



NASS Resolution on Help America Vote Act of 2002 (HAVA) Grant and Payment Distinction

Approved July 19, 2009

WHEREAS, the Help America Vote Act of 2002 (“HAVA”) established the Election Assistance Commission (EAC) to assist in the administration of federal elections and charged the EAC with distributing payments to states under its authorized funding programs (Pub. L. No. 107-252, 116 Stat. 1666 (Oct. 29, 2002); 42 U.S.C. sections 15301-15545. See HAVA Sections 101, 251 and 261); and

WHEREAS, the Help America Vote Act of 2002 (“HAVA”) also charged the EAC with distributing grants to other entities under its authorized funding programs (See HAVA Sections 271 and 295); and

WHEREAS, HAVA authorizes the EAC in making a grant or payment to audit or examine the recipient of such a grant or payment made under HAVA, and in so doing makes an express categorical distinction between “grant” and “payment” (See HAVA Section 902); and

WHEREAS, in conducting audits of grants and payments, the EAC has no rule-making authority, and therefore, in performing its functions must act in accordance with the express statutory provisions of HAVA (See HAVA Section 209); and

WHEREAS, in enacting HAVA, Congress expressly used the terms “payments” and “requirements payments” in Sections 101, 251, and 261 of the Act; and

WHEREAS, Congress also used the terms “grants” and authorized the EAC to award “grants” in Sections 271 and 295 of the Act; and

WHEREAS, Congress does not interchange the use of the term “payments” and/or “requirements payments” in Section 101, 251, and 261, with the use of the term “grant” in Sections 271 and 295; and

NOW THEREFORE BE IT RESOLVED that the National Association of Secretaries of State finds that:

1. Under HAVA, a “payment” is not a “grant,” and a “grant” is not a “payment;” and
2. In effectuating its duties under HAVA, the EAC should create an accurate administrative record by using the term “payment” when the federal law means “payment”, and it should use the term “grant” when the federal law means “grant.”

Adopted the 19th day of July 2009
in Minneapolis, MN

EXPIRES: Summer 2014