issued by governmental disability agencies;
- P. identification document issued by government homeless shelters and other temporary or transitional facilities;
- Q. drug prescription issued by a government doctor or other governmental health care provider;
- R. property tax statement issued by a governmental agency;
- S. vehicle registration or certificate of ownership issued by a governmental agency.

NOTE: A VOTER CAN MEET THE PROOF OF IDENTITY REQUIREMENT BY PRESENTING **EITHER** A CURRENT AND VALID PHOTO IDENTIFICATION OR OTHER ACCEPTABLE DOCUMENT, AS SET FORTH ABOVE. ALSO, THE PROOF OF IDENTITY REQUIREMENT ONLY APPLIES TO FEDERAL ELECTIONS. THEREFORE, ALL REGISTRANTS SHALL BE PERMITTED TO VOTE A REGULAR BALLOT IN ALL NON-FEDERAL ELECTIONS WITHOUT SHOWING ID.

Elections officials shall make available to voters a list of acceptable identifications in languages appropriate for their county. Any doubt as to the sufficiency of the identification presented shall be resolved in favor of permitting the person to vote a regular ballot. (Title 2, California Code of Regulations, Section 20107(b).)

## CHAPTER 8

### PROVISIONAL VOTING AND FREE ACCESS

This chapter is designed to aid county elections officials in determining when a voter should cast a provisional ballot, and what to do with that ballot once it has been voted.

#### **Background**

Provisional voting is intended to prevent disenfranchisement of voters due to voter registration errors or other unusual circumstances. If a voter appears at a polling place to vote in an election, and for some reason his/her name does not appear on the official roster of voters for that polling place, the voter may cast a provisional ballot if he/she claims to be both eligible to vote in the election and registered to vote in that jurisdiction. (HAVA Section 302(a).) Whether an individual is eligible to vote, and whether the provisional ballot will be counted, are matters to be determined by state and local elections officials “in accordance with State law.” (HAVA Section 302(a)(4).) State law (Elec. Code, §§ 14310-14312) further specifies the procedures and criteria to be used in issuing and counting provisional ballots.

#### **Notice to Voters**

Both federal and state law provide that if an individual claims to be both eligible to vote and registered to vote in the jurisdiction in which he/she wants to vote, the elections official at the polling place is to notify the individual that he/she may cast a provisional ballot in that election. (HAVA Section 302(a)(1); Elec. Code, § 14310(a)(1).) In addition, HAVA Section 302(b) requires that elections officials post certain information at each polling place, including instructions on how to vote and how to cast a provisional ballot.

#### **Who is Eligible to Cast a Provisional Ballot?**

There are many reasons why it may be appropriate for a voter to cast a provisional ballot rather than a regular ballot, including the following:

- ◆ The voter’s name does not appear on the list of registered voters and the eligibility to vote cannot be verified at the polling place; or
- ◆ The voter is designated on the list of registered voters as a first-time voter who registered by mail and is voting in a Federal election, but is unable, or refuses, to provide the required proof of identity; or
- ◆ The voter requested an absentee ballot, but has not returned the ballot by mail or brought it to the polling place; or
- ◆ The voter is voting during polling place hours that have been extended by a state or federal court; or



- ◆ The voter is registered to vote, but is attempting to vote in a precinct different from the one in which the voter is registered or assigned; or
- ◆ The voter has moved within the county, but did not update his/her voter registration information to reflect the move.

Note that for those voters who are casting provisional ballots because their name does not appear on the list of registered voters, the provisional ballot envelope offers another opportunity for elections officials to capture the necessary information to process the voter's registration affidavit. For instance, if the voter's identification has not been validated through Calvalidator, capturing the voter's driver's license number or the last four digits of his or her social security number as part of the provisional voting process will better enable elections officials to process the provisional ballot and clear any potential registration hurdles prior to the end of the canvass period. (See *also* Chapter 1).

### **Procedure for Casting a Provisional Ballot**

HAVA includes very general requirements for provisional voting, and defers to state law for implementation. Section 302(a) of HAVA provides that an individual who claims to be both eligible to vote in an election and registered to vote in the jurisdiction (county) in which he/she desires to vote, but whose name is not included on the official roster of voters for that polling place, may cast a provisional ballot. The individual must sign a written affirmation of eligibility and registration prior to being permitted to vote provisionally. (HAVA Section 302(a)(2).) Once the individual's eligibility to vote under state law is confirmed, the provisional ballot will be counted in accordance with state law. (HAVA Section 302(a)(3)-(4).)

California state law provides more detailed criteria and information concerning the procedures for provisional voting. If it is determined that it would be appropriate for an individual to cast a provisional ballot, the elections official must advise the voter of his/her right to do so and provide the voter with written instructions. (Elec. Code, §§ 14310(a)(1)-(2).) Like HAVA, state law requires the voter to execute, in the presence of the elections official, a written affirmation stating that he/she is eligible to vote and is registered in the county where he/she desires to vote. (Elec. Code, § 14310(a)(3).) The voter is given a provisional ballot, which he/she votes and then places into the provisional ballot envelope. The voter then signs the envelope and deposits it into the ballot box. (Elec. Code, § 14310(b).)

In addition, every voter who is issued a provisional ballot must have access to instructions on how to correctly cast a provisional ballot in any language required by the Voting Rights Act. Voters must also be given similar instructions in writing on how to find out if their ballot has been counted through the "Free Access" system, discussed below. (See *also* Chapter 4.)

## **Procedure for Processing a Provisional Ballot**

The provisional ballots are taken, along with the regular ballots, to the canvassing area. During the official canvass, the elections official compares the signature on each provisional ballot envelope with the signature on that voter's affidavit of registration. Once the voter's registration is confirmed, and the signature on the envelope has been verified, the ballot is separated from the envelope and counted as a regular ballot. If the voter's registration cannot be confirmed, the ballot is not counted, and the reason for not counting the ballot is recorded. (Elec. Code, § 14310(c)(1).) Only the votes for contests in which the voter is eligible to vote will be counted. (Elec. Code, § 14310(c)(3).)

## **Free Access System**

HAVA requires that at the time a voter casts a provisional ballot, the elections official must provide the voter with written information concerning how the voter can find out whether his/her provisional ballot was counted, and if not, why not. (HAVA Section 302(a)(5)(A).) HAVA further requires each state or local elections official to establish a "Free Access System," such as a toll-free telephone number for voters to call or an Internet website that voters can access free of charge to obtain this information. (HAVA Section 302(a)(5)(B).) California state law also requires the establishment of this Free Access System. (Elec. Code, § 14310(d).)

Each county may determine how to establish its Free Access System, so long as the system meets the requirements of the law. In addition, the Secretary of State has determined that the following minimum standards apply to all county Free Access Systems:

- The system may not impose a fee for access;
- The system must be available during regular business hours, at a minimum, but should be available at all hours if possible;
- The system must treat all voters equally;
- The system may rely on a password, but the password may not include, in whole or in part, the voter's driver's license number, California ID number, or social security number;
- The system must reasonably ensure that access to information concerning an individual provisional ballot is restricted to the individual who cast the ballot;
- The system must not reveal how the voter marked his or her ballot;
- The system must reveal to the voter whether his or her provisional ballot was counted and, if the ballot was not counted, the reason why not;

- The system must inform the voter how to register to vote and provide every non-registered provisional voter with a form to register to vote;
- The system must be accessible to persons with disabilities and persons who do not speak fluent English;
- The system must establish a deadline following the election after which the "free access" information will be available;
- The system may, but is not required to, proactively and regardless of whether the voter requests the information, notify EVERY provisional voter whether his or her ballot was counted and, if it was not counted, the reason why not; and
- The system may, but is not required to, provide every provisional voter at a polling place a postage-paid return postcard for requesting "free access" information.

In accordance with federal and state law and guidelines, each County Elections Official's office has established a Free Access System for voters to determine if their Provisional Ballot was counted. Information about how to access each county's free access system can be found on the Secretary of State's website at [http://www.ss.ca.gov/elections/type\\_of\\_free\\_access\\_system\\_1105.pdf](http://www.ss.ca.gov/elections/type_of_free_access_system_1105.pdf).



**Secretary of State  
Bruce McPherson**

STATE OF CALIFORNIA

## **Uniform Vote Counting Standards**

**Effective: March 23, 2006**

**California Secretary of State  
Uniform Vote Counting Standards**

**TABLE OF CONTENTS**

<b>SECTION I</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>SECTION II</b>	<b>DEFINITIONS .....</b>	<b>1</b>
<b>SECTION III</b>	<b>GENERAL STANDARDS.....</b>	<b>2</b>
<b>SECTION IV</b>	<b>MARK SENSE (OPTICAL SCAN) VOTING SYSTEMS .....</b>	<b>2</b>
<b>SECTION V</b>	<b>PUNCH CARD VOTING SYSTEMS.....</b>	<b>4</b>
<b>SECTION VI</b>	<b>OTHER PAPER VOTING SYSTEMS .....</b>	<b>5</b>
<b>SECTION VII</b>	<b>DIRECT RECORDING ELECTRONIC VOTING SYSTEMS..</b>	<b>5</b>
<b>SECTION VIII</b>	<b>ABSENTEE VOTING SYSTEMS.....</b>	<b>6</b>
<b>SECTION IX</b>	<b>PROVISIONAL BALLOTS .....</b>	<b>7</b>

# California Secretary of State Uniform Vote Counting Standards

## Section I Introduction

Pursuant to Section 301 (a)(6) of the Help America Vote Act (HAVA) of 2002, the Secretary of State has developed these standards to define the circumstances under which “marking” of a ballot constitutes a vote and when a vote will or will not count for each category of voting system certified and in use in California.

## Section II Definitions

The following are practical definitions as used herein and are not the definitions provided in the California Elections Code or federal law/HAVA, but are nonetheless consistent with state and federal law.

Blank Ballot	A blank ballot is one on which the voter has made no marks in any voting position target, or one which has been marked with an unreadable marker, or one which has been consistently marked outside of the “read” area of the scanner.
Candidate	A candidate is a person who is seeking nomination or election to a specified office and who either has met the legal requirements to have his/her name printed on the ballot or is eligible to have his/her name written in on the ballot and counted as the voter’s choice for the contest.
Damaged Ballot	A damaged ballot is one that has been torn, bent, or otherwise mutilated or rendered unreadable such that it cannot be processed by the ballot tabulating equipment designed for use with the ballot.
Duplicated Ballot	A duplicated ballot is a ballot which is a true copy of the originally cast ballot. It is created when damage, improper marking or some other action/defect prevents the original ballot from being read by a ballot tabulating machine, and is used to properly process and count the votes originally cast by the voter. (Elections Code §15210 provides the method by which a duplicate ballot must be created.)
Listed Candidate	A listed candidate is a candidate whose name appears on the ballot at the time the voter received the ballot, as opposed to a write-in candidate.
Measure	A measure is a ballot proposition, which appears on a ballot and requires voter action in order to enact or reject a proposed law.
Overvote	An overvote occurs when a voter marks more than the maximum number of voting position targets allowed in the contest.
Punch Card Ballot	A punch card ballot is a ballot card that contains voting position targets that a marking device must pierce to form a hole in order to record a voter’s choice for a candidate or measure.
Undervote	An undervote occurs when a voter marks less than the maximum number of voting position targets allowed in a contest.
Voting Position Target	A voting position target refers to that area of the ballot adjacent to each candidate or measure, or that area of the ballot, specifically designated to record the voter’s choice for that contest. The term applies to all types of voting position targets on ballots, regardless of what form they may take, including, but not limited to, rectangle, oval, circle, square, hole punch, cross punch, slotting and open arrow.

### **Section III General Standards**

The following general standards shall apply in the counting of all ballots and votes, regardless of the voting system used, for both the initial count and for any recount.

- A.** A ballot that is marked or signed by the voter in such a way that it can be identified from other ballots must be voided and none of its votes counted. Examples of such markings include, but are not limited to: voter signature, initials, voter name and address, voter identification number, social security number or driver's license number, messages or text, or unusual markings not related to indication of the vote choice for a contest. Generic text meant to clarify the voter's choice regarding a contest, such as the word "yes" or "no" next to a candidate's name, shall not be sufficient cause to void a ballot. If there are distinctly identifiable markings on one page of a multiple-page ballot, the entire ballot must be voided. (Elections Code §§13204, 14287, 15154, and 15208.)
- B.** A vote for any candidate or ballot measure shall not be rejected solely because the voter failed to follow instructions for marking the ballot. If, for any reason, it is impossible to determine the choice of the voter for any candidate or ballot measure, the vote for that candidate or ballot measure shall be considered void. (Elections Code §19001.)
- C.** A mark is considered valid when it is clear that it represents the voter's choice and is the technique consistently used by the voter to indicate his or her selections. Such marks may include, but are not limited to, properly filled-in voting position targets, checkmarks, X's, circles, completed arrows, or any other clear indication of the voter's choice, such as the word "yes" next to a candidate's name or a voting position target for a ballot measure.

Conversely, a mark crossed out by the voter, or the word "no" next to a candidate's name or a voting position target for a ballot measure shall not be considered to be a valid vote but will, instead, be deemed an indication that the voter did not choose to cast a vote for that candidate or measure.
- D.** In determining the validity of a partially filled-in voting position target, the consistency of a voter's marks on the entire ballot shall be taken into consideration. A "hesitation mark" such as a dot in the voting position target shall not be considered a valid mark unless it is demonstrated that the voter consistently marked his or her ballot in such a manner.
- E.** If a contest is marked with more choices than there are offices to be filled or measures that may prevail, the vote shall not be counted for that contest, but shall be counted in all other contests in which there is no overvote and the voter's choice can be clearly determined.
- F.** If a contest is marked with fewer choices than there are offices to be filled or measures that may prevail, the vote choice(s) for all otherwise properly marked candidates or measures shall be counted.
- G.** Write-in votes are counted pursuant to the provisions established in Elections Code §§14420 and 15342.

### **Section IV Mark Sense (Optical Scan) Voting Systems**

When optical scan technology is used to count the votes on a ballot, the provisions of this section shall apply.

The following standards shall be used to determine whether there is a clear indication on the ballot that the voter has made a definite choice. The examples used in this section refer to the "voting position target" as defined in Section II of this document. The same principles demonstrated in the examples below shall apply to all types of voting position targets on

optical scan ballots, regardless of what form they may take (e.g. rectangle, oval, circle, square, hole punch, cross punch, slotting, open arrow).

#### **A. Standards Indicating a Valid Vote**

A voter's choice shall be considered a valid vote, if the:

1. Voter indicates vote choice by consistently filling inside the entire voting position target.
2. Voter indicates vote choice by consistently filling in less than the entire voting position target for all vote choices on the ballot and the ballot is processed in a manner consistent with the use procedures provided and approved for the voting system.
3. Voter indicates vote choice by consistently placing a distinctive mark, such as (X) or (√) or (←), inside the associated voting position target for a candidate choice or ballot measure.
4. Voter indicates vote choice by consistently placing a distinctive mark, such as (X) or (√) or (←), in the corresponding space directly above, below or beside the associated voting position target for a candidate or ballot measure.
5. Voter marks vote choices by encircling the entire voting position target for a candidate or ballot measure.
6. Voter indicates voting error correction by using correction tape, strikeover, white-out or generic written note of instruction and marks another vote choice for the same contest on the ballot.
7. Voter writes in a qualified write-in candidate's name, or a reasonable facsimile of the spelling of the name, in the designated write-in spaces directly below the list of candidates for that office and marks the associated write-in voting target position.
8. Voter writes in a listed candidate's name in the designated write-in space and marks the associated write-in voting target position. In such cases, the vote shall be counted as a single vote for the listed candidate.
9. Voter marks a voting target position for a listed candidate and also enters the listed candidate's name in the designated candidate write-in space. In such cases, the vote shall be counted as a single vote for the listed candidate.
10. Voter writes in qualified write-in candidate's name, or a reasonable facsimile of the spelling of the name, on the secrecy sleeve envelope or stub and indicates the contest for which the vote is being cast, in the case of voting systems where write-in spaces appear separately from the list of candidates for an office and do not provide voting position targets, .

#### **B. Standards Indicating an Invalid Vote**

A voter's choice shall be considered an invalid vote, if the:

1. Voter uses random markings, indentations, punctures or impressions, squiggly/dimpled or crimp marks, pinholes or pinpricks on a ballot, and there is no distinctive and consistent voting pattern to clearly indicate voter choice(s).
2. Voter indicates vote choice by filling in less than the entire voting position target, and the voter has not consistently marked the entire ballot in the same manner, making voter's choice unclear.
3. Voter inconsistently places a mark above, below or beside the associated



voting position target on a ballot, instead of inside the voting position target, and voter's choice cannot be clearly determined.

4. Voter writes in the name of a person who has not qualified as a write-in candidate.
5. Voter writes in a listed candidate's name in the designated write-in space and fills in the associated voting position target for a different listed candidate in the same contest.
6. Voter writes in a candidate name that is unrecognizable/undecipherable and it cannot be determined for whom the vote is intended to be cast..
7. Voter writes in a qualified write-in candidate's name in the designated write-in space and does not fill in the associated voting position target for the write-in candidate.
8. Voter uses pressure-sensitive stickers, rubber stamps, glued stamps, or any other device not provided for in the voting procedures for the voting systems approved by the Secretary of State to indicate the name of the voter's choice for a write-in candidate.

### **C. Abandoned Ballot**

If a voter leaves the voting booth without casting the ballot, the precinct official shall cause the ballot to be cast without examining the ballot.

## **Section V Punch Card Voting Systems**

When a card reader is used to count the votes cast on a punch card ballot, the provisions of this section shall apply. The following standards shall be used to determine whether the voter has made a definite choice.

### **A. Standards Indicating a Valid Vote**

A voter's choice shall be considered a valid vote, if the:

1. Vote cast on a lever-type punch card voting machine (Datavote) is cast by a voter either operating the lever adjacent to the name of the candidate or measure for which the voter chooses to vote or by writing in the name of a qualified write-in candidate in accordance with the ballot instructions and then recording such votes on the machine by the actuation of the main lever.
2. Punch card ballot is initially processed by a card reader and stops the card reader from counting it or proceeding, is able to be inspected and processed in accordance with the standards of Section IV Mark Sense (Optical Scan) Voting Systems.

### **B. Standards Indicating an Invalid Vote**

A voter's choice shall be considered an invalid vote, if the:

1. Voter uses random markings, indentations, punctures or impressions, squiggly/dimpled or crimp marks, pinholes or pinpricks on a ballot, and there is no distinctive and consistent voting pattern to clearly indicate voter's choice.
2. Voter writes in the name of a person who has not qualified as a write-in candidate.
3. Voter writes in a listed candidate's name in the designated write-in space and punches the associated voting position target for a different listed candidate in the same contest.
4. Voter writes in the name of a candidate whose name cannot be deciphered.

This invalidates only the contest for which the name has been written; all remaining valid votes shall be counted.

5. Voter writes in a qualified write-in candidate's name in the designated write-in space and does not punch the associated voting position target for the write-in candidate.
6. Voter uses pressure-sensitive stickers, rubber stamps, glued stamps, or any other device not provided for in the voting procedures for the voting systems approved by the Secretary of State to indicate the name of the voter's choice for a write-in candidate.

### **C. Abandoned Ballot**

If a voter leaves the voting booth without casting the ballot, the precinct official shall cause the ballot to be cast without examining the ballot.

## **Section VI Other Paper Voting Systems**

A paper ballot shall be subject to the standards in the section applicable to the system on which it is processed (e.g., optical scan or punch card voting system).

When paper ballots, or voting responses on paper other than a ballot, are counted by the hand and eye, the provisions of Section IV Optical Scan Voting Systems shall apply.

## **Section VII Direct Recording Electronic (DRE) Voting Systems**

When DRE technology is used to cast and count the votes on a ballot, the provisions of this section shall apply. The following standards shall be used to determine whether the voter has made a definite choice.

### **A. Standards Indicating a Valid Vote**

A voter's choice shall be considered a valid vote, if the:

1. Voter operates the DRE in a manner to cause an "X" or "√" or "highlight" or similar designation to display in the voting target position of the name of the candidate or measure for which the voter chooses to vote, followed by the voter activating the cast vote indicator;
2. Voter operates the DRE in a manner to cause the name of a qualified write-in candidate to be entered in the designated write-in space, followed by the voter activating the cast vote indicator;
3. Voter operates the DRE in a manner to cause the name of a candidate listed on the ballot to be entered in the designated write-in space, followed by the voter activating the cast vote indicator;
4. Voter operates the DRE in a manner to cause the cast ballot indicator to be activated and has not voted for more contests or candidates than the number for which the voter is eligible to vote.

**Note: DRE systems prevent the casting of an invalid vote.**

### **B. Abandoned Ballot**

If a voter leaves the voting booth without causing the ballot to be cast, the precinct official shall cause the ballot to be cast, without examining how any votes have been recorded on the machine.

## **Section VIII Absentee Voting Systems**

An absentee ballot shall be subject to the standards provided in the approved use procedures for the system on which it is processed and the provisions of the Elections Code. In addition, the following standards shall also apply.

### **A. Standards for Valid Absentee Ballots**

A voter's choice shall be considered a valid vote, if the:

1. Voter's residence address on the returned absentee identification envelope is the same as that on the affidavit of registration pursuant to Elections Code §§3011 and 3019.
2. Damaged, torn or otherwise non-processable ballot can be duplicated to exactly reflect the voter's choices and thereby enable the ballot to be processed on the system provided for that purpose. Standards for duplicating ballots are set forth in Elections Code §15210 and in the voting system use procedures.
3. Voter's signature on the absentee ballot envelope compares with the signature on the affidavit of voter registration. If the elections official has compared the signature of the voter's application with the affidavit pursuant to Elections Code §3009, the application may be used rather than the voter registration affidavit to make the signature comparison.
4. Voter prints name on the signature portion of the absentee ballot envelope, and it compares with the printed signature on the signature portion of the affidavit of voter registration. If the elections official has compared the signature of the voter's application with the affidavit pursuant to Elections Code §3009, the application may be used rather than the affidavit to make the signature comparison.
5. Voter uses a variation of the signature appearing on the affidavit of voter registration caused by the substitution of initials for the first or middle name, or both, and the signature compares with that on the affidavit of voter registration. If the elections official has compared the signature of the voter's application with the affidavit pursuant to Elections Code §3009, the application may be used rather than the affidavit to make the signature comparison.
6. Voter does not sign the absentee ballot envelope in the appropriate space, but the signature does appear elsewhere on the envelope and compares with the signature in the affidavit of voter registration. If the elections official has compared the signature of the voter's application with the affidavit pursuant to Elections Code §3009, the application may be used rather than the affidavit to make the signature comparison.
7. Voter uses a mark on both the absentee ballot envelope and the affidavit of voter registration, and the mark compares.
8. Absentee ballot envelope is not dated, but is otherwise properly executed and is received by the elections official before the close of the polls on Election Day.
9. Voter indicates vote choice(s) by writing the name(s) of the candidate(s) or indicating the vote(s) on the measure(s) in a letter or note, and returns it in an absentee envelope with a valid signature. If the voter's choice(s) can be determined, the ballot shall be duplicated to reflect the voter's choices and processed as if cast by the voter. (Elections Code §15210 provides the method by which a duplicate ballot must be created.)

10. Voter, instead of using his or her official ballot, marks a sample ballot and mails it in the absentee envelope and the signature on the envelope compares with the signature on the affidavit of voter registration. If the elections official has compared the signature of the voter's application with the affidavit pursuant to Elections Code §3009, the application may be used rather than the affidavit to make the signature comparison.
11. Two or more ballots are returned in one absentee ballot envelope, and there are an equal number of distinct signatures on the envelope that can be attributed to eligible absentee voters and each of these signatures compares with the affidavits of voter registration. If the elections official has compared the signature of the voter's application with the affidavit pursuant to Elections Code §3009, the application may be used rather than the affidavit to make the signature comparison.
12. Voter is a special absentee voter who is temporarily living outside of the territorial limits of the United States or the District of Columbia and transmits a voted ballot by facsimile and the ballot is submitted consistent with the provisions of Elections Code §§3103.5 and 3011.

**B. Standards for Invalid Absentee Ballots**

A voter's choice shall be considered an invalid vote, if the:

1. Absentee ballot envelope is not signed by the voter.
2. Absentee ballot envelope is signed using power of attorney.
3. Absentee ballot envelope is received after the close of the polls on Election Day.
4. Absentee ballot envelope is returned by a third party who is not eligible or authorized to return the voted ballot on behalf of the absent voter.
5. Voter, who is not a special absentee voter, transmits his or her voted ballot by facsimile.
6. Voter's signature on the absentee ballot envelope, when compared to the signature on the affidavit of voter registration, does not appear to be the same, including:
  - a. Voter uses a mark on the absentee envelope that it is not properly witnessed, and the affidavit of voter registration has a signature of the voter.
  - b. Voter printed his or her name on the signature portion of the absentee ballot envelope but has a written signature on the signature portion of the affidavit of voter registration.
7. Absentee ballot return envelope contains two or more voted absentee ballots but there are less than an equal number of distinct signatures on the absentee envelope.

**Section IX Provisional Ballots**

A provisional ballot shall be subject to the standards in the section applicable to the system on which it is processed. In addition to those standards, the following standards shall also apply.

**A. Standards for Valid Provisional Ballot and Vote**

A voter's choice shall be considered a valid vote, if the:

1. Voter casts a provisional ballot and the voter's eligibility can be confirmed

and the voter's choice is clearly marked, the vote shall be counted.

2. Voter casts a provisional ballot for a precinct other than the precinct in which the voter was legally entitled to vote, all votes properly cast in contests for which the voter was legally entitled to vote will be counted. (Elections Code §14310.)

**B. Standards for Invalid Provisional Ballot and Vote**

A voter's choice shall be considered an invalid vote, if the:

1. Voter casts a provisional ballot and the voter's eligibility cannot be confirmed, the ballot shall not be counted.
2. Voter casts a provisional ballot for a precinct other than the precinct in which the voter was legally entitled to vote, in which case all votes cast in contests for which the voter was not legally entitled to vote will not be counted. (Elections Code §14310.)

## CHAPTER 10

### VOTER COMPLAINTS

The goal of this chapter is to provide information to county elections officials and the public concerning the filing of complaints against a state or local elections official, or another person or entity, alleging violations of Title III of HAVA.

#### **Voter Complaints – Federal Requirements**

Under HAVA, the state is required to establish administrative procedures to address complaints concerning violations of HAVA Title III requirements for uniform and nondiscriminatory election technology and administration. (HAVA Section 402(a)(1).) The procedures must be uniform and nondiscriminatory, and must allow any person who believes there is any violation of Title III – including a violation which has occurred, is occurring, or is about to occur – to file a complaint. The complaint must be in writing and notarized, and must be signed and sworn by the person filing the complaint. The complainant may request a hearing on the matter. If the state determines that there has been a violation of Title III, the state shall provide the appropriate remedy; if there is no violation, the complaint shall be dismissed. The state shall make a final determination within 90 days from the date of filing of the complaint, unless the complainant consents to a longer time period. (HAVA Section 402(a)(2).)

#### **Voter Complaints – State Requirements**

In June 2003, the Secretary of State adopted an administrative complaint procedure as required by section 402 of HAVA. The entire text of the complaint procedure can be accessed on the Secretary of State's website at <http://www.ss.ca.gov/elections/hava-complaint-procedure.htm>. The procedure incorporates all the HAVA requirements, and specifies additional procedures for filing the complaint, processing the complaint, and hearing and making a determination on the complaint, as more fully set forth below.

#### **Form and Filing of Complaint**

The Complaint Procedure specifies that, as required by HAVA, the complaint shall be in writing and notarized, and signed and sworn by the complainant. The complainant may use a form provided by the Secretary of State, or may use any other writing containing the information required by the form. Complaint forms in languages required pursuant to the Voting Rights Act (Spanish, Tagalog, Chinese, Japanese, Korean and Vietnamese) can be accessed on the Secretary of State's website at [http://www.ss.ca.gov/elections/elections\\_fraud.htm](http://www.ss.ca.gov/elections/elections_fraud.htm). These complaint forms can also be used for filing complaints regarding non-HAVA, state law violations, such as voter fraud. Forms used to report complaints based on violations of state law do not need to be notarized.

The complainant must file the complaint within 60 days after the actions or events forming the basis for the complaint have occurred, or within 90 days after the complainant becomes aware of the actions or events, whichever is later. (HAVA Administrative Complaint Procedure, section 5.B.) The complaint must be sent to the Secretary of State, Elections Division, HAVA Complaint, 1500 11<sup>th</sup> Street, Sacramento, California 95814, or delivered in person to any office of the Secretary of State.

### **Processing the Complaint**

The Complaint Procedure provides that the Secretary of State may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact. Prior to making a determination on the complaint, the Secretary of State must notify all respondents of the allegations made in the complaint. This requirement will not apply if the Secretary of State has reason to believe that notifying a respondent might compromise a criminal or other enforcement action by any other local, state, or federal agency. Similarly, when a complaint subsequently becomes the basis for litigation, the litigation may become the sole venue for resolution of that complaint.

The Secretary of State must compile and maintain an official record for each complaint filed. The official record shall contain:

- (a) A copy of the complaint, including any amendments;
- (b) A copy of any written submission by the Complainant;
- (c) A copy of any written response by any Respondent or other interested person;
- (d) A written report of any investigation conducted by agents of the Secretary of State or of any local elections official, who may not be directly involved in the actions or events complained of;
- (e) Copies of all notices and correspondence to or from the Secretary of State in connection with the complaint;
- (f) Originals or copies of any tangible evidence produced at any hearing conducted;
- (g) The original tape recording produced at any oral hearing conducted, and a copy of any transcript produced; and
- (h) A copy of any final determination made.

### **Hearing and Determination of the Complaint**

If the complainant requests a hearing on the record, the Secretary of State shall conduct a hearing. The proceedings may be oral, at the discretion of the Secretary of State, but

shall otherwise be based on the writings and tangible evidence received by the parties. The hearing must be conducted no sooner than 10 days and no later than 60 days after the Secretary of State receives the complaint. The Secretary of State or his designee acts as the hearing officer.

The hearing officer will determine whether, under a preponderance of the evidence standard, a violation of Title III of HAVA has been established. If there has been a violation of Title III, the Secretary of State or his designee will provide an appropriate remedy, if a remedy is available. No remedy may involve the awarding of compensatory or punitive money damages to the complainant. If there has not been a violation, or if there is insufficient evidence of a violation, the complaint will be dismissed. The Secretary of State must explain the reasons for the determination and any remedy selected in a written decision, and the final determination is to be issued within 90 days after the complaint was filed, unless the complainant consents to an extension in writing.

### **Alternative Dispute Resolution**

If, for any reason, the Secretary of State does not render a final determination on the complaint within 90 days, then on or before the fifth business day after the final determination was due, the Secretary of State shall designate in writing a neutral hearing officer. This hearing officer may review the record compiled in connection with the complaint, but need not take additional testimony or evidence. The officer will then determine the appropriate resolution of the complaint. No resolution may involve the awarding of compensatory or punitive money damages to the complainant. The officer must issue a written decision within 60 days after the final Secretary of State determination was due, and this time may not be extended without the express consent of the complainant.



**PORTIONS OF  
PUBLIC LAW 107-252 [H.R. 3295]  
OCT. 29, 2002 HELP AMERICA VOTE ACT OF 2002**

*107 P.L. 252; 116 Stat. 1666; 2002 Enacted H.R. 3295; 107 Enacted H.R. 3295*

**TITLE III--UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND  
ADMINISTRATION REQUIREMENTS**

**Subtitle A--Requirements**

**Sec. 301. (42 USC 15481) VOTING SYSTEMS STANDARDS.**

(a) Requirements.--Each voting system used in an election for Federal office shall meet the following requirements:

(1) In general.----

(A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall--

(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;

(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and

(iii) if the voter selects votes for more than one candidate for a single office--

(I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;

(II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and

(III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

(B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by--

(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and

(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).

(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.

(2) Audit capacity.----

(A) In general.--The voting system shall produce a record with an audit capacity for such system.

(B) Manual audit capacity.--

(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.

(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.

(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.

(3) Accessibility for individuals with disabilities.-- The voting system shall--

(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;

(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and

(C) if purchased with funds made available under title II on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).

(4) Alternative language accessibility.-- The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (*42 U.S.C. 1973aa-1a*).

(5) Error rates.-- The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.

(6) Uniform definition of what constitutes a vote.-- Each State shall adopt uniform and non-discriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.

(b) Voting System Defined.--In this section, the term "voting system" means--

(1) the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used--

(A) to define ballots;

- (B) to cast and count votes;
  - (C) to report or display election results; and
  - (D) to maintain and produce any audit trail information; and
- (2) the practices and associated documentation used--
- (A) to identify system components and versions of such components;
  - (B) to test the system during its development and maintenance;
  - (C) to maintain records of system errors and defects;
  - (D) to determine specific system changes to be made to a system after the initial qualification of the system; and
  - (E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

(c) Construction.--

(1) In general.-- Nothing in this section shall be construed to prohibit a State or jurisdiction which used a particular type of voting system in the elections for Federal office held in November 2000 from using the same type of system after the effective date of this section, so long as the system meets or is modified to meet the requirements of this section.

(2) Protection of paper ballot voting systems.-- For purposes of subsection (a)(1)(A)(i), the term "verify" may not be defined in a manner that makes it impossible for a paper ballot voting system to meet the requirements of such subsection or to be modified to meet such requirements.

(d) Effective Date.--Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.

**Sec. 302. (42 USC 15482) PROVISIONAL VOTING AND VOTING INFORMATION REQUIREMENTS.**

(a) Provisional Voting Requirements.--If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:

(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is--

- (A) a registered voter in the jurisdiction in which the individual desires to vote; and
- (B) eligible to vote in that election.

(3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).

(4) If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law.

(5)

(A) At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under the system established under subparagraph (B) whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.

(B) The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

States described in section 4(b) of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg-2(b)*) may meet the requirements of this subsection using voter registration procedures established under applicable State law. The appropriate State or local official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system established under paragraph (5)(B). Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

(b) Voting Information Requirements.--

(1) Public posting on election day.-- The appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.

(2) Voting information defined.-- In this section, the term "voting information" means--

(A) a sample version of the ballot that will be used for that election;

(B) information regarding the date of the election and the hours during which polling places will be open;

(C) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;

(D) instructions for mail-in registrants and first-time voters under section 303(b);

(E) general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and

(F) general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

(c) Voters Who Vote After the Polls Close.--Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.

(d) Effective Date for Provisional Voting and Voting Information.--Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2004.

**Sec. 303. (42 USC 15483) COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS AND REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL.**

(a) Computerized Statewide Voter Registration List Requirements.--

(1) Implementation.----

(A) In general.--Except as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (in this subsection referred to as the "computerized list"), and includes the following:

(i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.

(ii) The computerized list contains the name and registration information of every legally registered voter in the State.

(iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.

(iv) The computerized list shall be coordinated with other agency databases within the State.

(v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

(vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

(vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).

(viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

(B) Exception.--The requirement under subparagraph (A) shall not apply to a State in which, under a State law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.

(2) Computerized list maintenance.----

(A) In general.--The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:

(i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg et seq.*), including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (*42 U.S.C. 1973gg-6*).

(ii) For purposes of removing names of ineligible voters from the official list of eligible voters—

(I) under section 8(a)(3)(B) of such Act (*42 U.S.C. 1973gg-6(a)(3)(B)*), the State shall coordinate the computerized list with State agency records on felony status; and

(II) by reason of the death of the registrant under section 8(a)(4)(A) of such Act (*42 U.S.C. 1973gg-6(a)(4)(A)*), the State shall coordinate the computerized list with State agency records on death.

(iii) Notwithstanding the preceding provisions of this subparagraph, if a State is described in section 4(b) of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg-2(b)*), that State shall remove the names of ineligible voters from the computerized list in accordance with State law.

(B) Conduct.--The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that--

(i) the name of each registered voter appears in the computerized list;

(ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and

(iii) duplicate names are eliminated from the computerized list.

(3) Technological security of computerized list.-- The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.

(4) Minimum standard for accuracy of state voter registration records.-- The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system,

consistent with the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg et seq.*), registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(5) Verification of voter registration information.----

(A) Requiring provision of certain information by applicants.--

(i) In general.--Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes--

(I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or

(II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant's social security number.

(ii) Special rule for applicants without driver's license or social security number.--If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.

(iii) Determination of validity of numbers provided.--The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.

(B) Requirements for state officials.--

(i) Sharing information in databases.--The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.

(ii) Agreements with commissioner of social security.--The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 205(r)(8) of the Social Security Act (as added by subparagraph (C)).

(C) Access to federal information.--Section 205(r) of the Social Security Act (*42 U.S.C. 405(r)*) is amended by adding at the end the following new paragraph:

"(8)(A) The Commissioner of Social Security shall, upon the request of the official responsible for a State driver's license agency pursuant to the Help America Vote Act of 2002--

"(i) enter into an agreement with such official for the purpose of verifying applicable information, so long as the requirements of subparagraphs (A) and (B) of paragraph (3) are met; and

"(ii) include in such agreement safeguards to assure the maintenance of the confidentiality of any applicable information disclosed and procedures to permit such agency to use the applicable information for the purpose of maintaining its records.

"(B) Information provided pursuant to an agreement under this paragraph shall be provided at such time, in such place, and in such manner as the Commissioner determines appropriate.

"(C) The Commissioner shall develop methods to verify the accuracy of information provided by the agency with respect to applications for voter registration, for whom the last 4 digits of a social security number are provided instead of a driver's license number.

"(D) For purposes of this paragraph--

"(i) the term 'applicable information' means information regarding whether--

"(I) the name (including the first name and any family forename or surname), the date of birth (including the month, day, and year), and social security number of an individual provided to the Commissioner match the information contained in the Commissioner's records, and

"(II) such individual is shown on the records of the Commissioner as being deceased; and

"(ii) the term 'State driver's license agency' means the State agency which issues driver's licenses to individuals within the State and maintains records relating to such licensure.

"(E) Nothing in this paragraph may be construed to require the provision of applicable information with regard to a request for a record of an individual if the Commissioner determines there are exceptional circumstances warranting an exception (such as safety of the individual or interference with an investigation).

"(F) Applicable information provided by the Commission pursuant to an agreement under this paragraph or by an individual to any agency that has entered into an agreement under this paragraph shall be considered as strictly confidential and shall be used only for the purposes described in this paragraph and for carrying out an agreement under this paragraph. Any officer or employee or former officer or employee of a State, or any officer or employee or former officer or employee of a contractor of a State who, without the written authority of the Commissioner, publishes or communicates any applicable information in such individual's possession by reason of such employment or position as such an officer, shall be guilty of a felony



and upon conviction thereof shall be fined or imprisoned, or both, as described in section 208."

(D) Special rule for certain states.--In the case of a State which is permitted to use social security numbers, and provides for the use of social security numbers, on applications for voter registration, in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note), the provisions of this paragraph shall be optional.

(b) Requirements for Voters Who Register by Mail.--

(1) In general.-- Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4(c)) and subject to paragraph (3), a State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if--

(A) the individual registered to vote in a jurisdiction by mail; and(B)

(i) the individual has not previously voted in an election for Federal office in the State; or

(ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of subsection (a).

(2) Requirements.----

(A) In general.--An individual meets the requirements of this paragraph if the individual--

(i) in the case of an individual who votes in person--

(I) presents to the appropriate State or local election official a current and valid photo identification; or

(II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or

(ii) in the case of an individual who votes by mail, submits with the ballot--

(I) a copy of a current and valid photo identification; or

(II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

(B) Fail-safe voting.--

(i) In person.--An individual who desires to vote in person, but who does not meet the requirements of subparagraph (A)(i), may cast a provisional ballot under section 302(a).

(ii) By mail.--An individual who desires to vote by mail but who does not meet the requirements of subparagraph (A)(ii) may cast such a ballot by mail and the ballot shall be counted as a provisional ballot in accordance with section 302(a).

(3) Inapplicability.-- Paragraph (1) shall not apply in the case of a person--

(A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg-4*) and submits as part of such registration either--

(i) a copy of a current and valid photo identification; or

(ii) a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter;

(B)

(i) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg-4*) and submits with such registration either--

(I) a driver's license number; or

(II) at least the last 4 digits of the individual's social security number;

and

(ii) with respect to whom a State or local election official matches the information submitted under clause (i) with an existing State identification record bearing the same number, name and date of birth as provided in such registration; or

(C) who is--

(i) entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (*42 U.S.C. 1973ff-1* et seq.);

(ii) provided the right to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act (*42 U.S.C. 1973ee-1(b)(2)(B)(ii)*); or

(iii) entitled to vote otherwise than in person under any other Federal law.

(4) Contents of mail-in registration form.---

(A) In general.--The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg-4*) shall include the following:

(i) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(ii) The question "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.

(iii) The statement "If you checked 'no' in response to either of these questions, do not complete this form.".

(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.

(B) Incomplete forms.--If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the regis-

trar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law).

(5) Construction.-- Nothing in this subsection shall be construed to require a State that was not required to comply with a provision of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg et seq.*) before the date of the enactment of this Act to comply with such a provision after such date.

(c) Permitted Use of Last 4 Digits of Social Security Numbers.--The last 4 digits of a social security number described in subsections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II) shall not be considered to be a social security number for purposes of section 7 of the Privacy Act of 1974 (*5 U.S.C. 552a* note).

(d) Effective Date.--

(1) Computerized statewide voter registration list requirements.----

(A) In general.--Except as provided in subparagraph (B), each State and jurisdiction shall be required to comply with the requirements of subsection (a) on and after January 1, 2004.

(B) Waiver.--If a State or jurisdiction certifies to the Commission not later than January 1, 2004, that the State or jurisdiction will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, subparagraph (A) shall apply to the State or jurisdiction as if the reference in such subparagraph to "January 1, 2004" were a reference to "January 1, 2006".

(2) Requirement for voters who register by mail.----

(A) In general.--Each State and jurisdiction shall be required to comply with the requirements of subsection (b) on and after January 1, 2004, and shall be prepared to receive registration materials submitted by individuals described in subparagraph (B) on and after the date described in such subparagraph.

(B) Applicability with respect to individuals.--The provisions of subsection (b) shall apply to any individual who registers to vote on or after January 1, 2003.

#### **Sec. 304. (*42 USC 15484*) MINIMUM REQUIREMENTS.**

The requirements established by this title are minimum requirements and nothing in this title shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this title so long as such State requirements are not inconsistent with the Federal requirements under this title or any law described in section 906.

#### **Sec. 305. (*42 USC 15485*) METHODS OF IMPLEMENTATION LEFT TO DISCRETION OF STATE.**

The specific choices on the methods of complying with the requirements of this title shall be left to the discretion of the State.

## **TITLE VII--VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS**

### **Sec. 701. VOTING ASSISTANCE PROGRAMS.**

(a) Voting Assistance Officers.--Subsection (f) of *section 1566 of title 10, United States Code*, as added by section 1602(a) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1274), is amended--

(1) by striking "Voting assistance" in the first sentence and inserting "(1) Voting assistance"; and

(2) by adding at the end the following new paragraph:

"(2) Under regulations and procedures (including directives) prescribed by the Secretary, a member of the armed forces appointed or assigned to duty as a voting assistance officer shall, to the maximum extent practicable, be given the time and resources needed to perform the member's duties as a voting assistance officer during the period in advance of a general election when members and their dependents are preparing and submitting absentee ballots."

(b) Postmarking of Overseas Voting Materials.--Subsection (g)(2) of such section is amended by adding at the end the following: "The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall ensure that the measures implemented under the preceding sentence do not result in the delivery of absentee ballots to the final destination of such ballots after the date on which the election for Federal office is held. Not later than the date that is 6 months after the date of the enactment of the Help America Vote Act of 2002, the Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures."

(c) Providing Notice of Deadlines and Requirements.--Such section is amended by adding at the end the following new subsection:

"(h) Notice of Deadlines and Requirements.--The Secretary of each military department, utilizing the voting assistance officer network established for each military installation, shall, to the maximum extent practicable, provide notice to members of the Armed Forces stationed at that installation of the last date before a general Federal election for which absentee ballots mailed from a postal facility located at that installation can reasonably be expected to be timely delivered to the appropriate State and local election officials."

(d) Registration and Voting Information for Members and Dependents.--Such section is further amended by adding at the end the following new subsection:

"(i) Registration and Voting Information for Members and Dependents.--(1) The Secretary of each military department, using a variety of means including both print and electronic media, shall, to the maximum extent practicable, ensure that members of the Armed Forces and their dependents who are qualified to vote have ready access to information regarding voter registration re-

quirements and deadlines (including voter registration), absentee ballot application requirements and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirements.

"(2) The Secretary of each military department shall make the national voter registration form prepared for purposes of the Uniformed and Overseas Citizens Absentee Voting Act by the Federal Election Commission available so that each person who enlists shall receive such form at the time of the enlistment, or as soon thereafter as practicable.

"(3) Where practicable, a special day or days shall be designated at each military installation for the purpose of informing members of the Armed Forces and their dependents of election timing, registration requirements, and voting procedures."

### **Sec. 702. DESIGNATION OF SINGLE STATE OFFICE TO PROVIDE INFORMATION ON REGISTRATION AND ABSENTEE BALLOTS FOR ALL VOTERS IN STATE.**

Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (*42 U.S.C. 1973ff-1*) is amended--

(1) by inserting "(a) In General.--" before "Each State"; and

(2) by adding at the end the following new subsection:

"(b) Designation of Single State Office To Provide Information on Registration and Absentee Ballot Procedures for All Voters in State.--

"(1) In general.-- Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed services voters and overseas voters with respect to elections for Federal office (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

"(2) Recommendation regarding use of office to accept and process materials.-- Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State."

### **Sec. 703. REPORT ON ABSENTEE BALLOTS TRANSMITTED AND RECEIVED AFTER GENERAL ELECTIONS.**

(a) In General.--Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (*42 U.S.C. 1973ff-1*), as amended by section 702, is amended by adding at the end the following new subsection:

"(c) Report on Number of Absentee Ballots Transmitted and Received.--Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and

unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public."

(b) (*42 USC 1973ff-1* note) Development of Standardized Format for Reports.--The Election Assistance Commission, working with the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board, shall develop a standardized format for the reports submitted by States and units of local government under section 102(c) of the Uniformed and Overseas Citizens Absentee Voting Act (as added by subsection (a)), and shall make the format available to the States and units of local government submitting such reports.

#### **Sec. 704. EXTENSION OF PERIOD COVERED BY SINGLE ABSENTEE BALLOT APPLICATION.**

Section 104(a) of the Uniformed and Overseas Citizens Absentee Voting Act (*42 U.S.C. 1973ff-1*) (*42 USC 1973ff-3*), as amended by section 1606(b) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1279), is amended by striking "during that year," and all that follows and inserting the following: "through the next 2 regularly scheduled general elections for Federal office (including any runoff elections which may occur as a result of the outcome of such general elections), the State shall provide an absentee ballot to the voter for each such subsequent election."

#### **Sec. 705. ADDITIONAL DUTIES OF PRESIDENTIAL DESIGNEE UNDER UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.**

(a) Educating Election Officials on Responsibilities Under Act.--Section 101(b)(1) of the Uniformed and Overseas Citizens Absentee Voting Act (*42 U.S.C. 1973ff(b)(1)*) is amended by striking the semicolon at the end and inserting the following: ", and ensure that such officials are aware of the requirements of this Act;"

(b) Development of Standard Oath for Use With Materials.--

(1) In general.-- Section 101(b) of such Act (*42 U.S.C. 1973ff(b)*) is amended--

(A) by striking "and" at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(7) prescribe a standard oath for use with any document under this title affirming that a material misstatement of fact in the completion of such a document may constitute grounds for a conviction for perjury."

(2) Requiring states to use standard oath.-- Section 102(a) of such Act (*42 U.S.C. 1973ff-1(b)*), as amended by section 702, is amended--

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(5) if the State requires an oath or affirmation to accompany any document under this title, use the standard oath prescribed by the Presidential designee under section 101(b)(7)."

(c) Providing Statistical Analysis of Voter Participation for Both Overseas Voters and Absent Uniformed Services Voters.--Section 101(b)(6) of such Act (*42 U.S.C. 1973ff(b)(6)*) is amended by striking "a general assessment" and inserting "a separate statistical analysis."

#### **Sec. 706. PROHIBITION OF REFUSAL OF VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATIONS ON GROUNDS OF EARLY SUBMISSION.**

(a) In General.--Section 104 of the Uniformed and Overseas Citizens Absentee Voting Act (*42 U.S.C. 1973ff-3*), as amended by section 1606(b) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1279), is amended by adding at the end the following new subsection:

"(e) Prohibition of Refusal of Applications on Grounds of Early Submission.--A State may not refuse to accept or process, with respect to any election for Federal office, any otherwise valid voter registration application or absentee ballot application (including the postcard form prescribed under section 101) submitted by an absent uniformed services voter during a year on the grounds that the voter submitted the application before the first date on which the State otherwise accepts or processes such applications for that year submitted by absentee voters who are not members of the uniformed services."

(b) (*42 USC 1973ff- note*) Effective Date.--The amendment made by subsection (a) shall apply with respect to elections for Federal office that occur after January 1, 2004.

#### **Sec. 707. OTHER REQUIREMENTS TO PROMOTE PARTICIPATION OF OVERSEAS AND ABSENT UNIFORMED SERVICES VOTERS.**

Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (*42 U.S.C. 1973ff-1*), as amended by the preceding provisions of this title, is amended by adding at the end the following new subsection:

"(d) Registration Notification.--With respect to each absent uniformed services voter and each overseas voter who submits a voter registration application or an absentee ballot request, if the State rejects the application or request, the State shall provide the voter with the reasons for the rejection."

**SELECTED FEDERAL STATUTES  
TABLE OF CONTENTS**

10 USCS § 1566.....	1
42 USCS § 405.....	4
42 USCS § 1973aa-1a.....	25
42 USCS § 1973ee-1 .....	27
42 USCS § 1973ff.....	28
42 USCS § 1973ff-1 .....	29
42 USCS § 1973ff-2 .....	30
42 USCS § 1973ff-3 .....	32
42 USCS § 1973ff-4 .....	33
42 USCS § 1973ff-5 .....	34
42 USCS § 1973ff-6 .....	35
42 USCS § 1973gg .....	36
42 USCS § 1973gg-1 .....	37
42 USCS § 1973gg-2.....	38
42 USCS § 1973gg-3.....	39
42 USCS § 1973gg-4.....	41
42 USCS § 1973gg-5.....	42
42 USCS § 1973gg-6.....	44
42 USCS § 1973gg-7.....	48
42 USCS § 1973gg-8.....	49
42 USCS § 1973gg-9.....	50
42 USCS § 1973gg-10.....	51



42 USCS § 12132 .....	52
42 USCS § 15404 .....	53
42 USCS § 15481 .....	55
42 USCS § 15482 .....	57
42 USCS § 15483 .....	59
42 USCS § 15484 .....	63
42 USCS § 15485 .....	64
42 USCS § 15512 .....	65

TITLE 10. ARMED FORCES  
SUBTITLE A. GENERAL MILITARY LAW  
PART II. PERSONNEL  
CHAPTER 80. MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES

**§ 1566. Voting assistance: compliance assessments; assistance**

(a) Regulations. The Secretary of Defense shall prescribe regulations to require that the Army, Navy, Air Force, and Marine Corps ensure their compliance with any directives issued by the Secretary of Defense in implementing any voting assistance program.

(b) Voting assistance programs defined. In this section, the term "voting assistance programs" means--

(1) the Federal Voting Assistance Program carried out under the Uniformed and Overseas Citizens Absentee Voting Act (*42 U.S.C. 1973ff et seq.*); and

(2) any similar program.

(c) Annual effectiveness and compliance reviews.

(1) The Inspector General of each of the Army, Navy, Air Force, and Marine Corps shall conduct--

(A) an annual review of the effectiveness of voting assistance programs; and

(B) an annual review of the compliance with voting assistance programs of that armed force.

(2) Upon the completion of each annual review under paragraph (1), each Inspector General specified in that paragraph shall submit to the Inspector General of the Department of Defense a report on the results of each such review. Such report shall be submitted in time each year to be reflected in the report of the Inspector General of the Department of Defense under paragraph (3).

(3) Not later than March 31 each year, the Inspector General of the Department of Defense shall submit to Congress a report on--

(A) the effectiveness during the preceding calendar year of voting assistance programs; and

(B) the level of compliance during the preceding calendar year with voting assistance programs of each of the Army, Navy, Air Force, and Marine Corps.

(d) Inspector General assessments.

(1) The Inspector General of the Department of Defense shall periodically conduct at Department of Defense installations unannounced assessments of the compliance at those installations with--

(A) the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (*42 U.S.C. 1973ff et seq.*);

(B) Department of Defense regulations regarding that Act and the Federal Voting Assistance Program carried out under that Act; and

(C) other requirements of law regarding voting by members of the armed forces.

(2) The Inspector General shall conduct an assessment under paragraph (1) at not less than 10 Department of Defense installations each calendar year.

(3) Each assessment under paragraph (1) shall include a review of such compliance--

(A) within units to which are assigned, in the aggregate, not less than 20 percent of the personnel assigned to duty at that installation;

(B) within a representative survey of members of the armed forces assigned to that installation and their dependents; and

(C) within unit voting assistance officers to measure program effectiveness.

(e) Regular military department assessments. The Secretary of each military department shall include in the set of issues and programs to be reviewed during any management effectiveness review or inspection at the installation level an assessment of compliance with the Uniformed and Overseas Citizens Absentee Voting

Act (42 U.S.C. 1973ff et seq.) and with Department of Defense regulations regarding the Federal Voting Assistance Program.

(f) Voting assistance officers.

(1) Voting assistance officers shall be appointed or assigned under Department of Defense regulations. Commanders at all levels are responsible for ensuring that unit voting officers are trained and equipped to provide information and assistance to members of the armed forces on voting matters. Performance evaluation reports pertaining to a member who has been assigned to serve as a voting assistance officer shall comment on the performance of the member as a voting assistance officer.

(2) Under regulations and procedures (including directives) prescribed by the Secretary, a member of the armed forces appointed or assigned to duty as a voting assistance officer shall, to the maximum extent practicable, be given the time and resources needed to perform the member's duties as a voting assistance officer during the period in advance of a general election when members and their dependents are preparing and submitting absentee ballots.

(g) Delivery of mail from overseas preceding Federal elections.

(1) During the four months preceding a general Federal election month, the Secretary of Defense shall periodically conduct surveys of all overseas locations and vessels at sea with military units responsible for collecting mail for return shipment to the United States and all port facilities in the United States and overseas where military-related mail is collected for shipment to overseas locations or to the United States. The purpose of each survey shall be to determine if voting materials are awaiting shipment at any such location and, if so, the length of time that such materials have been held at that location. During the fourth and third months before a general Federal election month, such surveys shall be conducted biweekly. During the second and first months before a general Federal election month, such surveys shall be conducted weekly.

(2) The Secretary shall ensure that voting materials are transmitted expeditiously by military postal authorities at all times. The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall ensure that the measures implemented under the preceding sentence do not result in the delivery of absentee ballots to the final destination of such ballots after the date on which the election for Federal office is held. Not later than April 29, 2003, the Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.

(3) In this section, the term "general Federal election month" means November in an even-numbered year.

(h) Notice of deadlines and requirements. The Secretary of each military department, utilizing the voting assistance officer network established for each military installation, shall, to the maximum extent practicable, provide notice to members of the armed forces stationed at that installation of the last date before a general Federal election for which absentee ballots mailed from a postal facility located at that installation can reasonably be expected to be timely delivered to the appropriate State and local election officials.

(i) Registration and voting information for members and dependents.

(1) The Secretary of each military department, using a variety of means including both print and electronic media, shall, to the maximum extent practicable, ensure that members of the armed forces and their dependents who are qualified to vote have ready access to information regarding voter registration requirements and deadlines (including voter registration), absentee ballot application requirements and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirements.

(2) The Secretary of each military department shall make the national voter registration form prepared for purposes of the Uniformed and Overseas Citizens Absentee Voting Act by the Federal Election Commission

available so that each person who enlists shall receive such form at the time of the enlistment, or as soon thereafter as practicable.

(3) Where practicable, a special day or days shall be designated at each military installation for the purpose of informing members of the armed forces and their dependents of election timing, registration requirements, and voting procedures.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 7. SOCIAL SECURITY ACT  
TITLE II. FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

**§ 405. Evidence and procedure for establishment of benefits**

(a) Rules and regulations; procedures. The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this *title* [42 USCS § § 401 et seq.], which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

(b) Administrative determination of entitlement to benefits; findings of fact; hearings; investigations; evidentiary hearings in reconsiderations of disability benefit terminations.

(1) The Commissioner of Social Security is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this *title* [42 USCS § § 401 et seq.]. Any such decision by the Commissioner of Social Security which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner's determination and the reason or reasons upon which it is based. Upon request by any such individual or upon request by a wife, divorced wife, surviving divorced mother, surviving divorced father husband, divorced husband, widower, surviving divorced husband, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Commissioner of Social Security has rendered, the Commissioner shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse the Commissioner's findings of fact and such decision. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request. The Commissioner of Social Security is further authorized, on the Commissioner's own motion, to hold such hearings and to conduct such investigations and other proceedings as the Commissioner may deem necessary or proper for the administration of this *title* [42 USCS § § 401 et seq.]. In the course of any hearing, investigation or other proceeding, the Commissioner may administer oaths and affirmations, examine witnesses and receive evidence. Evidence may be received at any hearing before the Commissioner of Social Security even though inadmissible under rules of evidence applicable to court procedure.

(2) In any case where--

(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Commissioner of Social Security not to be entitled to such benefits,

any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Commissioner of Social Security (before any hearing under paragraph (1) on the issue of such entitlement) of the Commissioner's determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Commissioner of Social Security where the finding was originally made by the State agency, and shall be made by the Commissioner of Social Security where the finding was originally made by the Commissioner of Social Security. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall

be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Commissioner of Social Security of a finding described in subparagraph (B) which was originally made by the Commissioner of Social Security, the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B).

(3) (A) A failure to timely request review of an initial adverse determination with respect to an application for any benefit under this *title* [42 USCS § § 401 et seq.] or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any benefit under this *title* [42 USCS § § 401 et seq.] if the applicant demonstrates that the applicant, or any other individual referred to in paragraph (1), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for benefits in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 221 [42 USCS § 441].

(B) In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Commissioner of Social Security shall describe in clear and specific language the effect on possible entitlement to benefits under this *title* [42 USCS § § 401 et seq.] of choosing to reapply in lieu of requesting review of the determination.

(c) Records of wages and self-employment income.

(1) For the purposes of this subsection--

(A) The term "year" means a calendar year when used with respect to wages and a taxable year when used with respect to self-employment income.

(B) The term "time limitation" means a period of three years, three months, and fifteen days.

(C) The term "survivor" means an individual's spouse, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent, who survives such individual.

(D) The term "period" when used with respect to self-employment income means a taxable year and when used with respect to wages means--

(i) a quarter if wages were reported or should have been reported on a quarterly basis on tax returns filed with the Secretary of the Treasury or his delegate under *section 6011 of the Internal Revenue Code of 1986* [26 USCS § 6011] or regulations thereunder (or on reports filed by a State under section 218(e) [42 USCS § 418(e)] (as in effect prior to December 31, 1986) or regulations thereunder),

(ii) a year if wages were reported or should have been reported on a yearly basis on such tax returns or reports, or

(iii) the half year beginning January 1 or July 1 in the case of wages which were reported or should have been reported for calendar year 1937.

(2)

(A) On the basis of information obtained by or submitted to the Commissioner of Social Security, and after such verification thereof as the Commissioner deems necessary, the Commissioner of Social Security shall establish and maintain records of the amounts of wages paid to, and the amounts of self-employment income derived by, each individual and of the periods in which such wages were paid and such income was derived and, upon request, shall inform any individual or his survivor, or the legal representative of such individual or his estate, of the amounts of wages and self-employment income of such individual and the periods during which such wages were paid and such income was derived, as shown by such records at the time of such request.

(B) (i) In carrying out the Commissioner's duties under subparagraph (A) and subparagraph (F), the Commissioner of Social Security shall take affirmative measures to assure that social security account numbers will, to the maximum extent practicable, be assigned to all members of appropriate groups of categories of individuals by assigning such numbers (or ascertaining that such numbers have already been assigned):

(I) to aliens at the time of their lawful admission to the United States either for permanent residence or under other authority of law permitting them to engage in employment in the United States and to other aliens at such time as their status is so changed as to make it lawful for them to engage in such employment;

(II) to any individual who is an applicant for or recipient of benefits under any program financed in whole or in part from Federal funds including any child on whose behalf such benefits are claimed by another person; and

(III) to any other individual when it appears that he could have been but was not assigned an account number under the provisions of subclauses (I) or (II) but only after such investigation as is necessary to establish to the satisfaction of the Commissioner of Social Security, the identity of such individual, the fact that an account number has not already been assigned to such individual, and the fact that such individual is a citizen or a noncitizen who is not, because of his alien status, prohibited from engaging in employment;

and, in carrying out such duties, the Commissioner of Social Security is authorized to take affirmative measures to assure the issuance of social security numbers:

(IV) to or on behalf of children who are below school age at the request of their parents or guardians; and

(V) to children of school age at the time of their first enrollment in school.

(ii) The Commissioner of Social Security shall require of applicants for social security account numbers such evidence as may be necessary to establish the age, citizenship, or alien status, and true identity of such applicants, and to determine which (if any) social security account number has previously been assigned to such individual. With respect to an application for a social security account number for an individual who has not attained the age of 18 before such application, such evidence shall include the information described in subparagraph (C)(ii).

(iii) In carrying out the requirements of this subparagraph, the Commissioner of Social Security shall enter into such agreements as may be necessary with the Attorney General and other officials and with State and local welfare agencies and school authorities (including nonpublic school authorities).

(C)

(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security.

(ii) In the administration of any law involving the issuance of a birth certificate, each State shall require each parent to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if the parent has more than one such number) issued to the parent unless the State (in accordance with regulations prescribed by the Commissioner of Social Security) finds good cause for not requiring the furnishing of such number. The State shall make numbers furnished under this subclause available to the Commissioner of Social Security and the agency administering the State's plan under part D of title IV [42 USCS § § 651 et seq.] in accordance with Federal or State law and regulation. Such numbers shall not be recorded on the birth certificate. A State shall not use any social security account number, obtained with respect to the issuance by the State of a birth certificate, for any purpose other than for the enforcement of child support orders in effect in the State, unless section 7(a) of the Privacy Act of 1974 [5 USCS § 552a note] does not prohibit the State from requiring the disclosure of such number, by reason of the State having adopted, before January 1, 1975, a statute or regulation requiring such disclosure.

(iii) (I) In the administration of section 9 of the Food Stamp Act of 1977 (7 U.S.C 2018) involving the determination of the qualifications of applicants under such Act, the Secretary of Agriculture may require each applicant retail store or wholesale food concern to furnish to the Secretary of Agriculture the social security account number of each individual who is an officer of the store or concern and, in the case of a pri-

vately owned applicant, furnish the social security account numbers of the owners of such applicant. No officer or employee of the Department of Agriculture shall have access to any such number for any purpose other than the establishment and maintenance of a list of the names and social security account numbers of such individuals for use in determining those applicants who have been previously sanctioned or convicted under section 12 or 15 of such Act (7 U.S.C. 2021 or 2024).

(II) The Secretary of Agriculture may share any information contained in any list referred to in subclause (I) with any other agency or instrumentality of the United States which otherwise has access to social security account numbers in accordance with this subsection or other applicable Federal law, except that the Secretary of Agriculture may share such information only to the extent that such Secretary determines such sharing would assist in verifying and matching such information against information maintained by such other agency or instrumentality. Any such information shared pursuant to this subclause may be used by such other agency or instrumentality only for the purpose of effective administration and enforcement of the Food Stamp Act of 1977 or for the purpose of investigation of violations of other Federal laws or enforcement of such laws.

(III) The Secretary of Agriculture, and the head of any other agency or instrumentality referred to in this subclause, shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause only to officers and employees of the United States whose duties or responsibilities require access for the purposes described in subclause (II).

(IV) The Secretary of Agriculture, and the head of any agency or instrumentality with which information is shared pursuant to clause (II), shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of the social security account numbers.

(iv) In the administration of section 506 of the Federal Crop Insurance Act [7 USCS § 1506], the Federal Crop Insurance Corporation may require each policyholder and each reinsured company to furnish to the insurer or to the Corporation the social security account number of such policyholder, subject to the requirements of this clause. No officer or employee of the Federal Crop Insurance Corporation shall have access to any such number for any purpose other than the establishment of a system of records necessary for the effective administration of such Act [7 USCS § § 1501 et seq.]. The Manager of the Corporation may require each policyholder to provide to the Manager, at such times and in such manner as prescribed by the Manager, the social security account number of each individual that holds or acquires a substantial beneficial interest in the policyholder. For purposes of this clause, the term "substantial beneficial interest" means not less than 5 percent of all beneficial interest in the policyholder. The Secretary of Agriculture shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause only to officers and employees of the United States or authorized persons whose duties or responsibilities require access for the administration of the Federal Crop Insurance Act. The Secretary of Agriculture shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of such social security account numbers. For purposes of this clause the term "authorized person" means an officer or employee of an insurer whom the Manager of the Corporation designates by rule, subject to appropriate safeguards including a prohibition against the release of such social security account number (other than to the Corporation) by such person.

(v) If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i), such provision shall, on and after the date of the enactment of this subparagraph [enacted Oct. 4, 1976], be null, void, and of no effect. If and to the extent that any such provision is inconsistent with the requirement set forth in clause (ii), such provision shall, on and after the date of the enactment of such subclause, be null, void, and of no effect.

(vi) (I) For purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above and for the



purpose of responding to requests for information from an agency administering a program funded under part A of title IV [42 USCS § § 601 et seq.] or an agency operating pursuant to the provisions of part D of such title [42 USCS § § 651 et seq.].

(II) Any State or political subdivision thereof (and any person acting as an agent of such an agency or instrumentality), in the administration of any driver's license or motor vehicle registration law within its jurisdiction, may not display a social security account number issued by the Commissioner of Social Security (or any derivative of such number) on any driver's license, motor vehicle registration, or personal identification card (as defined in section 7212(a)(2) of the 9/11 Commission Implementation Act of 2004 [49 USCS § 30301 note]), or include, on any such license, registration, or personal identification card, a magnetic strip, bar code, or other means of communication which conveys such number (or derivative thereof).

(vii) For purposes of this subparagraph, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(viii) (I) Social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law, enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number or related record.

(II) Paragraphs (1), (2), and (3) of *section 7213(a) of the Internal Revenue Code of 1986* [26 USCS § 7213(a)] shall apply with respect to the unauthorized willful disclosure to any person of social security account numbers and related records obtained or maintained by an authorized person pursuant to a provision of law enacted on or after October 1, 1990, in the same manner and to the same extent as such paragraphs as such paragraphs apply with respect to unauthorized disclosures of returns and return information described in such paragraphs. Paragraph (4) of such 7213(a) of such Code [26 USCS § 7213(a)(4)] shall apply with respect to the willful offer of any item of material value in exchange for any such social security account number or related record in the same manner and to the same extent as such paragraph applies with respect to offers (in exchange for any return or return information) described in such paragraph.

(III) For purposes of this clause, the term "authorized person" means an officer or employee of the United States, an officer or employee of any State, political subdivision of a State, or agency of a State or political subdivision of a State, and any other person (or officer or employee thereof), who has or had access to social security account numbers or related records pursuant to any provision of law enacted on or after October 1, 1990. For purposes of this subclause, the term "officer or employee" includes a former officer or employee.

(IV) For purposes of this clause, the term "related record" means any record, list, or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom a social security account number or a request for a social security account number is maintained pursuant to this clause.

(ix) In the administration of the provisions of chapter 81 of *title 5, United States Code* [5 USCS § § 8101 et seq.], and the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.), the Secretary of Labor may require by regulation that any person filing a notice of injury or a claim for benefits under such provisions provide as part of such notice or claim such person's social security account number, subject to the requirements of this clause. No officer or employee of the Department of Labor shall have access to any such number for any purpose other than the establishment of a system of records necessary for the effective administration of such provisions. The Secretary of Labor shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause to officers and employees of the United States whose duties or responsibilities require access for the administration or enforcement of such provisions. The Secretary of Labor shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of the social security account numbers.

(D)

(i) It is the policy of the United States that--

(I) any State (or any political subdivision of a State) and any authorized blood donation facility may utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of identifying blood donors, and

(II) any State (or political subdivision of a State) may require any individual who donates blood within such State (or political subdivision) to furnish to such State (or political subdivision), to any agency thereof having related administrative responsibility, or to any authorized blood donation facility the social security account number (or numbers, if the donor has more than one such number) issued to the donor by the Commissioner of Social Security.

(ii) If and to the extent that any provision of Federal law enacted before the date of the enactment of this subparagraph [enacted Nov. 10, 1988] is inconsistent with the policy set forth in clause (i), such provision shall, on and after such date, be null, void, and of no effect.

(iii) For purposes of this subparagraph--

(I) the term "authorized blood donation facility" means an entity described in section 1141(h)(1)(B) [42 USCS § 1320b-11(h)(1)(B)], and

(II) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(E) (i) It is the policy of the United States that--

(I) any State (or any political subdivision of a State) may utilize the social security account numbers issued by the Commissioner of Social Security for the additional purposes described in clause (ii) if such numbers have been collected and are otherwise utilized by such State (or political subdivision) in accordance with applicable law, and

(II) any district court of the United States may use, for such additional purposes, any such social security account numbers which have been so collected and are so utilized by any State.

(ii) The additional purposes described in this clause are the following:

(I) Identifying duplicate names of individuals on master lists used for jury selection purposes.

(II) Identifying on such master lists those individuals who are ineligible to serve on a jury by reason of their conviction of a felony.

(iii) To the extent that any provision of Federal law enacted before the date of the enactment of this subparagraph is inconsistent with the policy set forth in clause (i), such provision shall, on and after that date, be null, void, and of no effect.

(iv) For purposes of this subparagraph, the term "State" has the meaning such term has in subparagraph (D).

(F) The Commissioner of Social Security shall require, as a condition for receipt of benefits under this title [42 USCS § § 401 et seq.], that an individual furnish satisfactory proof of a social security account number assigned to such individual by the Commissioner of Social Security or, in the case of an individual to whom no such number has been assigned, that such individual make proper application for assignment of such a number.

(G) The Commissioner of Social Security shall issue a social security card to each individual at the time of the issuance of a social security account number to such individual. The social security card shall be made of banknote paper, and (to the maximum extent practicable) shall be a card which cannot be counterfeited.

(H) The Commissioner of Social Security shall share with the Secretary of the Treasury the information obtained by the Commissioner pursuant to the second sentence of subparagraph (B)(ii) and to subparagraph (C)(ii) for the purpose of administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children.

(3) The Commissioner's records shall be evidence for the purpose of proceedings before the Commissioner of Social Security or any court of the amounts of wages paid to, and self-employment income derived by, an individual and of the periods in which such wages were paid and such income was derived. The absence of an entry in such records as to wages alleged to have been paid to, or as to self-employment income alleged to have been derived by, an individual in any period shall be evidence that no such alleged wages were paid to, or that no such alleged income was derived by, such individual during such period.

(4) Prior to the expiration of the time limitation following any year the Commissioner of Social Security may, if it is brought to the Commissioner's attention that any entry of wages or self-employment income in the Commissioner's records for such year is erroneous or that any item of wages or self-employment income for such year has been omitted from such records, correct such entry or include such omitted item in the Commissioner's records, as the case may be. After the expiration of the time limitation following any year--

(A) the Commissioner's records (with changes, if any, made pursuant to paragraph (5)) of the amounts of wages paid to, and self-employment income derived by, an individual during any period in such year shall be conclusive for the purposes of this *title* [42 USCS § § 401 et seq.];

(B) the absence of an entry in the Commissioner's records as to the wages alleged to have been paid by an employer to an individual during any period in such year shall be presumptive evidence for the purposes of this *title* [42 USCS § § 401 et seq.] that no such alleged wages were paid to such individuals in such period; and

(C) the absence of an entry in the Commissioner's records as to the self-employment income alleged to have been derived by an individual in such year shall be conclusive for the purposes of this *title* [42 USCS § § 401 et seq.] that no such alleged self-employment income was derived by such individual in such year unless it is shown that he filed a tax return of his self-employment income for such year before the expiration of the time limitation following such year, in which case the Commissioner of Social Security shall include in the Commissioner's records the self-employment income of such individual for such year.

(5) After the expiration of the time limitation following any year in which wages were paid or alleged to have been paid to, or self-employment income was derived or alleged to have been derived by, an individual, the Commissioner of Social Security may change or delete any entry with respect to wages or self-employment income in the Commissioner's records of such year for such individual or include in the Commissioner's records of such year for such individual any omitted item of wages or self-employment income but only--

(A) if an application for monthly benefits or for a lump-sum death payment was filed within the time limitation following such year; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon the application for monthly benefits or lump-sum death payment;

(B) if within the time limitation following such year an individual or his survivor makes a request for a change or deletion, or for an inclusion of an omitted item, and alleges in writing that the Commissioner's records of the wages paid to, or the self-employment income derived by, such individual in such year are in one or more respects erroneous; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon such request. Written notice of the Commissioner's decision on any such request shall be given to the individual who made the request;

(C) to correct errors apparent on the face of such records;

(D) to transfer items to records of the Railroad Retirement Board if such items were credited under this *title* [42 USCS § § 401 et seq.] when they should have been credited under the Railroad Retirement Act of 1937 or 1974, or to enter items transferred by the Railroad Retirement Board which have been credited under the Railroad Retirement Act of 1937 or 1974 when they should have been credited under this *title* [42 USCS § § 401 et seq.];

(E) to delete or reduce the amount of any entry which is erroneous as a result of fraud;

(F) to conform his records to--

(i) tax returns or portions thereof (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act [42 USCS § § 1001 et seq.], under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939, under chapter 2 or 21 of the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986 [26 USCS § § 1401 et seq., or 3101 et seq.], or under regulations made under authority of such title, subchapter, or chapter;

(ii) wage reports filed by a State pursuant to an agreement under section 218 [42 USCS § 418] or regulations of the Commissioner of Social Security thereunder; or

(iii) assessments of amounts due under an agreement pursuant to section 218 [42 USCS § 418] (as in effect prior to December 31, 1986), if such assessments are made within the period specified in subsection (q) of such section [42 USCS § 418(q)] (as so in effect), or allowances of credits or refunds of overpayments by a State under an agreement pursuant to such section;

except that no amount of self-employment income of an individual for any taxable year (if such return or statement was filed after the expiration of the time limitation following the taxable year) shall be included in the Commissioner's records pursuant to this subparagraph;

(G) to correct errors made in the allocation, to individuals or periods, of wages or self-employment income entered in the records of the Commissioner of Social Security;

(H) to include wages paid during any period in such year to an individual by an employer;

(I) to enter items which constitute remuneration for employment under subsection (o), such entries to be in accordance with certified reports of records made by the Railroad Retirement Board pursuant to section 5(k)(3) of the Railroad Retirement Act of 1937 [45 USCS § 228e(k)(3)] or section 7(b)(7) of the Railroad Retirement Act of 1974 [45 USCS § 231f(b)(7)]; or

(J) to include self-employment income for any taxable year, up to, but not in excess of, the amount of wages deleted by the Commissioner of Social Security as payments erroneously included in such records as wages paid to such individual, if such income (or net earnings from self-employment), not already included in such records as self-employment income, is included in a return or statement (referred to in subparagraph (F)) filed before the expiration of the time limitation following the taxable year in which such deletion of wages is made.

(6) Written notice of any deletion or reduction under paragraph (4) or (5) shall be given to the individual whose record is involved or to his survivor, except that (A) in the case of a deletion or reduction with respect to any entry of wages such notice shall be given to such individual only if he has previously been notified by the Commissioner of Social Security of the amount of his wages for the period involved, and (B) such notice shall be given to such survivor only if he or the individual whose record is involved has previously been notified by the Commissioner of Social Security of the amount of such individual's wages and self-employment income for the period involved.

(7) Upon request in writing (within such period, after any change or refusal of a request for a change of the Commissioner's records pursuant to this subsection, as the Commissioner of Social Security may prescribe), opportunity for hearing with respect to such change or refusal shall be afforded to any individual or his survivor. If a hearing is held pursuant to this paragraph the Commissioner of Social Security shall make findings of fact and a decision based upon the evidence adduced at such hearing and shall include any omitted items, or change or delete any entry, in the Commissioner's records as may be required by such findings and decision.

(8) A translation into English by a third party of a statement made in a foreign language by an applicant for or beneficiary of monthly insurance benefits under this *title* [42 USCS § § 401 et seq.] shall not be regarded as reliable for any purpose under this *title* [42 USCS § § 401 et seq.] unless the third party, under penalty of perjury--

(A) certifies that the translation is accurate; and

(B) discloses the nature and scope of the relationship between the third party and the applicant or recipient, as the case may be.

(9) Decisions of the Commissioner of Social Security under this subsection shall be reviewable by commencing a civil action in the United States district court as provided in subsection (g).

(d) Issuance of subpoenas in administrative proceedings. For the purpose of any hearing, investigation, or other proceeding authorized or directed under this *title* [42 USCS § § 401 et seq.], or relative to any other matter within the the Commissioner's jurisdiction hereunder, the Commissioner of Social Security shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the Commissioner of Social Security. Such attendance of witnesses and production of evidence at the designated place of such hearing, inves-

tigation, or other proceeding may be required from any place in the United States or in any Territory or possession thereof. Subpenas of the Commissioner of Social Security shall be served by anyone authorized by the Commissioner (1) by delivering a copy thereof to the individual named therein, or (2) by registered mail or by certified mail addressed to such individual at his last dwelling place or principal place of business. A verified return by the individual so serving the subpoena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post-office receipt therefor signed by the individual so served, shall be proof of service. Witnesses so subpoenaed shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(e) Judicial enforcement of subpoenas; contempt. In case of contumacy by, or refusal to obey a subpoena duly served upon, any person, any district court of the United States for the judicial district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Commissioner of Social Security, shall have jurisdiction to issue an order requiring such person to appear and give testimony, or to appear and produce evidence, or both; any failure to obey such order of the court may be punished by said court as contempt thereof.

(f) [Repealed]

(g) Judicial review. Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the District Court of the United States for the District of Columbia [United States District Court for the District of Columbia]. As part of the Commissioner's answer the Commissioner of Social Security shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing. The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Commissioner of Social Security or a decision is rendered under subsection (b) hereof which is adverse to an individual who was a party to the hearing before the Commissioner of Social Security, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) hereof, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court may, on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files the Commissioner's answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social Security, and it may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Commissioner of Social Security shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm the Commissioner's findings of fact or the Commissioner's decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript of the additional record and testimony upon which the Commissioner's action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive not-

withstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office.

(h) Finality of Commissioner's decision. The findings and decisions of the Commissioner of Social Security after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Commissioner of Social Security, or any officer or employee thereof shall be brought under section 1331 or 1346 of title 28, United States Code [28 USCS § 1331 or 1346], to recover on any claim arising under this *title* [42 USCS § § 401 et seq.].

(i) Certification for payment. Upon final decision of the Commissioner of Social Security, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this *title* [42 USCS § § 401 et seq.], the Commissioner of Social Security shall certify to the Managing Trustee the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the Managing Trustee, through the Fiscal Service of the Department of the Treasury, and prior to any action thereon by the General Accounting Office [Government Accountability Office], shall make payment in accordance with the certification of the Commissioner of Social Security (except that in the case of (A) an individual who will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995) creditable under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1974, (B) the wife or husband of such an individual, (C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 USCS § 231a], and (D) any other person entitled to benefits under section 202 of this Act [42 USCS § 402] on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry, as defined in the Railroad Retirement Act of 1974 [45 USCS § § 231 et seq.], at the time of his death), such certification shall be made to the Railroad Retirement Board which shall provide for such payment or payments to such person on behalf of the Managing Trustee in accordance with the provisions of the Railroad Retirement Act of 1974): *Provided*, That where a review of the Commissioner's decision is or may be sought under subsection (g) the Commissioner of Social Security may withhold certification of payment pending such review. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Commissioner of Social Security.

(j) Representative payees.

(1) (A) If the Commissioner of Social Security determines that the interest of any individual under this *title* [42 USCS § § 401 et seq.] would be served thereby, certification of payment of such individual's benefit under this *title* [42 USCS § § 401 et seq.] may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization, with respect to whom the requirements of paragraph (2) have been met (hereinafter in this subsection referred to as the individual's "representative payee"). If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee has misused any individual's benefit paid to such representative payee pursuant to this subsection or section 807 or 1631(a)(2) [42 USCS § 1007 or 1383(a)(2)], the Commissioner of Social Security shall promptly revoke certification for payment of benefits to such representative payee pursuant to this subsection and certify payment to an alternative representative payee or, if the interest of the individual under this *title* [42 USCS § § 401 et seq.] would be served thereby, to the individual.

(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.

(2)

(A) Any certification made under paragraph (1) for payment of benefits to an individual's representative payee shall be made on the basis of--

(i) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such certification and shall, to the extent practicable, include a face-to-face interview with such person, and

(ii) adequate evidence that such certification is in the interest of such individual (as determined by the Commissioner of Social Security in regulations).

(B) (i) As part of the investigation referred to in subparagraph (A)(i), the Commissioner of Social Security shall--

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity has been submitted with an application for benefits under this title, title VIII, or title XVI [42 USCS § § 401 et seq., 1001 et seq. or 1381 et seq.],

(II) verify such person's social security account number (or employer identification number),

(III) determine whether such person has been convicted of a violation of section 208, 811, or 1632 [42 USCS § 408, 1011, or 1383a],

(IV) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year,

(V) obtain information concerning whether such person is a person described in section 202(x)(1)(A)(iv) [42 USCS § 402(x)(1)(A)(iv)], and

(VI) determine whether certification of payment of benefits to such person has been revoked pursuant to this subsection, the designation of such person as a representative payee has been revoked pursuant to section 807(a) [42 USCS § 1007(a)], or payment of benefits to such person has been terminated pursuant to section 1631(a)(2)(A)(iii) [42 USCS § 1383(a)(2)(A)(iii)] by reason of misuse of funds paid as benefits under this title, title VIII, or title XVI [42 USCS § § 401 et seq., 1001 et seq. or 1381 et seq.].

(ii) The Commissioner of Social Security shall establish and maintain a centralized file, which shall be updated periodically and which shall be in a form which renders it readily retrievable by each servicing office of the Social Security Administration. Such file shall consist of--

(I) a list of the names and social security account numbers (or employer identification numbers) of all persons with respect to whom certification of payment of benefits has been revoked on or after January 1, 1991, pursuant to this subsection, whose designation as a representative payee has been revoked pursuant to section 807(a) [42 USCS § 1007(a)], or with respect to whom payment of benefits has been terminated on or after such date pursuant to section 1631(a)(2)(A)(iii) [42 USCS § 1383(a)(2)(A)(iii)], by reason of misuse of funds paid as benefits under this title, title VIII, or title XVI [42 USCS § § 401 et seq., 1001 et seq., or 1381 et seq.], and

(II) a list of the names and social security account numbers (or employer identification numbers) of all persons who have been convicted of a violation of section 208, 811, or 1632 [42 USCS § 408, 1011 or 1383a].

(iii) Notwithstanding the provisions of *section 552a of title 5, United States Code* [5 USCS § 552a], or any other provision of Federal or State law (other than *section 6103 of the Internal Revenue Code of 1986* [26 USCS § 6103] and *section 1106(c) of this Act* [42 USCS § 1306(c)]), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this paragraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that--

(I) such person is described in section 202(x)(1)(A)(iv) [42 USCS § 402(x)(1)(A)(iv)],

(II) such person has information that is necessary for the officer to conduct the officer's official duties, and

(III) the location or apprehension of such person is within the officer's official duties.

(C) (i) Benefits of an individual may not be certified for payment to any other person pursuant to this subsection if--

(I) such person has previously been convicted as described in subparagraph (B)(i)(III),

(II) except as provided in clause (ii), certification of payment of benefits to such person under this subsection has previously been revoked as described in subparagraph (B)(i)(VI) the designation of such person as a representative payee has been revoked pursuant to section 807(a) [42 USCS § 1007(a)], or payment of benefits to such person pursuant to section 1631(a)(2)(A)(ii) [42 USCS § 1383(a)(2)(A)(ii)] has previously been terminated as described in section 1631(a)(2)(B)(ii)(VI) [42 USCS § 1383(a)(2)(B)(ii)(VI)],

(III) except as provided in clause (iii), such person is a creditor of such individual who provides such individual with goods or services for consideration,

(IV) such person has previously been convicted as described in subparagraph (B)(i)(IV), unless the Commissioner determines that such certification would be appropriate notwithstanding such conviction, or

(V) such person is a person described in section 202(x)(1)(A)(iv) [42 USCS § 402(x)(1)(A)(iv)].

(ii) The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant exemptions to any person from the provisions of clause (i)(II) on a case-by-case basis if such exemption is in the best interest of the individual whose benefits would be paid to such person pursuant to this subsection.

(iii) Clause (i)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is--

(I) a relative of such individual if such relative resides in the same household as such individual,

(II) a legal guardian or legal representative of such individual,

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State,

(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the certification of payment to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom such certification of payment would serve the best interests of such individual, or

(V) an individual who is determined by the Commissioner of Social Security, on the basis of written findings and under procedures which the Commissioner of Social Security shall prescribe by regulation, to be acceptable to serve as a representative payee.

(iv) The procedures referred to in clause (iii)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that--

(I) such individual poses no risk to the beneficiary,

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest, and

(III) no other more suitable representative payee can be found.

(v) In the case of an individual described in paragraph (1)(B), when selecting such individual's representative payee, preference shall be given to--

(I) a certified community-based nonprofit social service agency (as defined in paragraph (10)),

(II) a Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities,

(III) a State or local government agency with fiduciary responsibilities, or

(IV) a designee of an agency (other than of a Federal agency) referred to in the preceding subclauses of this clause, if the Commissioner of Social Security deems it appropriate,

unless the Commissioner of Social Security determines that selection of a family member would be appropriate.

(D)

(i) Subject to clause (ii), if the Commissioner of Social Security makes a determination described in the first sentence of paragraph (1) with respect to any individual's benefit and determines that direct payment of



the benefit to the individual would cause substantial harm to the individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subsection.

(ii) (I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (i) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual is, as of the date of the Commissioner's determination, legally incompetent, under the age of 15 years, or described in paragraph (1)(B).

(iii) Payment pursuant to this subsection of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual or the representative payee as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interest of the individual entitled to such benefits.

(E) (i) Any individual who is dissatisfied with a determination by the Commissioner of Social Security to certify payment of such individual's benefit to a representative payee under paragraph (1) or with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Commissioner of Social Security to the same extent as is provided in subsection (b), and to judicial review of the Commissioner's final decision as is provided in subsection (g).

(ii) In advance of the certification of payment of an individual's benefit to a representative payee under paragraph (1), the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to certify such payment. Such notice shall be provided to such individual, except that, if such individual--

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(iii) Any notice described in clause (ii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (i) of such individual or of such individual's legal guardian or legal representative--

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(3)

(A) In any case where payment under this *title* [42 USCS § § 401 et seq.] is made to a person other than the individual entitled to such payment, the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each State.

(C) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

(D) Notwithstanding subparagraphs (A), (B), and (C), the Commissioner of Social Security may require a report at any time from any person receiving payments on behalf of another, if the Commissioner of Social Security has reason to believe that the person receiving such payments is misusing such payments.

(E) In any case in which the person described in subparagraph (A) or (D) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under subparagraph (A)

or (D), the Commissioner may, after furnishing notice to such person and the individual entitled to such payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.

(F) The Commissioner of Social Security shall maintain a centralized file, which shall be updated periodically and which shall be in a form which will be readily retrievable by each servicing office of the Social Security Administration, of--

(i) the address and the social security account number (or employer identification number) of each representative payee who is receiving benefit payments pursuant to this subsection, section 807 [42 USCS § 1007], or section 1631(a)(2) [42 USCS § 1383(a)(2)], and

(ii) the address and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this subsection, section 807 [42 USCS § 1007], or section 1631(a)(2) [42 USCS § 1383(a)(2)].

(G) Each servicing office of the Administration shall maintain a list, which shall be updated periodically, of public agencies and certified community-based nonprofit social service agencies (as defined in paragraph (10)) which are qualified to serve as representative payees pursuant to this subsection or section 807 or 1631(a)(2) [42 USCS § 1007 or 1383(a)(2)] and which are located in the area served by such servicing office.

(4) (A) (i) Except as provided in the next sentence, a qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to this subsection if such fee does not exceed the lesser of--

(I) 10 percent of the monthly benefit involved, or

(II) \$ 25.00 per month (\$ 50.00 per month in any case in which the individual is described in paragraph (1)(B)).

A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of paragraphs (5) and (6). The Commissioner of Social Security shall adjust annually (after 1995) each dollar amount set forth in subclause (II) under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 215(i)(2)(A) [42 USCS § 415(i)(2)(A)], except that any amount so adjusted that is not a multiple of \$ 1.00 shall be rounded to the nearest multiple of \$ 1.00.

(ii) In the case of an individual who is no longer currently entitled to monthly insurance benefits under this title [42 USCS § § 401 et seq.] but to whom all past-due benefits have not been paid, for purposes of clause (i), any amount of such past-due benefits payable in any month shall be treated as a monthly benefit referred to in clause (i)(I).

Any agreement providing for a fee in excess of the amount permitted under this subparagraph shall be void and shall be treated as misuse by such organization of such individual's benefits.

(B) For purposes of this paragraph, the term "qualified organization" means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any certified community-based nonprofit social service agency (as defined in paragraph (10)), if such agency, in accordance with any applicable regulations of the Commissioner of Social Security--

(i) regularly provides services as the representative payee, pursuant to this subsection or section 807 or 1631(a)(2) [42 USCS § 1007 or 1383(a)(2)], concurrently to 5 or more individuals, [and]

(ii) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual.

The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exception from clause (ii) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(C) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under subparagraph (A) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, United States Code, or imprisoned not more than 6 months, or both.

(5) In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to such misused benefits. In any case in which a representative payee that--

(A) is not an individual (regardless of whether it is a "qualified organization" within the meaning of paragraph (4)(B)); or

(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this *title* [42 USCS § § 401 et seq.], title VIII [42 USCS § § 1001 et seq.], title XVI [42 USCS § § 1381 et seq.], or any combination of such titles;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B). The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(6) (A) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under this *title* [42 USCS § § 401 et seq.] (alone or in combination with benefits payable under title VIII [42 USCS § § 1001 et seq.] or title XVI [42 USCS § § 1381 et seq.]) to another individual pursuant to the appointment of such person or agency as a representative payee under this subsection, section 807 [42 USCS § 1007], or section 1631(a)(2) [42 USCS § 1383(a)(2)] in any case in which--

(i) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

(ii) the representative payee is a certified community-based nonprofit social service agency (as defined in paragraph (10) of this subsection or section 1631(a)(2)(I) [42 USCS § 1383(a)(2)(I)]); or

(iii) the representative payee is an agency (other than an agency described in clause (ii)) that serves in that capacity with respect to 50 or more such individuals.

(B) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to subparagraph (A) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this *title* [42 USCS § § 401 et seq.]. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include--

(i) the number of such reviews;

(ii) the results of such reviews;

(iii) the number of cases in which the representative payee was changed and why;

(iv) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

(v) the number of cases discovered in which there was a misuse of funds;

(vi) how any such cases of misuse of funds were dealt with by the Commissioner;

(vii) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

(viii) such other information as the Commissioner deems appropriate.

(7)

(A) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to such representative payee under this subsection, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this *title* [42 USCS § § 401 et seq.] to the representative payee for all purposes of this Act [42 USCS § § 301 et seq.] and related laws pertaining to the recovery of such overpayments. Subject to subparagraph (B), upon recovering all or any part of such amount, the Commissioner shall certify an amount equal to the recovered amount for payment to such individual or such individual's alternative representative payee.

(B) The total of the amount certified for payment to such individual or such individual's alternative representative payee under subparagraph (A) and the amount certified for payment under paragraph (5) may not exceed the total benefit amount misused by the representative payee with respect to such individual.

(8) For purposes of this subsection, the term "benefit based on disability" of an individual means a disability insurance benefit of such individual under section 223 [42 USCS § 423] or a child's, widow's, or widower's insurance benefit of such individual under section 202 [42 USCS § 402] based on such individual's disability.

(9) For purposes of this subsection, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this *title* [42 USCS § § 401 et seq.] for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term "use and benefit" for purposes of this paragraph.

(10) For purposes of this subsection, the term "certified community-based nonprofit social service agency" means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.

(k) Payments to incompetents. Any payment made after December 31, 1939, under conditions set forth in subsection (j) any payment made before January 1, 1940, to, or on behalf of, a legally incompetent individual, and any payment made after December 31, 1939, to a legally incompetent individual without knowledge by the Commissioner of Social Security of incompetency prior to certification of payment, if otherwise valid under this *title* [42 USCS § § 401 et seq.], shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

(l) Delegation of powers and duties by Commissioner of Social Security. The Commissioner of Social Security is authorized to delegate to any member, officer, or employee of the Social Security Administration designated by the Commissioner any of the powers conferred upon the Commissioner by this section, and is authorized to be represented by the Commissioner's own attorneys in any court in any case or proceeding arising under the provisions of subsection (e).

(m) [Repealed]

(n) Joint payments. The Commissioner of Social Security may, in the Commissioner's discretion, certify to the Managing Trustee any two or more individuals of the same family for joint payment of the total benefits

payable to such individuals for any month, and if one of such individuals dies before a check representing such joint payment is negotiated, payment of the amount of such unnegotiated check to the surviving individual or individuals may be authorized in accordance with regulations of the Secretary of the Treasury; except that appropriate adjustment or recovery shall be made under section 204(a) [42 USCS § 404(a)] with respect to so much of the amount of such check as exceeds the amount to which such surviving individual or individuals are entitled under this *title* [42 USCS § § 401 et seq.] for such month.

(o) Crediting of compensation under the Railroad Retirement Act. If there is no person who would be entitled, upon application therefor, to an annuity under section 5 of the Railroad Retirement Act of 1974 [45 USCS § 231a], or to a lump-sum payment under section 6(b) of such Act [45 USCS § 231e(b)], with respect to the death of an employee (as defined in such Act), then, notwithstanding section 210(a)(10) of this Act [42 USCS § 410(a)(10)], compensation (as defined in such Railroad Retirement Act, but excluding compensation attributable as having been paid during any month on account of military service creditable under section 3(i) of such Act [45 USCS § 231b(i)] if wages are deemed to have been paid to such employee during such month under subsection (a) or (e) of section 217 of this Act [42 USCS § 417(a) or (e)]) of such employee shall constitute remuneration for employment for purposes of determining (A) entitlement to and the amount of any lump-sum death payment under this *title* [42 USCS § § 401 et seq.] on the basis of such employee's wages and self-employment income and (B) entitlement to and the amount of any monthly benefit under this *title* [42 USCS § § 401 et seq.], for the month in which such employee died or for any month thereafter, on the basis of such wages and self-employment income. For such purposes, compensation (as so defined) paid in a calendar year before 1978 shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee rendered services for such compensation.

(p) Special rules in case of Federal service.

(1) With respect to service included as employment under section 210 [42 USCS § 410] which is performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service, performed as a member of a uniformed service, to which the provisions of subsection (l)(1) of such section [42 USCS § 410(l)(1)] are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 210(o) [42 USCS § 410(o)] are applicable, the Commissioner of Social Security shall not make determinations as to the amounts of remuneration for such service, or the periods in which or for which such remuneration was paid, but shall accept the determinations with respect thereto of the head of the appropriate Federal agency or instrumentality, and of such agents as such head may designate, as evidenced by returns filed in accordance with the provisions of *section 3122 of the Internal Revenue Code of 1954* [26 USCS § 3122] and certifications made pursuant to this subsection. Such determinations shall be final and conclusive. Nothing in this paragraph shall be construed to affect the Commissioner's authority to determine under sections 209 and 210 [42 USCS § § 409, 410] whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages.

(2) The head of any such agency or instrumentality is authorized and directed, upon written request of the Commissioner of Social Security, to make certification to the Commissioner with respect to any matter determinable for the Commissioner of Social Security by such head or his agents under this subsection, which the Commissioner of Social Security finds necessary in administering this *title* [42 USCS § § 401 et seq.].

(3) The provisions of paragraphs (1) and (2) shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of paragraphs (1) and (2) the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of para-

graphs (1) and (2) shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Homeland Security, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of paragraphs (1) and (2) the Secretary of Homeland Security shall be deemed to be the head of such instrumentality.

(q) Expedited benefit payments.

(1) The Commissioner of Social Security shall establish and put into effect procedures under which expedited payment of monthly insurance benefits under this *title* [42 USCS § § 401 et seq.] will, subject to paragraph (4) of this subsection, be made as set forth in paragraphs (2) and (3) of this subsection.

(2) In any case in which--

(A) an individual makes an allegation that a monthly benefit under this *title* [42 USCS § § 401 et seq.] was due him in a particular month but was not paid to him, and

(B) such individual submits a written request for the payment of such benefit--

(i) in the case of an individual who received a regular monthly benefit in the month preceding the month with respect to which such allegation is made, not less than 30 days after the 15th day of the month with respect to which such allegation is made (and in the event that such request is submitted prior to the expiration of such 30-day period, it shall be deemed to have been submitted upon the expiration of such period), and

(ii) in any other case, not less than 90 days after the later of (I) the date on which such benefit is alleged to have been due, or (II) the date on which such individual furnished the last information requested by the Commissioner of Social Security (and such written request will be deemed to be filed on the day on which it was filed, or the ninetieth day after the first day on which the Commissioner of Social Security has evidence that such allegation is true, whichever is later),

the Commissioner of Social Security shall, if the Commissioner finds that benefits are due, certify such benefits for payment, and payment shall be made within 15 days immediately following the date on which the written request is deemed to have been filed.

(3) In any case in which the Commissioner of Social Security determines that there is evidence, although additional evidence might be required for a final decision, that an allegation described in paragraph (2)(A) is true, the Commissioner may make a preliminary certification of such benefit for payment even though the 30-day or 90-day periods described in paragraph (2)(B)(i) and (B)(ii) have not elapsed.

(4) Any payment made pursuant to a certification under paragraph (3) of this subsection shall not be considered an incorrect payment for purposes of determining the liability of the certifying or disbursing officer.

(5) For purposes of this subsection, benefits payable under section 228 [42 USCS § 428] shall be treated as monthly insurance benefits payable under this *title* [42 USCS § § 401 et seq.]. However, this subsection shall not apply with respect to any benefit for which a check has been negotiated, or with respect to any benefit alleged to be due under either section 223 [42 USCS § 423], or *section 202* [42 USCS § 402] to a wife, husband, or child of an individual entitled to or applying for benefits under section 223 [42 USCS § 423], or to a child who has attained age 18 and is under a disability, or to a widow or widower on the basis of being under a disability.

(r) Use of death certificates to correct program information.

(1) The Commissioner of Social Security shall undertake to establish a program under which--

(A) States (or political subdivisions thereof) voluntarily contract with the Commissioner of Social Security to furnish the Commissioner of Social Security periodically with information (in a form established by the Commissioner of Social Security in consultation with the States) concerning individuals with respect to whom death certificates (or equivalent documents maintained by the States or subdivisions) have been officially filed with them; and

(B) there will be (i) a comparison of such information on such individuals with information on such individuals in the records being used in the administration of this Act [42 USCS § § 301 et seq.], (ii) validation of the results of such comparisons, and (iii) corrections in such records to accurately reflect the status of such individuals.

(2) Each State (or political subdivision thereof) which furnishes the Commissioner of Social Security with information on records of deaths in the State or subdivision under this subsection may be paid by the Commissioner of Social Security from amounts available for administration of this Act [42 USCS § § 301 et seq.] the reasonable costs (established by the Commissioner of Social Security in consultations with the States) for transcribing and transmitting such information to the Commissioner of Social Security.

(3) In the case of individuals with respect to whom federally funded benefits are provided by (or through) a Federal or State agency other than under this Act [42 USCS § § 301 et seq.], the Commissioner of Social Security shall to the extent feasible provide such information through a cooperative arrangement with such agency, for ensuring proper payment of those benefits with respect to such individuals if--

(A) under such arrangement the agency provides reimbursement to the Commissioner of Social Security for the reasonable cost of carrying out such arrangement, and

(B) such arrangement does not conflict with the duties of the Commissioner of Social Security under paragraph (1).

(4) The Commissioner of Social Security may enter into similar agreements with States to provide information for their use in programs wholly funded by the States if the requirements of subparagraphs (A) and (B) of paragraph (3) are met.

(5) The Commissioner of Social Security may use or provide for the use of such records as may be corrected under this section, subject to such safeguards as the Commissioner of Social Security determines are necessary or appropriate to protect the information from unauthorized use or disclosure, for statistical and research activities conducted by Federal and State agencies.

(6) Information furnished to the Commissioner of Social Security under this subsection may not be used for any purpose other than the purpose described in this subsection and is exempt from disclosure under *section 552 of title 5, United States Code*, and from the requirements of section 552a of such title.

(7) The Commissioner of Social Security shall include information on the status of the program established under this section and impediments to the effective implementation of the program in the 1984 report required under section 704 of the Act [42 USCS § 904].

(8) (A) The Commissioner of Social Security shall, upon the request of the official responsible for a State driver's license agency pursuant to the Help America Vote Act of 2002--

(i) enter into an agreement with such official for the purpose of verifying applicable information, so long as the requirements of subparagraphs (A) and (B) of paragraph (3) are met; and

(ii) include in such agreement safeguards to assure the maintenance of the confidentiality of any applicable information disclosed and procedures to permit such agency to use the applicable information for the purpose of maintaining its records.

(B) Information provided pursuant to an agreement under this paragraph shall be provided at such time, in such place, and in such manner as the Commissioner determines appropriate.

(C) The Commissioner shall develop methods to verify the accuracy of information provided by the agency with respect to applications for voter registration, for whom the last 4 digits of a social security number are provided instead of a driver's license number.

(D) For purposes of this paragraph--

(i) the term "applicable information" means information regarding whether--

(I) the name (including the first name and any family forename or surname), the date of birth (including the month, day, and year), and social security number of an individual provided to the Commissioner match the information contained in the Commissioner's records, and

(II) such individual is shown on the records of the Commissioner as being deceased; and

(ii) the term "State driver's license agency" means the State agency which issues driver's licenses to individuals within the State and maintains records relating to such licensure.

(E) Nothing in this paragraph may be construed to require the provision of applicable information with regard to a request for a record of an individual if the Commissioner determines there are exceptional circumstances warranting an exception (such as safety of the individual or interference with an investigation).

(F) Applicable information provided by the Commission pursuant to an agreement under this paragraph or by an individual to any agency that has entered into an agreement under this paragraph shall be considered as strictly confidential and shall be used only for the purposes described in this paragraph and for carrying out an agreement under this paragraph. Any officer or employee or former officer or employee of a State, or any officer or employee or former officer or employee of a contractor of a State who, without the written authority of the Commissioner, publishes or communicates any applicable information in such individual's possession by reason of such employment or position as such an officer, shall be guilty of a felony and upon conviction thereof shall be fined or imprisoned, or both, as described in section 208 [42 USCS § 408].

(s) Notice requirements. The Commissioner of Social Security shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this *title* [42 USCS § § 401 et seq.] by the Commissioner of Social Security or by a State agency--

(1) is written in simple and clear language, and

(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.

(t) Same-day personal interviews at field offices in cases where time is of the essence. In any case in which an individual visits a field office of the Social Security Administration and represents during the visit to an officer or employee of the Social Security Administration in the office that the individual's visit is occasioned by--

(1) the receipt of a notice from the Social Security Administration indicating a time limit for response by the individual, or

(2) the theft, loss, or nonreceipt of a benefit payment under this *title* [42 USCS § § 401 et seq.],

the Commissioner of Social Security shall ensure that the individual is granted a face-to-face interview at the office with an officer or employee of the Social Security Administration before the close of business on the day of the visit.

(u) Redetermination of entitlement in cases of fraud or similar fault.

(1) (A) The Commissioner of Social Security shall immediately redetermine the entitlement of individuals to monthly insurance benefits under this *title* [42 USCS § § 401 et seq.] if there is reason to believe that fraud or similar fault was involved in the application of the individual for such benefits, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that such action by the Commissioner of Social Security with regard to beneficiaries in a particular investigation would jeopardize the criminal prosecution of a person involved in a suspected fraud.

(B) When redetermining the entitlement, or making an initial determination of entitlement, of an individual under this *title* [42 USCS § § 401 et seq.], the Commissioner of Social Security shall disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence.

(2) For purposes of paragraph (1), similar fault is involved with respect to a determination if--

(A) an incorrect or incomplete statement that is material to the determination is knowingly made; or

(B) information that is material to the determination is knowingly concealed.



(3) If, after redetermining pursuant to this subsection the entitlement of an individual to monthly insurance benefits, the Commissioner of Social Security determines that there is insufficient evidence to support such entitlement, the Commissioner of Social Security may terminate such entitlement and may treat benefits paid on the basis of such insufficient evidence as overpayments.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
SUPPLEMENTAL PROVISIONS

**§ 1973aa-1a. Bilingual election requirements**

(a) Congressional findings and declaration of policy. The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution [USCS Constitution, Amendments 14, 15], it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.

(b) Bilingual voting materials requirement.

(1) Generally. Before August 6, 2032, no covered State or political subdivision shall provide voting materials only in the English language.

(2) Covered States and political subdivisions.

(A) Generally. A State or political subdivision is a covered State or political subdivision for the purposes of this subsection if the Director of the Census determines, based on the 2010 American Community Survey census data and subsequent American Community Survey data in 5-year increments, or comparable census data, that--

(i)

(I) more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient;

(II) more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient; or

(III) in the case of a political subdivision that contains all or any part of an Indian reservation, more than 5 percent of the American Indian or Alaska Native citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient; and

(ii) the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.

(B) Exception. The prohibitions of this subsection do not apply in any political subdivision that has less than 5 percent voting age limited-English proficient citizens of each language minority which comprises over 5 percent of the statewide limited-English proficient population of voting age citizens, unless the political subdivision is a covered political subdivision independently from its State.

(3) Definitions. As used in this section--

(A) the term "voting materials" means registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots;

(B) the term "limited-English proficient" means unable to speak or understand English adequately enough to participate in the electoral process;

(C) the term "Indian reservation" means any area that is an American Indian or Alaska Native area, as defined by the Census Bureau for the purposes of the 1990 decennial census;

(D) the term "citizens" means citizens of the United States; and

(E) the term "illiteracy" means the failure to complete the 5th primary grade.

(4) Special rule. The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.

(c) Requirement of voting notices, forms, instructions, assistance, or other materials and ballots in minority language. Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language: *Provided*, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives and American Indians, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

(d) Action for declaratory judgment permitting English-only materials. Any State or political subdivision subject to the prohibition of subsection (b) of this section, which seeks to provide English-only registration or voting materials or information, including ballots, may file an action against the United States in the United States District Court for a declaratory judgment permitting such provision. The court shall grant the requested relief if it determines that the illiteracy rate of the applicable language minority group within the State or political subdivision is equal to or less than the national illiteracy rate.

(e) Definitions. For purposes of this section, the term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED

**§ 1973ee-1. Selection of polling facilities**

(a) Within each State, except as provided in subsection (b), each political subdivision responsible for conducting elections shall assure that all polling places for Federal elections are accessible to handicapped and elderly voters.

(b) Subsection (a) shall not apply to a polling place--

(1) in the case of an emergency, as determined by the chief election officer of the State; or

(2) if the chief election officer of the State--

(A) determines that all potential polling places have been surveyed and no such accessible place is available, nor is the political subdivision able to make one temporarily accessible, in the area involved; and

(B) assures that any handicapped or elderly voter assigned to an inaccessible polling place, upon advance request of such voter (pursuant to procedures established by the chief election officer of the State)--

(i) will be assigned to an accessible polling place, or

(ii) will be provided with an alternative means for casting a ballot on the day of the election.

(c) (1) Not later than December 31 of each even-numbered year, the chief election officer of each State shall report to the Federal Election Commission, in a manner to be determined by the Commission, the number of accessible and inaccessible polling places in such State on the date of the preceding general Federal election, and the reasons for any instance of inaccessibility.

(2) Not later than April 30 of each odd-numbered year, the Federal Election Commission shall compile the information reported under paragraph (1) and shall transmit that information to the Congress.

(3) The provisions of this subsection shall only be effective for a period of 10 years beginning on the date of enactment of this Act [enacted Sept. 28, 1984].

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS  
VOTERS IN ELECTIONS FOR FEDERAL OFFICE

**§ 1973ff. Federal responsibilities**

(a) Presidential designee. The President shall designate the head of an executive department to have primary responsibility for Federal functions under this *title* [42 USCS § § 1973ff et seq.].

(b) Duties of presidential designee. The Presidential designee shall--

(1) consult State and local election officials in carrying out this *title* [42 USCS § § 1973ff et seq.], and ensure that such officials are aware of the requirements of this Act;

(2) prescribe an official post card form, containing both an absentee voter registration application and an absentee ballot application, for use by the States as required under section 102(4) [42 USCS § 1973ff-1(4)];

(3) carry out section 103 [42 USCS § 1973ff-2] with respect to the Federal write-in absentee ballot for absent uniformed services voters and overseas voters in general elections for Federal office;

(4) prescribe a suggested design for absentee ballot mailing envelopes for use by the States as recommended in section 104 [42 USCS § 1973ff-3];

(5) compile and distribute (A) descriptive material on State absentee registration and voting procedures, and (B) to the extent practicable, facts relating to specific elections, including dates, offices involved, and the text of ballot questions;

(6) not later than the end of each year after a Presidential election year, transmit to the President and the Congress a report on the effectiveness of assistance under this *title* [42 USCS § § 1973ff et seq.], including a statistical analysis of uniformed services voter participation, a separate statistical analysis of overseas non-military participation, and a description of State-Federal cooperation; and

(7) prescribe a standard oath for use with any document under this *title* [42 USCS § § 1973ff et seq.] affirming that a material misstatement of fact in the completion of such a document may constitute grounds for a conviction for perjury.

(c) Duties of other Federal officials.

(1) In general. The head of each Government department, agency, or other entity shall, upon request of the Presidential designee, distribute balloting materials and otherwise cooperate in carrying out this *title* [42 USCS § § 1973ff et seq.].

(2) Administrator of General Services. As directed by the Presidential designee, the Administrator of General Services shall furnish official post card forms (prescribed under subsection (b)) and Federal write-in absentee ballots (prescribed under section 103 [42 USCS § § 1973ff-2]).

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS  
VOTERS IN ELECTIONS FOR FEDERAL OFFICE

**§ 1973ff-1. State responsibilities**

(a) In general. Each State shall--

(1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office;

(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;

(3) permit absent uniformed services voters and overseas voters to use Federal write-in absentee ballots (in accordance with section 103 [42 USCS § 1973ff-2]) in general elections for Federal office;

(4) use the official post card form (prescribed under section 101 [42 USCS § 1973ff]) for simultaneous voter registration application and absentee ballot application; and

(5) if the State requires an oath or affirmation to accompany any document under this title, use the standard oath prescribed by the Presidential designee under section 101(b)(7) [42 USCS § 1973ff(b)(7)].

(b) Designation of single State office to provide information on registration and absentee ballot procedures for all voters in State.

(1) In general. Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed services voters and overseas voters with respect to elections for Federal office (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(2) Recommendation regarding use of office to accept and process materials. Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(c) Report on number of absentee ballots transmitted and received. Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.

(d) Registration notification. With respect to each absent uniformed services voter and each overseas voter who submits a voter registration application or an absentee ballot request, if the State rejects the application or request, the State shall provide the voter with the reasons for the rejection.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS  
VOTERS IN ELECTIONS FOR FEDERAL OFFICE

**§ 1973ff-2. Federal write-in absentee ballot in general elections for Federal office for absent uniformed services voters and overseas voters**

(a) In general. The Presidential designee shall prescribe a Federal write-in absentee ballot (including a secrecy envelope and mailing envelope for such ballot) for use in general elections for Federal office by absent uniformed services voters and overseas voters who make timely application for, and do not receive, States, absentee ballots.

(b) Submission and processing. Except as otherwise provided in this *title* [42 USCS § § 1973ff et seq.], a Federal write-in absentee ballot shall be submitted and processed in the manner provided by law for absentee ballots in the State involved. A Federal write-in absentee ballot of an absent uniformed services voter or overseas voter shall not be counted--

(1) in the case of a ballot submitted by an overseas voter who is not an absent uniformed services voter, if the ballot is submitted from any location in the United States;

(2) if the application of the absent uniformed services voter or overseas voter for a State absentee ballot is received by the appropriate State election official after the later of--

(A) the deadline of the State for receipt of such application; or

(B) the date that is 30 days before the general election; or

(3) if a State absentee ballot of the absent uniformed services voter or overseas voter is received by the appropriate State election official not later than the deadline for receipt of the State absentee ballot under State law.

(c) Special rules. The following rules shall apply with respect to Federal write-in absentee ballots:

(1) In completing the ballot, the absent uniformed services voter or overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party (in which case the ballot shall be counted for the candidate of that political party).

(2) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the electors supporting the candidate involved.

(3) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot, if the intention of the voter can be ascertained.

(d) Second ballot submission; instruction to absent uniformed services voter or overseas voter. An absent uniformed services voter or overseas voter who submits a Federal write-in absentee ballot and later receives a State absentee ballot, may submit the State absentee ballot. The Presidential designee shall assure that the instructions for each Federal write-in absentee ballot clearly state that an absent uniformed services voter or overseas voter who submits a Federal write-in absentee ballot and later receives and submits a State absentee ballot should make every reasonable effort to inform the appropriate State election official that the voter has submitted more than one ballot.

(e) Use of approved State absentee ballot in place of Federal write-in absentee ballot. The Federal write-in absentee ballot shall not be valid for use in a general election if the State involved provides a State absentee ballot that--

(1) at the request of the State, is approved by the Presidential designee for use in place of the Federal write-in absentee ballot; and

(2) is made available to absent uniformed services voters and overseas voters at least 60 days before the deadline for receipt of the State ballot under State law.

(f) Certain States exempted. A State is not required to permit use of the Federal write-in absentee ballot, if, on and after the date of the enactment of this title [enacted Aug. 28, 1986], the State has in effect a law providing that--

(1) a State absentee ballot is required to be available to any voter described in section 107(5)(A) [42 USCS § 1973ff-6(5)(A)] at least 90 days before the general election involved; and

(2) a State absentee ballot is required to be available to any voter described in section 107(5)(B) or (C) [42 USCS § 1973ff-6(5)(B) or (C)], as soon as the official list of candidates in the general election is complete.



TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS  
VOTERS IN ELECTIONS FOR FEDERAL OFFICE

**§ 1973ff-3. Use of single application for all subsequent elections**

(a) In general. If a State accepts and processes an official post card form (prescribed under section 101 [42 USCS § 1973ff]) submitted by an absent uniformed services voter or overseas voter for simultaneous voter registration and absentee ballot application (in accordance with section 102(a)(4) [102(4)] [42 USCS § 1973ff-1(4)]) and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State through the next 2 regularly scheduled general elections for Federal office (including any runoff elections which may occur as a result of the outcome of such general elections), the State shall provide an absentee ballot to the voter for each such subsequent election.

(b) Exception for voters changing registration. Subsection (a) shall not apply with respect to a voter registered to vote in a State for any election held after the voter notifies the State that the voter no longer wishes to be registered to vote in the State or after the State determines that the voter has registered to vote in another State.

(c) Revision of official post card form. The Presidential designee shall revise the official post card form (prescribed under section 101 [42 USCS § 1973ff]) to enable a voter using the form to--

- (1) request an absentee ballot for each election for Federal office held in a State during a year; or
- (2) request an absentee ballot for only the next scheduled election for Federal office held in a State.

(d) No effect on voter removal programs. Nothing in this section may be construed to prevent a State from removing any voter from the rolls of registered voters in the State under any program or method permitted under section 8 of the National Voter Registration Act of 1993 [42 USCS § 1973gg-6].

(e) Prohibition of refusal of applications on grounds of early submission. A State may not refuse to accept or process, with respect to any election for Federal office, any otherwise valid voter registration application or absentee ballot application (including the postcard form prescribed under section 101 [42 USCS § 1973ff]) submitted by an absent uniformed services voter during a year on the grounds that the voter submitted the application before the first date on which the State otherwise accepts or processes such applications for that year submitted by absentee voters who are not members of the uniformed services.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS  
VOTERS IN ELECTIONS FOR FEDERAL OFFICE

**§ 1973ff-4. Enforcement**

The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out this *title* [42 USCS § § 1973ff et seq.].

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS  
VOTERS IN ELECTIONS FOR FEDERAL OFFICE

**§ 1973ff-5. Effect on certain other laws**

The exercise of any right under this *title* [42 USCS § § 1973ff et seq.] shall not affect, for purposes of any Federal, State, or local tax, the residence or domicile of a person exercising such right.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS  
VOTERS IN ELECTIONS FOR FEDERAL OFFICE

**§ 1973ff-6. Definitions**

As used in this *title* [42 USCS § § 1973ff et seq.], the term--

(1) "absent uniformed services voter" means--

(A) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(B) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and

(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

(2) "balloting materials" means official post card forms (prescribed under section 101 [42 USCS § 1973ff]), Federal write-in absentee ballots (prescribed under section 103 [42 USCS § 1973ff-2]), and any State balloting materials that, as determined by the Presidential designee, are essential to the carrying out of this *title* [42 USCS § § 1973ff et seq.];

(3) "Federal office" means the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(4) "member of the merchant marine" means an individual (other than a member of a uniformed service or an individual employed, enrolled, or maintained on the Great Lakes or the inland waterways)--

(A) employed as an officer or crew member of a vessel documented under the laws of the United States, or a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States; or

(B) enrolled with the United States for employment or training for employment, or maintained by the United States for emergency relief service, as an officer or crew member of any such vessel;

(5) "overseas voter" means--

(A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(6) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa;

(7) "uniformed services" means the Army, Navy, Air Force, Marine Corps, and Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration; and

(8) "United States", where used in the territorial sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
NATIONAL VOTER REGISTRATION

**§ 1973gg. Findings and purposes**

(a) Findings. The Congress finds that--

- (1) the right of citizens of the United States to vote is a fundamental right;
- (2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and
- (3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

(b) Purposes. The purposes of this Act are--

- (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
- (2) to make it possible for Federal, State, and local governments to implement this Act in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
- (3) to protect the integrity of the electoral process; and
- (4) to ensure that accurate and current voter registration rolls are maintained.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
NATIONAL VOTER REGISTRATION

**§ 1973gg-1. Definitions**

As used in this Act--

(1) the term "election" has the meaning stated in section 301(1) of the Federal Election Campaign Act of 1971 (2 *U.S.C.* 431(1));

(2) the term "Federal office" has the meaning stated in section 301(3) of the Federal Election Campaign Act of 1971 (2 *U.S.C.* 431(3));

(3) the term "motor vehicle driver's license" includes any personal identification document issued by a State motor vehicle authority;

(4) the term "State" means a State of the United States and the District of Columbia; and

(5) the term "voter registration agency" means an office designated under section 7(a)(1) [42 *USCS* § 1973gg-5(a)(1)] to perform voter registration activities.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
NATIONAL VOTER REGISTRATION

**§ 1973gg-2. National procedures for voter registration for elections for Federal office**

(a) In general. Except as provided in subsection (b), notwithstanding any other Federal or State law, in addition to any other method of voter registration provided for under State law, each State shall establish procedures to register to vote in elections for Federal office--

(1) by application made simultaneously with an application for a motor vehicle driver's license pursuant to section 5 [42 USCS § 1973gg-3];

(2) by mail application pursuant to section 6 [42 USCS § 1973gg-4]; and

(3) by application in person--

(A) at the appropriate registration site designated with respect to the residence of the applicant in accordance with State law; and

(B) at a Federal, State, or nongovernmental office designated under section 7 [42 USCS § 1973gg-5].

(b) Nonapplicability to certain States. This Act does not apply to a State described in either or both of the following paragraphs:

(1) A State in which, under law that is in effect continuously on and after August 1, 1994, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

(2) A State in which under law that is in effect continuously on and after August 1, 1994, or that was enacted on or prior to August 1, 1994, and by its terms is to come into effect upon the enactment of this Act [enacted May 20, 1993], so long as that law remains in effect, all voters in the State may register to vote at the polling place at the time of voting in a general election for Federal office.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
NATIONAL VOTER REGISTRATION

**§ 1973gg-3. Simultaneous application for voter registration and application for motor vehicle driver's license**

(a) In general.

(1) Each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.

(2) An application for voter registration submitted under paragraph (1) shall be considered as updating any previous voter registration by the applicant.

(b) Limitation on use of information. No information relating to the failure of an applicant for a State motor vehicle driver's license to sign a voter registration application may be used for any purpose other than voter registration.

(c) Forms and procedures.

(1) Each State shall include a voter registration application form for elections for Federal office as part of an application for a State motor vehicle driver's license.

(2) The voter registration application portion of an application for a State motor vehicle driver's license--

(A) may not require any information that duplicates information required in the driver's license portion of the form (other than a second signature or other information necessary under subparagraph (C));

(B) may require only the minimum amount of information necessary to--

(i) prevent duplicate voter registrations; and

(ii) enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(C) shall include a statement that--

(i) states each eligibility requirement (including citizenship);

(ii) contains an attestation that the applicant meets each such requirement; and

(iii) requires the signature of the applicant, under penalty of perjury;

(D) shall include, in print that is identical to that used in the attestation portion of the application--

(i) the information required in section 8(a)(5)(A) and (B) [42 USCS § 1973gg-6(a)(5)(A), (B)];

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes; and

(E) shall be made available (as submitted by the applicant, or in machine readable or other format) to the appropriate State election official as provided by State law.

(d) Change of address. Any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.

(e) Transmittal deadline.



(1) Subject to paragraph (2), a completed voter registration portion of an application for a State motor vehicle driver's license accepted at a State motor vehicle authority shall be transmitted to the appropriate State election official not later than 10 days after the acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
NATIONAL VOTER REGISTRATION

**§ 1973gg-4. Mail registration**

(a) Form.

(1) Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission pursuant to section 9(a)(2) [42 USCS § 1973gg-7(a)(2)] for the registration of voters in elections for Federal office.

(2) In addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form that meets all of the criteria stated in section 9(b) [42 USCS § 1973gg-7(b)] for the registration of voters in elections for Federal office.

(3) A form described in paragraph (1) or (2) shall be accepted and used for notification of a registrant's change of address.

(b) Availability of forms. The chief State election official of a State shall make the forms described in subsection (a) available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.

(c) First-time voters.

(1) Subject to paragraph (2), a State may by law require a person to vote in person if--

(A) the person was registered to vote in a jurisdiction by mail; and

(B) the person has not previously voted in that jurisdiction.

(2) Paragraph (1) does not apply in the case of a person--

(A) who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1 et. seq.);

(B) who is provided the right to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee-1(b)(2)(B)(ii)); or

(C) who is entitled to vote otherwise than in person under any other Federal law.

(d) Undelivered notices. If a notice of the disposition of a mail voter registration application under section 8(a)(2) [42 USCS § 1973gg-6(a)(2)] is sent by nonforwardable mail and is returned undelivered, the registrar may proceed in accordance with section 8(d) [42 USCS § 1973gg-6(d)].

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
NATIONAL VOTER REGISTRATION

**§ 1973gg-5. Voter registration agencies**

(a) Designation.

(1) Each State shall designate agencies for the registration of voters in elections for Federal office.

(2) Each State shall designate as voter registration agencies--

(A) all offices in the State that provide public assistance; and

(B) all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities.

(3) (A) In addition to voter registration agencies designated under paragraph (2), each State shall designate other offices within the State as voter registration agencies.

(B) Voter registration agencies designated under subparagraph (A) may include--

(i) State or local government offices such as public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, government revenue offices, unemployment compensation offices, and offices not described in paragraph (2)(B) that provide services to persons with disabilities; and

(ii) Federal and nongovernmental offices, with the agreement of such offices.

(4) (A) At each voter registration agency, the following services shall be made available:

(i) Distribution of mail voter registration application forms in accordance with paragraph (6).

(ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.

(iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.

(B) If a voter registration agency designated under paragraph (2)(B) provides services to a person with a disability at the person's home, the agency shall provide the services described in subparagraph (A) at the person's home.

(5) A person who provides service described in paragraph (4) shall not--

(A) seek to influence an applicant's political preference or party registration;

(B) display any such political preference or party allegiance;

(C) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(D) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(6) A voter registration agency that is an office that provides service or assistance in addition to conducting voter registration shall--

(A) distribute with each application for such service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance--

(i) the mail voter registration application form described in section 9(a)(2) [42 USCS § 1973gg-7(a)(2)], including a statement that--

(I) specifies each eligibility requirement (including citizenship);

(II) contains an attestation that the applicant meets each such requirement; and

(III) requires the signature of the applicant, under penalty of perjury; or

(ii) the office's own form if it is equivalent to the form described in section 9(a)(2) [42 USCS § 1973gg-7(a)(2)],

unless the applicant, in writing, declines to register to vote;

(B) provide a form that includes--

(i) the question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

(ii) if the agency provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";

(iii) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of subparagraph (C)), together with the statement (in close proximity to the boxes and in prominent type), "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";

(iv) the statement, "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private."; and

(v) the statement "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with -----", the blank being filled by the name, address, and telephone number of the appropriate official to whom such a complaint should be addressed; and

(C) provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.

(7) No information relating to a declination to register to vote in connection with an application made at an office described in paragraph (6) may be used for any purpose other than voter registration.

(b) Federal Government and private sector cooperation. All departments, agencies, and other entities of the executive branch of the Federal Government shall, to the greatest extent practicable, cooperate with the States in carrying out subsection (a), and all nongovernmental entities are encouraged to do so.

(c) Armed Forces recruitment offices.

(1) Each State and the Secretary of Defense shall jointly develop and implement procedures for persons to apply to register to vote at recruitment offices of the Armed Forces of the United States.

(2) A recruitment office of the Armed Forces of the United States shall be considered to be a voter registration agency designated under subsection (a)(2) for all purposes of this Act.

(d) Transmittal deadline.

(1) Subject to paragraph (2), a completed registration application accepted at a voter registration agency shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
NATIONAL VOTER REGISTRATION

**§ 1973gg-6. Requirements with respect to administration of voter registration**

(a) In general. In the administration of voter registration for elections for Federal office, each State shall--

(1) insure that any eligible applicant is registered to vote in an election--

(A) in the case of registration with a motor vehicle application under section 5 [42 USCS § 1973gg-3], if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(B) in the case of registration by mail under section 6 [42 USCS § 1973gg-4], if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(2) require the appropriate State election official to send notice to applicant of the disposition of the application;

(3) provide that the name of a registrant may not be removed from the official list of eligible voters except--

(A) at the request of the registrant;

(B) as provided by State law, by reason of criminal conviction or mental incapacity; or

(C) as provided under paragraph (4);

(4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of--

(A) the death of the registrant; or

(B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d);

(5) inform applicants under sections 5, 6, and 7 [42 USCS § § 1973gg-3, 1973gg-4, 1973gg-5] of--

(A) voter eligibility requirements; and

(B) penalties provided by law for submission of a false voter registration application; and

(6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

(b) Confirmation of voter registration. Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office--

(1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.); and

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual--

(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.

(c) Voter removal programs.

(1) A State may meet the requirement of subsection (a)(4) by establishing a program under which--

(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(B) if it appears from information provided by the Postal Service that--

(i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) to confirm the change of address.

(2) (A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

(B) Subparagraph (A) shall not be construed to preclude--

(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a); or

(ii) correction of registration records pursuant to this Act.

(d) Removal of names from voting rolls.

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant--

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B) (i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

(2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(A) If the registrant did not change his or her residence, or changed residence but remained in the registrar's jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B). If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in a Federal election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters.

(B) If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote.

(3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.

(e) Procedure for voting following failure to return card.

(1) A registrant who has moved from an address in the area covered by a polling place to an address in the same area shall, notwithstanding failure to notify the registrar of the change of address prior to the date of an election, be permitted to vote at that polling place upon oral or written affirmation by the registrant of change of address before an election official at that polling place.

(2) (A) A registrant who has moved from an address in the area covered by one polling place to an address in an area covered by a second polling place within the same registrar's jurisdiction and the same congres-

sional district and who has failed to notify the registrar of the change address prior to the date of an election, at the option of the registrant--

(i) shall be permitted to correct the voting records and vote at the registrant's former polling place, upon oral or written affirmation by the registrant of the new address before an election official at that polling place; or

(ii) (I) shall be permitted to correct the voting records and vote at a central location within the same registrar's jurisdiction designated by the registrar where a list of eligible voters is maintained, upon written affirmation by the registrant of the new address on a standard form provided by the registrar at the central location; or

(II) shall be permitted to correct the voting records for purposes of voting in future elections at the appropriate polling place for the current address and, if permitted by State law, shall be permitted to vote in the present election, upon confirmation by the registrant of the new address by such means as are required by law.

(B) If State law permits the registrant to vote in the current election upon oral or written affirmation by the registrant of the new address at a polling place described in subparagraph (A)(i) or (A)(ii)(II), voting at the other locations described in subparagraph (A) need not be provided as options.

(3) If the registration records indicate that a registrant has moved from an address in the area covered by a polling place, the registrant shall upon oral or written affirmation by the registrant before an election official at that polling place that the registrant continues to reside at the address previously made known to the registrar, be permitted to vote at that polling place.

(f) Change of voting address within a jurisdiction. In the case of a change of address, for voting purposes, of a registrant to another address within the same registrar's jurisdiction, the registrar shall correct the voting registration list accordingly, and the registrant's name may not be removed from the official list of eligible voters by reason of such a change of address except as provided in subsection (d).

(g) Conviction in Federal court.

(1) On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief State election official designated under section 10 of the State of the person's residence.

(2) A notice given pursuant to paragraph (1) shall include--

(A) the name of the offender;

(B) the offender's age and residence address;

(C) the date of entry of the judgment;

(D) a description of the offenses of which the offender was convicted; and

(E) the sentence imposed by the court.

(3) On request of the chief State election official of a State or other State official with responsibility for determining the effect that a conviction may have on an offender's qualification to vote, the United States attorney shall provide such additional information as the United States may have concerning the offender and the offense of which offender was convicted.

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief State election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

(h) [Omitted]

(i) Public disclosure of voter registration activities.

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and ac-

tivities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

(j) "Registrar's jurisdiction" defined. For the purposes of this section, the term "registrar's jurisdiction" means--

(1) an incorporated city, town, borough, or other form of municipality;

(2) if voter registration is maintained by a county, parish, or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government; or

(3) if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government by an office that performs all of the functions of a voting registrar, the geographic area of the consolidated municipalities or other geographic units.



TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
NATIONAL VOTER REGISTRATION

**§ 1973gg-7. Federal coordination and regulations**

(a) In general. The Election Assistance Commission--

(1) in consultation with the chief election officers of the States, shall prescribe such regulations as are necessary to carry out paragraphs (2) and (3);

(2) in consultation with the chief election officers of the States, shall develop a mail voter registration application form for elections for Federal office;

(3) not later than June 30 of each odd-numbered year, shall submit to the Congress a report assessing the impact of this Act on the administration of elections for Federal office during the preceding 2-year period and including recommendations or improvements in Federal and State procedures, forms, and other matters affected by this Act; and

(4) shall provide information to the States with respect to the responsibilities of the States under this Act.

(b) Contents of mail voter registration form. The mail voter registration form developed under subsection (a)(2)--

(1) may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(2) shall include a statement that--

(A) specifies each eligibility requirement (including citizenship);

(B) contains an attestation that the applicant meets each such requirement; and

(C) requires the signature of the applicant, under penalty of perjury;

(3) may not include any requirement for notarization or other formal authentication; and

(4) shall include, in print that is identical to that used in the attestation portion of the application--

(i) the information required in section 8(a)(5)(A) and (B) [42 USCS § 1973gg-6(a)(5)(A), (B)];

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
NATIONAL VOTER REGISTRATION

**§ 1973gg-8. Designation of chief State election official**

Each State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this Act.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
NATIONAL VOTER REGISTRATION

**§ 1973gg-9. Civil enforcement and private right of action**

(a) Attorney General. The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as is necessary to carry out this Act.

(b) Private right of action.

(1) A person who is aggrieved by a violation of this Act may provide written notice of the violation to the chief election official of the State involved.

(2) If the violation is not corrected within 90 days after receipt of a notice under paragraph (1), or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.

(3) If the violation occurred within 30 days before the date of an election for Federal office, the aggrieved person need not provide notice to the chief election official of the State under paragraph (1) before bringing a civil action under paragraph (2).

(c) Attorney's fees. In a civil action under this section the court may allow the prevailing party (other than the United States) reasonable attorney fees, including litigation expenses, and costs.

(d) Relation to other laws.

(1) The rights and remedies established by this section are in addition to all other rights and remedies provided by law, and neither the rights and remedies established by this section nor any other provision of this Act shall supersede, restrict, or limit the application of the Voting Rights Act of 1965 (*42 U.S.C. 1973 et seq.*).

(2) Nothing in this Act authorizes or requires conduct that is prohibited by the Voting Rights Act of 1965 (*42 U.S.C. 1973 et seq.*).

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 20. ELECTIVE FRANCHISE  
NATIONAL VOTER REGISTRATION

**§ 1973gg-10. Criminal penalties**

A person, including an election official, who in any election for Federal office--

(1) knowingly and willfully intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any person for--

(A) registering to vote, or voting, or attempting to register or vote;

(B) urging or aiding any person to register to vote, to vote, or to attempt to register or vote; or

(C) exercising any right under this Act; or

(2) knowingly and willfully deprives, defrauds, or attempts to deprive or defraud the residents of a State of a fair and impartially conducted election process, by--

(A) the procurement or submission of voter registration applications that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held; or

(B) the procurement, casting, or tabulation of ballots that are known by the person to be materially false, fictitious or fraudulent under the laws of the State in which the election is held,

shall be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to *section 3302 of title 31, United States Code*), notwithstanding any other law), or imprisoned not more than 5 years, or both.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 126. EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES  
PUBLIC SERVICES  
PROHIBITION AGAINST DISCRIMINATION AND OTHER GENERALLY APPLICABLE  
PROVISIONS

**§ 12132. Discrimination**

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 146. ELECTION ADMINISTRATION IMPROVEMENT  
COMMISSION  
ELECTION ASSISTANCE  
REQUIREMENTS PAYMENTS

**§ 15404. State plan**

(a) In general. The State plan shall contain a description of each of the following:

(1) How the State will use the requirements payment to meet the requirements of title III [42 USCS § § 15481 et seq.], and, if applicable under section 251(a)(2) [42 USCS § 15401(a)(2)], to carry out other activities to improve the administration of elections.

(2) How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of--

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

(3) How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of title III [42 USCS § § 15481 et seq.].

(4) How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 301 [42 USCS § 15481].

(5) How the State will establish a fund described in subsection (b) for purposes of administering the State's activities under this part [42 USCS § § 15401 et seq.], including information on fund management.

(6) The State's proposed budget for activities under this part [42 USCS § § 15401 et seq.], based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on--

(A) the costs of the activities required to be carried out to meet the requirements of title III [42 USCS § § 15481 et seq.];

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) the portion of the requirements payment which will be used to carry out other activities.

(7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

(8) How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

(9) A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402 [42 USCS § 15512].

(10) If the State received any payment under title I [42 USCS § § 15301 et seq.], a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

(11) How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change--

(A) is developed and published in the Federal Register in accordance with section 255 [42 USCS § 15405] in the same manner as the State plan;

(B) is subject to public notice and comment in accordance with section 256 [42 USCS § 15406] in the same manner as the State plan; and

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

(12) In the case of a State with a State plan in effect under this subtitle [42 USCS § § 15401 et seq.] during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

(13) A description of the committee which participated in the development of the State plan in accordance with section 255 [42 USCS § 15405] and the procedures followed by the committee under such section and section 256 [42 USCS § 15406].

(b) Requirements for election fund.

(1) Election fund described. For purposes of subsection (a)(5), a fund described in this subsection with respect to a State is a fund which is established in the treasury of the State government, which is used in accordance with paragraph (2), and which consists of the following amounts:

(A) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment is made to the State under this part [42 USCS § § 15401 et seq.].

(B) The requirements payment made to the State under this part [42 USCS § § 15401 et seq.].

(C) Such other amounts as may be appropriated under law.

(D) Interest earned on deposits of the fund.

(2) Use of fund. Amounts in the fund shall be used by the State exclusively to carry out the activities for which the requirements payment is made to the State under this part [42 USCS § § 15401 et seq.].

(3) Treatment of States that require changes to State law. In the case of a State that requires State legislation to establish the fund described in this subsection, the Commission shall defer disbursement of the requirements payment to such State until such time as legislation establishing the fund is enacted.

(c) Protection against actions based on information in plan.

(1) In general. No action may be brought under this Act against a State or other jurisdiction on the basis of any information contained in the State plan filed under this part [42 USCS § § 15401 et seq.].

(2) Exception for criminal acts. Paragraph (1) may not be construed to limit the liability of a State or other jurisdiction for criminal acts or omissions.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 146. ELECTION ADMINISTRATION IMPROVEMENT  
UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION  
REQUIREMENTS  
REQUIREMENTS

**§ 15481. Voting systems standards**

(a) Requirements. Each voting system used in an election for Federal office shall meet the following requirements:

(1) In general.

(A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall--

(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;

(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and

(iii) if the voter selects votes for more than one candidate for a single office--

(I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;

(II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and

(III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

(B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by--

(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and

(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).

(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.

(2) Audit capacity.

(A) In general. The voting system shall produce a record with an audit capacity for such system.

(B) Manual audit capacity.

(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.

(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.

(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.

(3) Accessibility for individuals with disabilities. The voting system shall--

(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;



(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and

(C) if purchased with funds made available under title II [42 USCS § § 15321 et seq.] on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).

(4) Alternative language accessibility. The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).

(5) Error rates. The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act [enacted Oct. 29, 2002].

(6) Uniform definition of what constitutes a vote. Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.

(b) Voting system defined. In this section, the term "voting system" means--

(1) the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used--

(A) to define ballots;

(B) to cast and count votes;

(C) to report or display election results; and

(D) to maintain and produce any audit trail information; and

(2) the practices and associated documentation used--

(A) to identify system components and versions of such components;

(B) to test the system during its development and maintenance;

(C) to maintain records of system errors and defects;

(D) to determine specific system changes to be made to a system after the initial qualification of the system; and

(E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

(c) Construction.

(1) In general. Nothing in this section shall be construed to prohibit a State or jurisdiction which used a particular type of voting system in the elections for Federal office held in November 2000 from using the same type of system after the effective date of this section, so long as the system meets or is modified to meet the requirements of this section.

(2) Protection of paper ballot voting systems. For purposes of subsection (a)(1)(A)(i), the term "verify" may not be defined in a manner that makes it impossible for a paper ballot voting system to meet the requirements of such subsection or to be modified to meet such requirements.

(d) Effective date. Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 146. ELECTION ADMINISTRATION IMPROVEMENT  
UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION  
REQUIREMENTS  
REQUIREMENTS

**§ 15482. Provisional voting and voting information requirements**

(a) Provisional voting requirements. If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:

(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is--

(A) a registered voter in the jurisdiction in which the individual desires to vote; and

(B) eligible to vote in that election.

(3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).

(4) If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law.

(5) (A) At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under the system established under subparagraph (B) whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.

(B) The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

States described in section 4(b) of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg-2(b)*) may meet the requirements of this subsection using voter registration procedures established under applicable State law. The appropriate State or local official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system established under paragraph (5)(B). Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

(b) Voting information requirements.

(1) Public posting on Election Day. The appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.

(2) Voting information defined. In this section, the term "voting information" means--

(A) a sample version of the ballot that will be used for that election;

(B) information regarding the date of the election and the hours during which polling places will be open;

(C) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;

(D) instructions for mail-in registrants and first-time voters under section 303(b) [*42 USCS § 15483(b)*];

(E) general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and

(F) general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

(c) Voters who vote after the polls close. Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.

(d) Effective date for provisional voting and voting information. Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2004.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 146. ELECTION ADMINISTRATION IMPROVEMENT  
UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION  
REQUIREMENTS  
REQUIREMENTS

§ 15483. Computerized statewide voter registration list requirements and requirements for voters who register by mail

(a) Computerized statewide voter registration list requirements.

(1) Implementation.

(A) In general. Except as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (in this subsection referred to as the "computerized list"), and includes the following:

(i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.

(ii) The computerized list contains the name and registration information of every legally registered voter in the State.

(iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.

(iv) The computerized list shall be coordinated with other agency databases within the State.

(v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

(vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

(vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).

(viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

(B) Exception. The requirement under subparagraph (A) shall not apply to a State in which, under a State law in effect continuously on and after the date of the enactment of this Act [enacted Oct. 29, 2002], there is no voter registration requirement for individuals in the State with respect to elections for Federal office.

(2) Computerized list maintenance.

(A) In general. The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:

(i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg et seq.*), including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (*42 U.S.C. 1973gg-6*).

(ii) For purposes of removing names of ineligible voters from the official list of eligible voters--

(I) under section 8(a)(3)(B) of such Act (*42 U.S.C. 1973gg-6(a)(3)(B)*), the State shall coordinate the computerized list with State agency records on felony status; and

(II) by reason of the death of the registrant under section 8(a)(4)(A) of such Act (*42 U.S.C. 1973gg-6(a)(4)(A)*), the State shall coordinate the computerized list with State agency records on death.

(iii) Notwithstanding the preceding provisions of this subparagraph, if a State is described in section 4(b) of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg-2(b)*), that State shall remove the names of ineligible voters from the computerized list in accordance with State law.

(B) Conduct. The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that--

(i) the name of each registered voter appears in the computerized list;

(ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and

(iii) duplicate names are eliminated from the computerized list.

(3) Technological security of computerized list. The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.

(4) Minimum standard for accuracy of State voter registration records. The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg et seq.*), registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(5) Verification of voter registration information.

(A) Requiring provision of certain information by applicants.

(i) In general. Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes--

(I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or

(II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant's social security number.

(ii) Special rule for applicants without driver's license or social security number. If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.

(iii) Determination of validity of numbers provided. The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.

(B) Requirements for State officials.

(i) Sharing information in databases. The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.

(ii) Agreements with Commissioner of Social Security. The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 205(r)(8) of the Social Security Act [*42 USCS § 405(r)(8)*] (as added by subparagraph (C)).

(C) [Omitted]

(D) Special rule for certain States. In the case of a State which is permitted to use social security numbers, and provides for the use of social security numbers, on applications for voter registration, in accordance

with section 7 of the Privacy Act of 1974 (*5 U.S.C. 552a* note), the provisions of this paragraph shall be optional.

(b) Requirements for voters who register by mail.

(1) In general. Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg-4(c)*) and subject to paragraph (3), a State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if--

(A) the individual registered to vote in a jurisdiction by mail; and

(B) (i) the individual has not previously voted in an election for Federal office in the State; or

(ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of subsection (a).

(2) Requirements.

(A) In general. An individual meets the requirements of this paragraph if the individual--

(i) in the case of an individual who votes in person--

(I) presents to the appropriate State or local election official a current and valid photo identification;

or

(II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or

(ii) in the case of an individual who votes by mail, submits with the ballot--

(I) a copy of a current and valid photo identification; or

(II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

(B) Fail-safe voting.

(i) In person. An individual who desires to vote in person, but who does not meet the requirements of subparagraph (A)(i), may cast a provisional ballot under section 302(a) [*42 USCS § 15482(a)*].

(ii) By mail. An individual who desires to vote by mail but who does not meet the requirements of subparagraph (A)(ii) may cast such a ballot by mail and the ballot shall be counted as a provisional ballot in accordance with section 302(a) [*42 USCS § 15482(a)*].

(3) Inapplicability. Paragraph (1) shall not apply in the case of a person--

(A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg-4*) and submits as part of such registration either--

(i) a copy of a current and valid photo identification; or

(ii) a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter;

(B) (i) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg-4*) and submits with such registration either--

(I) a driver's license number; or

(II) at least the last 4 digits of the individual's social security number; and

(ii) with respect to whom a State or local election official matches the information submitted under clause (i) with an existing State identification record bearing the same number, name and date of birth as provided in such registration; or

(C) who is--

(i) entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (*42 U.S.C. 1973ff-1* et seq.);

(ii) provided the right to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act (*42 U.S.C. 1973ee-1(b)(2)(B)(ii)*); or

(iii) entitled to vote otherwise than in person under any other Federal law.

(4) Contents of mail-in registration form.

(A) In general. The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg-4*) shall include the following:

(i) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(ii) The question "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.

(iii) The statement "If you checked 'no' in response to either of these questions, do not complete this form."

(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.

(B) Incomplete forms. If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law).

(5) Construction. Nothing in this subsection shall be construed to require a State that was not required to comply with a provision of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg et seq.*) before the date of the enactment of this Act [enacted Oct. 29, 2002] to comply with such a provision after such date.

(c) Permitted use of last 4 digits of social security numbers. The last 4 digits of a social security number described in subsections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II) shall not be considered to be a social security number for purposes of section 7 of the Privacy Act of 1974 (*5 U.S.C. 552a* note).

(d) Effective date.

(1) Computerized statewide voter registration list requirements.

(A) In general. Except as provided in subparagraph (B), each State and jurisdiction shall be required to comply with the requirements of subsection (a) on and after January 1, 2004.

(B) Waiver. If a State or jurisdiction certifies to the Commission not later than January 1, 2004, that the State or jurisdiction will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, subparagraph (A) shall apply to the State or jurisdiction as if the reference in such subparagraph to "January 1, 2004" were a reference to "January 1, 2006".

(2) Requirement for voters who register by mail.

(A) In general. Each State and jurisdiction shall be required to comply with the requirements of subsection (b) on and after January 1, 2004, and shall be prepared to receive registration materials submitted by individuals described in subparagraph (B) on and after the date described in such subparagraph.

(B) Applicability with respect to individuals. The provisions of subsection (b) shall apply to any individual who registers to vote on or after January 1, 2003.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 146. ELECTION ADMINISTRATION IMPROVEMENT  
UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION  
REQUIREMENTS  
REQUIREMENTS

**§ 15484. Minimum requirements**

The requirements established by this *title* [42 USCS § § 15481 et seq.] are minimum requirements and nothing in this *title* [42 USCS § § 15481 et seq.] shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this *title* [42 USCS § § 15481 et seq.] so long as such State requirements are not inconsistent with the Federal requirements under this *title* [42 USCS § § 15481 et seq.] or any law described in section 906 [42 USCS § 15545].



TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 146. ELECTION ADMINISTRATION IMPROVEMENT  
UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION  
REQUIREMENTS  
REQUIREMENTS

**§ 15485. Methods of implementation left to discretion of State**

The specific choices on the methods of complying with the requirements of this *title* [42 USCS § § 15481 et seq.] shall be left to the discretion of the State.

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 146. ELECTION ADMINISTRATION IMPROVEMENT  
ENFORCEMENT

**§ 15512. Establishment of State-based administrative complaint procedures to remedy grievances**

(a) Establishment of State-based administrative complaint procedures to remedy grievances.

(1) Establishment of procedures as condition of receiving funds. If a State receives any payment under a program under this Act, the State shall be required to establish and maintain State-based administrative complaint procedures which meet the requirements of paragraph (2).

(2) Requirements for procedures. The requirements of this paragraph are as follows:

(A) The procedures shall be uniform and nondiscriminatory.

(B) Under the procedures, any person who believes that there is a violation of any provision of title III [42 USCS § § 15481 et seq.] (including a violation which has occurred, is occurring, or is about to occur) may file a complaint.

(C) Any complaint filed under the procedures shall be in writing and notarized, and signed and sworn by the person filing the complaint.

(D) The State may consolidate complaints filed under subparagraph (B).

(E) At the request of the complainant, there shall be a hearing on the record.

(F) If, under the procedures, the State determines that there is a violation of any provision of title III [42 USCS § § 15481 et seq.], the State shall provide the appropriate remedy.

(G) If, under the procedures, the State determines that there is no violation, the State shall dismiss the complaint and publish the results of the procedures.

(H) The State shall make a final determination with respect to a complaint prior to the expiration of the 90-day period which begins on the date the complaint is filed, unless the complainant consents to a longer period for making such a determination.

(I) If the State fails to meet the deadline applicable under subparagraph (H), the complaint shall be resolved within 60 days under alternative dispute resolution procedures established for purposes of this section. The record and other materials from any proceedings conducted under the complaint procedures established under this section shall be made available for use under the alternative dispute resolution procedures.

(b) Requiring Attorney General approval of compliance plan for States not receiving funds.

(1) In general. Not later than January 1, 2004, each nonparticipating State shall elect--

(A) to certify to the Commission that the State meets the requirements of subsection (a) in the same manner as a State receiving a payment under this Act; or

(B) to submit a compliance plan to the Attorney General which provides detailed information on the steps the State will take to ensure that it meets the requirements of title III [42 USCS § § 15481 et seq.].

(2) States without approved plan deemed out of compliance. A nonparticipating State (other than a State which makes the election described in paragraph (1)(A)) shall be deemed to not meet the requirements of title III [42 USCS § § 15481 et seq.] if the Attorney General has not approved a compliance plan submitted by the State under this subsection.

(3) Nonparticipating State defined. In this section, a "nonparticipating State" is a State which, during 2003, does not notify any office which is responsible for making payments to States under any program under this Act of its intent to participate in, and receive funds under, the program.

**SELECTED FEDERAL REGULATIONS**  
**28 C.F.R. 55.1 – 55.24**

TITLE 28 -- JUDICIAL ADMINISTRATION  
CHAPTER I -- DEPARTMENT OF JUSTICE  
PART 55 -- IMPLEMENTATION OF THE PROVISIONS OF THE VOTING RIGHTS ACT  
REGARDING LANGUAGE MINORITY GROUPS  
SUBPART A -- GENERAL PROVISIONS

**§ 55.1 Definitions.**

As used in this part --

Act means the Voting Rights Act of 1965, 79 Stat. 437, as amended by the Civil Rights Act of 1968, 82 Stat. 73, the Voting Rights Act Amendments of 1970, 84 Stat. 314, the District of Columbia Delegate Act, 84 Stat. 853, the Voting Rights Act Amendments of 1975, 89 Stat. 400, the Voting Rights Act Amendments of 1982, 96 Stat. 131, and the Voting Rights Language and Assistance Act of 1992, Public Law 102-344, 106 Stat. 921, 42 U.S.C. 1973 et seq. Section numbers, such as "section 14(c)(3)," refer to sections of the Act.

Attorney General means the Attorney General of the United States.

Language minorities or language minority group is used, as defined in the Act, to refer to persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. (Sections 14(c)(3) and 203(e)).

Political subdivision is used, as defined in the Act, to refer to "any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting." (Section 14(c)(2)).

**§ 55.2 Purpose; standards for measuring compliance.**

(a) The purpose of this part is to set forth the Attorney General's interpretation of the provisions of the Voting Rights Act which require certain States and political subdivisions to conduct elections in the language of certain "language minority groups" in addition to English.

(b) In the Attorney General's view the objective of the Act's provisions is to enable members of applicable language minority groups to participate effectively in the electoral process. This part establishes two basic standards by which the Attorney General will measure compliance:

(1) That materials and assistance should be provided in a way designed to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities; and

(2) That an affected jurisdiction should take all reasonable steps to achieve that goal.

(c) The determination of what is required for compliance with section 4(f)(4) and section 203(c) is the responsibility of the affected jurisdiction. These guidelines should not be used as a substitute for analysis and decision by the affected jurisdiction.

(d) Jurisdictions covered under section 4(f)(4) of the Act are subject to the preclearance requirements of section 5. See part 51 of this chapter. Such jurisdictions have the burden of establishing to the satisfaction of the Attorney General or to the U.S. District Court for the District of Columbia that changes made in their election laws and procedures in order to comply with the requirements of section 4(f)(4) are not discrimina-

tory under the terms of section 5. However, section 5 expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of the changes.

(e) Jurisdictions covered solely under section 203(c) of the Act are not subject to the preclearance requirements of section 5, nor is there a Federal apparatus available for preclearance of section 203(c) compliance activities. The Attorney General will not preclear jurisdictions' proposals for compliance with section 203(c).

(f) Consideration by the Attorney General of a jurisdiction's compliance with the requirements of section 4(f)(4) occurs in the review pursuant to section 5 of the Act of changes with respect to voting, in the consideration of the need for litigation to enforce the requirements of section 4(f)(4), and in the defense of suits for termination of coverage under section 4(f)(4). Consideration by the Attorney General of a jurisdiction's compliance with the requirements of section 203(c) occurs in the consideration of the need for litigation to enforce the requirements of section 203(c).

(g) In enforcing the Act--through the section 5 preclearance review process, through litigation, and through defense of suits for termination of coverage under section 4(f)(4)--the Attorney General will follow the general policies set forth in this part.

(h) This part is not intended to preclude affected jurisdictions from taking additional steps to further the policy of the Act. By virtue of the Supremacy Clause of Art. VI of the Constitution, the provisions of the Act override any inconsistent State law.

### **§ 55.3 Statutory requirements.**

The Act's requirements concerning the conduct of elections in languages in addition to English are contained in section 4(f)(4) and section 203(c). These sections state that whenever a jurisdiction subject to their terms "provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in \* \* \* English. \* \* \*"

TITLE 28 -- JUDICIAL ADMINISTRATION  
CHAPTER I -- DEPARTMENT OF JUSTICE  
PART 55 -- IMPLEMENTATION OF THE PROVISIONS OF THE VOTING RIGHTS ACT  
REGARDING LANGUAGE MINORITY GROUPS  
SUBPART B -- NATURE OF COVERAGE

### **§ 55.4 Effective date; list of covered jurisdictions.**

(a) The minority language provisions of the Voting Rights Act were added by the Voting Rights Act Amendments of 1975.

(1) The requirements of section 4(f)(4) take effect upon publication in the Federal Register of the requisite determinations of the Director of the Census and the Attorney General. Such determinations are not reviewable in any court.

(2) The requirements of section 203(c) take effect upon publication in the Federal Register of the requisite determinations of the Director of the Census. Such determinations are not reviewable in any court.

(b) Jurisdictions determined to be covered under section 4(f)(4) or section 203(c) are listed, together with the language minority group with respect to which coverage was determined, in the Appendix to this part. Any additional determinations of coverage under either section 4(f)(4) or section 203(c) will be published in the Federal Register.

**§ 55.5 Coverage under section 4(f)(4).**

(a) Coverage formula. Section 4(f)(4) applies to any State or political subdivision in which

- (1) Over five percent of the voting-age citizens were, on November 1, 1972, members of a single language minority group,
- (2) Registration and election materials were provided only in English on November 1, 1972, and
- (3) Fewer than 50 percent of the voting-age citizens were registered to vote or voted in the 1972 Presidential election.

All three conditions must be satisfied before coverage exists under section 4(f)(4). n1

n1 Coverage is based on sections 4(b) (third sentence), 4(c), and 4(f)(3).

(b) Coverage may be determined with regard to section 4(f)(4) on a statewide or political subdivision basis.

(1) Whenever the determination is made that the bilingual requirements of section 4(f)(4) are applicable to an entire State, these requirements apply to each of the State's political subdivisions as well as to the State. In other words, each political subdivision within a covered State is subject to the same requirements as the State.

(2) Where an entire State is not covered under section 4(f)(4), individual political subdivisions may be covered.

**§ 55.6 Coverage under section 203(c).**

(a) Coverage formula. There are four ways in which a political subdivision can become subject to section 203(c). n2

n2 The criteria for coverage are contained in section 203(b).

(1) Political subdivision approach. A political subdivision is covered if --

(i) More than 5 percent of its voting age citizens are members of a single language minority group and are limited-English proficient; and

(ii) The illiteracy rate of such language minority citizens in the political subdivision is higher than the national illiteracy rate.

(2) State approach. A political subdivision is covered if --

(i) It is located in a state in which more than 5 percent of the voting age citizens are members of a single language minority and are limited-English proficient;

(ii) The illiteracy rate of such language minority citizens in the state is higher than the national illiteracy rate; and

(iii) Five percent or more of the voting age citizens of the political subdivision are members of such language minority group and are limited-English proficient.

(3) Numerical approach. A political subdivision is covered if --

(i) More than 10,000 of its voting age citizens are members of a single language minority group and are limited-English proficient; and

(ii) The illiteracy rate of such language minority citizens in the political subdivision is higher than the national illiteracy rate.

(4) Indian reservation approach. A political subdivision is covered if there is located within its borders all or any part of an Indian reservation --

(i) In which more than 5 percent of the voting age American Indian or Alaska Native citizens are members of a single language minority group and are limited-English proficient; and

(ii) The illiteracy rate of such language minority citizens is higher than the national illiteracy rate.

(b) Definitions. For the purpose of determinations of coverage under section 203(c), limited-English proficient means unable to speak or understand English adequately enough to participate in the electoral process; Indian reservation means any area that is an American Indian or Alaska Native area, as defined by the Census Bureau for the purposes of the 1990 decennial census; and illiteracy means the failure to complete the fifth primary grade.

(c) Determinations. Determinations of coverage under section 203(c) are made with regard to specific language groups of the language minorities listed in section 203(e).

#### **§ 55.7 Termination of coverage.**

(a) Section 4(f)(4). A covered State, a political subdivision of a covered State, or a separately covered political subdivision may terminate the application of section 4(f)(4) by obtaining the declaratory judgment described in section 4(a) of the Act.

(b) Section 203(c). The requirements of section 203(c) apply until August 6, 2007. A covered jurisdiction may terminate such coverage earlier if it can prove in a declaratory judgment action in a United States district court, that the illiteracy rate of the applicable language minority group is equal to or less than the national illiteracy rate.

#### **§ 55.8 Relationship between section 4(f)(4) and section 203(c).**

(a) The statutory requirements of section 4(f)(4) and section 203(c) regarding minority language material and assistance are essentially identical.

(b) Jurisdictions subject to the requirements of section 4(f)(4)--but not jurisdictions subject only to the requirements of section 203(c)--are also subject to the Act's special provisions, such as section 5 (regarding preclearance of changes in voting laws) and section 6 (regarding Federal examiners). n3 See part 51 of this chapter.

n3 In addition, a jurisdiction covered under section 203(c) but not under section 4(f)(4) is subject to the Act's special provisions if it was covered under section 4(b) prior to the 1975 Amendments to the Act.

(c) Although the coverage formulas applicable to section 4(f)(4) and section 203(c) are different, a political subdivision may be included within both of the coverage formulas. Under these circumstances, a judgment terminating coverage of the jurisdiction under one provision would not have the effect of terminating coverage under the other provision.

#### **§ 55.9 Coverage of political units within a county.**

Where a political subdivision (e.g., a county) is determined to be subject to section 4(f)(4) or section 203(c), all political units that hold elections within that political subdivision (e.g., cities, school districts) are subject to the same requirements as the political subdivision.

#### **§ 55.10 Types of elections covered.**

(a) General. The language provisions of the Act apply to registration for and voting in any type of election, whether it is a primary, general or special election. Section 14(c)(1). This includes elections of officers as well as elections regarding such matters as bond issues, constitutional amendments and referendums. Federal, State and local elections are covered as are elections of special districts, such as school districts and water districts.

(b) Elections for statewide office. If an election conducted by a county relates to Federal or State offices or issues as well as county offices or issues, a county subject to the bilingual requirements must insure compliance with those requirements with respect to all aspects of the election, i.e., the minority language material and assistance must deal with the Federal and State offices or issues as well as county offices or issues.

(c) Multi-county districts. Regarding elections for an office representing more than one county, e.g., State legislative districts and special districts that include portions of two or more counties, the bilingual requirements are applicable on a county-by-county basis. Thus, minority language material and assistance need not be provided by the government in counties not subject to the bilingual requirements of the Act.

TITLE 28 -- JUDICIAL ADMINISTRATION  
CHAPTER I -- DEPARTMENT OF JUSTICE  
PART 55 -- IMPLEMENTATION OF THE PROVISIONS OF THE VOTING RIGHTS ACT  
REGARDING LANGUAGE MINORITY GROUPS  
SUBPART C -- DETERMINING THE EXACT LANGUAGE

**§ 55.11 General.**

The requirements of section 4(f)(4) or section 203(c) apply with respect to the languages of language minority groups. The applicable groups are indicated in the determinations of the Attorney General or the Director of the Census. This subpart relates to the view of the Attorney General concerning the determination by covered jurisdictions of precisely the language to be employed. In enforcing the Act, the Attorney General will consider whether the languages, forms of languages, or dialects chosen by covered jurisdictions for use in the electoral process enable members of applicable language minority groups to participate effectively in the electoral process. It is the responsibility of covered jurisdictions to determine what languages, forms of languages, or dialects will be effective. For those jurisdictions covered under section 203(c), the coverage determination (indicated in the Appendix) specifies the particular language for which the jurisdiction was covered and which thus, under section 203(c), is required to be used.

**§ 55.12 Language used for written material.**

(a) Language minority groups having more than one language. Some language minority groups, for example, Filipino Americans, have more than one language other than English. A jurisdiction required to provide election materials in the language of such a group need not provide materials in more than one language other than English. The Attorney General will consider whether the language that is used for election materials is the one most widely used by the jurisdiction's voting-age citizens who are members of the language minority group.

(b) Languages with more than one written form. Some languages, for example, Japanese, have more than one written form. A jurisdiction required to provide election materials in such a language need not provide more than one version. The Attorney General will consider whether the particular version of the language that is used for election materials is the one most widely used by the jurisdiction's voting-age citizens who are members of the language minority group.

(c) Unwritten languages. Many of the languages used by language minority groups, for example, by some American Indians and Alaskan Natives, are unwritten. With respect to any such language, only oral assistance and publicity are required. Even though a written form for a language may exist, a language may

be considered unwritten if it is not commonly used in a written form. It is the responsibility of the covered jurisdiction to determine whether a language should be considered written or unwritten.

**§ 55.13 Language used for oral assistance and publicity.**

(a) Languages with more than one dialect. Some languages, for example, Chinese, have several dialects. Where a jurisdiction is obligated to provide oral assistance in such a language, the jurisdiction's obligation is to ascertain the dialects that are commonly used by members of the applicable language minority group in the jurisdiction and to provide oral assistance in such dialects. (See § 55.20.)

(b) Language minority groups having more than one language. In some jurisdictions members of an applicable language minority group speak more than one language other than English. Where a jurisdiction is obligated to provide oral assistance in the language of such a group, the jurisdiction's obligation is to ascertain the languages that are commonly used by members of that group in the jurisdiction and to provide oral assistance in such languages. (See § 55.20)

TITLE 28 -- JUDICIAL ADMINISTRATION  
CHAPTER I -- DEPARTMENT OF JUSTICE  
PART 55 -- IMPLEMENTATION OF THE PROVISIONS OF THE VOTING RIGHTS ACT  
REGARDING LANGUAGE MINORITY GROUPS  
SUBPART D -- MINORITY LANGUAGE MATERIALS AND ASSISTANCE

**§ 55.14 General.**

(a) This subpart sets forth the views of the Attorney General with respect to the requirements of section 4(f)(4) and section 203(c) concerning the provision of minority language materials and assistance and some of the factors that the Attorney General will consider in carrying out his responsibilities to enforce section 4(f)(4) and section 203(c). Through the use of his authority under section 5 and his authority to bring suits to enforce section 4(f)(4) and section 203(c), the Attorney General will seek to prevent or remedy discrimination against members of language minority groups based on the failure to use the applicable minority language in the electoral process. The Attorney General also has the responsibility to defend against suits brought for the termination of coverage under section 4(f)(4) and section 203(c).

(b) In discharging these responsibilities the Attorney General will respond to complaints received, conduct on his own initiative inquiries and surveys concerning compliance, and undertake other enforcement activities.

(c) It is the responsibility of the jurisdiction to determine what actions by it are required for compliance with the requirements of section 4(f)(4) and section 203(c) and to carry out these actions.

**§ 55.15 Affected activities.**

The requirements of sections 4(f)(4) and 203(c) apply with regard to the provision of "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots." The basic purpose of these requirements is to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities. Accordingly, the quoted language should be broadly construed to apply to all stages of the electoral process, from voter registration through activities related to conducting elections, including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process.



## **§ 55.16 Standards and proof of compliance.**

Compliance with the requirements of section 4(f)(4) and section 203(c) is best measured by results. A jurisdiction is more likely to achieve compliance with these requirements if it has worked with the cooperation of and to the satisfaction of organizations representing members of the applicable language minority group. In planning its compliance with section 4(f)(4) or section 203(c), a jurisdiction may, where alternative methods of compliance are available, use less costly methods if they are equivalent to more costly methods in their effectiveness.

## **§ 55.17 Targeting.**

The term "targeting" is commonly used in discussions of the requirements of section 4(f)(4) and section 203(c). "Targeting" refers to a system in which the minority language materials or assistance required by the Act are provided to fewer than all persons or registered voters. It is the view of the Attorney General that a targeting system will normally fulfill the Act's minority language requirements if it is designed and implemented in such a way that language minority group members who need minority language materials and assistance receive them.

## **§ 55.18 Provision of minority language materials and assistance.**

(a) Materials provided by mail. If materials provided by mail (or by some comparable form of distribution) generally to residents or registered voters are not all provided in the applicable minority language, the Attorney General will consider whether an effective targeting system has been developed. For example, a separate mailing of materials in the minority language to persons who are likely to need them or to residents of neighborhoods in which such a need is likely to exist, supplemented by a notice of the availability of minority language materials in the general mailing (in English and in the applicable minority language) and by other publicity regarding the availability of such materials may be sufficient.

(b) Public notices. The Attorney General will consider whether public notices and announcements of electoral activities are handled in a manner that provides members of the applicable language minority group an effective opportunity to be informed about electoral activities.

(c) Registration. The Attorney General will consider whether the registration system is conducted in such a way that members of the applicable language minority group have an effective opportunity to register. One method of accomplishing this is to provide, in the applicable minority language, all notices, forms and other materials provided to potential registrants and to have only bilingual persons as registrars. Effective results may also be obtained, for example, through the use of deputy registrars who are members of the applicable language minority group and the use of decentralized places of registration, with minority language materials available at places where persons who need them are most likely to come to register.

(d) Polling place activities. The Attorney General will consider whether polling place activities are conducted in such a way that members of the applicable language minority group have an effective opportunity to vote. One method of accomplishing this is to provide all notices, instructions, ballots, and other pertinent materials and oral assistance in the applicable minority language. If very few of the registered voters scheduled to vote at a particular polling place need minority language materials or assistance, the Attorney General will consider whether an alternative system enabling those few to cast effective ballots is available.

(e) Publicity. The Attorney General will consider whether a covered jurisdiction has taken appropriate steps to publicize the availability of materials and assistance in the minority language. Such steps may include the display of appropriate notices, in the minority language, at voter registration offices, polling places,

etc., the making of announcements over minority language radio or television stations, the publication of notices in minority language newspapers, and direct contact with language minority group organizations.

#### **§ 55.19 Written materials.**

(a) Types of materials. It is the obligation of the jurisdiction to decide what materials must be provided in a minority language. A jurisdiction required to provide minority language materials is only required to publish in the language of the applicable language minority group materials distributed to or provided for the use of the electorate generally. Such materials include, for example, ballots, sample ballots, informational materials, and petitions.

(b) Accuracy, completeness. It is essential that material provided in the language of a language minority group be clear, complete and accurate. In examining whether a jurisdiction has achieved compliance with this requirement, the Attorney General will consider whether the jurisdiction has consulted with members of the applicable language minority group with respect to the translation of materials.

(c) Ballots. The Attorney General will consider whether a jurisdiction provides the English and minority language versions on the same document. Lack of such bilingual preparation of ballots may give rise to the possibility, or to the appearance, that the secrecy of the ballot will be lost if a separate minority language ballot or voting machine is used.

(d) Voting machines. Where voting machines that cannot mechanically accommodate a ballot in English and in the applicable minority language are used, the Attorney General will consider whether the jurisdiction provides sample ballots for use in the polling booths. Where such sample ballots are used the Attorney General will consider whether they contain a complete and accurate translation of the English ballots, and whether they contain or are accompanied by instructions in the minority language explaining the operation of the voting machine. The Attorney General will also consider whether the sample ballots are displayed so that they are clearly visible and at the same level as the machine ballot on the inside of the polling booth, whether the sample ballots are identical in layout to the machine ballots, and whether their size and typeface are the same as that appearing on the machine ballots. Where space limitations preclude affixing the translated sample ballots to the inside of polling booths, the Attorney General will consider whether language minority group voters are allowed to take the sample ballots into the voting booths.

#### **§ 55.20 Oral assistance and publicity.**

(a) General. Announcements, publicity, and assistance should be given in oral form to the extent needed to enable members of the applicable language minority group to participate effectively in the electoral process.

(b) Assistance. The Attorney General will consider whether a jurisdiction has given sufficient attention to the needs of language minority group members who cannot effectively read either English or the applicable minority language and to the needs of members of language minority groups whose languages are unwritten.

(c) Helpers. With respect to the conduct of elections, the jurisdiction will need to determine the number of helpers (i.e., persons to provide oral assistance in the minority language) that must be provided. In evaluating the provision of assistance, the Attorney General will consider such facts as the number of a precinct's registered voters who are members of the applicable language minority group, the number of such persons who are not proficient in English, and the ability of a voter to be assisted by a person of his or her own choice. The basic standard is one of effectiveness.

#### **§ 55.21 Record keeping.**

The Attorney General's implementation of the Act's provisions concerning language minority groups would be facilitated if each covered jurisdiction would maintain such records and data as will document its actions under those provisions, including, for example, records on such matters as alternatives considered prior to taking such actions, and the reasons for choosing the actions finally taken.

TITLE 28 -- JUDICIAL ADMINISTRATION  
CHAPTER I -- DEPARTMENT OF JUSTICE  
PART 55 -- IMPLEMENTATION OF THE PROVISIONS OF THE VOTING RIGHTS ACT  
REGARDING LANGUAGE MINORITY GROUPS  
SUBPART E -- PRECLEARANCE

**§ 55.22 Requirements of section 5 of the Act.**

For many jurisdictions, changes in voting laws and practices will be necessary in order to comply with section 4(f)(4) or section 203(c). If a jurisdiction is subject to the preclearance requirements of section 5 (see § 55.8(b)), such changes must either be submitted to the Attorney General or be made the subject of a declaratory judgment action in the U.S. District Court for the District of Columbia. Procedures for the administration of section 5 are set forth in part 51 of this chapter.

TITLE 28 -- JUDICIAL ADMINISTRATION  
CHAPTER I -- DEPARTMENT OF JUSTICE  
PART 55 -- IMPLEMENTATION OF THE PROVISIONS OF THE VOTING RIGHTS ACT  
REGARDING LANGUAGE MINORITY GROUPS  
SUBPART F -- SANCTIONS

**§ 55.23 Enforcement by the Attorney General.**

(a) The Attorney General is authorized to bring civil actions for appropriate relief against violations of the Act's provisions, including section 4 and section 203. See sections 12(d) and 204.

(b) Also, certain violations may be subject to criminal sanctions. See sections 11(a)-(c) and 205.

TITLE 28 -- JUDICIAL ADMINISTRATION  
CHAPTER I -- DEPARTMENT OF JUSTICE  
PART 55 -- IMPLEMENTATION OF THE PROVISIONS OF THE VOTING RIGHTS ACT  
REGARDING LANGUAGE MINORITY GROUPS  
SUBPART G -- COMMENT ON THIS PART

**§ 55.24 Procedure.**

These guidelines may be modified from time to time on the basis of experience under the Act and comments received from interested parties. The Attorney General therefore invites public comments and suggestions on these guidelines. Any party who wishes to make such suggestions or comments may do so by sending them to: Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, DC 20530.

APPENDIX TO PART 55 -- JURISDICTIONS COVERED UNDER SECS. 4(F)(4) AND 203(C) OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED. [AS TO CALIFORNIA ONLY.]

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4) n1	Coverage under sec. 203(c) n2
California:		
Alameda County		Asian American (Chinese), Spanish heritage.
Colusa County		American Indian (Wintun).
Fresno County		Spanish heritage.
Imperial County		Spanish heritage.
Inyo County		American Indian (Spanish).
Kern County		Spanish heritage.
Kings County	Spanish heritage	Spanish heritage.
Lake County		American Indian (Spanish).
Los Angeles County		Asian American (Chinese, Filipino, Japanese, Vietnamese), Spanish heritage.
Merced County	Spanish heritage	
Monterey County		Spanish heritage.
Orange County		Asian American (Vietnamese), Spanish heritage.
Riverside County		Spanish heritage.
San Benito County		Spanish heritage.
San Bernardino County		Spanish heritage.
San Diego County		Spanish heritage.
San Francisco County		Asian American (Chinese).
Santa Clara County		Spanish heritage.
Tulare County		Spanish heritage.
Ventura County		Spanish heritage.
Yuba County	Spanish heritage	

n1 Coverage determinations were published at 40 FR 43746 (Sept. 23, 1975), 40 FR 49422 (Oct. 22, 1975), 41 FR 784 (Jan. 5, 1976) (corrected at 41 FR 1503 (Jan. 8, 1976)), and 41 FR 34329 (Aug. 13, 1976). Covered counties in Colorado, New Mexico, and Oklahoma have bailed out pursuant to section 4(a). See Sec. 55.7(a) of this part.

n2 Coverage determinations were published at 57 FR 43213 (Sept. 18, 1992).

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Notices

DEPARTMENT OF COMMERCE (DOC)

Economics and Statistics Administration

Bureau of the Census

[Docket Number 020723173-2173-01]

RIN 0607-ZA05

**Voting Rights Act Amendments of 1992, Determinations Under Section 203**

67 FR 48871

**DATE:** Friday, July 26, 2002

**ACTION:** Notice of determination.

**SUMMARY:** The notice's purpose is to publish the Bureau of the Census (Census Bureau) Director's determination as to which political subdivisions are subject to the minority language assistance provisions of Section 203 of the Voting Rights Act.

**EFFECTIVE DATE:** July 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this notice, please contact Ms. Catherine M. McCully, Chief, Census Redistricting Data Office, Bureau of the Census, U.S. Department of Commerce, Federal Building 3, Room 3631, 301-457-4039.

For information regarding the statutory provisions, enforcement, or compliance, contact Mr. Joseph D. Rich, Chief, Voting Section-NWB, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, 1-800-253-3931 or 202-307-2767, or visit the Voting Section Internet site at [www.usdoj.gov.crt/voting](http://www.usdoj.gov.crt/voting) >.

**SUPPLEMENTARY INFORMATION:** In August 1992, Congress amended the Voting Rights Act of 1965, Title 42, *United States Code, 1973 et seq.* (See Public Law 102-344.) Among other changes, the minority language assistance provision set forth in Section 203 of the Act was extended to August 6, 2007. Section 203 mandates that a state or political subdivision must provide language assistance to voters if more than 5 percent of the voting age citizens are members of a single-language minority group who do not "speak or understand English adequately enough to participate in the electoral process" and if the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade. When a state is covered for a particular language minority group, an exception is made for any political subdivision in which less than 5 percent of the voting age citizens are members of the minority group and are limited in English proficiency, unless the political subdivision is covered independently. A political subdivision also is covered if more than 10,000 of the voting age citizens are members of a

single-language minority group, do not "speak or understand English adequately enough to participate in the electoral process," and the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade.

Finally, if more than 5 percent of the American Indian or Alaska Native voting age citizens residing within an American Indian Reservation (and off-reservation trust lands) are members of a single language minority group, do not "speak or understand English adequately enough to participate in the electoral process," and the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade, any political subdivision, such as a county, which contains all or any part of that Indian reservation, is covered by the minority language assistance provision set forth in Section 203. An American Indian Reservation is defined as any area that is an American Indian or Alaska Native area identified for purposes of the decennial census. For Census 2000, these areas were identified by the federally-recognized tribal governments, Bureau of Indian Affairs, and state governments. The Census Bureau worked with American Indian tribes and Alaska Natives to identify statistical areas, such as Oklahoma Tribal Statistical Areas, State-Designated American Indian Statistical Areas, and Alaska Native Village Statistical Areas.

Pursuant to Section 203, the Census Bureau Director has the responsibility to determine which states and political subdivisions are subject to the minority language assistance provisions of [\*48872] Section 203. The states and political subdivisions obligated to comply with the requirements are listed in the attachment.

Section 203 also provides that "determinations of the Director of the Census under this subsection shall be effective upon publication in the **Federal Register** and shall not be subject to review in any court." Therefore, as of this date, those jurisdictions that are listed as covered by Section 203 have a legal obligation to provide the minority language assistance prescribed by Section 203 of the Act. In the cases where a state is identified as covered, those counties or county equivalents not displayed in the attachment are exempt from the obligation. Those jurisdictions subject to Section 203 of the Act previously, but not included on the list below, are no longer obligated to comply with Section 203. The previous determinations under Section 4(f)(4) of the Voting Rights Act remain in effect and are unaffected by this determination. (*See* Title 28, Code of Federal Regulations, Part 55, Appendix.)

Dated: July 22, 2002.

**Charles Louis Kincannon,**

*Director, Bureau of the Census.*

Covered Areas for Voting Rights Bilingual Election Materials—2000  
[CALIFORNIA ONLY]

State and political subdivision	Group
California:	
State Coverage	Hispanic.
Alameda County	Hispanic.
Alameda County	Chinese.
Colusa County	Hispanic.
Contra Costa County	Hispanic.
Fresno County	Hispanic.
Imperial County	Hispanic.
Imperial County	American Indian (Central or South American).
Imperial County	American Indian (Yuman).
Kern County	Hispanic.
Kings County	Hispanic.
Los Angeles County	Hispanic.
Los Angeles County	Chinese.
Los Angeles County	Filipino.
Los Angeles County	Japanese.
Los Angeles County	Korean.
Los Angeles County	Vietnamese.
Madera County	Hispanic.
Merced County	Hispanic.
Monterey County	Hispanic.
Orange County	Hispanic.
Orange County	Chinese.
Orange County	Korean.
Orange County	Vietnamese.
Riverside County	Hispanic.
Riverside County	American Indian (Central or South American).
Sacramento County	Hispanic.
San Benito County	Hispanic.
San Bernardino County	Hispanic.
San Diego County	Hispanic.
San Diego County	Filipino.
San Francisco County	Hispanic.
San Francisco County	Chinese.
San Joaquin County	Hispanic.
San Mateo County	Hispanic.
San Mateo County	Chinese.
Santa Barbara County	Hispanic.
Santa Clara County	Hispanic.
Santa Clara County	Chinese.
Santa Clara County	Filipino.
Santa Clara County	Vietnamese.
Stanislaus County	Hispanic.
Tulare County	Hispanic.
Ventura County	Hispanic.