

United States Election Assistance Commission
Minutes of the Public Meeting
Sheraton Chicago Hotel and Towers
301 East North Water Street
Chicago, Illinois 60611

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission (“EAC”) held on Monday June 28, 2010. The meeting convened at 10:01 a.m., CST. The meeting was adjourned at 2:32 p.m., CST.

PUBLIC MEETING

Call to Order:

Chair Donetta Davidson called the meeting to order at 10:01 a.m.

Pledge of Allegiance:

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

Roll Call:

EAC Commissioners:

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

Senior Staff:

Associate General Counsel Tamar Nedzar; Executive Director Thomas Wilkey

Panelists:

Jeannie Layson, Director of Communications, EAC; Pimjai Sudsawad, Sc.D., Knowledge Translation Program Coordinator, National Institute on Disability and Rehabilitation Research; Dr. Mark Abbott, Director of Grants, EAC; Christopher Thomas, Elections Director, Michigan Secretary of State; Karen Lynn-Dyson, Director of Research, Policy and Programs, EAC; Bill Boehm, Deputy Director of Research, Policy and Programs, EAC

Adoption of the Agenda

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

Welcoming remarks

Chair Davidson's welcoming remarks included extending her appreciation to the representatives from IACREOT who were in attendance in connection with their 39th Annual Meeting and encouraging those present to take advantage of the newest Election Management Guidelines chapters by either picking up hardcopies that were made available, or viewing them on EAC's newly designed website. She concluded her remarks by congratulating Commissioner Hillman for co-chairing a very successful Advisory Board meeting that was held the end of June in Washington, D.C

Commissioner Hillman encouraged those who have not completed the Census to do so. She also pointed out the ongoing primary season and encouraged individuals to serve as poll workers.

Commissioner Bresso announced the change in her last name from Beach to Bresso, providing her new email address of gbresso@eac.gov. She concluded her remarks by announcing that the Standards Board would be holding a virtual meeting on July 27, 2010, from 1 to 7 p.m. EDT.

Old Business:

Approval of the minutes from the previous meeting

Commissioner Hillman moved approval of the minutes of the April 8, 2010, meeting which was seconded by Commissioner Bresso. Discussion was held on a technical amendment to the minutes. Commissioner Bresso moved to adopt the minutes as amended, which was seconded by Commissioner Hillman. The motion carried unanimously.

Report from the Executive Director

Mr. Wilkey extended a welcome to all in attendance in addition to acknowledging the presence of Lance Gough, the Executive Director for the Chicago Board of Elections. Mr. Wilkey provided an update on activities that have taken place since the Commission's April 8, 2010, public meeting in the areas of testing and certification, state voting system reports, grants, requirements payments, funding advisory opinions, election management resources, research, tally votes and other news.

In the area of testing and certification, the following was reported:
Comments that were received on the draft UOCAVA Pilot Program

Testing Requirements and Manual are being reviewed, a required report on EAC's progress to establish guidelines for remote electronic voting absentee voting systems has been submitted to Congress, Dominion Democracy Suite 4.0 voting system testing application package was approved, two decisions on coding conventions and a decision on temperature power variation were issued, information regarding de minimum changes for ES&S Unity 3.2.0.0. has been posted to the website and the Technical Guidelines Development Committee (TGDC) will be holding a meeting at the National Institute of Standards and Technology (NIST) July 8-9 in Gaithersburg, Maryland.

In the area of State voting system reports, Connecticut submitted three reports dealing with pre and post-election audits for the November 2009 election.

In the area of grants, a \$500,000 grant was announced to improve voting accessibility for recently injured military personnel for which the application deadline has been extended to July 28, 2010. Winners of the 2010 Help America Vote Mock Election Program and HAVA College Program were also recently announced.

In the area of requirements payments, seven comments on the draft Maintenance of Expenditure (MOE) policy have been received to date and were posted to the website. Since the April 2010 public meeting, \$7 million in requirements payments were disbursed. This brings the total amount of disbursed payments to \$81.2 million for 2008, \$53.3 million for 2009 and \$10.8 million for 2010.

Four new funding advisory opinions were issued by the Commission relating to the following areas: post-election audits, purchase of closed-circuit surveillance cameras, purchase of paper ballots and purchase of a van for voter education and training activities related to voting systems

In the area of election management resources, voter guides have now been published in Spanish, five Asian languages, and most recently Cherokee, Dakota, Navajo and Yup'ik. EAC's Advisory Board provided comments to the draft Recounts and Contests study, and the Standards Board provided comments on the three new Election Management Guidelines covering the topics of Technology in Elections, Elections Office Administration and Accessibility.

In the area of research, a new guide to the Election Administration and Voting Survey was recently posted to the website.

The Commission certified 11 tally votes since the April public meeting.

Under other news, Mr. Wilkey reported that EAC recently co-hosted the 7th Inter-American Meeting of Electoral Management Bodies with the Federal Election Commission (FEC) and the Organization of American States, to exchange knowledge and ideas to strengthen the elections process in each of the member states. Mr. Wilkey encouraged everyone to view EAC's redesigned website and provide any feedback.

Questions and Answers:

In response to Commissioner Hillman's request, Mr. Wilkey clarified that the processes of establishing both the UOCAVA Pilot Program Testing Requirements and guidelines for electronic absentee voting systems came about as a result of the enactment of the MOVE Act by Congress. He also explained EAC's relationship with the Department of Defense (DOD) who has responsibility for UOCAVA voters.

In response to Commissioner Bresso's inquiry into the status of job vacancies within EAC, Mr. Wilkey replied that a vacancy in the Grants Division has been closed, for which an offer has been made to fill the position. A vacancy in the Policy and Programs Division has also been closed, for which resumes are being reviewed. Upon filling these two positions, there will be 40 employees within EAC. In response to Chair Davidson's question, Ms. Nedzar confirmed that Mr. Wilkey, as the Executive Director, is responsible to both post positions and hire, pursuant to HAVA.

New Business:

Discussion of Clearinghouse Policy

Presenter: Jeannie Layson, Director of Communications and Congressional Affairs, EAC, addressed the Commission to first provide testimony setting forth staff's recommendations pertaining to the scope and duration of a pilot Clearinghouse policy. Ms. Layson next outlined the content of the pilot policy that would consist of the following five categories: voting system performance, poll worker information, contingency plans, pre-election activities and post-election day activities. Ms. Layson concluded her testimony to outline the operation of the Clearinghouse, pointing out it would be her recommendation that all requests be submitted to the Executive Director for approval within 48 hours. If the Executive Director declines a request, the matter would be moved to the next public meeting for discussion, and the Commissioners would serve as the appeal body, if necessary.

Presenter: Pimjai Sudsawad, Sc.D., OTR, Knowledge Translation Program Coordinator, National Institute on Disability and Rehabilitation

Research (NIDRR), addressed the Commission to provide testimony concerning the two information clearinghouses that NIDRR utilizes, AbleData available at www.abledata.com and the National Rehabilitation Information Center (NARIC) available at www.NARIC.com, which were developed for the purpose of disseminating information related to disability and rehabilitation to the public. Dr. Sudsawad suggested that the EAC may want to consider the following features in developing its Clearinghouse:

1. User service channels, i.e., toll-free number, e-mail contact, chat room and other social media channels.
2. Categorization of information and search functions.
3. Information acquisition, vetting and updating.
4. Accessibility and usability evaluation and testing of the website.
5. User feedback system and suggestions regarding information to be included on the website.
6. Reporting of usage via a tracking system for number and types of inquiries.
7. Marketing and networking plan to promote the site.
8. Specific product development and distribution, i.e., newsletter, listserv.

Questions/Answers/Comments:

In response to Commissioner Hillman's first question regarding how information is filtered for posting within a Federal Government agency clearinghouse, Dr. Sudsawad explained that while the Department of Education has no set policy regarding what it does or does not include, the information is presented to the agency via the contractor for its review and input. Ms. Layson commented that it is a delicate balance, pointing out the importance of making sure the information that is posted, which voters rely on, is both accurate and current. In response to Commissioner Hillman's second question as to how her agency ensures the accuracy of the information it posts to its clearinghouses, Dr. Sudsawad explained that accuracy is ensured through a peer review process. Ms. Layson concurred with Commissioner Hillman's suggestion that the draft Clearinghouse policy be posted for no less than what EAC's Notice and Public Comment Policy requires of 30 days, reiterating her recommendation is for a 45-day comment period due to the fact that this

area is not only of great interest to the public, but it is one of EAC's major responsibilities under HAVA. In response to Commissioner Hillman's final question regarding why the Commissioners would need to consider, during a public meeting, any items that the Executive Director would decline for inclusion in the Clearinghouse, Ms. Layson stated this recommendation was modeled after another policy that is utilized within EAC. She also explained that the Commissioners can change the process should they choose to do so.

Ms. Layson confirmed Commissioner Bresso's first inquiry that the Clearinghouse will be able to accommodate the creative and innovative procedures/trainings that States are currently utilizing. In response to Commissioner Bresso's second question with respect to what will encourage States to post their voting system reports to the Clearinghouse, Ms. Layson commented that it's a combination of not only making it easier for States to do so, but also having an attractive and easier to use portal through the newly designed website. In response to Commissioner Bresso's inquiry of Ms. Layson concerning whether delegating responsibility to the Executive Director regarding Clearinghouse items would be abrogating their authority in light of Section 208 of HAVA, which reads, "Any action which the Commission is authorized to carry out under this Act may be carried out only with the approval of at least three of its members," Ms. Layson explained that staff's intention regarding this recommendation was so that the Commissioners can set the parameters and staff would apply the rules accordingly. In response to Commissioner Bresso's next inquiry, Dr. Sudsawad confirmed that her agency avoids endorsing the products it displays in both of its clearinghouses through a disclaimer notice. In response to Commissioner Bresso's final inquiry, Dr. Sudsawad provided information on both the number and variety of visitors it receives to its clearinghouses, in addition to how it tracks the number of hits per server that she explained justifies both the website and the contract for the clearinghouse. Ms. Layson concurred with Commissioner Bresso's suggestion that it may be beneficial to implement the six-month pilot Clearinghouse following Election Day.

In response to Chair Davidson's first question regarding the amount of NIDRR staff that works on both the AbleData and NARIC clearinghouses, Dr. Sudsawad stated that, in terms of the day-to-day operations, it consists of herself and a core contract office representative. In response to Chair Davidson's question with respect to what EAC could do to ensure that it is not overburdened as a small agency when considering the volume and accuracy of the information it would consider posting in its Clearinghouse, Dr. Sudsawad explained that NARIC does not accept submissions from the outside, but rather the contractor is responsible for researching, gathering and posting the information to the clearinghouse. Dr. Sudsawad provided information regarding NARIC's budget, pointing

out the cost for a one-year contract the prior year was \$853,674. Ms. Layson concurred that the costs associated with EAC's pilot Clearinghouse will most likely be less, due to the fact that the scope of the information collected will be substantively less than the information contained in NIDRR's two clearinghouses.

Commissioner Hillman commented that while she is not sure what her final position will be on whether or not the Commission should approve or be involved in the approval process of each and every item that is submitted to the Clearinghouse, she emphasized the fact that she views delegating as a responsible thing for the Commissioners to do and she does not want to be viewed as abrogating any of her responsibilities should she choose to do so.

The Commission recessed at 11:06 a.m. and reconvened at 11:16 a.m.

Consideration of Maintenance of Expenditure (MOE) Policy

Presenter: Christopher M. Thomas, Director of Elections, Michigan Secretary of State, acknowledged the presence of Detroit, Michigan, City Clerk Janice Winfrey, in addition to expressing NASED's appreciation for the Commission's continuing work on drafting a policy on MOE. Mr. Thomas provided testimony supporting the proposed MOE policy, in terms of it being both a reasonable and legally correct application of Section 254(a)(7) of HAVA.

Chair Davidson pointed out that written testimony from the Inspector General and John D. Webster, CPA, CGFM, that were intended for the Commission's consideration at its June 2010 meeting, which was cancelled due to the Chair's illness, were being incorporated into the record.

Presenter: Mark Abbott, Director of Grants, EAC, addressed the Commission to review the major changes that were made to question numbers 10, 18, 16 and 8 of the draft Maintenance of Expenditure policy dated February 22, 2010. He explained that the amendments were based upon input from the Commissioners, the Inspector General, six States and the public. Dr. Abbott also outlined the Inspector General's second round of comments to the current draft MOE policy that were set forth in a letter dated June 22, 2010.

The Commission thereafter engaged in a review/discussion of further amendments to the responses to question numbers 5, 8, 16 and 18 and amendments of both the question and answer to number 13 in the draft MOE policy.

The Commission recessed at 12:53 p.m. and reconvened at 1:38 p.m.

Consideration of MOE Policy (Cont'd)

Associate General Counsel Tamar Nedzar read the amendments that were made to the draft MOE policy, as discussed by the Commissioners during open session, and also during its recess, as follows:

Question #5: What does the EAC mean by the term “lower-tier” entities and recipients? Answer: “A lower-tier entity is a political subdivision of a State. Depending on the State, lower-tier entities may include, but are not limited to, counties, cities, townships and other jurisdictions. A lower-tier recipient is a lower-tier entity that receives Section 251 HAVA funds or equipment from the State.”

Question #13: What are the recordkeeping requirements associated with MOE? Answer: “Pursuant to Section 902(a) of HAVA, each State is required to keep records consistent with sound accounting principles, which would include MOE. Appropriate documentation, including documentation described in the State’s MOE plan, must be kept on file by the State and made available to EAC staff, auditors, or other duly authorized representatives during an audit or investigation.”

Question #16: What happens if our State fails to meet its MOE? Answer: “Any audit findings related to a State not meeting its MOE requirement will be addressed through EAC’s audit resolution process. The State’s MOE plan and EAC’s assessment of it will be a factor in how EAC resolves any questioned costs or policies related to MOE arising from Inspector General or single-State audits.”

Question #18: Do States have to collect MOE information every year from lower-tier entities? Answer: “It would depend on how a State determines how it wants to meet its MOE obligation. Once the baseline is established by the State by identifying all covered expenditures with State funds in the base year that would have been allowable costs under HAVA, the State will need to determine how it would like to meet that MOE obligation on an annual basis.” And the balance of the answer would remain the same line. So in the second line striking the word “appropriations” and instead including the word “covered.”

Question #8: What types of expenditures must be used to calculate the MOE baseline amount and are eligible to count towards our annual MOE contribution? Answer: “States must use all election expenditures that are allowable under Section 251 of HAVA, and that were funded directly by the State, or for a State appropriation to a lower-tier entity in the base year to calculate the baseline MOE. EAC does not consider funds distributed

from States to lower-tier entities, where the lower-tier entities have discretion on how the funds are spent, to be an eligible State expenditure that would require inclusion in the baseline MOE calculation. For example, sales tax that is collected by State, but distributed back to counties to finance county operations, would not constitute a State expenditure for purposes of calculating the MOE baseline.”

Commissioner Hillman pointed out that the policy will not inform States as to the specific possible consequences of not meeting Maintenance of Expenditure. She expressed that she believed EAC has a responsibility to provide that information before any such situation should occur. Dr. Abbott stated that EAC could include that information in its cover letter to States.

Commissioner Bresso made a motion to adopt the MOE policy that was posted for comment on February 22, 2010, as amended during the meeting of June 28, 2010. Commissioner Hillman seconded the motion. The motion carried unanimously.

Associate General Counsel Nedzar explained that she will be incorporating the following statement into the draft MOE policy, “This policy supersedes and replaces any previous MOE policies adopted by the EAC.” Chair Davidson pointed out that the policy will be posted on the Commission’s website.

Consideration of National Voter Registration Act (NVRA) Regulations for Publication for Public Comment

Karen Lynn-Dyson, Director of Research, Policy and Programs, EAC, introduced Mr. Boehm and his work on the NVRA regulations, pointing out that he is also busy working on policy related to provisional voting guidance and statewide voter registration database guidance.

Presenter: William Boehm, Deputy Director of Research, Policy and Programs, EAC, addressed the Commission to provide testimony setting forth staff’s recommendations for the text of a Notice of Proposed Rulemaking in order to incorporate changes into the National Voter Registration Act (NVRA) regulations that are consistent with the Help America Vote Act (HAVA) in the following categories:

1. HAVA requirements.
2. HAVA-related requirements.
3. Technical amendments.

Mr. Boehm also set forth staff's recommendation that EAC ask for public comment on the following issues, which are not required or addressed by HAVA, and would not be proposed as amendments to the NVRA regulations in the Notice of Proposed Rulemaking:

1. The use of an electronic, web-based form.
2. A proposal to add additional information on the form, such as the applicant's e-mail address, and boxes for the applicant to check to indicate whether the applicant is an overseas citizen or military voter covered by the Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA).
3. Changing the deadline for States to certify information to EAC for the NVRA report to Congress, from March 31 to 90 days after the date of each regularly scheduled general election for Federal office, which is the deadline required by UOCAVA for the certification of UOCAVA information and obtained by EAC through the same survey instrument.

Mr. Boehm emphasized the fact that any changes to the national mail voter registration form will not go into effect until after the November 2010 election.

Questions/Answers/Comments:

In response to Commissioner Hillman's question as to whether the NVRA limits EAC's regulatory authority just to prescribing only those regulations as are necessary to design, Mr. Boehm quoted Section 9 of NVRA, which now gives the EAC authority to further dictate the content of the form, if it is deemed necessary. Mr. Boehm clarified, per Commissioner Hillman's request, both where and how the language in the Notice of Proposed Rulemaking addressed staff's "other recommendations" on issues not required or addressed by HAVA, that it is seeking comment on. Associate General Counsel Nedzar explained that the Commission could handle public comments/ideas submitted in connection with the "other recommendations" in one of two ways. The first would be by incorporating the specific language that is being proposed into the Final Rule. The second would be to draft another Notice of Proposed Rulemaking which would incorporate the body of ideas.

In response to Commissioner Bresso's inquiry into whether there are any other States that seek additional information from their applicants, such as e-mail addresses and serving as poll workers, Mr. Wilkey confirmed he is aware of a number of states that have incorporated the question regarding poll workers, and he is also aware of a few states that are including space

for applicants to provide their e-mail addresses. In response to Commissioner Bresso's second question regarding whether questions such as these are outside the scope of the regulations, Mr. Boehm explained that this is something that the Commissioners would need to consider based upon the language of the NVRA regulations which reads, "May require only such identifying information including the signature of the applicant and other information including data relating to previous registration by the applicant as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process." Commissioner Bresso commented that it would be her desire to focus, first on the HAVA requirements as to what is included on the Federal form, as soon as possible, and then, tackle the "other recommendations" as suggested by staff in order to ensure completion of the form for 2012.

The Commissioners concurred that review of the draft in greater detail would be needed when they return to Washington, at which time they will make any amendments they feel are necessary and thereafter conduct a tally vote. Commissioner Hillman requested that Ms. Nedzar provide an opinion as to whether the "other recommendations", as contained within the Notice of Proposed Rulemaking, fit within the NVRA law.

Adjournment:

Chair Davidson called for a motion to adjourn the public meeting of EAC. Commissioner Bresso moved to adjourn the meeting, which was seconded by Commissioner Hillman.

The meeting of the EAC adjourned at 2:32 p.m.