

**Minutes of the Public Meeting
United States Election Assistance Commission
Military and Overseas Citizens: Counting Their Votes – Part 2**

1225 New York Avenue, NW
Suite 150
Washington, DC 20005

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission (“EAC”) held on December 3, 2009. The meeting convened at 10:02 a.m., EDT. The meeting was adjourned at 3:12 p.m., EDT.

PUBLIC MEETING

Call to Order:

Chair Gineen Bresso Beach called the meeting to order at 10:02 a.m.

Pledge of Allegiance:

Chair Beach led all present in the recitation of the Pledge of Allegiance.

Roll Call:

EAC Commissioners:

Associate General Counsel Tamar Nedzar called roll of the members of the Commission and found present: Chair Gineen Bresso Beach, Vice-Chair Gracia Hillman, and Commissioner Donetta Davidson. Three members were present for a quorum.

Senior Staff:

Executive Director Thomas Wilkey; Associate General Counsel Tamar Nedzar

Panelists:

Karen Lynn-Dyson, EAC Director for Research, Policy and Programs; Dr. Shelly Anderson, EAC Deputy Director of Research; Bob Carey, Director, FVAP; Andrew Guggenheim, EAC General Counsel’s Office; Andrew Regenscheid, Mathematician, National Institute of Standards and Technology; Jim Silrum, Deputy Secretary of State, North Dakota; Brian Hancock, EAC Testing and Certification Division

Adoption of the Agenda

Commissioner Donetta Davidson moved to remove the election of the 2010 officers and the update on the Maintenance of Effort from the agenda. The amendment was seconded by Vice-Chair Hillman. The motion carried unanimously to adopt the agenda as amended.

Welcoming remarks

Chair Beach announced that the meeting was being Webcast live for the first time, on EAC's Website. Chair Beach also acknowledged and congratulated Dr. Patrick Gallagher's confirmation as Director of the National Institute of Standards and Technology (NIST).

Vice-Chair Hillman extended the EAC's recognition, congratulations and thanks to the many poll workers for their valuable service during the 2009 state and local elections, in addition to thanking EAC staff for the statistical information that they provide which sets forth the progress that continues to be made in recruiting, training and placing poll workers throughout the country.

Commissioner Davidson extended her congratulations to EAC's financial team with respect to the Commission receiving a clean audit opinion.

Old Business:

Approval of the minutes from the previous meetings

Vice-Chair Hillman moved acceptance of the minutes from the November 5, 2009, public meeting of the EAC, which was seconded by Commissioner Davidson. The motion carried unanimously.

Report from the Executive Director

Mr. Wilkey extended a welcome to all in attendance, providing an update on activities pertaining to Voting System Testing and Certification, Requirements Payments, Grants, Research, Policy and Programs, Tally Votes and Other News that occurred since the November 5, 2009, public meeting.

With regard to Voting System Testing and Certification, Mr. Wilkey reported the following: EAC continues to work with the National Institute of Standards and Technology (NIST) on the 2005 VVSG, after which EAC will publicly publish the final version of the VVSG 1.1. The Technical Guidelines Development Committee (TGDC) will be meeting December 9-

10, 2009, at NIST, which will be Webcast; in January 2010 the Standards Board and Board of Advisors will be reviewing Phase II of the Election Operations Assessment report and providing comments; work continues with NIST to develop guidelines for the electronic submission of ballots; a version 2.0 test plan for the ES&S Unity 3.2.1.0 and a Notice of Clarification 09-004 on the development/submission of test reports has been posted to the online clearinghouse.

With respect to Requirements Payments, Mr. Wilkey reported the following: A total of \$62.4 million of the \$115 million in 2008 funds and \$28.5 million of the \$100 million in 2009 funds have been disbursed to date. Since the November 5th public meeting, \$3.2 million has been distributed to North Carolina, \$4.8 million has been distributed to Illinois and \$500,000 was distributed to Rhode Island. A Webinar on how to complete the new Federal Financial Report SR-425 was recently held, which was both well attended and well received.

With regard to Grants, Mr. Wilkey reported he anticipates that the grant notices for both the 2010 HAVA College Poll Worker and the Mock Election Programs will be issued later during the month and it is anticipated EAC will receive the funds once its budget clears appropriations. The Accessible Voting Technology and Pre-Election Logic and Accuracy Testing and Post-Election Audit Initiatives will be issued after the first part of the year. Information regarding the grants will be made available through the following: A press release to approximately 1,400 stakeholders on EAC's email distribution list, posted to national service listserves, holding technical assistance calls, posted to EAC's Website, to grants.gov, to post-secondary education and student associations, to minority student groups, to education and government reporters across the country.

Under Research, Policy and Programs Mr. Wilkey reported it is anticipated that the translation of the National Mail Voter Registration form into five Asian languages will be completed in time for the 2010 federal election. The 60-day comment period for both the evaluation of EAC educational products and the 2010 Election Administration and Voting Survey closed November 9, 2009, and OMB is accepting comments on EAC's educational products evaluation for which additional information is available on the Website.

Two tally votes, pertaining to the following, were held since the November 5th meeting: A staff recommendation to adopt the 2008 UOCAVA and 2008 Election Administration and Survey Reports; and a staff recommendation to adopt five new Election Management Guideline (EMG) Chapters on: Building Community Partnerships, Canvassing and

Certifying an Election, Communicating with the Public, Conducting a Recount and Provisional Ballots.

Under Other News, Mr. Wilkey noted that the following documents have been posted to the Website: EAC's Annual Financial Audit Report for FY 2009, for which it received a clean audit opinion, and a report on EAC's compliance with the Federal Information Security Management Act of 2002. Mr. Wilkey also expressed his deep gratitude and congratulations to EAC's financial team for its hard work in achieving the clean audit opinion.

Questions and Answers:

In response to Vice-Chair Hillman's inquiry concerning the status of the remaining states certifying their compliance with HAVA Title III requirements, Mr. Wilkey explained that while he has not heard any concerns directly from the states, he would follow-up on this topic with both the National Association of Secretaries of States and the State Election Directors Association at their upcoming meetings in February.

In response to Chair Beach's inquiry into when it is anticipated that the Notice of Funding Availability will be released in connection with the Accessible Voting Technology and Pre-Election Logic and Accuracy Testing and Post-Election Audit Initiatives, Mr. Wilkey confirmed this would take place following the first of the year, noting that the timeline was set in such a way in order to allow as many applicants as possible to respond and to gain as much feedback as possible. In response to Chair Beach's inquiry into the status of the NVRA regulations, Mr. Wilkey was pleased to announce that Mr. Bill Boehm was recently hired as the Deputy Policy Director within the Research and Policy Division and he would be briefing the Commissioners within the next several weeks on this matter. Ms. Lynn-Dyson was pleased to announce that Marci Reedy was recently hired as a Program Specialist. Mr. Wilkey pointed out that positions for Chief Information Officer and a Deputy within the Inspector General's Office have been posted on USAJOBS and EAC's Website. There are 50 EAC employees at the present time.

New Business:

Update on 2010 Election Day Survey (EAC Research Department)

Chair Beach entered into the record a statement from Representative Rush Holt about the 2010 survey instrument to include a list of questions with respect to the performance of voting systems and the accessibility of polling places.

Karen Lynn-Dyson, EAC Director of Research, Policy and Programs, provided a brief overview, for the benefit of the audience, regarding the public comment process that is involved with respect to the survey instrument as required by the Paperwork Reduction Act. Ms. Lynn-Dyson also provided a brief overview of how the 18 comments which were submitted during the first 60-day public comment period have been categorized.

Dr. Shelly Anderson, EAC Deputy Director of Research, addressed the Commission to briefly describe some of the ways that the 2010 survey is being streamlined in order to help make it more accessible, more useful and better understood by states. Dr. Anderson noted that the comments are still in the process of being considered.

Questions and Answers:

In response to Vice-Chair Hillman's inquiry into how staff will respond to the conflicting messages that were submitted during the public comment period with regard to changing the survey instrument, Ms. Lynn-Dyson commented that this is a challenge for which there is no simple answer. Dr. Anderson explained that the instructional manual will be utilized to help states with regard to providing clarification to certain questions on the survey.

In response to Commissioner Davidson's question regarding whether it would be feasible to include some additional questions to the 2010 survey in light of the MOVE Act, Dr. Anderson explained that while this is something both staff and the contractor could accomplish within the next several weeks, her concern lies in the data collection end by states and jurisdictions.

In response to Chair Beach's inquiry, Dr. Anderson provided the timeline with which it is anticipated that the 2010 survey would be sent to election officials, both in the event that there were no changes to the survey and in the event that additional questions would be introduced. Dr. Anderson explained that clarification and/or removal of items from the survey could be accomplished within several weeks and would not delay the process. Ms. Lynn-Dyson explained some of the approaches that could be explored in order to satisfy the requirements of the MOVE Act while at the same time avoiding major changes to the 2010 survey instrument which included the following: Developing a separate survey, a series of focus groups, a pilot program, or utilizing the Statutory Overview.

In response to Mr. Wilkey's inquiry into whether staff was surprised that only 18 comments were submitted to the 2010 survey, Ms. Lynn-Dyson commented she attributes the relatively few comments due to the fact that

the survey has improved greatly since 2004, in addition to the tremendous amount of technical support that states have received.

The Commission recessed for lunch at 10:54 a.m. and reconvened at 1:04 p.m.

Military and Overseas Citizens: Counting Their Votes – Part 2

Partnering with the Federal Voting Assistance Program (FVAP)

Bob Carey, Director, FVAP, addressed the Commission to discuss an overview of FVAP's mission pertaining to assistance and advocacy.

Mr. Carey next provided an overview of the following four goals of FVAP:

1. UOCAVA voting success rates equal to or exceed general population rates.
2. UOCAVA voter participation rate equal to or exceed general population (age and gender adjusted).
3. UOCAVA voter registration rate equal to or exceeds general population (age and gender adjusted).
4. Defining the actual overseas citizen population.

The Military and Overseas Voters Empowerment (MOVE) Act

Chair Beach publicly recognized and thanked the various sponsors and co-sponsors for their leadership and support of the MOVE Act.

Andrew Guggenheim, EAC General Counsel Office, addressed the Commission for the purpose of providing an overview of the impact/responsibilities of the EAC as set forth in the Military and Overseas Voter Empowerment (MOVE) Act which was passed as part of the National Defense Authorization Act for FY 2010 and signed into law by President Obama on October 28, 2009.

Mr. Carey addressed the Commission to discuss an overview regarding the federal requirements of the MOVE Act, along with an overview of the following FVAP initiatives to meet the requirements of the MOVE Act:

1. Direct-to-the-voter assistance focus
2. Voting wizards

3. Better data.
4. Election official assistance.
5. Better addresses.
6. Better mail delivery.

Questions and Answers:

In response to Vice-Chair Hillman's question whether there are problems being experienced with UOCAVA ballots being undeliverable due to lack of postage on return, Mr. Carey commented that while he has not heard anything specific with regard to this, to the extent it might exist FVAP would be willing to help out in that regard. He also noted that FVAP is working with both the U.S. Postal Service and election officials to identify and correct, early on, anything that might interfere with the return of UOCAVA ballots. In response to Vice-Chair Hillman's inquiry into what Mr. Carey anticipates some of the greatest challenges will be toward implementation by 2010, he stated that it is a significant effort that will require a concerted effort by all agencies involved in order to coordinate the extensive project management and having a final appropriation will be a great benefit in doing so.

In response to Commissioner Davidson's inquiry regarding whether states may experience difficulty, due to either their Constitutions or laws, in seeking a waiver of the 45-day time period that absentee ballots must be sent to UOCAVA voters who have requested one, Mr. Carey commented that while he does not know of any states having a Constitutional problem he has been made aware, through press releases, that because some states have late primaries they will not be able to meet the 45 days and will therefore be requesting a waiver. In response to Commissioner Hillman's inquiry into whether FVAP is underneath the Paperwork Reduction Act, Mr. Carey commented this issue was raised by the EAC General Counsel's Office and an examination will be conducted to determine to what extent, if any, the Paperwork Reduction Act will apply under the MOVE requirements.

In response to Chair Beach's inquiry into what FVAP has planned for 2010 and beyond with regard to pilot programs for UOCAVA voters as provided for in MOVE, Mr. Carey explained that a decision has not been made at this point as to whether a pilot project will be executed in 2010, pointing out that much will depend on the amount of funding that will be available to support pilot programs. In response to Chair Beach's final question into what both EAC and FVAP can do together to improve the process for UOCAVA voters, Mr. Carey directed attention back to the list of initiatives

he discussed earlier, which he pointed out are being looked at holistically, to improve the process.

In response to Vice-Chair Hillman's follow-up question regarding whether Mr. Carey anticipates there will be a public comment period with respect to the 45-day waiver application that states may seek, Mr. Carey commented that while he could not provide a definitive answer and he would follow-up on this topic, he does not envision this process taking place without some type of comment period.

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) Working Group

Andrew Regenscheid, Mathematician, National Institute for Standards and Technology, (NIST), addressed the Commission to provide an update on NIST's role in improving the voting process for UOCAVA voters which included the release of NISTIR 7551: *A Threat Analysis on UOCAVA Voting Systems* that was completed in December 2007.

Mr. Regenscheid also summarized the following three documents that NIST is currently in the process of developing on the use of technology in the UOCAVA voting process:

1. *IT System Security Best Practices for UOCAVA Supporting Systems.*
2. *Best Practices for Securing the Electronic Transmission of Election Materials.*
3. *Security Considerations for Remote Electronic UOCAVA Voting Systems.*

Jim Silrum, Deputy Secretary of State, North Dakota, addressed the Commission on behalf of EAC's Standards Board to discuss the following:

1. The implications/impact that Section 588 of the MOVE Act will have on states.
2. The ability of states and territories to participate in FVAP's UOCAVA remote access electronic voting pilot project (kiosk voting stations) for the 2010 election.
3. Suggestions with regard to any changes that may be made to the 2010 Election Day survey.

Bob Carey, Director, FVAP, addressed the Commission to provide testimony via PowerPoint presentation regarding the following:

1. Demonstration projects versus pilot projects.
2. 2007 GAO recommendations with regard to an electronic voting program.
3. A May 2007 IVAS Report; Electronic Voting Plan
4. Key planning issues.
5. Road ahead ideas.

Brian Hancock, EAC Testing & Certification Division, addressed the Commission to provide an update of the UOCAVA pilot testing program which included the following:

1. An overview of the legal mandates that the EAC is under.
2. The concept of the pilot program
3. Development of two separate and distinct work products: Testable requirements for pilot UOCAVA voting systems; and a draft Pilot Certification Program Manual.
4. Two major changes to EAC's Testing and Certification Program Manual: Significant reliance on a manufacturer declaration of conformance; and the addition of mandatory reporting.
5. Future UOCAVA work.

Questions and Answers:

In response to Vice-Chair Hillman's inquiry into whether NIST, in the development of products and conducting research, utilizes a prototype system to test its theories, Mr. Regenscheid explained that while NIST does not have a prototype remote voting system, he pointed out that FVAP has been very helpful in providing a great deal of documentation that they have had on their voting over the Internet system, SERVE and IVAS. Mr. Regenscheid also commented that input from the EAC, state and local election officials, election security experts and manufacturers has also proved to be helpful. In addition, he pointed out that NIST is currently developing best practices or recommendations in this area, which may not always be testable.

In response to Vice-Chair Hillman's question regarding why North Dakota would not be able to participate in the remote access voting pilot project,

Mr. Silrum explained this is due to the fact that a kiosk is akin to a polling place under North Dakota law that would require the use of poll workers which would not be feasible. Mr. Carey referred to the Operation BRAVO pilot which was conducted in Okaloosa County, Florida, pointing out the similarities of this pilot to that of a polling place. In response to Vice-Chair Hillman's inquiry into what can be done to factor in any pushback from the use of risky technology in the transmittal of ballots, Mr. Carey discussed the need to complete a risk assessment in order to define a baseline with regard to what level of risk is currently accepted with current voting systems. Mr. Hancock pointed out the risk of disenfranchisement to voters may be greater than the risk of the systems themselves.

In response to Commissioner Davidson's question regarding why there has been a change in the timeline for the submission of NIST's three documents, *IT System Security Best Practices for UOCAVA Supporting Systems*, *Best Practices for Securing the Electronic Transmission of Election Materials* and *Security Considerations for Remote Electronic UOCAVA Voting Systems*, Mr. Regenscheid explained that while NIST is committed to developing the reports in a timely manner it does not want to sacrifice quality for expediency. In response to Commissioner Davidson's inquiry into whether EAC should be releasing the *IT System Security Best Practices for UOCAVA Supporting Systems* and *Best Practices for Securing the Electronic Transmission of Election Materials* for public comment as opposed to NIST, Mr. Regenscheid stated this is something that EAC may want to raise with the appropriate management individuals at NIST. Mr. Regenscheid pointed out that while the third document, *Security Consideration for Remote Electronic UOCAVA Voting Systems*, is more research oriented, a decision has not been made as to whether this should also have a public review period, which NIST would be interested in hearing EAC's thoughts on.

In response to Commissioner Davidson's question with regard to what it would cost North Dakota to change an element to its statewide voter registration database, Mr. Silrum explained that North Dakota utilizes a voter tracking system as opposed to a statewide voter registration system. He pointed out that most changes to the system would cost in the area of tens of thousands of dollars.

In response to Commissioner Davidson's question regarding whether it would be possible to use overseas civilian voters to serve as poll workers, Mr. Carey commented that each state would need to make that determination.

In response to Chair Beach's inquiry into how NIST balances security concerns with the disenfranchisement that exists when conducting its research and compiling reports, Mr. Regenscheid explained that NIST

does not set the acceptable level of risk when working with government agencies. NIST is focused on the security issues for which it tries to provide the best recommendations, guidelines and standards on how to deal with security issues which is typically left to the agencies to balance their security needs with what they need to accomplish in their agency.

In response to Chair Beach's inquiry into whether any other type of voter demographic may benefit from a kiosk voting system, besides UOCAVA voters, Mr. Silrum commented that at as far as a kiosk-based system, he is not aware of any. However, he pointed out that if full remote access voting becomes a reality, another possible demographic would be individuals with disabilities.

In response to Chair Beach's inquiry into what type of preparation FVAP is taking to educate voters whose state may not participate in the 2010 remote access electronic voting pilot project, Mr. Carey explained that it will be important to first define what the level of participation will be. He also described what FVAP has done to expand its outreach capabilities via Facebook, Twitter, RSS and online email service.

In response to Chair Beach's inquiry into when it is anticipated the testing for the pilot systems will begin and whether they will be available for states' use in the 2010 election, Mr. Hancock explained that states who are interested in participating will most likely start the testing process in the April/May timeframe with the hope of getting certifications done by July, so that states can start implementing in the August/September timeframe for the November election. In response to how the pilot project will build upon the Operation BRAVO concept, Mr. Hancock explained it will be very similar, but that it would encompass a much larger expansion involving voters from numerous counties and potentially numerous states. Mr. Hancock confirmed that the efficiencies which are being built into the pilot certification process will result in cost savings for states. Mr. Hancock noted that the next meeting of the UOCAVA pilot project working group will be held December 16, 2009.

Meeting was adjourned at 3:12 p.m.