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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 more wide-ranging in the topics it aims to address than other elections measures Congress has approved in the recent past and has a greater emphasis on federal assistance for states and localities.

Partly as a result of those features, HAVA and the election administration-dedicated agency it created, the U.S. Election Assistance Commission (EAC), have figured in much of the recent congressional activity on election administration. Congress responded to foreign interference in the 2016 elections and the emergence of the Coronavirus Disease 2019 (COVID-19) pandemic in the 2020 election cycle, for example, by providing new funding for one of HAVA's grant programs. Legislation has also been introduced in recent Congresses to revisit HAVA or the EAC or to extend them to encompass new aspects of election administration.

This In Focus provides a brief overview of HAVA, introducing the major provisions of the act. For more on HAVA and the role it has played in federal elections policymaking since its enactment in 2002, see CRS Report R46949, *The Help America Vote Act of 2002 (HAVA): Overview and Ongoing Role in Election Administration Policy*, by Karen L. Shanton.

### Background

HAVA was enacted in response to issues with the administration of the 2000 elections. The highest-profile challenges in 2000 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 for 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 elections, and (3) providing for creation of the election administration-dedicated EAC.

### Requirements

HAVA was designed, in part, to standardize certain aspects of the administration of federal elections. Some states and localities had adopted policies before the 2000 elections—such as provisional voting, implementation of statewide voter registration databases, and use of voting systems that

notified voters about overvoting (making multiple selections for a single office)—that may have helped them avoid some of the issues faced by other jurisdictions in 2000. Other policy proposals, such as changes to military and overseas voting, were offered in post-2000 hearings and reports.

HAVA required adoption of some of those state and local policies and post-2000 policy proposals. Title VII of the act amended existing law to include some proposed revisions to military and overseas voting, and Title III set national requirements for federal elections for

- **voting systems**, including requirements to offer voters the opportunity to check and correct their ballots, notify voters about overvoting, produce a manually auditable permanent paper record, provide for certain types of 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 a provisional ballot 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 types of 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.

For details of those requirements and HAVA's amendments to military and overseas voting processes, 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.

HAVA left decisions about how to implement—and, to a certain extent, enforce—its Title III requirements to the states. The act directs 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 (DOJ) but routes action by individual voters on violations through state-based administrative complaint procedures rather than an explicit private right of action.

## Grant Programs

Complying with HAVA's Title III requirements involved significant financial investments for many states and localities. There were also other post-2000 adjustments to election processes—not addressed by the HAVA requirements—that states and localities wanted or needed to make. Congress accounted for both cases, in HAVA, with a pair of general grant programs that were designed to help states meet HAVA's Title III requirements and make general improvements to the administration of federal elections: (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 repayments. It includes provisions for audits by the agencies charged with administering its grant programs, as well as regular audits of requirements payments and special audits of any HAVA funding on a vote of the commissioners of the EAC.

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

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

Federal agency support for the general administration of elections was provided in 2000 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 administration of the 2000 elections prompted calls for an expanded federal agency role in elections.

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 rulemaking authority.

Congress struck a balance in HAVA by providing for a new agency, the EAC, but positioning it as a support agency. The EAC's rulemaking authority is explicitly limited by the act to regulations about two responsibilities it inherited from the FEC: (1) maintaining the federal mail voter registration form established by the NVRA, and (2) reporting to Congress on 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 research on elections topics; sharing election administration best practices; and developing federal Voluntary Voting System Guidelines (VVSG) and providing for testing and certification of voting systems to the guidelines.

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 are paired with three advisory bodies that are designed to play a central role in the direction and functioning of the agency and composed of state and local officials and other elections stakeholders:

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

For more on the VVSG and the duties and structure of the EAC, respectively, see CRS Insight IN11592, *Voluntary Voting System Guidelines (VVSG): An Overview*, by Karen L. Shanton; and CRS Report R45770, *The U.S. Election Assistance Commission: Overview and Selected Issues for Congress*, by Karen L. Shanton.

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