



**U.S. ELECTION ASSISTANCE COMMISSION
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**STATEMENT BY COMMISSIONER GRACIA HILLMAN
UNITED STATES ELECTION ASSISTANCE COMMISSION (EAC)
REGARDING INTERIM PROCEDURES FOR RESPONDING TO STATE REQUESTS TO
CHANGE THE FEDERAL MAIL VOTER REGISTRATION APPLICATION FORM**

Washington, DC – December 7, 2007: On September 6, 2007, United States Election Assistance (EAC) Commissioners voted to begin consideration of whether EAC should administratively transfer regulations issued by the Federal Election Commission regarding the National Voter Registration Act (NVRA) or promulgate new regulations. That vote started the long overdue process of promulgating regulations, and establishing policies and procedures under which EAC could exercise its discretion in developing the Federal Voter Registration Form and consider requests from States for changes to the Federal form's state specific instructions.

It is my position that all requests from States for changes to the form's state specific instructions (requests from States) must be treated the same. The only way to do that is to have policies and procedures under which the changes would be considered. In the absence of promulgated regulations and adopted policies, EAC commissioners have not reached agreement on how it can or will consider requests from States. Currently, there are several requests from States pending consideration. Additionally, EAC expects to receive more requests before we have promulgated regulations, adopted policies and established procedures.

I believe that my colleagues and I should move forward to establish limited and restricted interim procedures for those matters that require EAC to exercise little or no discretion, such as State Voter Eligibility Requirements and Administrative Matters.

Under NVRA, EAC discretion and action on State Voter Eligibility Requirements, which are standards that describe voter qualifications such as voting age, residence and criminal conviction, are limited as States are granted authority under the U.S. Constitution to set voter eligibility requirements.

Administrative Matters also require EAC to exercise limited or no discretion. These matters include changes to a State's contact information or address for the submission of registration forms, and matters clearly prescribed in the Help America Vote Act (HAVA), such as voter registration deadlines and the collecting of voter identification numbers.

Therefore, at EAC's upcoming meeting, to be held December 11, 2007, in Austin, TX, I will offer a proposed Interim Procedures policy for consideration by my colleagues. The interim policy will be limited to allow the agency to consider requests from States on Voter Eligibility Requirements and Administrative Matters. I have attached a copy of my recommended policy to this statement. It is taken directly from a much broader policy recommendation that was developed by staff and presented to the commissioners at our

October 4, 2007 meeting. That proposed policy, though not adopted, was widely available to the public on October 4 and has been posted on EAC's website since then.

There are other very important matters covered by the NVRA that speak to the heart and intent of that law. These matters regarding State and local voter registration procedures need to be thoroughly vetted through our rulemaking process, during which EAC should hold several hearings to include consultation with the Chief State Election Officials, public service agency agencies and voter advocates. Once EAC has promulgated NVRA regulations and adopted polices under those regulations, requests from States on these procedures will be able to be treated the same.

I am hopeful my colleagues and I will come to agreement and will vote on December 11 to adopt my proposed policy on Interim Procedures. This will enable us to take another constructive step forward in our responsibilities under NVRA.

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PROPOSED INTERIM PROCEDURE FOR RESPONDING TO STATE REQUESTS TO CHANGE THE FEDERAL MAIL VOTER REGISTRATION APPLICATION FORM

Offered by Commissioner Gracia Hillman on December 7, 2007

Background. The National Voter Registration Act of 1993 (NVRA) requires the U.S. Election Assistance Commission (EAC) to develop a Federal Mail Voter Registration Application Form (42 U.S.C. §1973gg-7(a)(2)), which must be used and accepted by states “for the registration of voters in elections for Federal Office.” (42 U.S.C §1973gg-4(a)). The registration form developed by the EAC for use by the states must be consistent with the content requirements and limitations found in Section 9 of the NVRA (42 U.S.C. §1973gg-7(b)). The NVRA also grants the EAC authority to prescribe regulations that are needed to carry out its responsibilities with respect to the form. The EAC is presently considering the transfer of regulations promulgated by its predecessor agency, the Federal Election Commission, which it will then work to amend. Alternatively, the EAC will work to promulgate new regulations.

Purpose. As the EAC works to develop its regulatory frame work, it has received and expects to continue to receive requests from states to amend the Federal form’s state specific instructions. The purpose of this policy is to provide the EAC with written temporary procedures regarding the processing of state requests for changes to the Federal Registration Form with regard to State Voter Eligibility Requirements and Administrative Matters, as defined below. Written procedures will ensure that all requests are treated the same. Additionally, the procedures will help the EAC expedite its decision making process.

Roles and Responsibilities.

1. Director of Election Administration Support. The Director of Election Administration Support (formerly Programs and Services) shall be responsible for processing State requests for changes to the Federal Form. This includes reviewing, clarifying, classifying, and recommending action on each request. The Director shall implement any decisions made by the Executive Director or Commissioners.
2. Executive Director. The Executive Director will make decisions on requests which do not require a determination of policy or substantive exercise of discretion.
3. General Counsel. The Office of the General Counsel shall provide counsel upon request to the Director of Election Administration Support, the Executive Director, or the Commissioners.
4. Commissioners. The Commissioners shall respond to requests by a state for reconsideration or an opportunity to be heard after a decision has been made.

Procedure.

1. Request for Changes. All State requests submitted to the EAC for changes to the state specific instructions of the Federal Form shall be forwarded to the Director of Election Administration Support for processing.
2. Processing. The Division of Election Administration Support shall be responsible for processing state requests. The Division shall:
 - a. *Review.* Intake and review each request received by the agency. The Division shall acknowledge receipt of each request in writing and ensure that each request is timely processed.
 - b. *Clarification.* Request additional information from the requesting state. If upon review of the request, division staff identifies a need for additional information or clarification, staff shall coordinate with appropriate state officials. All requests for additional information shall be made in writing. Requests shall not be referred for action until all necessary information has been obtained.
 - c. *Classification.* Classify all requests into one of the following groups to facilitate the final decision-making process:
 - i. *State Voter Eligibility Requirements.* This group includes any request for change based upon a State's amendment to its constitutional or statutorily prescribed voter eligibility requirements. Voter eligibility requirements are standards which describe voter qualifications, not the procedures for demonstrating eligibility. Voter eligibility requirements traditionally include: voting age, citizenship, residence, mental capacity, criminal conviction, and oaths.
 - ii. *Administrative Matters.* This group includes any request for a change where EAC discretion is not a noteworthy factor in implementation. A State's contact information or the proper state address for the submission of registration forms are administrative factors. For purposes of this interim policy, administrative matters also include registration information presently collected on the Federal Form, which is clearly prescribed and defined by Federal statute. This includes state changes to (1) deadlines for accepting voter registration applications, consistent with the requirements of the NVRA (42 U.S.C. §1973gg-6), and (2) instructions regarding the collection of voter identification numbers, consistent with the Help America Vote Act (42 U.S.C. 15483(a)(5)(a)).
 - iii. *Procedural Matters.* This group includes any request for a change to States' statutes or administrative regulations regarding registration procedures not otherwise identified as administrative matters. EAC has

not issued regulations pertaining to these matters. State procedural changes will not be considered until EAC has issued such regulations; therefore this interim policy does not cover these issues.

- d. *Public Notification.* Publicly post the request for a change.
 - e. *Recommendation and Referral.* Make a recommendation, in writing, as to disposition and properly refer the request to the Executive Director for action. The Executive Director may request the Director of Election Administration Support to provide additional information or clarification as necessary.
3. Decision Authority Review. Upon receipt of the recommendation and referral, the decision authority shall review a State's request.
- a. *State Voter Eligibility Requirement.* EAC discretion and action on state voter eligibility requirements is limited. The NVRA requires that the Federal Form specify each State's "eligibility requirements (including citizenship)." This is consistent with Article I, section 2 and the Seventeenth Amendment to the U.S. Constitution which grant States the authority to set requirements regarding voter qualifications. The Executive Director shall approve and implement State changes to voter eligibility requirements when the State has amended the relevant statute or constitutional provision.
 - b. *Administrative Matter.* The exercise of EAC discretion regarding administrative matters is generally unnecessary. The Executive Director shall approve and implement relevant administrative changes consistent with applicable statutory requirements.
 - c. *Procedural Matter.* Under this policy, the EAC will not take action on these matters until the agency has issued appropriate regulations. No decision shall be issued. The Executive Director shall inform the appropriate state official of this policy in writing.
4. Issuance of Decision. After review, the Executive Director shall issue a determination on each request classified as a state voter eligibility requirement or administrative matter. Each decision shall be in writing and shall be posted for public notification at the time the decision is issued. The written decision shall clearly state the determination, any findings of the Executive Director, and identify any documents or information that served as the basis of the decision.
5. Requests for Reconsideration. States may request to be heard or otherwise request reconsideration after an EAC decision. When such requests are sent to the EAC, they shall be forwarded to the Chair of the Commission. The Chair will acknowledge receipt of the request in writing and forward copies to the commissioners, including the State's request. The acknowledgement shall also inform the State whether it shall be heard solely through the submission of written materials or whether a hearing will

be set. The written acknowledgement will specify the dates of any hearing (if applicable) and notice a reasonable deadline for the submission of written information. Any reconsideration of a request for a change to the Federal Form shall be made by a vote of the Commissioners. Any decision on reconsideration shall be final and no subsequent requests for reconsideration on that particular matter will be considered.

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