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## The Help America Vote Act of 2002 (HAVA): An Overview

The Help America Vote Act of 2002 (HAVA; P.L. 107-252; 52 U.S.C. §§20901-21145) is perhaps the closest thing in federal law to a general election administration statute. It is (1) more wide-ranging in the topics it aims to address than other elections measures Congress has approved in the recent past, with (2) a greater emphasis on federal assistance for states and localities.

Partly as a result of those two features of the act, HAVA and the election administration-dedicated agency it created, the U.S. Election Assistance Commission (EAC), have played a role in much of the recent congressional activity on election administration. For example, Congress responded to foreign efforts to interfere in the 2016 elections and the emergence of the COVID-19 pandemic in the 2020 election cycle by providing new funding for a HAVA grant program administered by the EAC. Members have also introduced legislation in recent Congresses to revisit HAVA or the EAC or to extend them to address new aspects of election administration.

### Background

HAVA was enacted in response to issues with the administration of the 2000 elections. The highest-profile issues in those elections were in Florida—where disputes about the vote count delayed the resolution of the presidential race for weeks—but post-election hearings and reports identified issues with various aspects of election administration across multiple states.

Congress's response to those findings, in HAVA, spanned a correspondingly wide range of elections topics, from voting systems to voter identification to the accessibility of the electoral process to individuals with disabilities. HAVA took three main approaches to the issues: (1) setting requirements for the administration of federal elections, (2) authorizing the first major federal grant programs for election administration, and (3) providing for creation of the EAC.

### Requirements

Some states and localities had adopted policies or technologies before the 2000 elections, such as provisional voting and statewide voter registration databases, that may have helped prevent some of the issues encountered by other jurisdictions in 2000. Other policy proposals, such as changes to military and overseas voting and registration processes, were offered in post-2000 hearings and reports.

HAVA was designed, in part, to standardize use of some of those policies and technologies in federal elections. Title VII of the act amended existing federal law to incorporate some of the proposed changes to military and overseas voting and registration, and Title III set requirements for federal elections for the following:

- **voting systems**, including requirements to offer voters the opportunity to check and correct their ballots, notify voters who attempt to make more selections for a given contest than permitted, produce a manually auditable permanent paper record, provide for accessibility for individuals with disabilities and members of language minority groups, and meet specified error rate standards;
- **provisional voting**, including requirements to permit certain voters to cast provisional ballots and count provisional ballots cast by voters who are found to be eligible under state law to vote;
- **voting information**, including a requirement to post certain information at the polls, such as a sample ballot, voting instructions, and polling place hours;
- **statewide voter registration databases**, including requirements to implement centralized, computerized statewide voter registration lists and follow specified procedures for maintaining them;
- **voter identification**, including a requirement that certain first-time voters who register by mail provide identification in order to cast a regular ballot; and
- **the federal mail voter registration form**, including requirements to add age and citizenship questions to the federal mail voter registration form established by the National Voter Registration Act of 1993 (NVRA; P.L. 103-31; 52 U.S.C. §§20501-20511) and offer voters who fail to answer the citizenship question an opportunity to complete the form.

Congress amended Title III in the 118<sup>th</sup> Congress to add a provision addressing congressional authority to send designees to observe states' federal election processes. The Confirmation of Congressional Observer Access (COCO) Act of 2024 (P.L. 118-106) requires states to provide congressional election observers access to federal election processes, with specified limitations on observers' activities and conditions for their removal and replacement.

HAVA leaves decisions about how to implement—and, to a certain extent, enforce—its Title III requirements to the states. The act directed the EAC to issue voluntary guidance for implementing the Title III requirements but leaves states discretion over exactly how to meet them. It assigns federal enforcement of the requirements to the U.S. Department of Justice but routes action by individual voters on violations through state-based administrative complaint procedures rather than an explicit private right of action.

For more on HAVA's Title III requirements and the changes the act made to military and overseas voting and registration, see CRS Report R46949, *The Help America Vote Act of 2002 (HAVA): Overview and Ongoing Role in Election Administration Policy*, by Karen L. Shanton. For

more on military and overseas voting in general, see CRS In Focus IF11642, *Absentee Voting for Uniformed Services and Overseas Citizens: Roles and Process, In Brief*, by R. Sam Garrett.

## Grant Programs

Complying with HAVA's Title III requirements involved significant financial investments for many states and localities. There were also other post-2000 changes to election processes—not addressed by the HAVA requirements—that states and localities wanted or needed to make. Congress accounted for both of those circumstances, in HAVA, with a pair of general grant programs that were designed to help states meet HAVA's Title III requirements and make certain general improvements to election administration: (1) a requirements payments program, and (2) a general improvements grant program.

HAVA also authorized grant programs to facilitate or incentivize action on specific issues or policy proposals, including grant programs related to

- **voting technology**, including for replacing lever and punch card voting systems used in the November 2000 election, researching improvements to election systems, and conducting pilot programs to test new voting technologies and implement them on a trial basis;
- **disability access**, including for improving the accessibility of polling places and supporting work by protection and advocacy systems (state-level systems charged with empowering and advocating for individuals with disabilities) to help ensure electoral access for individuals with disabilities; and
- **youth voter participation and poll worker recruitment**, including for conducting voter education activities for students and their parents and encouraging students to serve as poll workers and election officials to use their services.

To help ensure that grant funds are used as intended, HAVA provides for funding audits and examinations. It includes provisions for audits by the agencies that administer its grant programs, as well as both special audits of any HAVA funding upon a vote of the EAC commissioners and regular audits of funding provided under the requirements payments program.

For more information about HAVA's grant programs, including the funding Congress has authorized and appropriated for them to date, see CRS Report R46646, *Election Administration: Federal Grant Programs for States and Localities*, by Karen L. Shanton.

## U.S. Election Assistance Commission (EAC)

In 2000, federal agency support for the general administration of elections was provided by a small office at the Federal Election Commission (FEC) known as the Office of Election Administration (OEA). The scope of the issues with the conduct of the 2000 elections prompted calls for an expanded federal agency role in election administration.

Some proposed assigning any new responsibilities to the existing OEA, while others wanted to create a new agency that would be fully dedicated to election administration. There was also debate among Members about whether a new elections agency should have the authority to issue regulations.

Congress struck a balance in HAVA by providing for a new agency, the EAC, but positioning it as a support agency. HAVA explicitly limits the EAC's rulemaking authority to regulations about two responsibilities the agency inherited from the FEC: (1) maintaining the federal mail voter registration form established by the NVRA, and (2) reporting to Congress about the impact of the NVRA on the administration of federal elections. The EAC's other duties are assistance-oriented activities, such as administering grant programs; issuing voluntary guidance for implementing HAVA's Title III requirements; conducting elections research and sharing election administration best practices; developing federal Voluntary Voting System Guidelines (VMSG); and overseeing a program to test and certify voting systems for conformance to the VMSG.

The structure of the EAC also reflects its positioning as a support agency. The EAC's four-member commission, Office of Inspector General, and professional staff were paired by HAVA with three advisory bodies that are composed of state and local officials and other elections stakeholders and designed to play a central role in the direction and functioning of the agency:

- **Board of Advisors.** Composed of representatives of state and local officials, federal agencies, science and technology experts, and voters. Responsible for reviewing voluntary guidance and draft VMSG and consulting on certain agency activities and planning.
- **Standards Board.** Composed of state and local officials. Responsible for reviewing voluntary guidance and draft VMSG and consulting on certain agency activities and planning.
- **Technical Guidelines Development Committee.** Composed of the Director of the National Institute of Standards and Technology and representatives of the Board of Advisors and Standards Board, state election officials, science and technology experts, and individuals with disabilities. Responsible for helping develop draft VMSG.

In 2021, the EAC used its authority to establish a fourth advisory body, the Local Leadership Council, that consists of local election officials and is charged with advising the agency and helping it carry out its responsibilities.

For more on the VMSG and the duties and structure of the EAC, respectively, see CRS Report R47592, *Federal Standards and Guidelines for Voting Systems: Overview and Potential Considerations for Congress*, by Karen L. Shanton; and CRS Report R45770, *The U.S. Election Assistance Commission (EAC): Overview and Selected Issues for Congress*, by Karen L. Shanton.

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