

## **United States Election Assistance Commission Minutes of the Public Meeting**

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Suite 150  
Washington, DC 20005

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission (“EAC”) held on Thursday, April 8, 2010. The meeting convened at 10:00 a.m., EDT. The meeting was adjourned at 2:35 p.m., EDT.

### **PUBLIC MEETING**

#### **Call to Order:**

Chair Donetta Davidson called the meeting to order at 10:00 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 Beach. Three members were present for a quorum.

##### **Senior Staff:**

Thomas Wilkey, Executive Director; Associate General Counsel Tamar Nedzar.

##### **Panelists:**

Brian J. Hancock, Director, Voting System Testing and Certification, U.S. Election Assistance Commission; Matt Masterson, Deputy Director, Voting System Testing and Certification, U.S. Election Assistance Commission; Mark Skall, Technical Reviewer, U.S. Election Assistance Commission; Paul Miller, Senior Technology/Policy Analyst, Washington State; Karen Lynn-Dyson, Director, Research, Policy and Programs Division, U.S. Election Assistance Commission; Jeannie Layson, Director of

Communications and Congressional Affairs, U.S. Election Assistance Commission.

### **Welcoming remarks**

Chair Davidson welcomed those joining the meeting both in person and via Webcast, providing some brief comments regarding her attendance at the Overseas Voting Summit that was held in Germany. Chair Davidson and Commissioner Hillman attended the Election Network Verification Conference that was held in Washington, D.C., observations have been posted on the Web site.

### **Adoption of Agenda**

Commissioner Hillman moved adoption of the agenda, which was seconded by Commissioner Beach. Chair Davidson moved to amend the agenda, which was seconded by Commissioner Beach. The motion carried unanimously to amend the agenda by removing the word "UOCAVA" from the section of the meeting that was titled "Discussion of Public Comment Version of UOCAVA Pilot Program Testing and Certification Manual." The agenda was adopted unanimously as amended.

### **Welcoming remarks (cont'd)**

Commissioner Hillman reminded everyone of the importance of fully participating in the 2010 Census, she also noted that the Census Bureau uses this data to estimate the number of people eligible to vote. Commissioner Beach announced that President Obama nominated Senior Elections Counsel Tom Hicks of the House Administration Committee to serve on the Commission. Commissioner Beach encouraged local election officials to submit any comments they have regarding the U.S. Postal Service's proposal to reduce mail delivery to five days a week to both the Postal Regulatory Commission and the Postal Service. She also encouraged election officials to submit any contingency plans they may have on how to address shortened delivery schedules to EAC for posting on its Web site.

### **Old Business:**

#### **Approval of the minutes from the previous meeting**

Commissioner Hillman moved to adopt the minutes from the March 11, 2010, public meeting, which was seconded by Commissioner Beach. The motion carried unanimously.

## **Report from the Executive Director**

Mr. Wilkey extended a welcome to all in attendance, providing the following update on activities that have taken place since the March 11, 2010, public meeting in the areas of testing and certification, grants, requirements payments, tally votes and other news.

With respect to Testing and Certification, Mr. Wilkey noted the following: Both the UOCAVA Pilot Program Testing Requirements and the Pilot Program Testing and Certification Manual have been posted on the Web site. Comments for the UOCAVA Requirements are being accepted through April 15<sup>th</sup> and comments for the Manual are being accepted through April 26<sup>th</sup>. The Test Plan for the ES&S Unity 3.2.1.0 v.5.0 was recently approved, and decision 2010-01 on the voltage levels that must be tested when performing the ESD test was posted to the Web site. Manufacturers of voting systems were sent a letter by the Testing and Certification Program reminding them of their requirements/obligations in addition to information regarding their site reviews.

With regard to Grants, Mr. Wilkey announced that 33 applications were received with respect to the Mock Election grant program and 61 for the College Poll Worker grant program. Applicants from Delaware, Massachusetts, Rhode Island, West Virginia and New Hampshire have been given an extension until April 6 due to the severe weather they recently experienced. He also announced there is still a need for additional external peer reviewers to help review the applications.

Under Requirements Payments, the deadline for commenting on the draft Maintenance of Expenditure policy has been extended until 5 p.m. on April 19. The total amount of requirements payments disbursed for 2008 is \$80.4 million, \$52 million for 2009 and \$6.6 million for 2010. Two Advisory Opinion requests have been posted to the Web site: AOR-10-004 and AOR-10-005.

The following three tally votes were certified since the March 11<sup>th</sup> public meeting: Submission of Notice and Comment Policy and Voting by Circulation Policy for Public Notice and Comment; Submission of UOCAVA Pilot Program Testing Requirements for Public Notice and Comment; and, Submission of Voting System Pilot Testing and Certification Manual for Public Notice and Comment.

Under other news, Mr. Wilkey pointed out that comments on the draft Information Quality Guidelines Policy are being accepted through April 30<sup>th</sup>, and that Commissioner Beach's observations from her trip to North Dakota's Statewide Election Conference are available for viewing on the

Web site. He was pleased to note that the Commission's move to its new office location at 1201 New York Avenue, N.W., Suite 300 went very well due to the hard work by the administrative office staff. Mr. Wilkey was pleased to announce that he would be accepting an award, sponsored by the East St. Louis Board of Election Commissioners, on behalf of former colleague Peggy Sims and the EAC. There were no questions for Mr. Wilkey.

### **New Business:**

#### **Update on Clearinghouse Policy**

Presenter: Jeannie Layson, Director of Communications and Congressional Affairs, EAC, provided testimony with respect to the process/development of the draft Clearinghouse policy in accordance with the Help America Vote Act. Ms. Layson also provided a brief demonstration of EAC's newly designed Web site, in addition to the Clearinghouse as it is envisioned.

Presenter: Karen Lynn-Dyson, Director of EAC's Research, Policy and Programs Division, provided an overview of the materials that have been developed over the past five years and are available via the Commission's Web site, in addition to providing a brief summary of some materials that will populate the Clearinghouse.

Ms. Layson explained that the Commission would be presented with a proposed draft Clearinghouse policy within the next several weeks, recommending a 45-day public comment period in line with Notice and Public Comment Policy.

### **Questions and Answers:**

In response to Commissioner Hillman's question pertaining to whether individuals who only have dialup access will be able to navigate the newly designed Web site, Ms. Layson explained that in addition to the Web site contractors working on finding solutions to meet this need, there will also be a usability testing period in which the public will be given an opportunity to report their experiences for solutions to problems they may encounter. In response to Commissioner Hillman's second question regarding how the "Give us your feedback" option on the Web site will be monitored to ensure that it contains appropriate language, Ms. Layson noted that the solution will be a combination of both technology and monitoring. Ms. Layson confirmed Commissioner Hillman's inquiry that the Clearinghouse policy will adhere to certain government-wide policies.

In response to Commissioner Beach's inquiry regarding whether it would be possible to include a collection of best practices in election administration in the Clearinghouse and whether this would be beneficial for States, Ms. Layson agreed that having a hub of information would be not only very helpful for election officials, but it would also fulfill EAC's mission to improve the administration of federal elections. In response to Commissioner Beach's second question regarding what steps are taken to ensure that the information contained in other agencies' Clearinghouses was found to be accurate, Ms. Layson explained that while it varies from agency to agency they all have a system in place regarding quality assurance which seems to be driven by available resources. In response to Commissioner Beach's final question regarding why a 45-day public comment period will be recommended as opposed to 30 days, Ms. Layson pointed out that because the Clearinghouse is for the benefit of the public, the extra time will allow both election officials and the public an opportunity to share practices, ideas and solutions. Commissioner Beach asked Ms. Lynn-Dyson to clarify what she meant about working with senior management on special election topics. Ms. Lynn-Dyson clarified that the topics would be special issues surrounding elections (not topics regarding special elections), such as: early voting, serving disabled voters, language minority voting, provisional voting, and felon voting.

In response to Chair Davidson's question regarding what was gained through the meetings that were held with Clearinghouse managers of other federal agencies, Ms. Lynn-Dyson said she was impressed by the length of time that some of the Clearinghouses have been in existence and also the amount of resources that they are able to put into their Clearinghouse functions. Ms. Layson pointed out that due to the amount of maintenance involved in a Clearinghouse, a gradual approach may be advisable in order to ensure a robust system. Ms. Layson also confirmed that the Web site will be made available in several different languages in addition to the six languages that major portions of the Web site have already been translated into. In response to Chair Davidson's question with respect to what will be done to ensure that the information on the Web site and the Clearinghouse is up-to-date Ms. Layson pointed out an important factor will be starting with a foundation that can be managed in order to ensure accuracy of the information, in addition to available resources to audit the materials regularly. In response to Chair Davidson's final inquiry as to whether the cost of the Clearinghouse is being planned for in EAC's next budget Ms. Layson explained that while she has not put in for a budget request for an increase, a lot will depend on the scope of the final policy. Creative ways are being explored to determine whether staff can share in the maintenance of the Clearinghouse.

Commissioner Hillman had a follow-up question regarding the timing of the Clearinghouse and the revamped website. Ms. Layson took the opportunity to let the public know that the website would be revamped and undergo beta & usability testing, and those will happen regardless of the Clearinghouse. Commissioner Hillman's final comment to Ms. Layson queried whether voters were a large stakeholder group that used the EAC website, and perhaps academics and election officials make greater use of the site. Ms. Layson responded by stating that the website will take a broad approach to users, and usability testing will be conducted by representatives of the general public, which includes voters, academics, and policy makers – including State legislators and Capitol Hill staffers. This broad approach will allow for inclusion of all perspectives.

### **Discussion of Public Comment Version on Pilot Program Testing and Certification Manual**

Presenter: Brian J. Hancock, Director, Testing and Certification Program, provided testimony regarding EAC's Pilot Program Testing and Certification Manual, which included a summary with respect to the purpose of the Manual, in addition to information with respect to certification testing, technical review, grant of certification, denial of certification and pilot program monitoring and reporting.

#### **Questions and Answers:**

In response to Commissioner Hillman's inquiry as to whether there are any voting systems presently waiting for certification that would qualify under the program Mr. Hancock commented that while he has not been made directly aware, he has heard anecdotal information that some states may be meeting such a program. One type of system Mr. Hancock provided as an example for a pilot project was a kiosk-based voting system, similar to the one fielded during Operation BRAVO in Okaloosa County Florida.

In response to Commissioner Beach's question regarding what the Declaration of Conformity consists of, Mr. Hancock explained that manufacturer's perform many tests on their products before it even gets to the certification stage. The Declaration of Conformity process allows EAC to review the beta tests performed by the manufacturer and allows the test labs to perform specific tests, such as electrostatic discharge tests (ESD) and security, which help to save time and costs in the process. In response to Commissioner Beach's question regarding who will perform the Declaration of Conformity audit, Mr. Hancock explained he anticipates EAC oversight of a staff member, perhaps himself, pointing out that the bulk of the work will be done by Technical Reviewers. In response to Commissioner Beach's final inquiry as to whether there are other industries that utilize the Declaration of Conformity process for testing, Mr.

Hancock explained it is widely used around the world, particularly in the European Union who use this process almost exclusively in their telecommunications industries.

In response to Chair Davidson's question to what would prevent a manufacturer from going through the pilot program certification program and bypassing the full testing and certification process, Mr. Hancock explained that certification will be limited to the period of the pilot election. In response to Chair Davidson's final inquiry regarding what the projected cost savings will be for testing systems via the pilot program as opposed to the full certification process Mr. Hancock stated that while it will depend on the system, the goal will be to keep the costs under a quarter million dollars and limited to a six week to two-month timeframe.

In response to Commissioner Hillman's follow-up question regarding the timeframe in which it is anticipated the pilot will be conducted, Mr. Hancock stated that while previous pilots that were reviewed lasted for the period of one election, jurisdictions that want to participate in a pilot will be given the broadest certification possible so that they can finish up whatever they might have to do at the end of the election process.

**The Commission recessed at 11:25 a.m. and reconvened at 1:15 p.m.**

**New Business: (cont'd)**

**Discussion of UOCAVA Pilot Voting Program and Requirements Document**

Presenter: Brian J. Hancock, Director, Testing and Certification Program, provided a brief background regarding panelists Mark Skall and Paul Miller, members of the UOCAVA working group, in addition to a brief overview concerning the composition of the UOCAVA working group and a brief summary regarding the background of the project.

Presenter: Matthew Masterson, Deputy Director, Testing and Certification Program, addressed the Commission to provide testimony with regard to the development process of the UOCAVA Pilot Program Testing Requirements, which included an overview of the standards/testable requirements.

Presenter: Mark Skall, EAC Technical Reviewer, provided testimony regarding the development of the UOCAVA Pilot Program Testing Requirements, which included information about the background of the project, differences between UOCAVA and general election testing and certification, risks in manufacturer testing, equivalent configurations and challenges in drafting the requirements

Presenter: Paul Miller, Senior Technology/Policy Analyst, Washington State, provided testimony regarding the development of the UOCAVA Pilot Program Testing Requirements, which included information about the background of the project, the scope of the project, risk assessment and how the system is intended to function.

**Questions and Answers:**

In response to Commissioner Hillman's first question regarding whether both the Manual and the specific requirements for the UOCAVA program identify the sections of HAVA that are being addressed, Mr. Masterson explained that both documents not only reference HAVA but the requirements under the Defense Authorization Act and the MOVE Act which calls on EAC to help support the Federal Voting Assistance Program (FVAP) if it should choose to run pilot projects. In response to Commissioner Hillman's inquiry as to whether the UOCAVA pilot program only pertains to voting outside of the U.S., Mr. Masterson noted that the pilot program would not be restricted to outside of the U.S. but could include military stationed within the U.S. but not necessarily in their home voting state. In response to Commissioner Hillman's question regarding how a kiosk voting system outside of the U.S. will meet the poll worker requirement when there are multiple parties on the ballot, Mr. Miller noted that this is something that states may need to address through legislation. In response to Commissioner Hillman's inquiry requesting further elaboration of what constitutes "remote voting technologies," Mr. Skall stated that it involves using networking technologies, i.e., the Internet. In response to Commissioner Hillman's question regarding where the funds will come from to finance the pilot program, Mr. Hancock stated while he would need confirmation, he believes there is some funding in FVAP's budget to run or assist with pilot programs. States and local jurisdictions in the past have picked up the bulk of the costs when participating in pilot projects. In response to Commissioner Hillman's question as to how the Commission will assure voters that participating in a pilot program means testing the system and it is not a pilot programming of their vote, Mr. Miller pointed out that in addition to the fact that participation is voluntary, the paper ballot backup will be available to ensure that the ballot gets counted correctly. Mr. Skall added that every requirement that is needed to ensure accuracy, reliability and security was included in the Requirements Document. In response to Commissioner Hillman's final question regarding what will ensure the privacy and confidentiality of a paper ballot in the case where only one individual casts their vote via a remote site, Mr. Miller explained that state laws allow jurisdictions to roll that particular vote into larger units in order to ensure privacy.

In response to Commissioner Beach's question regarding the length of the pilot program, Mr. Hancock stated that while the intent was specifically to

make the program available for the election this year, the architecture of the program does not limit it to the 2010 election. In response to Commissioner Beach's question regarding whether a kiosk model would be limited in the number of votes it can accommodate, Mr. Masterson stated that it will be a logistical limitation as opposed to a system limitation. In response to Commissioner Beach's inquiry as to whether states will be required to test a kiosk model prior to an election, Mr. Hancock replied that while he would hesitate to say states would be required, whoever is running the project will be encouraged to perform some initial testing. Mr. Miller commented he would certainly expect that part of the best practices will include testing that emulates the logic and accuracy testing process. In response to Commissioner Beach's question regarding how the pilot program will address the use of COTS, Mr. Hancock explained that due to the flexibility in a pilot project it will certainly provide more data regarding the management of COTS. In response to Commissioner Beach's final inquiry into whether the new requirements being used for a pilot program could be introduced into the next iteration of the VVSG, Mr. Skall stated that while this is something that most likely both the Technical Reviewers and the Technical Guidelines Development Committee (TGDC) will be considering, in his opinion it is fairly unlikely that the requirements will be applicable to larger systems, and that the requirements in question are very specific to UOCAVA systems. Mr. Masterson added that the only area where he sees a corollary would be the penetration testing requirements.

In response to Chair Davidson's question as to how the Requirements Document fits into EAC's mandate requiring remote voting systems in addition to the requirements under the MOVE Act, Mr. Hancock commented that in addition to it being one of the intentions of the document, EAC will be looking to the TGDC to make actual, full standards for Internet voting systems as envisioned by the MOVE Act. He further noted that research that will be provided by the National Institute of Standards and Technology (NIST) will assist the EAC and election officials as they work towards implementing pilot voting systems. In response to Chair Davidson's question as to why Washington State was unable to move forward with electronic voting for its UOCAVA and military voters in 2008, Mr. Miller replied it was due to the fact that legislation, both in 2008 and just recently, addressing Internet voting was defeated because of budget concerns. In response to Chair Davidson's question pertaining to how the standards in the Requirements Document compare to other standards he has been involved in developing, Mr. Skall was pleased to report that working on the Requirements Document was a much more harmonious, cooperative effort and that everyone involved was interested in working towards a common goal in comparison to some of the other standards deliberations he has taken part in which were much more contentious and where compromises were made to protect the various

interests that each participant had. In response to Chair Davidson's inquiry regarding whether other organizations/agencies allow their manufacturers to perform testing for the purpose of reducing costs, Mr. Skall reiterated Mr. Hancock's earlier explanation with respect the fact that it is used in many other arenas, particularly the European community. In response to Chair Davidson's inquiry as to whether it is envisioned allowing manufacturers to perform some of their own testing in the current certification and testing process Mr. Hancock replied that while he doesn't want to say for certain that this would be adopted, if the pilot program is successful it is something that would most likely be given consideration in order to reduce the cost of testing.

### **Commissioners' Closing Remarks**

Chair Davidson extended her appreciation to the panelists for their presentations, in addition to reminding voting system manufacturers that the letter they received regarding their responsibilities/obligations is posted on the Web site. Commissioner Hillman raised the issue of how the Commission would be addressing the receipt/posting of non-governmental documents in connection with the draft Clearinghouse policy. It was agreed that this topic would be placed on the next meeting agenda for further consideration. Commissioner Beach clarified her opening comment by explaining that it is President Obama's intent to nominate Tom Hicks to the position of EAC Commissioner.

### **Adjournment**

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

**Meeting was adjourned at 2:35 p.m. EDT**