

United States Election Assistance Commission

Meeting Minutes – January 27, 2005

Minutes of the meeting of the United States Election Assistance Commission (EAC) held on Thursday, January 27, 2005 at 10:00 a.m. at the EAC offices located at 1225 New York Avenue, N.W., Washington, DC 20005.

- Call to Order:** Chair Hillman called the meeting to order at 10:02 a.m.
- Pledge of Allegiance:** Chair Hillman led all present in the Pledge of Allegiance.
- Roll Call:** Chair Hillman recognized Brian Hancock of the EAC staff who took roll call for the Election Assistance Commission and in addition to the Chair, found present Vice-Chair Paul DeGregorio, Commissioner Ray Martinez, and Commissioner DeForest Soaries.
- Adoption of Agenda:** Chair Hillman recognized Commissioner Soaries, who moved to adopt the agenda for the meeting of December 14, 2004. The motion was seconded by Commissioner Martinez and the motion carried unanimously.
- Adoption of Minutes:** Chair Hillman recognized Commissioner Martinez who moved that EAC adopt the Minutes of the Commission Meeting held November 23, 2004. Chair Hillman noted one minor edit required to the Minutes. The Chair asked that in the discussion of the Executive Director search on page 6, the word “assist” be inserted to describe the functions of the Standards Board and Board of Advisors. The motion was seconded by Vice-Chair DeGregorio, and the motion carried unanimously.
- Updates and Reports:** Chair Hillman first recognized Peggy Sims of the EAC staff to give an update on the status of HAVA Title II Requirements Payments to the states. Ms. Sims noted that EAC has asked the General Services Administration (GSA) to disburse requirements payments to forty-seven of the fifty-five States and Territories eligible to receive them. All forty-seven States (including the District of Columbia and the Territory of American Samoa) have received their requirements payments for fiscal year 2003. These payments total over \$719 million. Thirty-five of these States also have received their payments for fiscal year 2004, totaling over \$822 million.
- More than \$1.5 billion has been disbursed of the more than \$2.3 billion appropriated for requirements payments in fiscal years 2003

and 2004. Approximately \$778 million remains available to be paid to States.

Chair Hillman next asked Ms. Sims to review State reporting requirements associated with funds provided by the Election Assistance Commission (EAC) and the General Services Administration (GSA) under the Help America Vote Act of 2002 (HAVA). The resulting reports should provide EAC with information that can be analyzed to determine how States are spending these HAVA funds. HAVA Section 258 requires States to submit reports to EAC on the activities conducted with requirements payments provided under HAVA Title II during the Federal fiscal year. This report must include:

- a list of expenditures made with respect to each category of activities described for the use of funds;
- the number and type of articles of voting equipment obtained with the funds; and
- an analysis and description of:
 - the activities funded to meet HAVA requirements; and
 - how such activities conform to the submitted State plan.

This report is due no later than six months after the end of each fiscal year. HAVA does not explicitly require reports from the States on HAVA Title I funds. Nevertheless, given the reporting and audit responsibilities of the EAC, it is prudent and necessary for the EAC to request information on the use of Title I funds.

In a July 2003 letter to the States, GSA noted that the first reports on HAVA Title I "early money" were due to GSA by January 21, 2004. The financial reports from seven of the fifty-five States (including the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands) that received section 101 funds disclosed that no disbursements were made from those funds during the reporting period. Also, twenty of the thirty States that received section 102 funds reported making no disbursements from those funds during the period. Of the States that did report disbursements of section 101 or 102 funds, few provided the verification of actual purchases and expenditures requested by GSA.

EAC has assumed the responsibility for receiving reports regarding these Title I funds, in accordance with the agency's assumption of its audit responsibilities under HAVA, Title IX, Section 902. This week, EAC sent a letter to the chief State election officials, directing the State to:

- file all subsequent reports regarding Title I funds with EAC, annually, beginning February 28, 2005;
- disclose, in separate reports for section 101 and 102 funds, the financial activity for the previous calendar year on a Standard Form 269; and
- provide the same detail on the expenditures that is required for the reports on Title II requirements payments.

Chair Hillman next recognized Mr. McCoy Williams of the Government Accountability Office (GAO) to report to the EAC on the Single Audit Act. Mr. Williams was assisted in his presentation by GAO staff members Ms. Bonnie McEwen and Ms. Debbie Page.

GAO staff reported that the Single Audit Act of 1984 established uniform entity-wide audit requirements for state and local governments receiving Federal financial assistance. Audits performed under the Single Audit Act are intended to satisfy all Federal agencies providing assistance to the entity. The act was amended raising the threshold for Single Audit to \$500,000 in Federal assistance for fiscal years ending after December 31, 2003.

In addition, GAO staff reported that all audits are performed in accordance with Federal Government Auditing Standards, and that over 39,000 single audits are conducted annually. GAO staff also noted that the program has a risk-based focus, in which programs selected for audit are based on several factors including the amount of program funding, the recipient's current and prior audit experience with federal programs, the results of recent oversight visits and the inherent program risk.

GAO noted that entities conducting audits send copies of single audit reports and data collection forms to the Federal Audit Clearinghouse (FAC), who distributes the reports to appropriate Federal agencies, and prepares and maintains a database of audit information.

GAO staff finally reported that a program is being developed to sample 208 single audits nationally and test for compliance with audit standards and single audit requirements.

Chair Hillman next recognized EAC General Counsel Juliet Thompson for a presentation on other audit authority under HAVA. Ms Thompson noted that in addition to the single audit provisions discussed by the previous presenter, HAVA also provides for two other means of extraordinary audit power. First, HAVA establishes that the funds shall be subject at least once during the term of the program to an audit by the Comptroller General. The second extraordinary audit authority lies with EAC. Section 902(b)(6) of HAVA allows EAC to conduct a “special audit” or “special examination” of the funds which are subject to regular audit under Section 902(a). This covers every program under HAVA including funds distributed under Section 101, 102, Title II, and programs administered by the Department of Health and Human Services. Beyond the establishment of this special audit authority, HAVA offers no guidelines under which a special audit should be conducted.

Until an IG office is established within EAC, it is incumbent on the members of the Commission to act in its absence. Thus, I recommend adopting the following policy and procedure for special audits:

- *Regularly review single audits and reports filed by States as well as other credible information on State HAVA spending.*
- *When a discrepancy or potential lack of compliance is revealed, analyze the risk to HAVA funds. The analysis should identify the source of any threat as well as the severity of the threat.*
- *Determine the need for additional review and information. If additional information is needed, consider voting to conduct a special audit. If the discrepancies are evident and the existing information sufficiently identifies them, EAC will act to refer the discrepancies to the appropriate enforcement agency, to include the U.S. Department of Justice, the U.S. Comptroller General, and/or other appropriate State or Federal enforcement agencies.*
- *When a decision is made to conduct a special audit, EAC will define the scope and type of audit. The audit may be one or more of the three types of audits: financial, compliance, and agreed-upon terms. The scope of the audit should include the term of the audit (e.g., from the time of receipt to present, a particular fiscal year, or other term established by the Commission) and the funds that will be audited (e.g., Section 101, Section 102, Title II).*

- *Develop a plan for the audit through a scope of work for the Inspector General (IG), a contractor, or other Federal government agency that will conduct the audit on behalf of EAC.*
- *Upon completion of the special audit and report, if the findings reveal that the recipient is out of compliance with the requirements of HAVA, EAC will refer the audit and the recipient to the Comptroller General with a request to take action to recoup funds on behalf of the United States. If potential voting rights, civil rights, or criminal violations are identified by the special audit report, EAC will refer the audit and recipient to the Department of Justice or the appropriate State or Federal law enforcement agency.*

Ms. Thompson asked if the Commissioners had any questions regarding this recommendation.

Vice Chair DeGregorio noted that it was important to adopt this policy because of the significant amount of Federal funds disbursed under HAVA.

Commissioner Martinez asked Ms. Thompson if the 6 steps outlined in her recommendation would be the framework for the EAC special audit process.

Ms. Thompson stated that the recommendation did represent the outline for the special audit process.

Commissioner Martinez also asked if it was correct that the single audit would not necessarily eliminate the need for a special audit in some circumstances.

Ms. Thompson replied that the statement was correct.

Commissioner Soaries asked Ms. Thompson the timeframe for establishing an Inspector General's office at the EAC.

Ms. Thompson replied that the Inspector General search would be completed in the next 2 months, and that the EAC will acquire these services by arrangement with another federal agency.

Commissioner Soaries made a motion for the EAC to accept the special audit provisions as outlined by the EAC General Counsel.

Commissioner Martinez seconded the motion, and the motion passed unanimously.

Chair Hillman next asked Ms. Thompson to move on to her presentation concerning the possible special audit of California.

Ms. Thompson reported that California received \$180,594,462 in Federal funds made available under HAVA. That amount includes \$27,340,830 in Section 101 funds, \$57,322,707 in Section 102 funds, \$94,559,169 in Title II funds, and \$1,371,756 in funding distributed by HHS. Through the Budget Act of 2004, the state appropriated \$266.1 million in HAVA funds to the Secretary of State's office. In order to access those funds, the Secretary of State's office must submit a detailed spending plan to the Department of Finance for approval. In Federal Fiscal Year 2004, the Department of Finance authorized the spending of \$81.2 million.

Reports in 2004 began to call into question the uses of HAVA funds. In August 2004, the Secretary of State submitted a spending plan to the Department of Finance for the use of \$15.2 million for activities related to the November 2004 election. The Department of Finance refused to approve the spending plan. In addition, on August 26, 2004, the Joint Legislative Audit Committee of the California Legislature requested that the State Auditor conduct a review of the Secretary of State's use of HAVA funds.

In order to accomplish that effort, the Auditor "selected a sample of expenditure transactions paid for with HAVA funds and evaluated whether the activities and costs were allowable under HAVA, the state plan, and Section 28 of the Budget Act of 2003." Those samples included 10 personal services, 25 operating and five grant payment transactions in California Fiscal Year 2003-04 and several state fiscal year 2004-05 charges to HAVA funds.

The State Auditor issued her report on December 16, 2004. In that report, the Auditor found:

- The office of the Secretary of State did not use sound management practices that would ensure the successful implementation of the federal Help America Vote Act.
- The Auditor found that the Secretary of State's poor administration of HAVA led to questioned costs.
- The Auditor found that the Office's poor oversight of HAVA consultants also resulted in questionable uses of HAVA funds. The Auditor found that the Office of the Secretary of State used questionable practices to procure goods and services related to HAVA.
- The Auditor found that the Office of the Secretary of State spent HAVA funds on activities for which it had not obtained spending authority from the Legislature.

- The Auditor found that the Secretary of State's Office unnecessarily delayed payments to counties for the procurement of voting equipment.

Ms. Thompson noted that the Office of the Secretary of State provided a response to the State Auditor's report. Generally, the Secretary responded to the recommendations made by the State Auditor by stating that the office had either already implemented the required change or was in the process of doing so.

Ms. Thompson concluded by noting that after reviewing the Auditor's report, it was apparent that a large percentage of the Section 101 funds were not subjected to testing by the Auditor. Thus, the possibility exists that while the findings of the state Auditor were significant, they are incomplete in terms of identifying all potential misspending of HAVA funds. The testing of transactions involving the Section 102 funds were much more complete. Ms. Thompson stated she believed that it is only the Section 101 funds that are at risk without further investigation. Ms. Thompson therefore recommended that a special audit be instituted to further investigate the potential misuses of HAVA funds.

Ms. Thompson asked the Commissioners if they had any questions.

Commissioner Soaries asked how the proposed EAC special audit would dovetail with a single audit of California.

Ms. Thompson stated that she did not feel that a single audit would be completed in time to impact the special audit, but also noted that the special audit would take into account all available information available at the time of the audit.

Chair Hillman asked if it was correct that the state audit report would also look at Federal HAVA compliance.

Ms. Thompson noted that the state audit would look at HAVA compliance, but would not look at how all HAVA funds were expended.

Vice Chair DeGregorio asked Ms. Thompson if the state auditors had replied to the California Secretary of State's response to their audit findings.

Ms. Thompson noted that they had, and that the auditors stood behind their initial findings.

Vice Chair DeGregorio next asked what timeframe would be covered by the proposed special audit.

Ms. Thompson replied that the audit would cover Title I payments received from April 2003 to June 16, 2003.

Commissioner Martinez noted that the use of HAVA Section 102 funds are very specific in HAVA and that the state auditor had looked at the use of 65% of these funds and found a lack of timely compliance, but no misuse of funds. The Commissioner went on to state that Section 101 funds were distributed for less specific activities to improve the election process and that the California auditor had looked at only 12.5% of these funds. Commissioner Martinez stated that the 101 funds belonged to the American people and that the funds should be used for the purposes contemplated in the HAVA legislation. Commissioner Martinez stated that after careful consideration of the audit reports, testimony and correspondence and after noting the questionable practices found in the small sampling done in California, the EAC had an obligation to conduct a special audit.

Vice Chair DeGregorio noted that Commissioner Martinez expressed his sentiments exactly.

Commissioner Soaries stated that although one year ago the EAC was without a budget, and virtually without staff support, the Commission had made a commitment to keep our word and support the states by distributing the requirements payments with the expectation that all funds would be used to improve the process of election administration. Commissioner Soaries noted that he fully supported the statement by Commissioner Martinez.

Chair Hillman stated that she fully agreed with the statements made by her colleagues and that the state audit report had raised legitimate questions on the use of HAVA funds in this instance. The Chair also noted that the EAC had a responsibility to ensure compliance with the legislative mandate for the use of these funds.

Commissioner Martinez next made the motion to initiate a special audit in California.

Commissioner Soaries seconded the motion and the motion carried unanimously.

Chair Hillman noted that EAC staff would take the required next steps to initiate the audit, and that the EAC would move with all deliberate speed in this case.

Chair Hillman reminded the audience that the next EAC meeting would take place in Columbus, OH on Wednesday, February 23, 2005, and that after the meeting; the EAC would hold a hearing on provisional voting.

Adjournment:

Chair Hillman asked for a motion to adjourn the meeting.

Commissioner Soaries motioned for adjournment, the motion was seconded by Commissioner Martinez, and the motion carried unanimously.

The meeting adjourned at 12:04 pm.