

United States Election Assistance Commission Minutes of the Public Meeting

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 Monday, January 25, 2010. The meeting convened at 1:00 p.m., EDT. The meeting was adjourned at 2:44 p.m., EDT.

PUBLIC MEETING

Call to Order:

Chair Donetta Davidson called the meeting to order at 1:00 p.m.

Pledge of Allegiance:

Chair Davidson 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 Donetta Davidson, Commissioner Gracia Hillman and Commissioner Gineen Bresso Beach. Three members were present for a quorum.

Senior Staff:

Executive Director Thomas Wilkey, Associate General Counsel Tamar Nedzar, Dr. Mark Abbott, Director of Grants

Adoption of the Agenda

Commissioner Beach moved to adopt the agenda as written, which was seconded by Commissioner Hillman. The motion carried unanimously.

Welcoming remarks

Chair Davidson welcomed all in attendance, thanking Jim Dickson for conducting the installation of new officers' ceremony, reviewing her goals

and plans for 2010, and to offer her prayers and support for the victims of the Haiti earthquake, in addition to extending her appreciation to everyone who is volunteering both their time and expertise during the disaster relief efforts.

Commissioner Beach extended her appreciation to everyone for their support while serving as Chair during 2009 and to highlight some of the goals that were accomplished during her tenure.

Chair Davidson presented Commissioner Beach with a gavel commemorating her tenure as Chair of EAC for 2009.

Old Business:

Approval of the minutes from the previous meeting

Commissioner Beach moved acceptance of the minutes from the December 3, 2009 public meeting as written, which was seconded by Commissioner Hillman. The motion carried unanimously.

Report from the Executive Director

Mr. Wilkey extended a welcome to all in attendance, providing an update on activities that have taken place since the December 3, 2009 public meeting pertaining to Voting System Testing and Certification, Requirements Payments, Grants, Research, Policy and Programs, Tally Votes, and Other News.

With regard to Voting System Testing and Certification, Mr. Wilkey reported the following: The Unisyn OpenElect 1.0 optical-scan voting system was recently certified; The TGDC met during December to discuss upcoming work on the next iteration of the VVSG version 2.0; Four new scientific and technical experts were appointed jointly with NIST (Steven Bellovin, Diane Cordry Golden, Douglas Jones, Edwin Smith); EAC continues to work with NIST to resolve comments that were submitted about version 1.1 and 2.0 of the VVSG; Work continues on both Phase II of the Election Operations Assessment and the pilot certification requirements for UOCAVA Pilot Voting Systems; A Notice of Clarification (09-005) pertaining to the Development and Submission of Test Plans for Modifications to EAC Certified Systems was recently issued.

With respect to Requirements Payments, Mr. Wilkey reported the following: 2010 requirements payments are available, for which \$70 million has been appropriated. \$74.7 million of the \$115 million in 2008 funds and \$43.1 million of the \$100 million in 2009 funds have been disbursed to

date. Since the December 3, 2009 meeting the following payments were disbursed: \$1.18 million to Oklahoma, \$2.37 and \$2.07 million to Indiana, \$7.8 and \$6.8 million to Texas and \$2.08 and \$1.8 million to Maryland.

With regard to Grants, Mr. Wilkey reported it is anticipated that final grant notices for the HAVA College Poll Worker and Mock Election Programs will be issued later during the month, and peer reviewers are being sought for the purpose of reviewing grant applications.

Pertaining to Research, Policy and Programs, Mr. Wilkey announced that translation of the National Mail Voter Registration Form into the five Asian languages listed in the Voting Rights Act is moving forward and will be completed in time for this year's federal election. A list of FAQs about the Election Day Survey has been posted to EAC's website in addition to five new Election Management Guidelines covering the topics of: Building Community Partnerships, Canvassing and Certifying an Election, Communicating with the Public, Conducting a Recount and Provisional Ballots.

Four tally votes were certified since the December 3, 2009 meeting pertaining to: The approval of New Scientific and Technical Expert Members of the TGDC, the adoption of Executive Order 13525 on Across the Board Pay Increase to Government Employees, the selection of EAC's Chair for 2010, and a recommendation to adopt the Fiscal Year 2009 EAC Annual Report.

With respect to Other News, Mr. Wilkey reported the following: Commissioner Beach's Notes From the Road, in connection with her visit to an accredited voting system test lab in Alabama has been posted to the website; Applications for a Certification Program Specialist position with EAC's voting systems testing and certification program are currently being accepted; and the Office of Inspector General posted a HAVA funds audit report for California.

Questions and Answers:

In response to Commissioner Beach's inquiry, Mr. Wilkey confirmed that states will be able to retrieve requirements payments for 2008, 2009, and 2010 simultaneously. In response to Commissioner Beach's second inquiry into when it is anticipated that the Notice of Funding Availability will be released in connection with the Accessible Voting Technology Initiative, Mr. Wilkey confirmed with Dr. Mark Abbott that this would be occurring within the next two to three weeks. He noted that the EAC has been very careful in putting this initiative together, not only due to the large number of grants that will be disbursed, but to ensure that it will be a sustainable initiative in years to come.

In response to Chair Davidson's inquiry on whether the opening for the Certification Program Specialist within EAC's voting system testing and certification program is an additional employee or a vacancy, Mr. Wilkey answered that it is a vacancy; the position opening was due to the departure of Laiza Otero, who had taken a position with Arlington County.

New Business:

Update on Memorandum of Understanding with Organization of American States (OAS)

Associate General Counsel Tamar Nedzar discussed the Memorandum of Understanding (MOU) pertaining to cooperation of electoral matters that was signed between the Organization of American States (OAS) and the EAC on January 19, 2010. Ms. Nedzar provided a brief overview regarding the mission and services of OAS, in addition to briefly reviewing the objective of the agreement.

Update on Maintenance of Effort

Dr. Mark Abbott, Director of Grants, addressed the Commission to present a draft policy on Maintenance of Expenditures (MOE). Dr. Abbott provided an overview with respect to the purpose of the draft policy and the steps/process that led up to the policy, which included the review of two previous policies on Maintenance of Effort (MOE), Advisory 07-003 and 07-003A, in addition to input that was sought from various channels, including convening a working group. The Commission was provided with a working definition of what MOE encompasses along with an explanation of what is and what is not included in MOE.

Questions and Answers:

In response to Commissioner Hillman's inquiry into whether there is a difference in referring to the policy as maintenance of expenditure as opposed to maintenance of effort, Dr. Abbott explained that he shifted to maintenance of expenditure because this is the language that is used in the statute and it allows for a little more flexibility on its face than maintenance of effort. With respect to Commissioner Hillman's question/suggestion, Dr. Abbott explained that in order to eliminate any confusion, the public will be made aware via an explanatory note that this draft policy is the same maintenance of effort policy that the Commission has been working on for the past two years. Dr. Abbott also noted that a summary statement of the policy could be incorporated at the beginning of the document in order to differentiate between Q & A format for informational purposes and Q & A format for policy. In response to

Commissioner Hillman's inquiry into how the proposed policy addresses the way in which States will work out MOE reporting requirements with local entities that receive HAVA funds, Dr. Abbott explained that States will first need to establish their eligible lower-tier entities, after which they will need to determine their base year and subsequent years for MOE reporting. Dr. Abbott provided details regarding a working group that was comprised of several states which was convened both prior to his tenure with the EAC and again in June/July of 2009 to receive feedback on issues surrounding MOE. He explained that he also received feedback from representatives of both NASS and NASED.

In response to Commissioner Beach's question with regard to whether the voluntary MOE plan is a portion of the State Plan and must therefore follow the process for the development and filing of the State Plan under Section 255 of HAVA, Dr. Abbott explained that filing an MOE plan is strictly voluntary, which States may submit separate and apart from their State Plan. In reply to Commissioner Beach's inquiry regarding clarification of question number 15 of the policy pertaining to whether the reporting requirements associated with MOE is something new, Dr. Abbott pointed out that MOE reporting will be considered to be a part of the State Plan. He also explained that States submitting their MOE plans in advance, for the Executive Director to review and provide any support/technical assistance, could help States avoid risks associated with an audit. In response to Commissioner Beach's final inquiry regarding clarification of question number 21 of the policy pertaining to how States should address capital expenditures in the base year, Dr. Abbott pointed out that consideration is being given to a depreciation schedule similar to what the IRS uses.

In response to Chair Davidson's question on how the current draft policy differs from EAC's two previous draft MOE policies, Dr. Abbott stated that the first major difference was clarifying what entities are required to have MOE. The second major change is that 70 percent of the document deals with implementation/technical assistance. To Chair Davidson's final inquiry into how this policy, if adopted, will affect States' obligations for meeting MOE in previous years, Dr. Abbott explained that while the proposed policy takes into consideration situations in which records have been destroyed, it also helps States establish a baseline for capturing and reporting MOE from that year forward in order to comply with HAVA.

In response to Commissioner Hillman's follow-up question regarding clarification with respect to the use of "State," as in questions 12 and 13 of the policy, Dr. Abbott clarified that this refers to State legislature, the Governor's office, or any other State entity that might have appropriated HAVA funds to lower-tier entities.

Consideration of Advisory Opinion Request 09-015

Dr. Abbott addressed the Commissioners to provide a brief overview with respect to Advisory Opinion Request 09-015, in response to Alaska's request to use HAVA Section 251 funds to modify existing office space to construct a secure storage room at its headquarters in Juneau. Dr. Abbott outlined the recommendation approving the request and the rationale for doing so.

Commissioner Beach moved to approve the recommendation, which was seconded by Commissioner Hillman. The motion carried unanimously.

Consideration of Annual Grants Report

Dr. Abbot addressed the Commissioners to provide a brief overview with respect to EAC's Annual Report on Grant Programs. Dr. Abbott outlined the recommendation approving the report and the rationale for doing so.

Commissioner Hillman moved to approve EAC's Annual Report on Grant Programs as of September 30, 2008, which was seconded by Commissioner Beach. The motion carried unanimously.

Commissioners' Closing Remarks

Commissioner Hillman announced that the Board of Advisors will be holding its annual meeting during the month of June in Washington, D.C., and that beginning February 8, 2010; the Board of Advisors' virtual meeting room would be open for the receipt of comments on Phase II of EAC's Election Operation Assessment.

Chair Davidson, again expressed her condolences to the earthquake victims and urged both State and local officials to ensure that voters who are working in Haiti will be able to vote absentee in the upcoming primaries, and asked that State and local officials share how they plan on carrying this out, with the Commission, so that it can be dispensed to all States for their consideration.

Adjournment

Commissioner Hillman moved to adjourn the meeting, which was seconded by Commissioner Beach.

The meeting adjourned at 2:44 p.m.