

**United States Election Assistance Commission
Public Meeting**

1225 New York Avenue, NW

Suite 150

Washington, DC 20005

Held on January 25, 2010

VERBATIM TRANSCRIPT

The following is the verbatim transcript 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

CHAIR DAVIDSON:

Good afternoon, I'd like to call this meeting to order. And if everybody would please turn off their BlackBerries and put their cell phones on silent, we would appreciate it. And I'd like for everybody to stand with me and join me with the Pledge of Allegiance.

[Chair Donetta Davidson led all present in the recitation of the Pledge of Allegiance.]

CHAIR DAVIDSON:

I'd like to turn to Tamar Nedzar from our Office of General Counsel for the roll call.

MS. NEDZAR:

Certainly. Commissioners when I call your name, please respond.
Commissioner -- Chair Donetta Davidson.

CHAIR DAVIDSON:

Here.

MS. NEDZAR:

Commissioner Gracia Hillman.

COMMISSIONER HILLMAN:

Here.

MS. NEDZAR:

Commissioner Gineen Beach?

COMMISSIONER BEACH:

Here.

MS. NEDZAR:

Madam Chair, there is a quorum present.

CHAIR DAVIDSON:

Okay, thank you. Next is adoption of the agenda. If you would please review it and see if there's -- if the agenda is okay, if there's any discussion. If not, I'd like a motion.

COMMISSIONER HILLMAN:

I just have a question for clarification on the agenda. What, if any, action is the Commission expected to take under New Business on the consideration of Advisory Opinion Request 09-016 and consideration of Annual Grants Report?

CHAIR DAVIDSON:

Because those went out for tally votes and because, obviously, myself, I did not get my tally vote in time to have it counted to approve them, there was two yeses and with those being short one vote they automatically appear on the agenda for the next meeting for a vote. But obviously for the public's interest, I thought it was important that Dr. Abbott be able to enlighten the public of what those issues are.

COMMISSIONER HILLMAN:

Um-hum, so is it that we will be voting on these items today?

CHAIR DAVIDSON:

That's correct.

COMMISSIONER HILLMAN:

Okay, thank you.

CHAIR DAVIDSON:

You're certainly welcome. Any other questions?

COMMISSIONER BEACH:

No.

CHAIR DAVIDSON:

Do I have a motion?

COMMISSIONER BEACH:

I move to adopt the agenda as written.

CHAIR DAVIDSON:

A second?

COMMISSIONER HILLMAN:

Second.

CHAIR DAVIDSON:

All those in favor please say aye. All those opposed?

[The motion carried unanimously.]

CHAIR DAVIDSON:

Thank you, motion carries. The first thing that I would like to do is, as you can see, I'd like to welcome everybody here for our first EAC meeting in 2010. And I'd like to welcome those that are also watching on our webcast, it's live now since last month, and we're really glad that all of you have joined us on live webcast. We had planned to have this meeting earlier this month, but when we got back from Christmas holidays we had about two to three inches of water in this room, so obviously, repairs and drying it out had to be made. So, we appreciate everybody coming today.

I'm very pleased to be serving as your Chair this year. I'm honored to be selected by my colleagues unanimously and I look

forward to working with the staff, election officials and all others in this election year. It's a very busy time. I want to thank the Board of Advisors, Jim Dickson personally, because he came over and conducted the installation ceremony this morning. And I do appreciate that. He is the Chair of our Advisory Committee. I don't know if I said that or not, and definitely I want to thank him. This year I want to reach out to election officials and the public to get their input on how EAC can help prepare for this busy year. For instance, would it be helpful if EAC would collect and share best practices, innovations from States and locals, such as sharing agreements or contracts from locals and States concerning how to deal with manufacturer support on Election Day and making sure they do have support? We'd like to also supplement election officials' efforts to educate the voters through our website. Also, you need to remember that you can share your training videos with us and we can post them on You-Tube. I look forward to receiving election officials and all other input in this coming year. In keeping with the smooth leadership and continued cooperation of the agencies affecting us and keeping the designated -- I am keeping the Designated Federal Officers for all of our Boards.

Commissioner Hillman will be the DFO for the Advisory Board. Commissioner Beach will be the DFO to the Standards Board. And I will continue with the Technical Guidelines Committee.

Before we begin with Old Business, I want to take a moment to offer my prayers and support to the people in Haiti. They need our help. And I want to personally thank everyone that has volunteered their time and expertise, whether it's here in our

country, or on the ground to help them in Haiti. They definitely are going out of their way, and I do appreciate that.

I'd like now to turn to my colleagues and ask them if they would like to make any announcements or statements before we start. Commissioner Hillman?

COMMISSIONER HILLMAN:

Not at this time, I'll just wait until after the meeting. Okay?

CHAIR DAVIDSON:

Okay, Commissioner Beach?

COMMISSIONER BEACH:

Yes, I'd just like to make an opening statement and want to just say that it has truly been an honor and a privilege to serve as your Chair for 2009 and serve as a Commissioner to the EAC. And as we welcome Chair Donetta Davidson in her new position as EAC Chair, I'd like to thank everybody for their support, you know, during my tenure, and especially the EAC staff. When I arrived at EAC, I realized how very quickly and fortunate we were to have such a knowledgeable and supportive staff. And I told them when I came onboard that my goals for 2009 were to get the best ideas and solutions in elections from the people who actually run them and bring that knowledge back to D.C., not the other way around.

Second, it was very important that we support the voting system teams' effort to get voting systems certified this past year; and third, to bring more attention to improving services for military and overseas voters. And certainly staff did deliver in 2009. I'm happy to report, if you don't already know, that four voting systems have been certified under our program. We've pushed hard to

highlight challenges facing military and overseas voters, we've had two public meetings, issued important research, and are working alongside with FVAP Director Bob Carey on these matters.

I've also had the opportunity to travel and observe many innovations at the local and State levels. EAC staff made sure my observations were chronicled and shared in our clearinghouse with the public and with Congress.

And I'd also like to take a moment to highlight some of the other staff accomplishments we had in 2009. I'm very proud of our finance team. We received a clean opinion on the statements in the Commission's Annual Financial Report. I'd like to also thank our Research Department, particularly, for acting quickly to begin to translate the National Mail Voter Registration form into the five Asian languages; Chinese, Japanese, Korean, Tagalog and Vietnamese. I'd also like to thank the testing certification staff for bringing the commercial off-the-shelf hardware and software issues to my attention. Commercial off-the-shelf software and hardware are used by most, if not all, of -- used in most, if not all, of our voting systems, and I'm happy that we're able to have a discussion about that important issue a few months ago. And, of course, I wish I had the time to list everything EAC staff has done, but certainly, if you're interested go to our website eac.gov and you'll certainly see how productive we've been this year. And my goals do remain the same for 2010, and I'll continue to support my colleagues and welcome the expertise of EAC staff, as well as solutions provided by election officials throughout the nation for this

coming year and beyond. It was -- again it was a pleasure to serve as Chair, and I look forward to the 2010 federal election year.

Thank you.

CHAIR DAVIDSON:

Very good, Commissioner Beach I'd like to thank you for your year of service, and now, I'd like to continue the EAC tradition in presenting you with a gavel of commemorative you know, obviously your leadership we appreciated in 2009. And it's also got a little stand. So I'll give you...

COMMISSIONER BEACH:

Oh thank you.

CHAIR DAVIDSON:

...it all. That's something you can put on your desk and have as a souvenir. Thank you.

COMMISSIONER BEACH:

Great, thank you.

CHAIR DAVIDSON:

I would have stood, but obviously it wouldn't have been on tape as well, so I apologize for that. Now, we'll turn to Old Business and the first item on the agenda is the minutes of the December, I believe, December 3rd meeting. Is there any discussion on the minutes? If not, is there a motion to approve?

COMMISSIONER BEACH:

I move to approve the minutes.

CHAIR DAVIDSON:

Is there a second?

COMMISSIONER HILLMAN:

Second.

CHAIR DAVIDSON:

All those in favor say aye. Opposed?

[The motion carried unanimously.]

CHAIR DAVIDSON:

The motion carries. Moving forward is -- I'll turn to our Executive Director Tom Wilkey for his report, for probably a little over a month.

EXECUTIVE DIRECTOR WILKEY:

Thank you Madam Chair, and we want to thank everyone for being here today. This is an exciting time for us as we enter another federal election year. We have a lot of work to do, and we have already accomplished a great deal during the first few weeks of 2010.

Under Voting System Testing and Certification, EAC certified another voting system this month, the Unisyn OpenElect 1.0, an optical-scan system. We've posted information about the certification, including the draft, summary, and final test reports. The TDGC met last month to discuss the upcoming work on the next iteration of the VVSG version 2.0. An on-demand webcast of that meeting is available on NIST's website. We also announced the new scientific and technical experts who were recently appointed jointly with NIST. They are Steven Bellovin, Diane Cordry Golden, Douglas Jones, and Edwin Smith. EAC is continuing to work with NIST to resolve comments we collected about version 1.1 and 2.0 of the VVSG. The Commissioners will issue a policy decision once this process is complete. Afterwards,

we will publish and post on our website the final version of the VVSG. This will be the 1.1. Phase II of the Election Operations Assessment is continuing as planned. Our Board of Advisors and Standards Board are reviewing the work product from Phase II. They will publicly comment on it during a virtual meeting to be held later this month. We continue to work on the pilot certification requirements for UOCAVA pilot voting systems, a topic we heard about during our last public meeting. And finally, we issued a Notice of Clarification 09-005, pertaining to the Development and Submission of Test Plans for Modifications to EAC Certified Systems.

Under Requirements Payments, 2010 requirements payments are now available. A list of amounts each State is entitled to along with matching requirements is listed on our website. A total of 70 million has been approved. We are providing more instructions and technical assistance on how to obtain funds, including a webinar for HAVA officials that can be viewed on our website. So far, we've distributed 74.7 million of the 115 million appropriated in fiscal year 2008 funds and 43.1 million of the 100 million in 2009 funds. Since our last meeting, we disbursed 1.18 million to Oklahoma, 2.37 and 2.07 to Indiana, 7.8 million and 6.8 million to Texas, 2.7 million to North Carolina, and 2.8 million and 1.8 million to the State of Maryland. A full list of funds disbursed is posted on our website, and I've also attached a copy of an update to this report. We recently issued a Funding Advisory Opinion 09-015, on whether funds may be used to modify existing office space to construct a secure storage room.

Under Grants, we expect to issue the final grant notices this month for the HAVA College Poll Worker Program and the Mock Election Program. We are seeking peer reviewers to help us evaluate our grant applications. These are paid, temporary opportunities. And for more information you can visit our website.

Under Research, Policy and Programs, we're moving forward on translating the National Mail Registration Form into the five Asian languages listed in the Voting Rights Act, and we expect the forms to be completed in time for this year's federal election. As a matter of fact, all but one of the languages has been completed and reviewed. We have one more, and those should be coming to us probably within the next couple of weeks. We posted a list of Frequently Asked Questions on our website about the Election Day Survey that provides key information on our survey methodology and approach. As a reminder, we've completed five Election Management Guidelines chapters that are now available on our website. And these topics include: Building Community Partnerships, Canvassing and Certifying an Election, Communicating with the Public, Conducting a Recount, and Provisional Ballots.

Under Tally Votes, the Commission certified four tally votes since our last meeting concerning: The approval of the New Scientific and Technical Expert Members of the Technical Guidelines Development Committee; the adoption of Executive Order 13525 on the Across the Board Pay Increase to Government Employees; The Selection of EAC Chair for 2010; and

Recommendation to Adopt the Fiscal Year 2009 EAC Annual Report.

Under Other News, we posted Commissioner Beach's observations of her recent trip to Alabama, where she met with election officials and toured an accredited voting system test lab. We are seeking applications for our Certification Program Specialist position within our voting system testing and certification program, and you may see that up on our website or in USAjobs. The Office of Inspector General has recently posted a HAVA funds report -- audit report for the State of California. I've also been asked by the communications division to announce that temporarily, as we are switching over to a new website contractor, we have lost some files that are not up, they're working on those links right now, and they should be up as soon as possible. So, we will keep you advised on that.

That is my report, Madam Chair.

CHAIR DAVIDSON:

Okay, questions for the Executive Director? Commissioner Hillman?

COMMISSIONER HILLMAN:

Not at this time, nothing.

CHAIR DAVIDSON:

Commissioner Beach?

COMMISSIONER BEACH:

I have two. Under the Requirements Payments, I know we had a policy where States can retrieve both the 2008 and 2009 at the same time.

EXECUTIVE DIRECTOR:

Um-hum.

COMMISSIONER BEACH:

Are they able to do that for '09 and for '10 as well, if they haven't for '09?

EXECUTIVE DIRECTOR WILKEY:

That's correct those three can be done together.

COMMISSIONER BEACH:

Three and...

EXECUTIVE DIRECTOR WILKEY:

Um-hum.

COMMISSIONER BEACH:

Okay. And also I don't know if you have an answer to this, but do we have an estimate when we're going to have the grant notice for the accessible technology initiative?

EXECUTIVE DIRECTOR WILKEY:

Yes, I spoke with the Director of Grants this morning. It should be in the next two or three weeks if -- that's correct, Mark? Yes, the next two or three weeks.

COMMISSIONER BEACH:

Okay, thank you.

EXECUTIVE DIRECTOR WILKEY:

That's going to be -- because of the amount of money in that program and the fact that there are a number of issues, that's taking a little bit longer to do. We want to be very careful in putting this together, because we see it as not being -- as not only being a program where we're giving away a large number of grants, but

also, we expect that that will go on in the years ahead and we want to be able to make that sustainable in the future.

COMMISSIONER BEACH:

Okay, thank you.

CHAIR DAVIDSON:

Just to add to that, I know that we just -- he's just asked the Commissioners to review that, and I think our deadline was the end of last week. So, it's out for the Commissioners to review and I think that deadline was Thursday of last week, I'm not sure about the date for sure and maybe I'm wrong, but we'll ask him when he's up here...

EXECUTIVE DIRECTOR WILKEY:

Okay.

CHAIR DAVIDSON:

...and we have an opportunity to ask him personally. Moving forward to New Business -- you know what? I do have a question. I just want to make it clear. On the vacancy that was announced is that -- was that a vacancy or is that an additional employee?

EXECUTIVE DIRECTOR WILKEY:

No, that's a vacancy. As you know, unfortunately our colleague Laiza Otero left several months ago to take a position with Arlington County, and we are in the process of filling that position.

CHAIR DAVIDSON:

Very good, thank you. Now, on to New Business. First under New Business is an update on the Memorandum of Understanding with Organization of American States. All of us at the EAC, Commissioners and a few staff members, was recently at the

signing ceremony with the Organization of American States, on signing the MOU. One of the goals of the Organization of American States is to help strengthen democracy through promoting its free and fair elections through Americans. The MOU document carries our desire to cooperate activities in the areas of mutual interest, to provide sound opportunities for exchange of information in technology and experiences. EAC and the OAS recognizes that this partnership will benefit everybody through the spirit of cooperating, dialogue and most important sharing the solutions and experiences in elections. To learn about OAS, I thought it was important to let you know that you can go to OAS.org and learn more about their organization.

Now I'm going to turn to Ms. Nedzar in our General Counsel Office to tell us more about the partnership and particulars about the MOU.

MS. NEDZAR:

Thank you, Chair Davidson. On January 19, 2010, the EAC Commissioners attended a ceremony to mark the signing of a Memorandum of Understanding between the EAC and the Organization of American States. OAS provides professional election observation services for the member States, collaborates with election officials and member States in the design and implementation of technical cooperation programs, and carries out applied research and education activities. The key mission of OAS is to promote democracy, human rights, security and development through political dialogue. As you know, EAC serves as a national clearinghouse and resource for the compilation of information

procedures concerning the administration of federal elections in the United States. Given the similar roles the EAC and OAS serve in the promotion of free and fair elections, a cooperative relationship could be beneficial to both organizations' activities. Accordingly, the Memorandum of Understanding documented both organizations' commitment to exchanging information and materials, providing opportunities for experts and employees to share common experience, conducting research pertaining to the effective administration of elections, and conducting meetings and seminars concerning election administration. Members of the public can find the MOU with the Organization of American States and the EAC on the EAC's website at www.eac.gov.

CHAIR DAVIDSON:

Thank you, is there any questions by the Commissioners? Thank you.

We'll move forward and Dr. Abbott while you're joining us I'll give a statement. We're going to move forward on the maintenance of effort. The purpose of an MOE is to ensure that recipients of Section 251 funds used the payments to meet the added requirements placed on States by HAVA while maintaining a level of no funded -- no federal funding that was available in activities during the fiscal year November of 2002 -- prior to that November 2002, which is important.

EAC has been working to adopt a final MOE and it has been a long haul. However, it is very important to make sure that we get this policy correct. Dr. Abbott has been putting together a draft policy. Dr. Abbott has worked very hard to get this put into place

with the cooperation of working with stakeholders and expertise.
And I really do appreciate that Dr. Abbott. I know it's been a long process for you, too. We'd like for you to tell us more about the process of -- and the particulars of the MOE, if you would please.

DR. ABBOTT:

Thank you.

COMMISSIONER HILLMAN:

Excuse me, Madam Chair.

DR. ABBOTT:

Yes, please.

COMMISSIONER HILLMAN:

Before he begins, Dr. Abbott can I ask that when you do your presentation, assume I know nothing. Okay?

DR. ABBOTT:

I will try.

COMMISSIONER HILLMAN:

Thank you.

DR. ABBOTT:

That will be difficult, but I will try.

CHAIR DAVIDSON:

We have plenty of time. This is our most important item on the agenda.

DR. ABBOTT:

Thank you Chair Davidson, Commissioners. Before I begin, just to clarify on some of the Old Business, we do have a funding notice circulating with the Commissioners right now for the mock

elections. And a funding notice for the accessible grant research we'll be circulating in a few weeks, so just to clarify.

CHAIR DAVIDSON:

Okay, thank you for that clarification.

DR. ABBOTT:

On maintenance of effort, thank you for the opportunity to discuss this. I have, and our staff, and consultants, and stakeholders, have been working hard on this issue since I came onboard in April, and so, we're building on a lot of really good work done by staff prior, and by Commissioners prior to me coming onboard. And all of that has culminated in where we are today, which is a draft policy that we intend to send out for public comment after the close of this meeting.

So, just kind of to recap what our process was over the last six or seven months that we've been in earnest on this process, we of course, reviewed all of our previous policies on MOE. We looked at 07-003, it's up on the website if folks would like to look at that, and 003A both of which are suspended at this point in time. We met with stakeholders that have had an ongoing interest in maintenance of effort, or maintenance of expenditure which is probably how I'll refer to it today since it's closer to what the statute says. We've engaged outside experts, including consultants that work for the Grants Department at the EAC, and others. We've touched base with OMB. We've looked to other federal agencies that have similar policies and statutes relating to maintenance of effort to see how they manage MOE. And then, we have sought input from our Inspector General. And now, we'll be seeking input

from our stakeholders and public in a formal way, so they can comment on what we think is a pretty good start to a policy that we hope to be able to enact in possibly as early as the March meeting.

So, let me just walk through and tell you what I'm going to do today. It will take about 20 minutes to walk through this slowly, and then I'll leave plenty of time to answer detailed questions. I want to give you our working definition of MOE and spend a little time on that, because I think it's probably the most important thing we'll do here today, talk a little bit about the framework for this policy and our approach, which -- and also, kind of our policy objectives in framing MOE the way we have, because I think it's important to keep in mind the reason we're doing this in the first place, beyond simply the paragraph in the statute that calls for a maintenance of expenditure to be maintained. And then, we'll talk specifically about what the States must do to meet MOE by our interpretation of the statute, and then how we're going to assist the States in meeting the maintenance of effort, both establishing a base year, which is the year prior to the 2000 elections, and then maintaining that level of expenditure in years out from there.

So, to get us underway, we believe the purpose of MOE is to ensure that the States that get requirements payments to meet what we consider the added requirements of HAVA. So, when HAVA was put in place, it put a burden on States to do a whole series of things, and to help them meet that burden or those responsibilities they put requirements payments together, and then we administer those payments to States. When they did that, our belief is, they said, "Listen, if you're a State and you're already

working on these issues, if you're already working on election reform related to some very specific things in Title III of HAVA, if you're doing that already, we want you to continue doing that at the level that you're continuing those activities, in addition to the funds we're going to give you to meet the requirements of Title III of HAVA."

So, we have a pretty specific thing in mind here, you know. And I'll just read you the paragraph that we're talking about. And this is really the only place in HAVA that we talk about maintenance of expenditure, and it's within the requirements for a State Plan. It says, "How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment, at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000." So, it's a pretty narrow...

COMMISSIONER HILLMAN:

Excuse me?

DR. ABBOTT:

...definition. Yes?

COMMISSIONER HILLMAN:

Dr. Abbott, would you repeat that and cite the section?

DR. ABBOTT:

Sure, it's Section 254(a)(7).

COMMISSIONER HILLMAN:

(a)...

DR. ABBOTT:

(7), it's imbedded in the requirements for the State Plan. And it's, "How the State, in using the requirement payment, will maintain the expenditures of the State for activities funded by the payment, at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November of 2000." So, in the fiscal year prior to 2000, just that year, if you were a State, and you expended money, or allocated money to counties for expenditures to meet the specific things that we call for in Title III -- that HAVA calls for in Title III, then, whatever those amounts were is what's going to constitute your base year. In other words, we expect -- HAVA expects you to maintain those expenditures in out years.

Now, there's been a lot of confusion about what entities have to record this, what expenditures are caught up in MOE, and must be recorded and maintained. And the purpose of our policy here today is to clarify what those expenditures are and to provide support and assistance for States and making sure that once they get their arms around what their MOE requirement is that they can meet that requirement each year.

So, in looking at -- so, I want to just spend a few more minutes on this definition and what actually is caught up in MOE. So -- but just before I do that, just to be specific about what our policy is and is not, this policy is designed to replace 07-003 and 07-003A which were the maintenance of effort policies previously enacted by the Commission. It's also intended to give instructions for States to develop detailed voluntary plans for identifying the baseline MOE and maintaining that level in subsequent years. This

is pretty critical because our role here is not to make a rule that requires States to do X, Y and Z in order to meet maintenance of effort. We have the authority to provide information and support in administering HAVA, and that's what this is about. So, you'll see in this policy a series of things that clarify what the expenditures are, and then, the rest of the policy is voluntary, and it's around helping our States to meet that requirement.

Now, there's some great carrots involved in having the States do -- meet this requirement as we're laying out this technical assistance, or suggested voluntary plans. The biggest challenge with this is, well, what's included in it? How do we know that we've got everything that we're supposed to have? And what happens when it's time for our audit? So, what we've laid out is a way for States to figure out what their MOE baseline year is, and that is the amount they spent in that base year, prior to the 2000 elections, and how they need to manage each year forward, making sure that they've met that level of expenditure.

So, what we're proposing is a plan, and we're proposing that they send the plans to us. Eventually it should be incorporated into their State Plan, but outside of that they can send us just how they plan to do this. And that has some elements to it that we're looking for in this policy that I'll walk you through in a moment. We'll look at those plans carefully. If we get to the point where we concur with the approach, concur with the amount of money that's wrapped up in the base year and how they intend to look at those years -- expenditures year to year, once we have that in place, the State can feel comfortable that they're meeting their MOE obligations.

And we'll have a document that will work to support audits, in terms of what the standard or basis for the audit will be around MOE, and then when we got to look at audit findings from the IG, we'll understand what criteria we are applying to this MOE, because we'll have this plan that's been developed by the State and meets specific particular needs of that State.

You know, one of the things -- one of the common themes in the policy, and that I'll talk about today, is the fact that this is done differently everywhere. So, we have tried to find a way that allows some -- States some flexibility. So, it would be very difficult for us to say, "You need to do X, Y and Z to meet MOE" when we know elections are financed very differently, in different jurisdictions and in different States. Rather we say, "These are the kinds of -- this is the framework you need to follow. If you follow this framework and get these components in it, then you should be okay," and then the plans can thus be tailored to the State's specific needs, whether you're a State that has, you know, thousands of jurisdictions that could be caught up in an MOE, or a State that just has a few. The policy -- the plan can be set up so that it supports you.

So, that's kind of the overview. And let's just talk a little bit about what we mean by MOE now. So, first and foremost, this is -- I'll do a compare and contrast between our proposal and the last ones. We need to talk about what is in MOE and what is not. So, take a pretty literal interpretation of State expenditure. HAVA says "State expenditure." It later defines what a State is in Section 902 of HAVA, which is one of the 50 States, American Samoa, Guam, Virgin Islands, there may be one more in there, and Puerto Rico

and the District of Columbia. So, when they say “maintain State expenditures,” that’s what our policy does. So -- and I can just read you this. It says, “MOE tracks State expenditures on a prescribed set of federal election activities,” I’ll talk about those election activities in a moment, but it’s basically meaning Title III of HAVA, “which includes any funds appropriated by the State to lower tier entities and any direct expenditures of the State.” So, in other words, an expenditure -- you’re only -- we’re looking at a very small basket of expenditures in a base year. It’s either an appropriated amount of money by the State to do -- expended by the State to do things like your statewide voter registration system, buying equipment, the other few things that are mentioned in Title III of HAVA, including provisional voting for federal elections, provision of information to voters at polling place on Election Day, verification of people seeking to register to vote, and then, this catchall of improvements to the administration of elections. So, those are -- that’s the basket of activities. If the State spent money directly on those activities, there’s probably -- there is an MOE that needs to be calculated based on those expenditures. If the State allocated funds to other lower tier entities, such as counties -- it depends on the State, but counties or local jurisdictions, and those counties turned around and spent that money just on those basket of activities, then they would have an MOE requirement that would need to be rolled up into the State level, just on those activities. So, for example, if the State allocated funds, say through the redistribution, possibly, of sales tax, for example, and that money -- some of that money went to support the State -- the development of

a statewide voter registration system, then those funds would be included in this policy and they would be wrapped up in the base year and from that point forward. If, however, the county spent that money on their local voter registration system, the thing they do every year, they've done for the last 20 years, it's their system, it's proprietary, they have a contract with someone to do that, that expenditure is not -- is not included in an MOE, because it's outside of the definition. It would not be an allowable cost under HAVA. Therefore, it is not an allowable cost under MOE and is excluded. So, what we have done in the policy is to narrow and be very specific about what's in and what's out for the baseline and then subsequent years. So, I think that -- and that was -- we spent a lot of time getting to that point where we have clarity around that. So, we've talked a little bit about what the basket of activities are, what we think -- what we believe to be expenditures that have to be captured.

And now, we should spend a little bit of time on how we're going to do this. And I mentioned earlier that we want -- we are proposing that States submit plans to us. Now, HAVA requires that the States tell us, in their State Plan, how they intend to meet the requirements -- the MOE requirements. That could be as little as a sentence, or as long as a paragraph. We've really not clarified or given any kind of instructions or support as to what should be in there, it's kind of the State's determination to make. But what we have laid out is a whole set of things that they should do if they want us to concur with their approach and their plan beforehand. What that does is it reduces risk. So, getting back to the -- at the

beginning, when I said I want to talk about our rationale and approach, we have mutual interests, the EAC and the States, in this area. We both want to spend HAVA funds efficiently, smartly, and create best value for our stakeholders, which, in the end, are our voters and taxpayers. We also want to reduce risk, the risk of spending federal money. The way a State can do that, and the way EAC do that are entirely aligned here. We need to put together plans that are very detailed that we look at and work with the States, so we understand what their basket of activities are in their baseline year and subsequent years, and their approach for documenting and managing that going forward. Once we're comfortable with that, then we can say, "This is the basis we believe MOE should be audited against." We can also say, in the audit resolution process after the auditors have gone out, made their findings and have recommendations for us to look at, we'll look at the findings from the audit, but we'll compare it to what we know the plan says they were going to do, and see if, in fact, they did what they said they were going to do. This reduces ambiguity for every State that submits a plan. So, while they're voluntary, there would be no downside to submitting a plan, and lots of upside. There's a lot of downside to not submitting a plan, though, which would be, we don't know -- we won't have a window into how they plan to manage their MOE obligations, until, in fact, we're looking at an audit set of findings, and then at that point we'll make our determinations and the State will not know how we'll go, because there's no basis for us to look at those results. So, we'll be following the auditor's recommendations. So, what we've put

together is kind of the carrot approach, and it falls in line with our overall goal of providing technical assistance to our States. So, that's why we have brought on a consulting group to do -- work with States and getting them ready for their audits. This is part of that work.

So, I can walk through details of the plan, but I think I'd like to let you ask some questions, and then, in answering those questions I can talk about the specifics of the plan. Let me say also that the whole document that you've reviewed and that will go out for public comment today, is in a Q & A format, and we did that intentionally. We did the Q & A format because it allows us to be pretty specific. So, in each area of our proposed technical assistance, and in each area of where we talk about what we believe the requirements are to meet MOE, we've offered questions that we've got from stakeholders and that we thought up, as staff, to get us there.

So, with that I will gladly turn it back over to you, Chair Davidson.

CHAIR DAVIDSON:

Thank you. One of the things, just to add, about putting it out for comment, I am going to ask the Executive Director to work with the Director of Grants, Dr. Abbott, to put this out. And if there's questions on whether we can do it that way, I've asked our General Counsel to be ready to go into that, because of our policy that's already established, so if there's question on that. But, I think I'll turn to Ms. Nedzar right now and that way that will clear up any questions that we might have in working in that direction.

COUNSEL BEACH:

I'd just like to say Chair Davidson, I received this on a Friday and I'm not ready for this to go out for public comment, because I haven't had time to digest it, or even, you know, possibly even get all of my questions answered. So, I would object to this going out to public comment today.

CHAIR DAVIDSON:

Well, it will take us awhile to get it up, but one of the things that going out for public comment, it gives any of us 30 days to comment. And, obviously, we won't be making any decisions until March on it. It's just to open it up so we can start getting comments on it, is the purpose of getting them from the public, from election officials and, obviously, from Commissioners. So that was -- if we - - if we hold it up, we can hold it up a week.

COMMISSIONER BEACH:

Were the prior -- and I know I wasn't a Commission at that time -- the prior policies that Commissioner Hillman had and that I believe Commissioner Hunter had, were they put out for public comment?

CHAIR DAVIDSON:

They were, yes.

COMMISSIONER BEACH:

They both were?

CHAIR DAVIDSON:

They both were. And then they were pulled.

COMMISSIONER BEACH:

They were pulled?

CHAIR DAVIDSON:

That's correct.

COMMISSIONER HILLMAN:

Just a point of clarification, they weren't pulled, there was just no action taken on them.

CHAIR DAVIDSON:

Okay.

COMMISSIONER HILLMAN:

They just stayed on the table because Commissioner Hunter and I had proposed policies out at the same time, not for public comment at the same time, but hers went out for public comment first, and then I put one out for public comment. And then, Commissioner Davidson you came in in January of last year and said you wanted an opportunity to introduce your version of a draft MOE. And I think that's where we are today, because nothing was put out in 2009 for public comment. But, at least, I don't recall what Commissioner Hunter did. I know that I did not pull mine back. It just didn't get any action.

COMMISSIONER BEACH:

After you put it out for comment?

COMMISSIONER HILLMAN:

It was commented on, but the Commission did not vote on.

COMMISSIONER BEACH:

Vote to adopt or vote to put it out for comment?

COMMISSIONER HILLMAN:

It was put out for public comment. We have a policy on how we introduce and work proposed policy. That policy does not require a vote of the Commission to put something out for public comment...

COMMISSIONER BEACH:

Okay.

COMMISSIONER HILLMAN:

...but rather, requires that the document go out for public comment.

So,, the draft went out for public comment. The Commission did just not vote to adopt it.

COMMISSIONER BEACH:

Okay.

COMMISSIONER HILLMAN:

Okay.

COMMISSIONER BEACH:

Thank you for the clarification.

CHAIR DAVIDSON:

And we will not address this at all at our February meeting, because 30 days would be beyond the time of our -- what we think will be our meeting day. It won't be until March. So, there will be a lot of time for staff to brief us on what those public comments are, and to also get public -- also get comments from Commissioners to add to those public comments.

COMMISSIONER BEACH:

So, Chair Davidson, will this be your policy, then, that you will be offering? Or...

CHAIR DAVIDSON:

And I'd like to have Ms. Nedzar...

COMMISSIONER BEACH:

Sure.

CHAIR DAVIDSON:

...explain the policy so that the -- everybody is really aware of it.

And then, I'll add why I made the decision that I'm making.

COMMISSIONER BEACH:

Okay.

CHAIR DAVIDSON:

Thank you.

COMMISSIONER BEACH:

Thanks.

MS. NEDZAR:

Under the Public Notice and Comment Policy that the Commission adopted in 2008, once a policy has been proposed the responsible Program Director puts it out for public notice and comment, collects the comments and then makes a recommendation to the Commissioners based on the comments that were received and details kind of the disposition of the comments. At that time, the Commission votes to adopt or not adopt and can put it out for additional public comment. So the responsible Director posts.

COMMISSIONER BEACH:

Okay, puts it out -- posts it for public comment.

CHAIR DAVIDSON:

And so, I was going to ask the Executive Director to work with Dr. Abbott to make sure that it gets out. That way we'll all be kept in touch with what the comments are that are coming in and as we move forward I -- I want it to be very, you know, open to the public. The public will also be able to see all the comments that are up...

COMMISSIONER BEACH:

Sure.

CHAIR DAVIDSON:

...as they come in. We want to make this a very open process so we get everybody's comments. And one of the things I'm really pleased about is this next week we have NASS and NASED in. So, once today it's out, you know, and it's been made public really, not for comment today, but for public so they can see it, we can make that public so that NASS and NASED can see it next week.

COMMISSIONER BEACH:

Will it be posted on our website?

CHAIR DAVIDSON:

It will be posted on the website.

COMMISSIONER BEACH:

Okay.

CHAIR DAVIDSON:

Absolutely, it will go up with all of the meeting -- of what took place today in the meeting. And we'll get then the separate posting once that can take place. It will take a few days to get that up for public comment, though. So, we intend to -- one of the things I was going to make the announcement of is encourage people to watch our website. And the other thing is, is when we put it up, we have about 7,000 people that we automatically shoot out emails and ask them -- encourage them to comment. So, I'm going to do both...

COMMISSIONER BEACH:

Okay.

CHAIR DAVIDSON:

...just to try to make sure that we reach as much of a base as we can of not only election people, but the Hill, the -- it goes out to

many, many people. Anybody that has asked to be put on that list it goes out to.

COMMISSIONER BEACH:

Okay, so then to be clear, it does not require three votes of the Commission to put it out for public comment? You're saying the...

CHAIR DAVIDSON:

That's correct.

COMMISSIONER BEACH:

...management or the Executive Director could put it out for notice and public comment?

CHAIR DAVIDSON:

Right.

COMMISSIONER BEACH:

Okay, thank you.

CHAIR DAVIDSON:

You bet, not a problem. Okay, I'll start then with questions.

Commissioner Hillman?

COMMISSIONER HILLMAN:

A couple of questions at the moment. Dr. Abbott you indicated that you would refer to this as maintenance of expenditure.

DR. ABBOTT:

Yes.

COMMISSIONER HILLMAN:

And in previous discussions, the Commission had been referring to it as maintenance of effort. One of the nice things about acronyms, I guess, is, MOE is MOE; it could be expenditure, it could be effort. But I'm wondering if you can clarify as to whether there is a

difference -- technical difference, federal rules and regulations, OMB definitions, guidelines, somebody's definition and guidelines -- if there is a difference between maintenance of effort and maintenance of expenditure.

DR. ABBOTT:

Thanks for the question. We were not -- I was not able to find a distinction that had meaning between expenditure and effort. I started calling it maintenance of expenditure because the statute talks about maintaining expenditures, not necessarily efforts. There could be a distinction made, I guess, which is why we erred on the side of using the language in the statute. When you get into what exactly that means, I think using either term would allow us the flexibility that we think States want in this area. For example, if you were expending money on one of the areas in the basket of goods that we talked about that are eligible for MOE and you know -- and you created efficiencies in doing so, a statewide voter registration system, once it's up and running, has maintenance costs that are much less on aggregate than individual efforts that are countywide. What would you do then with that money that you're required to keep expending under HAVA? You would move it to another cost category in the basket, for example, improving the administration of federal elections. So, you're maintaining your expenditure on a different effort. So, I guess, in that regard I see a slight difference in that we're allowing efforts to be multiple and States -- in allowing States and counties to pick what efforts they're going to maintain, as long as it's within the basket of allowable costs, as defined by HAVA Title III. Does that help?

COMMISSIONER HILLMAN:

It helped until you got to the last two sentences....

DR. ABBOTT:

Okay.

COMMISSIONER HILLMAN:

...of what you were saying, but it will come clear.

DR. ABBOTT:

Let me just reiterate, you know, as I was talking it became apparent that there might be a slight difference here. If you're maintaining an effort in one area, you should be able to use -- maintain that -- the expenditures associated with that effort may not be needed anymore. You may not need money to do that effort but you still have to maintain the expenditure that's required if it's in your base year, thus, there's other categories of funding that you could spend the money on or meet the expenditure on. And so, that's why we kind of shifted over to call it maintenance of expenditure. It provides a little more flexibility on its face than maintenance of effort.

CHAIR DAVIDSON:

Does that mean, like, if they've already bought their voting equipment and they meet the maintenance of effort there, that it can be utilized someplace else because they've already...

DR. ABBOTT:

Right. In the case of voting equipment if you expended State funds on that and were reimbursed by HAVA, you have an amount of money that you need to spend each year as part of your maintenance of effort requirement. It doesn't make sense to try to

keep buying equipment. Equipment has a lifespan of 20 years. There are other things that you should spend your -- other areas -- other baskets -- other goods in the basket that you'll want to spend that money on. For example, some kind of improvements to the administration of elections, or provisional voting, or whatever the situation is, then you should be allowed to do that under -- you would be allowed to do that under this policy.

CHAIR DAVIDSON:

Okay.

COMMISSIONER HILLMAN:

When the policy is put out for comment, may I ask that you consider some kind of a note of explanation or something that helps the reviewers and the public know that this is, in fact, the maintenance of effort policy that the Commission has been struggling with for the past two years? That way people won't think maintenance of effort is still on the table but...

DR. ABBOTT:

This is something different.

COMMISSIONER HILLMAN:

Right.

DR. ABBOTT:

I would be glad to make that clarification and the distinction, to the extent that there is one, for folks in kind of a cover letter or note -- explanatory note above the draft policy.

COMMISSIONER HILLMAN:

Yeah, I don't think it needs a lot, just to say this is one and the same.

DR. ABBOTT:

No and I think...

COMMISSIONER HILLMAN:

We're just calling it something different now.

DR. ABBOTT:

That's right. And when I disseminated this to staff we noted some things that you should look for in the policy, in general, and I would like to do that for the folks -- the public reading it, as well, because it will guide them to certain parts of the policy that are, I think, the most important.

COMMISSIONER HILLMAN:

Right. The format of a Q & A for policy is interesting, it's different for EAC, and I am a fan of simple language, so that any election official who needs to know this can get the gist of it without having to consult with a CPA, or somebody who's into the details of finance. But I'm wondering if the format can include some kind of a summary statement of the policy, at the beginning, that explains what this is, because for me, jumping directly into the Q & A brings me back to the Q & A, that we have for informational purposes.

DR. ABBOTT:

Right.

COMMISSIONER HILLMAN:

And so, to be able to differentiate between when EAC posts Q & A to provide information versus a Q & A format in a policy that people would say, "This is in fact a policy," so that there would be some kind of a paragraph of something that clearly identifies this is a policy, this is the purpose of the policy, and then...

DR. ABBOTT:

I think that's very doable. And it would allow us to make an important distinction that's throughout the document, which is, "Here are the points where we're clarifying for you what you need to do to meet your maintenance of effort obligations. And the rest of the document is, kind of, the how we suggest you do it, and how we're going to support you in doing it, and the resources that are going to be available to you, you know, to do that." So, it would be fair and relatively painless to put up in front of this a statement. As a matter of fact, you know, we are not that far from 007 and 007A that were about before in terms of the statement. What we've done is spent a lot of time on implementation...

COMMISSIONER HILLMAN:

Um-hum.

DR. ABBOTT:

...and support for implementation that takes away some of the ambiguities from our last policy statements around execution, which from talking to stakeholders I found was our largest hurdle in getting one of the other policies passed, which was, "Okay, so fine, this is it. How do we actually execute this policy"? Our document tried to take that into account. Having said that, though, it would be fine and easy to put a policy statement at the top of it, and we can do that.

COMMISSIONER HILLMAN:

One of the protracted discussions we got caught up in, in past consideration about MOE and implementing an MOE policy, was

the responsibility that would be placed on local jurisdictions, or any entity that had received HAVA funds from the State.

DR. ABBOTT:

Um-hum.

COMMISSIONER HILLMAN:

Understanding that EAC disburses funds to the State, how the State chooses to disburse those funds is its discretion.

DR. ABBOTT:

Correct.

COMMISSIONER HILLMAN:

Okay. So then, the question came up about changes in leadership at the local level and the extent to which they would be able to construct their records sufficient to meet the responsibility. And EAC was trying to find the language and approach that would say to the State, "The disbursement of funds from the State to sub entities is between the State and those sub entities. EAC is not a factor in that contract, except to the extent that we are responsible for monitoring and reporting on the expenditure of HAVA funds." And so, if you could characterize for me how this proposed policy addresses the issue of, who the locals report MOE to, and how the State's approach working with the -- and I'm trying to stay away from local government, because I think MOE would apply if it went to a non-government entity that was somehow involved in elections. I don't know what that would be, but in all of the United States there may be some unique thing...

DR. ABBOTT:

There may be something.

COMMISSIONER HILLMAN:

...we don't even know about, so how the State, then, would work out that reporting requirement with the local entities that receive State HAVA funds.

DR. ABBOTT:

Right, so we call them lower-tier entities, and it's a catchall for just anywhere the money goes after it leaves the State and flows downward. The first thing a State has to do is figure out what entities are eligible lower-tier entities. Simply because a jurisdiction receives HAVA requirements payments, a lower-tier jurisdiction receives requirements payments from the State does not make them automatically eligible to be included in an MOE obligation. You would first have to look to see what they were doing in 1999 related to the basket of allowable costs under Title III of HAVA. So, right away, the bulk of expenditures at the county -- lower-tier level are off the table, almost by definition. If you look at the activities that HAVA Title III requires, they are -- they are new sets of activities. They are different than what was being done locally. They are federal, being placed on there.

So, we have -- the first thing we have done is we've shrunk the size of what's actually going to be included in an MOE, but a State has to determine that. They have to look at how they finance elections and whether or not any money was appropriated or allocated to local jurisdictions that eventually ended up working in these areas. Once they do that and they've identified those eligible lower-tier entities, then what we need to do is work with them to get some easy instructions and templates, and ways of capturing the

base year and subsequent years. So, what you'll see referenced here in our -- in this policy is the fact that we intend to introduce tools, voluntary tools to help States and templates, to help States help their lower-tier entities record and meet this on an annual basis. Because what a State will need to do is aggregate their lower-tier MOE obligations and roll them up to a final number. And that number from the base year is just one amount. And then, they have to show, through documentation, that each year they're meeting that. So, they need to figure out who their eligible lower-tier entities are and justify that to us in their plan, and then yearly work with them to fill out a template or a form that shows that that State -- or that lower-tier jurisdiction has met its MOE requirement for the year. The forms and templates we'll use will be similar to what the Department of Education uses for all LEAs. Local education agencies are required to meet MOE. It's part of their statute. It's a very simple, oftentimes, one page form that has a list of categories of expenditure, what they said they needed to put in their base year, and then a place for them to record what they did in the current year, in those categories.

I would make the point, now, that not every lower-tier entity has to meet a certain MOE base every year. The State has to meet its MOE obligation and, thus, you may see variances from local jurisdiction to local jurisdiction. As long as we aggregate up, our view is they've met their -- the State has met its obligation. So, the numbers are, I guess fungible, would be the word at the lower tier -- eligible lower tier entity. Does that...

COMMISSIONER HILLMAN:

It does, and a final question for now anyway. Did I understand correctly, or hear correctly, that part of your work over the past several months to prepare this draft was using working groups or “a” working group?

DR. ABBOTT:

Yes, that’s correct.

COMMISSIONER HILLMAN:

Okay, could you talk a little bit about the composition of that working group, and some of what that group discussed, and the kind of feedback the individuals gave?

DR. ABBOTT:

Yes, I may defer to Chair Davidson on the composition of the working group, because the names of the States will -- I don’t have a full list in my head of who was there. But the group had met prior to my tenure as the Grants Director, and had a series of questions and concerns around MOE, and I took the notes from that meeting and the documents prepared by the General Counsel’s Office and by the staff, at the time, working on MOE. So, that was our first thing that we had.

And then, we convened the same group in June or July. It included representatives of -- from States. There was Michigan. There was Kentucky. Chair Davidson can help me with the other States that were there.

CHAIR DAVIDSON:

There was Wyoming. Minnesota, I believe. North Dakota.

EXECUTIVE DIRECTOR WILKEY:

North Dakota and I think Florida, but I’m not sure.

CHAIR DAVIDSON:

Could be Florida and also, possibly Texas.

DR. ABBOTT:

Right, I can get you a full list of our folks. And what we did was...

COMMISSIONER HILLMAN:

But they were all State level?

DR. ABBOTT:

They were States.

COMMISSIONER HILLMAN:

Um-hum, um-hum.

CHAIR DAVIDSON:

We had one Maryland -- one person came in from Maryland from the county.

DR. ABBOTT:

From the county. You know, in general, the States are our recipients and our partners and we, whenever possible, try to work at the State level, and we rely on them to bring us local perspectives. But, again, because we're dealing with a State level policy, that's where we focused our group.

COMMISSIONER HILLMAN:

Good.

CHAIR DAVIDSON:

But didn't you also have some, I don't know if it was through the web, and you asked anybody to join that, so you had several States in participation?

DR. ABBOTT:

We had other -- we had mentioned that we were working on this at the spring meeting of NASS and NASED in San Diego. So, I received emails and correspondence from other folks that were interested in MOE asking, you know, where we were on the policy, but also giving me input as to what we should include.

Once we were able to get very rough drafts of this policy in December, together, we shared that with members of the working group to get some initial kind of feedback whether or not we're heading in the right direction or not, what they thought the issues -- the ongoing issues were going to be, where we would have stick points moving forward. I will say that where we are now is it's been an iterative process, you know. We spent time with the statute, with the old policies, with our current set of Q & A, so that we were able to refine how we think about this.

And I started to talk about it but didn't get too much into detail, what our policy objective is and should be with managing this MOE requirement, and I can just say a sentence or so on that, you know, our interest is in making sure that our States are Title III compliant. It's the reason that we get requirements payments. Title III is a very specific set of activities. Our money -- requirements payments money cannot be used for anything other than those sets of activities. So, spending -- making sure that we get the basket correct, of activities where MOE applies and making sure that we have the right expenditures against that basket is important. I think it's going forward probably less important than it was prior, and the reason for that is the amount of money that we're talking about. So, we've already appropriated and disbursed 75

percent to 80 percent of the amount of money that we're authorized, under HAVA, to disburse for requirements payments. So, the amount of impact we will have going forward is less than it would be if we did this in '04. Had we done this in '04, we would be stuck -- we would have the same issue that we have today, but we would have had time to work it out a little bit differently. And I'll say two things on this. It would have required and still will require a massive amount of technical assistance and support. For being three sentences, it's a highly complex piece of the statute to implement. And it takes time to write guidance and support to help States meet this kind of requirement.

So, I'm pleased with where we are. I think the impact going forward is reduced because the amount of money that we have going forward is reduced until we're reauthorized or get, you know, another infusion of dollars to meet HAVA requirements, though I think States are well on their way to meeting Title III now.

COMMISSIONER HILLMAN:

Thank you.

CHAIR DAVIDSON:

Commissioner Beach?

COMMISSIONER BEACH:

Okay, thanks Dr. Abbott for all your hard work on this. I have a couple of questions. With number five it says, "What does this MOE policy do?" And in the second paragraph you say, "Adherence to a State-developed MOE plan with which the Election Assistance Commission concurs will be the basis for EAC's determination that a State has met its MOE requirements in any

given year.” Does this mean that the voluntary MOE plan is a portion of the State Plan and must follow the process for development and filing of the State Plan under Section 255 of HAVA?

DR. ABBOTT:

We would like States to eventually -- when they next amend their plan to include the MOE plans, as we've laid out in this document. That's not a requirement though.

COMMISSIONER BEACH:

Okay.

DR. ABBOTT:

What HAVA requires is short of that, so it would be voluntary. Now certainly, because of the voluntary nature of this, they can submit it outside of a State Plan update and we encourage them to do that. State Plan updates are long and expensive and would get us -- they'd get us what we want probably, and States would probably be willing to do it, but it would happen much later than we'd like. We want to be moving on this now and in the near future, anyway. So, we have left some flexibility there.

COMMISSIONER BEACH:

Okay. And on what basis do we maintain that EAC, especially the Executive Director, must concur with the voluntary plan? And if you look at question six, it's also mentioned there where it states that, "EAC Grants Department will work with your State until the EAC's Executive Director concurs with the plan." Is this something new that we're having an approval process? Because, State Plans, we don't concur with them, we just accept them and make sure the

requirements that are laid out under HAVA, that they're contained in there.

DR. ABBOTT:

Um-hum.

COMMISSIONER BEACH:

So, I'm just wondering if we're now setting an approval process by having a concurrence, which doesn't exist, currently.

DR. ABBOTT:

First, it's voluntary, so they don't have to submit anything to us, other than telling us, in their plan, how they plan to meet MOE. And some States have done that with a sentence. The carrot to having them do this and having them work with the staff until we can get a concurrence from the Executive Director is that once that is done their risk is minimized significantly, the risk associated with an audit. For example, if all we have is that sentence, the only time we will probably look at an MOE will be in an audit situation where we're looking to resolve audit findings. That's the EAC's role, Executive Director's role. That may be the first time we look at how they've handled MOE, and that's fine. Any State can choose to take that path. The State choosing that path will leave ambiguous and up in the air whether or not they're doing something that meets the muster of the auditors. So, they can assume all of that risk, that's okay with us. Or they -- we can share in that risk and reduce that risk by working with them to get something that we believe meets what we've defined as a reasonable MOE policy, in the way of meeting the obligation under the statute. So, in doing that, risk is minimized significantly.

So, that's how we've -- that's how we've put it together. It's voluntary. Our authority to do, even a voluntary plan, comes up in several places, you know. Under Title II of HAVA subtitle (d) it's our job to provide training and -- information, training, technical assistance on the management of payments and grants. So, we have the authority and really the duty. And this just goes to effective and best practices in federal management of funds. It's our job to help them avoid risk and efficiently and wisely spend HAVA funds, and this is part of that. They have an obligation to keep records, and that's Section 902 of HAVA. And they have to keep records that are auditable. This helps them figure out what records they have to keep for their MOE. Up until this point it's been ambiguous, at best. And every State is different. And so, the only way we can get to something that's reasonable for every State is to have them tell us what works for them, and have it be at a level of specificity and detail that we believe will pass muster in an audit and that we can sanction or concur with, which is thus why we've asked them to submit them to us and work with us.

The precedent for this has been an informal shift that we've had in dealing with State Plans in general. We have made the overture, made the invitation to have any State send us any draft plan before it goes to public comment at the State level, if they would like us to look at it. Almost every State that is in the process now of doing an update has sent us their plan, or called me to ask about something in the plan. And what I can do is share effective practices with them. I can say, "We had a State do it this way. This is some of the things that other States have included. Here's a

sample budget for a more detailed way of recording how you're going to spend your payments. This could have some upside for you." All advisory, all voluntary, all based on established policy and other things States are doing. We're a conduit for that information because we're in the middle of all the States. We're in a great spot to provide that. It's one of the reasons we have a new technical assistance provider onboard, so that we can capture the effective practices and get them out to other places. Calling for these plans, reviewing them and concurring with them is the next logical step in that technical assistance and support that we're required to give our federal recipients funds.

COMMISSIONER BEACH:

Okay, moving to question 15 you have here, "What are the reporting requirements associated with MOE once a State has an approved MOE plan on file with the EAC?"

DR. ABBOTT:

Um-hum.

COMMISSIONER BEACH:

I want to know if you can point me to which section of HAVA requires certification of compliance with the MOE to receive HAVA requirements payments. Are these reporting requirements with regard to MOE something new that we're going to be doing?

DR. ABBOTT:

I don't believe so. And the States are required every year to tell us how they're updating their -- how they're meeting their plan. We consider MOE to be part of their plan. So, in those annual updates that they provide us by the 31st of every -- January 31st of every

year, they need to give us sufficient detail on MOE, so that we can say, "Yes, they're meeting their MOE." You know, in general, if we know there's a set of requirements that States need to meet, and HAVA lays that out pretty specifically, they have to tell us how they're implementing their plan, we need to know that information before we disburse additional funds. It's part of our oversight and monitoring responsibilities, as well as providing, you know, the direct authority we have to provide the technical assistance and support. So, that's what we mean by -- that's why we ask for that.

Again, the plan is voluntary, so if they don't submit a plan there would be no requirement for us to -- or ability for us to concur with it. Again that's fine, but what that does is shifts all the risks and responsibility for meeting these requirements to the State. And a State may choose to do that.

COMMISSIONER BEACH:

Because a State only certifies...

DR. ABBOTT:

I'm not exactly sure why they wouldn't.

COMMISSIONER BEACH:

...that they have complied with the procedures, we don't approve plans. They just give them to us. So, I guess I'm still a little confused why we would certify that they've complied with MOE in order -- before they receive their requirements payments. So that's a new addition that we're saying to them.

DR. ABBOTT:

I don't know if it's new as much as it's a clarification. Before we disburse funds, we have to be confident that they're doing what

they said they were going to do in their plan. And the plans should have enough detail for us to be able to provide that oversight and monitoring.

COMMISSIONER BEACH:

We don't opine on their plans, though. Have we opined on their plans and not given funds to States?

DR. ABBOTT:

I think if a State hasn't -- this would be an interesting area, because we actually have a couple of things coming right now where a State has said, "We're going to do X, Y and Z" and then, in an audit, we've found that X, Y, Z is actually not allowable. But, they have the plan in front of us and we have put money against the plan. So, that is an open question as to whether or not us signing off on giving them funds for a plan that has things that are thus found to be not allowable, how that's going to play out.

For MOE in moving forward, our position is, let us work with you to clarify what you're going to be doing, make sure it passes muster, so we reduce any ambiguity associated with how you decide to implement maintenance of expenditure.

CHAIR DAVIDSON:

Can I ask a little different -- I think the way you said that, then what you're really -- if I understand you correctly, what you're saying is, if a State says they're going to do something in their plan and we didn't approve it, we just put it in file, and then the auditor found they did something wrong when they went out to do the audit, our IG, when they went out to do the audit, and then the State turns around and says, "But I told you I was going to do that in the plan,"

so you're saying that by us not taking some type of review and automatically giving them suggestions, maybe not approving it or disapproving it, but giving them suggestions of, "Wait a second. If you would do such and such, you'd be a lot better off when the auditors come out."

DR. ABBOTT:

Um-hum.

CHAIR DAVIDSON:

So, what you're doing is trying to avoid the risk that the State may take up front by us reviewing their plan and giving them suggestions?

DR. ABBOTT:

That's well stated, thank you. That's exactly what we mean. We've got -- there are -- you know if you look to other agencies that have formula grants, the money it goes out automatically, or almost automatically, to States for things they're going to do. Oftentimes you will see kind of a back and forth where they work to get things - the application or the proposal or the plan in place, so that we know the costs and everything that is outlined there is allowable. Absent that, we run into this kind of ambiguity. And, frankly, absent that, we are probably putting a fair amount of additional risks on States that they may not need to have, if we spend more time with them. Thus the pre-looking at State Plans, if we look at something voluntarily before it goes to public comment as part of their input process, we can catch things and point things out that reduces risks for the States, because they want to do the right thing. They wouldn't put anything in there they didn't think they should do. But

things come up. Activities get in there that we should catch as early as possible. So, the MOE is kind of a subset of that mindset and that kind of customer service and the kind of partnership we want to develop with States moving forward, which is about efficient, wise use of HAVA funds and minimizing risk.

CHAIR DAVIDSON:

And I -- I'll come back to you, because I know you're not finished, but I see this being a benefit. And one area that always is a -- I think, an issue with States, we have term limits in States and we have turnovers, sometimes it's a whole office. So, if you have somebody new come in and want to redo a plan, because they want to do it their way, we can help them upfront that don't really understand HAVA, if I'm...

DR. ABBOTT:

Um-hum.

CHAIR DAVIDSON:

... understanding it correctly.

DR. ABBOTT:

I think -- that's right and I think we will see more States kind of looking closely at their plans. We have a lot, right now, that are -- that are doing their first revision since the first plan they put in. So, they have lots of questions, because, in some cases, we're two generations away from the folks that put the original plan in. And so, there's a lot of technical assistance that has to happen, a lot of support that needs to go on. If we don't provide that or we don't provide the opportunity for that, there's a danger that things will get

in there that we would never want to see in a State Plan, because they're outside of HAVA.

CHAIR DAVIDSON:

I know I struggled with our first State Plan. That's the reason why I brought it up. Sorry, I'll go back to you.

COMMISSIONER BEACH:

But certainly, you know, I welcome, and I hope States would, you know, use this as a resource. We are the Election Assistance Commission. I just always have concerns on imposing requirements that aren't -- that I don't think are in our authorizing statute, and that's why I'm trying to gather some more information about the policy.

I have one last question. On question 21, "How should States address capital expenditures in a base year?"

DR. ABBOTT:

Yes.

COMMISSIONER BEACH:

Does this mean that the baseline would diminish each year for MOE if a capital expenditure was made in the baseline year and then depreciates over time, like according to the IRS tables? Is that kind of how you envision it? Or...

DR. ABBOTT:

Well, we tried to find -- frankly we tried to find something that made sense here. If you're a State and you make a capital expenditure of "X" million dollars in one year, say you buy a \$20 million set of voting equipment, you don't do that with the intention of spending \$20 million every year on voting equipment.

COMMISSIONER BEACH:

Right.

DR. ABBOTT:

You just don't. So, there's this kind of common sense aspect in trying to make the statute make sense. Because, applied just based on the language you would say, "Okay, you need to put \$20 million in every year," but no State would ever do that, nor should we reasonably make them do that. So, one of the things we're looking at is a depreciation schedule, which would give you a set amount of funds that you have to do on your MOE for that year based on the depreciation table, which -- it's more than nothing and less than the full amount, which again, no State would be able to be in compliance with. And we will look for comments from everyone; from our IG, to our States, to any other stakeholders that want to talk about that particular question. That's a vexing one for us to be -- to put something out that makes common sense, and that also meets the spirit of HAVA. So, yes.

COMMISSIONER BEACH:

Okay, thanks. That's all I have for now.

CHAIR DAVIDSON:

Carrying -- just to touch further on that question, I understand, and when we think about it election equipment lasts about the time that -- what is it, ten years that you can go out, if I remember correctly? You may even have it in here, that the IRS really looks at, in depreciation. That's about the time they have to buy new equipment again. So, as our estimate, that kind of flows true with what the issue is in that area.

But I have some questions for you. You know, I think you've pretty well talked about it, but I want to ask if you've left anything out, how does this proposal of the MOE policy differ from the one the EAC issued in 2007?

DR. ABBOTT:

Um-hum.

CHAIR DAVIDSON:

Is there anything you would like to add in that section?

DR. ABBOTT:

Let me just say one thing where it's similar, to start with, and that is both policies really worked to define this basket of eligible expenditures. So, you have a very concrete set of activities that you needed to be spending money on in the base year, not HAVA money, but your own money on, to qualify for the MOE, and both policies lay that out pretty specifically. And we, basically, continued that.

In terms of the biggest departure for us, is a clarification as to what entities are eligible -- are required to have MOE. Here we are looking at the statute, I think, very literally. And it's hard to argue, it's not ambiguous. They said "State." From our review of other pieces of legislation, and it's usually -- and it's almost always the authorizing legislation that has MOE requirements, non-supplantation requirements, match requirements. Where it said "State," federal agencies take that to mean State. And, in fact, OMB, in the Circular, provides a definition of "State" that is unambiguous and follows what we've used here. Where it says "State and local must meet MOE," they, in fact, do both. So, we

believe there's intentionality with it being State. Otherwise, it would say State and local. So, that's -- we did not try to find alternative justifications or other means of arguing that the basket of allowable expenditures should be larger than it is -- than what we've proposed. So, I think that is probably the biggest change for us here.

The second change is, we've spent most of the document, and once we put a paragraph on top explaining what the policy is, and that is the stuff that we believe is required for the States to do, 70 percent of the document is on implementation and it could be considered technical assistance. So, our mandate and our authority in HAVA is to provide technical assistance and support for folks administering HAVA. That's what this does. It gives them a clear blueprint, a clear sense of how they can go about meeting this -- figuring out the base year and meeting this going forward. So, that's probably the biggest difference.

CHAIR DAVIDSON:

In your -- before you put it out for comment, I think there's one more place that you need some clarification and it would be just that of...

DR. ABBOTT:

Um-hum.

CHAIR DAVIDSON:

...of gives-- what authority do we have and the sections of the law that you're reverting back to...

DR. ABBOTT:

Okay.

CHAIR DAVIDSON:

...I think that would help not only election officials, the Commissioners obviously, and it would help the public to understand what we're doing.

DR. ABBOTT:

I would be glad to do that, thank you.

CHAIR DAVIDSON:

And my last question, and maybe one of the hardest things that we've been trying to address in the past, is, if and when this MOE policy is adopted, how would it affect States' obligation for meeting the MOE requirements in the past years, in prior years?

DR. ABBOTT:

I thought I was going to get out of here without answering that question.

CHAIR DAVIDSON:

Sorry.

DR. ABBOTT:

So, when we passed the policy, the policies would be enforced from this point forward. But that does not get everyone off the hook from prior years. There has always been an MOE requirement from the time HAVA passed. States are going to have to -- HAVA requires and we cannot get around the fact that the base year is 1999. Now, in our -- in our proposed policy we have some ways to mitigate if in fact those records have been shredded and there's no chance we're going to get every eligible lower tier entity to tell us what they spent. We've provided some support there, we think support. But they still are going to have to have this baseline, and so, this policy helps them get to that baseline. They still need to

have captured MOE from that year going forward. It's just -- it is a requirement of HAVA.

Now, the fact that we spent some time getting support and instructions and clear guidance out that allowed every State to do this in a consistent way is something that we have to be mindful of. And you're mindful of it in two ways. We're mindful of it as we go out and we do our monitoring and oversight responsibilities as an agency. When I go on a site visit or when I send one of my technical assistant supporters out to help States, you know, we'll work with them to get, as reasonable as we can, recovery of those records and the establishment of that going -- from '99 forward.

The other way that we have to keep it in mind is in their audit resolution process. We will undoubtedly start to see MOE findings. We have an MOE finding from 2005 for a particular State that appears to have missed something, and they're outside, and we don't have the plan yet. We've got to look and see what we provided, what support provided, what technical assistance we provided, whether or not we think they were doing their best to meet what they thought MOE was, take all of that into account as we issue management decisions.

I will not, can't comment on any -- telegraph anything of what we'll do around those management decisions, but I do think it's safe to say that we have to be mindful of the support and the assistance we've provided around this topic from first year forward. So, that's -
- that's my answer.

CHAIR DAVIDSON:

Okay, thank you. Well, this has been a very inclusive process, so far, with your outreach to other agencies and election officials and, you know, I think, well, even individuals that you contracted with. And so, I appreciate that and I think putting it out and making the comments open and having it a transparent process to the public I think is very important as we move forward. So, I look forward to, you know, continuing on this road. We're at the starting point and other -- I feel that we're further along than what we've been in the past, and so I look forward to moving forward. And I know we're always going to have questions, but I do appreciate the Commissioners' questions you've had today. I think they've been really insightful to bring out more of the issue.

COMMISSIONER HILLMAN:

I do have one more question...

CHAIR DAVIDSON:

Okay.

COMMISSIONER HILLMAN:

...if I can. It goes back to lower-tier recipients.

DR. ABBOTT:

Yes.

COMMISSIONER HILLMAN:

Okay, so looking at questions two and three and it says, "The policy may also impact lower tier," and then it defines lower tier.

DR. ABBOTT:

Um-hum.

COMMISSIONER HILLMAN:

And then, if I'm correct, it is question 12 that picks back up on lower-tier spending.

DR. ABBOTT:

Um-hum.

COMMISSIONER HILLMAN:

And so, then the State must determine if activities described in 13 were supported through lower-tier funding?

DR. ABBOTT:

Correct, lower-tier funding from a State appropriation or allocation.

COMMISSIONER HILLMAN:

And not just HAVA dollars?

DR. ABBOTT:

Correct. HAVA dollars really do not come into play. They come into play only if the recipient -- you could -- if you receive HAVA funding, then you've got to figure out if, in fact, you're eligible to have MOE. Everyone that receives HAVA funding does not automatically get encapsulated into an MOE requirement.

COMMISSIONER HILLMAN:

Right, but is the reverse true? That is to say that if the -- when the HAVA dollars flow to a lower-tier entity, that lower-tier entity is responsible for documenting maintenance of expenditure irrespective of the use of the HAVA dollars?

DR. ABBOTT:

If the State determines they're an eligible lower-tier entity, so the State is going to do the first kind of look at this. The first pass will be at the State level. They will look and see if, in fact, they

appropriated any funds in the base year, base year only, to that lower-tier entity to do activities covered under Title III.

COMMISSIONER HILLMAN:

Okay.

DR. ABBOTT:

If they did, and then, if that lower-tier entity received HAVA funds, they would be required to maintain a certain level of expenditure.

COMMISSIONER HILLMAN:

So, let me -- and I think that's my question. You use "State." When I think of Help America Vote Act and State, I am thinking of chief State election official whose dollars, principally to grant down to lower-tier entities, for the most part right now, are Help America Vote Act dollars.

DR. ABBOTT:

Um-hum.

COMMISSIONER HILLMAN:

But when you say "State," are you talking about State legislature...

DR. ABBOTT:

Yes.

COMMISSIONER HILLMAN:

...Governor's office, any other State entity that might have appropriated...

DR. ABBOTT:

I am.

COMMISSIONER HILLMAN:

...dollars to lower-tier entities?

DR. ABBOTT:

If we were going to talk about the Secretary of States, we would say the official recipient or the legal recipient...

COMMISSIONER HILLMAN:

Um-hum.

DR. ABBOTT:

...of HAVA funds...

COMMISSIONER HILLMAN:

Um-hum.

DR. ABBOTT:

...which would be the Secretary of State's Office. When the statute says "State," we take it to mean State expenditures, which could be from anywhere, from any source as long as it's from the State down, goes down. It's the Secretary of State or our applicant's responsibility to see if some of that money actually ended up going to -- we have -- I'll give you an example. Maybe that will help. One State has already done this kind of pass through as a test for us and what they found is, in fact, the only money the State has redistributed through a sales tax, I believe, redistribution -- this is how complicated it gets -- are in non-federal years. So '99 counts for non-federal provisional voting. That's the only money the counties get from the State. So, when you look to see, did they have an MOE requirement, because they're in the base year, the answer is "no", because provisional balloting was not for a federal election. So, they have -- they can make a determination, document their determination and they would propose to us that that now be included in their base. We would look at their

documentation and we would determine whether or not we concur or not. But, yes, we mean "State" literally as being "the State."

COMMISSIONER HILLMAN:

Thank you.

CHAIR DAVIDSON:

Any other questions?

COMMISSIONER BEACH:

No.

CHAIR DAVIDSON:

Thank you very much. I think this was a very learning process for all of us, and hopefully the public got a lot out of it also.

DR. ABBOTT:

Thank you for the questions.

CHAIR DAVIDSON:

Now, if you'll remain with us, you need to help me out. As I said early in the meeting, there was two tally votes taken. And the first one was an Advisory Opinion Request numbered 09-016. And this was a funding advisory in response to a question proposed by the State of Alaska. Two Commissioners voted yes, one Commissioner had their vote turned in late. So, automatically it's on our agenda. If you would give us a brief explanation of that for the public.

DR. ABBOTT:

Sure.

CHAIR DAVIDSON:

And then, I'll ask for questions from the Commissioners.

DR. ABBOTT:

The State of Alaska sent, through the Advisory Opinion process, the question of, may Section 251 funds be used to modify existing office space to construct a secure storage room in its headquarters in Juneau, Alaska. It's not the first time we have seen this question. And so, the answer -- the recommendation was in following previous answers on this which answer is, yes, we find that 251 funds are -- it's an allowable expense, it's allocable because of the nature of the expenditure, specifically for voting equipment, and it's reasonable, given the fact they went through a State procurement process and its market rate for this kind of costs. So, our recommendation was that we allow this expense. Kind of the overriding issue is we have a lot -- we have a lot of invested out there in equipment, and it's in our interest, as the Commission and in the State's interest to make sure that we do everything we can to ensure that no one is getting access to that equipment that shouldn't be. And in many cases that requires modifications to storage units. We'll see ones in the future about even video surveillance for equipment, for example. So, that was our recommendation that we approve the request.

CHAIR DAVIDSON:

Any questions?

COMMISSIONER HILLMAN:

No.

COMMISSIONER BEACH:

No.

CHAIR DAVIDSON:

The only statement I would make is, it follows, really, one of our Quick Starts, so I'm pleased that they're doing this.

Is there a motion to approve?

COMMISSIONER BEACH:

I move to approve the recommendation.

CHAIR DAVIDSON:

Second?

COMMISSIONER HILLMAN:

Second.

CHAIR DAVIDSON:

All those in favor say aye. Opposed?

[The motion carried unanimously.]

CHAIR DAVIDSON:

The motion passed. The second one?

DR. ABBOTT:

The second one is the somewhat overdue and long awaited HAVA funding report for 2008. This report details, primarily, expenditures reported to us from the States. So, it's self-reported data from the FSRs, Financial Status Reports, which, as of this year changed the Federal Financial Report, a little bit different, but basically the same information. The report here covers through -- basically, through the end of fiscal year 2008 and shows aggregate expenditures for each of our types of funding; 101, 102, 251, as well as our discretionary grant competitions. There are no surprises in the document. I think the numbers speak for themselves.

I will say two things about this report that are important going forward. One is, in future years we'll be able to report on data from

the current fiscal year. So, we will do this report again this spring, based on the FFRs, the Financial Reports that are in now. So, we'll do '09 immediately after this is published and get it published prior to the June -- what has been traditionally the June deadline. The following February we'll be able to report on 2010 data, so we'll be just a month after -- three months after -- one quarter after the close of the fiscal year we'll have data available on the current spending. So, we will catch up two years in the next year and be able to report along with the PAR how we're doing on federal expenditure. Our hope is that we can use that as an attachment to the PAR so that we're -- so we got performance data and financial data together, and it will happen six months prior for a full fiscal year sooner than we've been providing this information in the past. So, I think that's all good news.

The second thing is, we are really going to try to work to tie these numbers closer to performance goals, and the biggest performance goal we have, of course, is Title III compliance. Not only do we want to know which States are and which are not, but where they are on their glide path. So, what is their target date? How does that match up to the amount of money they've spent so far, and where they are along that thing. That story, aggregately and individually, is something that our appropriators have been asking for, our Hill constituents have been asking for and States as well. So, we hope to be able to provide that, again, through providing technical assistance to States and developing that performance measure.

So, I think the report is what it is, the numbers are here, and our hope is that we can approve this report for dissemination on to the Hill and our other stakeholders.

CHAIR DAVIDSON:

Any questions for Dr. Abbott?

COMMISSIONER HILLMAN:

No.

COMMISSIONER BEACH:

No.

CHAIR DAVIDSON:

Thank you very much. Is there a motion to approve?

COMMISSIONER HILLMAN:

I move to approve the EAC Annual Report on Grant Programs as of...

DR. ABBOTT:

It's the end of fiscal year 2008.

COMMISSIONER HILLMAN:

Would that be our fiscal year?

DR. ABBOTT:

Federal fiscal year 2008.

COMMISSIONER HILLMAN:

As of September 30, 2008.

CHAIR DAVIDSON:

Second?

COMMISSIONER BEACH:

I second it.

CHAIR DAVIDSON:

All those in favor please say aye. Opposed?

[The motion carried unanimously.]

COMMISSIONER HILLMAN:

I have a question about this now and it's not about the substance of the report. It is about what I would anticipate will be the ensuing confusion when people read these numbers. We are in almost February of 2010.

DR. ABBOTT:

Um-hum.

COMMISSIONER HILLMAN:

There has been a lot of consternation, in Congress, about whether States are or are not spending their HAVA dollars. And so, I would hope that the cover letter, whatever will accompany this, will make it very clear that these numbers are as of September 30, 2008, because there are about 14 or 15 States that haven't spent -- as of that date hadn't spent even half their dollars.

DR. ABBOTT:

That's correct.

COMMISSIONER HILLMAN:

And so, just seeing these numbers alone, if I were picking up this report from somebody's desk and looking at it, I would automatically jump to those numbers, and saw that it came out from the EAC in January of 2010, and assume that it is as of last year. So, I hope EAC will do everything it can to minimize the confusion that could ensue with this data coming out at this time.

DR. ABBOTT:

We will and we have in the narrative text of the report, itself, we anticipate that kind of challenge. In the beginning we talk a little bit about that. We will put a cover letter on there reaffirming that.

Thank you.

CHAIR DAVIDSON:

Okay, thank you very much. Sorry to keep you at the table so long.

DR. ABBOTT:

That's okay, thank you.

CHAIR DAVIDSON:

Before we close, I'd like to ask if the Commissioners have any closing remarks. Commissioner Hillman?

COMMISSIONER HILLMAN:

I wouldn't necessarily characterize it as closing remarks, but I do want to update that the EAC Board of Advisors is preparing, or is beginning to prepare for its next annual meeting, which will in all likelihood be June in Washington, D.C. And so, we will begin putting together the topics that the Board will want to address. And Mr. Wilkey, I know I will be coming to you with things, information, requests from staff to help put that together.

And then, starting on or about February 8th the Board of Advisors virtual meeting room will be open, so that Board members can comment on Phase 2 of the Operations Assessment. And I'm going to ask Ms. Nedzar if she would give me the full name of the document. I don't have my glasses. Election Operation Assessment -- it's the EAC Election Operation Assessment, Phase 2. Last year the Board -- both boards actually, the Board of Advisors and the Standards Board, did have an opportunity to

comment on Phase 1. The Board of Advisors has a Voting System Standards Committee, which is going through the process of reviewing the document to make recommendations to the Board for its virtual meeting room exercise. And again, the virtual meeting room, as I understand it, is likely to be open on February 8th and the Board meeting itself will be sometime in June.

CHAIR DAVIDSON:

A question. Is it by their bylaws that they have to have a meeting every year? Or is it...

COMMISSIONER HILLMAN:

Yes, it's May or June. Well, HAVA makes that requirement, though the requirement is pegged to review voting system standards, but the bylaws call for annual election of officers.

CHAIR DAVIDSON:

And in your bylaws it requires a meeting?

COMMISSIONER HILLMAN:

Well, it would be very interesting for the Board to do election of officers virtual. I mean, we've never tried to do a public meeting where the Board is live time trying to do one activity, where you've got to sustain the quorum, know who's there, know who's voting, within time. And so, since there are usually items for the Board to review, it has been the Board's preferred method to conduct its elections at a meeting. And the bylaws now call for an annual meeting in May or June.

CHAIR DAVIDSON:

Okay, Commissioner Beach any closing remarks?

COMMISSIONER BEACH:

No, I'm fine.

CHAIR DAVIDSON:

Before I close, again, I would like to extend my condolences for the people that is in Haiti. And I would like to commend all those that are donating their time on the ground. And I urge the State and local officials to make it really a primary responsibility to them and their offices to really make sure that all those people will be able to vote absentee that is coming up in their primary elections. And I would definitely urge all of those States or locals to send us any information that they have put out on their websites or making that available in any way that they can, whether it's a packet, that we could share that with other States, because I think there is many people that is going to be over there, and definitely we have other people, UOCAVA voters, but making an effort. We sometimes tend to forget about people that has been drawn out really fast and hasn't thought about continuing to vote in their primaries. So, I would urge the States to do that. I will be addressing their meeting this next week, and I'm going to urge them to share anything, so we can get that information out to other States and share that type of information.

And with that, I ask for a motion to adjourn.

COMMISSIONER HILLMAN:

So moved.

COMMISSIONER BEACH:

Second.

CHAIR DAVIDSON:

The motion has been made and seconded. And so, we are adjourning the meeting a little early, 15 minutes. Thank you.

[The public meeting of the United States Election Assistance Commission adjourned at 2:44 p.m. EDT.]