

Minutes of the Public Meeting

United States Election Assistance Commission

1225 New York Avenue, NW

Suite 150

Washington, DC 20005

Held on Tuesday, January 17, 2008

VERBATIM TRANSCRIPT

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission ("EAC") held on Thursday, January 17, 2008. The meeting convened at 10:05 a.m., EDT. The meeting was adjourned at 12:59 p.m., EDT.

PUBLIC MEETING

CHAIRWOMAN DAVIDSON:

We'll go ahead and start the morning meeting. I'd like to call it to order and ask everybody if they would please turn their cell phones on silence.

So if everybody would please join me and stand and we'll do the fledge of the flag.

[Whereupon, Chairwoman Davidson led all in attendance in the recitation of the Pledge of Allegiance.]

CHAIRWOMAN DAVIDSON:

Well, the meeting today I'd like to welcome everybody to it and it's got a bonus to it. We are electing a new Chair and Vice-Chair of the Elections Assistance Commission and we really appreciate everybody being here to take part and to be able to witness that. And so as we move forward we'll get into that very quickly. So it won't be long.

But in doing that and, you know, thinking about the year that's coming up right around the corner how many Presidential primaries are we going to be having here in just the next few weeks I think that the challenges of our Chair-to-be and our Vice-Chair is going to be numerous, but on the

other hand I can't think of two more capable individuals to be able to handle it. And so I'm very pleased as we move forward with the installation of officers. And I'd like to introduce Alice Miller who is going to swear in...

VICE-CHAIR RODRIGUEZ:

Roll call and adoption of agenda.

CHAIRWOMAN DAVIDSON:

Excuse me; I've got to do the roll call. See there, she's already picked up on what I'm missing. I guess I'd better do the roll call to make sure all four of us are here. So if you would do the roll call, Counsel Julie Hodgkins-Thompson.

COUNSEL HODGKINS:

Thank you, Madam Chair. Members, would you please respond by saying here or present when I call your name?
Donetta Davidson, Chair?

CHAIRWOMAN DAVIDSON:

Present.

COUNSEL HODGKINS:

Rosemary Rodriguez, Vice-Chair?

VICE-CHAIR RODRIGUEZ:

Here.

COUNSEL HODGKINS:

Gracia Hillman?

COMMISSIONER HILLMAN:

Here.

COUNSEL HODGKINS:

Caroline Hunter?

COMMISSIONER HUNTER:

Here.

COUNSEL HODGKINS:

Madam Chair, there are four members present and a quorum.

CHAIRWOMAN DAVIDSON:

All right. And then I do need a motion to adopt the agenda. Do

I so hear one?

VICE-CHAIR RODRIGUEZ:

So moved.

CHAIRWOMAN DAVIDSON:

A second?

COMMISSIONER HILLMAN:

Second.

CHAIRWOMAN DAVIDSON:

All those in favor say aye. Opposed?

[The motion carried unanimously.]

CHAIRWOMAN DAVIDSON:

Now we'll move forward and I'll introduce Alice Miller, which is the Director of Elections in Washington, D.C., the District. She I know has a Presidential primary coming up in February also, so it's a busy time for her. But thank you for being here with us today, and why don't you come forward and we'll go ahead and get started.

MS. MILLER:

I'm going to take a few minutes just to speak a little bit about this particular installation ceremony because I think with the

commencement of this term each of the four sitting Commissioners will have served in a leadership role and I think that's very important to highlight. Part of the beauty of this independent, bipartisan current Commission is its makeup and its diversity. The diversity of these four women, all women of grace. These amazing four women, all of whom are Presidential appointees. All of whom in their own right are different, yet all of whom are bound together for a single cause to ensure equal access of all through franchise. The premise of which this country was built on, diversity. And diversity is exactly what makes this country so unique, so promising. It's not a means to an end but it is the diversity, which also composes this Commission, is what will during this busy time, this Presidential election year, make the Commission so important. The diversity of this Commission is what will during the Presidential election year make the entity resource of unity that everyone will look forward for direction, for guidance, for leadership and, as is in the title, assistance. So I think it's important that we just take a minute and recognize that.

And then I want to take one second, and I've been told by Commissioner Rodriguez that, "We've got to get to business, so don't take a lot of time," so I want to recognize and respect that. But I think at this time we should all take a minute and to thank our outgoing Chairperson Donetta Davidson for her tireless effort, sincere dedication, and basic down-to-earth approach to chairing this Commission. You

have done a yeoman's job and for that I think we should say thank you.

[Applause]

MS. MILLER:

All right. You can take a breather, not a break. Who would have predicted that a federal government agency as important as this one would have ever been run by four women of diverse background, let alone be afforded the opportunity to be chaired by a woman of Hispanic descent? And when I say opportunity to be chaired by someone of Hispanic descent is because of all that Commissioner Rodriguez brings to the position of Chair as a woman of Hispanic descent; a former elected official of Colorado, the former Director of Boards and Commissions for the Mayor's Office, the former Clerk and Recorder of the City and County of Denver and the former Acting Director of the State of Denver, Denver Elections Commission.

She has been at the forefront of change, change which seems to be a tone of things these days in a nationwide kind of way. And I say that because Commissioner Rodriguez has established herself as an advocate for grassroots and civic organizations having co founded the Latino initiative, a project geared at registering Latino voters and providing election information to members of the Latino community.

Commissioner Rodriguez's tenure on the Commission to date continues to reflect the genre of change that she stands for. She has worked tirelessly to promote and establish brown bag discussions. She has continued to establish relationships with grassroots organizations that are dedicated to ensuring that the rights of voters are protected. By her own words she, and I quote, "Knows the value and benefit of public input and transparency." As such Commissioner Rodriguez has sought to dedicate her efforts by seeking participation from a wide spectrum of organizations that allows her to obtain and present the issues as represented by members of a broader continuum. Based on her background and experience, it is clear that as she serves in the position of Chairwoman of the Election Assistance Commission she will lead the agency in a manner that supports its overall mission while focusing on the needs to be inclusive of and sensitive to the concerns involved.

So at this point Commissioner Rodriguez I'd like to ask you to come forward. This is a Bible that Commissioner Rodriguez has asked to us and it's just -- she may talk a little bit about it, but it says, "From a Yankee" inside. So there's certainly significance to her being sworn in at this time.

[Whereupon, the oath of office as Chairwoman was administered to Rosemary Rodriguez by Alice Miller.]

[Applause]

COMMISSIONER DAVIDSON:

Cecilia Espenoza I welcome you and you are going to give us some comments about our new Chairwoman. Go right ahead.

MS. ESPENOZA:

Yes. I was very thrilled to be asked to speak and to represent many, many people on behalf of Rosemary, a high task. I'm representing her family which is numerous, loving, supportive and totally there for her and with her. So that alone would be a large task. But I am also representing the State of Colorado as I am a friend of Rosemary's from the State of Colorado and the place where she was nurtured and she nurtured, and so I'm proud to be here representing that group as well. But I'm also here as a fellow Latino and I wanted to take a moment to share some comments and my thoughts of why we are so fortunate to have Rosemary serve in this position from my perspective as a Latino.

I first got to know Rosemary -- I knew of Rosemary I think and her power and influence and leadership prior to even ever reaching Colorado. I was the second Latino admitted to the State bar in Utah and after seven years of every time we'd get to ten Latino members somebody would leave I decided it was my turn to leave. And I did that by going to the University of Denver to teach law school, but I was able to do that because of the work of Rosemary Rodriguez. As a community leader she had pushed for change and advocated that there be full representation at the law school, which had the largest

Latino population and no Latino law professors. So through her efforts and the community's efforts I find that my start as a career as a law professor -- transitioning from lawyer to law professor was in large part due to Rosemary. But when I got to Denver what I also found, and this is where the one thing that hasn't fully been discussed I think is important to share, the leadership and friendship of Rosemary was also demonstrated to me. Rosemary I met shortly after being at the law school because she hosted, and I'm not sure when this was founded, a coffee group. And this coffee group continues to meet today every Friday morning I think, even though she's not there. But it was a group where professional Latino women could come together and meet where we could share our problems and our strengths, but more importantly we could laugh and we could learn that we were okay no matter what happened in our difficult sometimes places of work. And it was that leadership which led many people to take on challenges that we never thought would be possible. The leadership of Rosemary in saying to us, "Well, this is really a great challenge. But have you thought about this and this and this?" Because what Rosemary modeled was it was not enough to be a leader, it was important to ensure that wherever anybody was we continue to open new doors which is the true demonstration of a leader. A leader is not just an individual who works for their own end aggrandizement. Now having been in Washington for eight years I know a lot of those types of leaders. That's not Rosemary. Rosemary is the

type of leader perfectly situated for the Chair of the Federal Election Assistance Commission because her life and her passion has been about not her own growth, her own signaling of power, which the recognitions have come because of what she has done. But that's not what's driven her. What's driven her is a sense that what has to be done and what is right is to ensure that every person has access to a better tomorrow, that every child is gets access to a better education, and what are you going to do about it in your own world, in your own life. And it's that model that I really appreciate.

And more importantly for me personally, this is also coming full circle, because it so happened when I was -- gone through the National Hispanic Leadership Institute Program and had my big graduation ceremony where I wanted my family there and no one could be there except my husband and son, Rosemary happened to be in town in Washington, D.C. and came and was my family. And also when I was sworn in to be on the Board of Immigration Appeals, which was what brought me here to Washington, D.C. by Janet Reno, Rosemary was there as well.

So our lives continue to intersect but my life has been changed by her leadership. And I know in speaking recently to someone who had appeared before this Commission, and I just mentioned that I knew Rosemary and was going to be coming to this event today, he said, "Yeah, I thought she's just another one of those bureaucrats that's not going to make any

difference.” But after his conversation with her and the probing questions that she raised he knew that wasn’t the case.

So I commend to you the new Chairwoman, and I look forward to the continuation of the work that I know she will do because she has demonstrated that in my life for these last 15 years. Thank you.

COMMISSIONER DAVIDSON:

Thank you very.

[Applause]

COMMISSIONER DAVIDSON:

As Cecilia said in the words she has spoken, I think that you definitely have the same belief I have. As Chairwoman it’s not power you’re receiving, it’s responsibility. And I do turn over the gavel to you for the next year. And it is my pleasure to be one of the first to congratulate you as our new Chairwoman.

CHAIRWOMAN RODRIGUEZ:

Thank you. Thank you, Commissioner Davidson. And my first official act as Chair of the Commission is to install Commissioner Caroline Hunter as the Vice-Chair. So if your back permits, would you like to stand?

[Whereupon, the oath of office as Vice-Chair was administered to Commissioner Caroline Hunter by Chairwoman Rosemary Rodriguez.]

[Applause]

CHAIRWOMAN RODRIGUEZ:

Okay. I have a statement that I'll make during my time on the agenda. And I thank Ms. Miller and Ms. Espenoza for joining us today.

We are now into the section of reports by Commissioners, and the first report is from Commissioner Davidson on the Technical Development Guidelines Committee.

COMMISSIONER DAVIDSON:

2007 was an exceptionally busy year for us at the EAC and the Technical Guidelines Committee. First, it's important I think that everything that the Technical Guidelines Committee does is public information. Whether it's a phone call, whether it's a meeting, it is all public information and very well, you know, made sure that it's noticed properly. And I think it is a very important step that they've always taken.

First, on August 17, 2007, the Technical Guidelines Development Committee voted unanimously to approve their draft recommendations for the next iteration of the Voluntary Voting System Guidelines pending minor edits. And on August 31, 2007, the Director of NIST, which she was the Chair of the TGDS, submitted to the EAC the draft Voluntary Voting System Guidelines from the Technical Guidelines Development Committee.

In 2007 the Technical Guidelines Committee held three preliminary meetings; March, May and August. All three meetings were focused on guiding NIST, which is the National Institute of Standards and Technology, in creation of the Voluntary Voting System Guidelines and final adoptions of that draft recommendation took place. In preparation for these three meetings there was three subcommittees, and in these three subcommittees they held 67 teleconferences that is on the web also to discuss the creation of the Voluntary Voting System Guidelines.

So you can see it was a very busy year for all of those individuals and they're still being involved with the process.

CHAIRWOMAN RODRIGUEZ:

Thank you very much, Commissioner Davidson. And now also hearing from Commissioner Davidson a report on the Board of Advisors.

COMMISSIONER HILLMAN:

Can I just ask a question about the TGDC?

COMMISSIONER DAVIDSON:

Uh-huh.

COMMISSIONER HILLMAN:

Is there anything in the law I guess under HAVA, I'm not sure where it would be, that would talk about the length of term of each of the members? Or are they just replaced as they resign? How would the Committee continue to be constituted?

COMMISSIONER DAVIDSON:

We've looked into it. There is nothing in the law, and there's no bylaws, that speaks to terms of individuals sitting on the TGDC as members. The law is very specific on who represents the TGDC, but it is not -- it did not go into terms. There has been a few replacements as people have resigned from the positions, but there is nothing that directs us on how to direct us. And we have looked into it and thinking about, well, now that they have developed and we've received the documentation is there time -- do we need to ask if people want to leave the same members on? That's a discussion that we've had internally and some with NIST because obviously each one of the organizations have the ability to appoint and there's appointments that we do together -- for appointments that we do together. But there's nothing on terms at this time. And so how we move forward has not been decided or discussed and the Commissioners will be involved with that...

COMMISSIONER HILLMAN:

Thank you.

COMMISSIONER DAVIDSON:

...discussion and involved with the determination how we move forward.

COMMISSIONER HILLMAN:

Thank you.

CHAIRWOMAN RODRIGUEZ:

Any further questions for Commissioner Davidson? Thank you very much.

And now I'll ask Commissioner Davidson to report on the Board of Advisors.

COMMISSIONER DAVIDSON:

Okay. This also has been a most interesting and busy year for the EAC encountered thus far, but it has definitely kept us engaged with our stakeholders and made the cooperation and communication between the EAC and our stakeholders so much more important. We have been utilizing our Board to secure a quality set of comments for proposed research projects, which has been posted on the EAC virtual website. The launch of the virtual website has been a great tool to disseminate. And, Commissioner, I do say that was a great job you did in trying to get that formulated. It allowed for the public to also be involved with the process.

One of our stakeholders, the EAC Board of Advisors, has gone above and beyond the call of duty in its service this year. Their dedication to the EAC and their support of fair and transparent elections has been admirable.

During my tenure as Chair during the calendar year '0,7 the Board of Advisors convened two full meetings. The first was here in Washington, D.C. , January 22nd and 23rd at the Four Points Sheraton. The meeting had excellent turnout and the Board reviewed reports and testimony from EAC staffers, Congressional staffers, and representatives from the Pew Charitable Foundation. Some of the topics included ongoing EAC research, EAC certification manual, and the Voluntary

Voting System Guidelines. At the meeting the Board passed six resolutions that is available on our website.

The second meeting, which was held at the start of FY '08, was hosted December 12-14 in Austin, Texas. We had a fantastic turnout and we were very proud of our productive meeting. The priorities and the central focus of the meeting was to review the TGDC Development Committee's version of the next iteration of the VVSG. It was a follow-up to the NIST event in Boulder in October where an ad hoc committee did preparation work on the documents in order to give presentations and comments in August. The Board received three days and finally voted on and passed 20 resolutions, which has been posted at www.eac.gov.

Again, I do want to thank the Board for their hard work and their time. I understand many of the Board members were going into primary elections and obviously had no time to spare, but definitely all of our Board members we appreciate their time and their dedication and commitment.

CHAIRWOMAN RODRIGUEZ:

Thank you. Are there any questions for Commissioner Davidson about the Board of Advisors?

Seeing none, Commissioner Hillman may we hear about the Standards Board?

COMMISSIONER HILLMAN:

Certainly. The Standards Board was organized at the same time that the Board of Advisors was, and I believe that was June of 2004. At any rate, it was the summer of 2004. And it

was a huge task. The Standards Board, as we all know, is made up of 110 people, two people representing each state, the District of Columbia, Puerto Rico and the three territories, one person serving at the state level, one at the local level. They must not be from the same party and the chief state election official has the responsibility to appoint people. And as individuals resign from their jobs, retire, or those who are elected who are no longer serving an office we see over the years quite a bit of turnover in the members of the Standards Board. So it takes a bit of a task to be able to keep everybody engaged and keep all of the Standards Board members informed. I've had the pleasure of serving as the designated federal officer of the Standards Board twice and have seen the development of that Board.

The Board has spent the last year-and-a-half really getting organized. The Executive Board, which consists of nine people elected by the broader membership, meets monthly by conference call. Generally speaking, they organize the Bylaws Committee and have in fact amended their bylaws at least twice since the bylaws were originally adopted. They have a Nominating Committee because elections to the Executive Board are held every other year, and this year they had what was called the Voluntary Voting Systems Guidelines Ad Hoc Committee and it was a group of 14 members of the Standards Board who invested a lot of time and effort reviewing the Voluntary Voting System Guidelines, working with the Executive Board to propose comments to the VVSG

through resolutions. And at the Standards Boards last meeting in December it passed 15 resolutions providing comment to the VVSG both high-level, big picture observations and comments, as well as particular comments about definitions of phrases, use of phrases, you know, and everything to typographical errors and grammatical errors. And the Board will use presumably this year to continue to watch the progress and comments made to the VVSG to be prepared for the second round of comments when EAC publishes the VVSG.

In 2007 the Board met twice. And it's a peculiar thing that the Help America Vote Act has done because it says that the Board shall meet at least once annually to vote on the VVSG. So the question arises if there is no vote to be taken on VVSG matters, does the Board under HAVA still have to meet. And it is a question that I pose to the General Counsel, because as we can imagine and appreciate, unlike the Board of Advisors, everybody on the Standards Board is an election official. And they've all got primaries, not only Presidential primaries but they've got, you know, local and state primaries and they're all very busy in 2008 and it does take a lot of effort to stay engaged with the Standards Board. So they've got some things to consider in 2008 about how they will move forward but have put together a structure I think that serves the purpose under HAVA under which the Board was organized, as well as to serve the election officials because the members of the Standards Board have taken it upon

themselves to report back to their colleagues, particularly the local representative, to keep them informed of the activities and decisions that the Standards Board makes.

And one important note is that the Executive Board consciously made a decision that it will not make recommendations directly to EAC, but rather the Executive Board makes recommendations to the Standards Board and the Standards Board makes the recommendations to EAC. And, yes, we used the virtual meeting room at least twice and it has been a convenient way for the Standards Board to be able to conduct business on matters that were time sensitive, needed to be handled, did not necessarily require an in-person meeting, but still that the business could be conducted in view of the public. The Standards Board has its own page on the EAC website and the Standards Board has its own email address so that if members of the public want to send comments to the Standards Board they can do that directly to that email address.

Thank you.

CHAIRWOMAN RODRIGUEZ:

Thank you. Are there any questions for Commissioner Hillman?

Seeing none, the next agenda item is a statement by the Chair. And the first part of my statement I will hand a gift to the outgoing Chair and this is a gavel to commemorate her service as the EAC Chair in 2007. I believe this is a tradition. And I think this is something that you're probably going to put

in a fairly prominent place and every time you look at it, you know, you're going to remember what a great year we had under your leadership.

COMMISSIONER DAVIDSON:

Thank you very much. And, you know, it's really the first time -- I thought I got to take back the gavel after I took my oath last time to my office and immediately I found that that gavel is kept under lock and key really and it shows up at every meeting, but you don't really get to have a gavel until now.

CHAIRWOMAN RODRIGUEZ:

Until you're done.

COMMISSIONER DAVIDSON:

So this is very precious, thank you. I appreciate it. Thanks for the gift.

CHAIRWOMAN RODRIGUEZ:

Thank you. And now I'll make a statement. I take the position of Chair -- I'm going to read it because we're going to post it -- I take the position of Chair of the EAC with a great deal of appreciation, anticipation and respect. First of all to the Commissioners who have preceded me, I express my appreciation for your dedication, commitment, and hard work. I can only imagine how hard it was to create an organization from the pages of HAVA. By starting this institution from scratch you blaze a trail. And I include the staff of the EAC in this recognition because you have been with the Commissioners every step of the way and I take this moment to honor your work with applause.

[Applause]

CHAIRWOMAN RODRIGUEZ:

Secondly, I'm filled with anticipation. This election year should mark the evolution of the EAC from a new organization to an institution. We must be prepared to deal with the hardest, most complex issues of the day in a thoughtful, responsive manner. Nothing new for the EAC, but the weight of our advice and guidance carries heft and I am mindful of how careful we must be in order to be authoritative and relevant.

Finally, I am filled with respect, respect for the Congress that created the EAC, for the people who conduct elections all over the country and for the people who vote in every election and for those who will vote for the first time in 2008. It is the voter whom the EAC was created to serve. Voter access and confidence was deemed by Congress to be of the utmost importance and so they ventured for the very first time into the election process establishing the EAC to provide funds, standards, testing and certification for equipment, and guidance and research for administration.

The role of the Chair is to conduct meetings, to speak for the Commission's consensus viewpoint, and to make Committee assignments. Each Commissioner has expressed a willingness to serve in a capacity that will most benefit the EAC. I thank them for their desire to help the Commission

succeed. The three assignments that the Chair must fill are the EAC's liaison to the TGDC, the liaison to the Board of Advisors and liaison to the Standards Board.

I'm going to ask immediate past-chair Donetta Davidson to continue as the TGDC representative. As we complete the next iteration of the VVSG, the Voluntary Voting System Guidelines, continuity on the TGDC is vitally important. It is also important for other Commissioners to develop skills in this area and I will speak more to this point later.

The Board of Advisors will serve in an especially critical role in the coming year. The Congress in establishing the election data collection grants has tasked the Board of Advisors with an extra duty of reviewing the grant program report before it is submitted to the Congress. Therefore, I have asked Commissioner Gracia Hillman to serve as the liaison to the Board of Advisors. This is a change in protocol, but because 2008 is what I expect to be an exceptionally busy year I don't think that the Chair, me, will have time to really manage this work. This program, the election data collection grants program, holds enormous promise if it achieves its goal of improving the collection of election data. Commissioner Hillman's service on the research subcommittee leads me to expect that she would be an excellent liaison to the Board of Advisors with this task.

In order to develop that skill with the TGDC that I mentioned earlier, we need to nurture among other Commissioners familiarity. Therefore, I've asked

Commissioner Caroline Hunter to serve as the Standards Board liaison. This Board made up of election officials will, as Commissioner Hillman pointed out, comment on the VVSG. This role will prepare Commissioner Hunter to lead the Commission in adopting guidelines that are measurable while also being accessible to election officials. She has already demonstrated leadership in ensuring that various groups of election officials are as familiar with the proposed guidelines as is humanly possible, and I know her contributions will continue to be valuable.

As Chair I am also committed to continue to build a responsive relationship with Congress, election officials, our Advisory Boards and the voters. I will continue my brown-bag lunches and plan to conduct field hearings across the country seeking venues recommended by election officials and advocates. I will seek their help to highlight jurisdictions that are doing a particularly great job with voter registration and NVRA, provisional balloting, post-election audits, providing access to voters with disabilities and providing access to the minority language voter. I also think it will be important to showcase those jurisdictions that do an exceptional job serving our voters in the military and citizens overseas.

I took my installation oath this morning on a Bible that, as Alice Miller pointed out, holds special meaning for me. I purchased this Bible during a trip to Virginia ten years ago. I was deeply immersed in reading about the Civil War at the time. When I saw the Bible, I was attracted to it by the cover

well worn and tattered. I didn't even know what it was, but when I opened it up I read the inscription. I was overcome. It reads, "From a Yankee." The Civil War sprang to life before me. The division, the conflict, indeed the very idea of a nation so divided that Americans would take arms against their fellow Americans still creates a deep sorrow in me. But for me this Bible represents conciliation. You see, the person who received this Bible and the giver shared something, agreed on something.

It is division, not near the magnitude of the Civil War but divisions just the same that we are charged to work through in the EAC. Surely we have our partisan orientation, but when we are doing the work of the EAC we are asked to try to achieve consensus. On certain issues consensus seems impossible, so sometimes our work may take a little longer than expediency requires. I ask you to bear with us and I assure you that we will consider every possible resolution of the issues placed before the EAC because at the end of the day regardless of what party labels we wear all four of us have the same goals; to increase voter participation, increase confidence in elections, and provide assistance and support for election officials in their quest to deliver accurate, accessible and secure elections.

Thank you for the time. And now I offer Commissioner Hunter. Would you like to make a statement in your new role as Vice-Chair?

VICE-CHAIR HUNTER:

Thank you, Madam Chair. I look forward to working with you and I'm excited about your enthusiasm and the excitement that you bring to this new role that you have. We all respect the fact that you are willing to work together and I think we all appreciate that very much.

I, too, look forward to assisting local officials to the extent we're able to with the administration of elections. I look forward to helping Donetta Davidson and others develop and eventually adopt the newest iteration of the VVSG. And I look forward and hope we can respect the tradition of the state and local government's administration of elections.

Thank you very much for the opportunity.

CHAIRWOMAN RODRIGUEZ:

Thank you. We now move into old business. The minutes are in draft but have not been reviewed preliminarily by the Commission, so we will not approve the minutes from December 11. However, they are this morning just available.

I now call on Executive Director Thomas R. Wilkey for his report.

EXECUTIVE DIRECTOR WILKEY:

Good morning Commissioners and to those of you who are attending this meeting. I want to welcome everyone here and hope that as the day progresses that with all of the weather that they're forecasting that everybody gets back to where they started this morning.

This is the first EAC meeting of 2008 and we have a busy year ahead of us. First let me, on behalf of myself and

the entire staff of the EAC, congratulate our new Chair Rosemary Rodriguez and our new Vice-Chair Caroline Hunter for taking the oath of office today and for their leadership in the coming year.

Let me also before I begin the body of my report comment, make a very brief comment, on what our guest, Director Alice Miller, was speaking about this morning in terms of diversity. You know, some of you know that I've been around this business for a very long time and I would dare to say that when I started, with the exception of perhaps a few local school boards, that you would not see the kind of diversity that is sitting at this table today. It says a lot about where we are as a nation and I'm particularly proud of that. And thank you for those comments. It means a lot to me and I think it means -- it shows that in terms of what's going on in the country it's really a great thing.

Looking ahead, well you'd have to be not turning on your television or your radio or reading a newspaper to not know that it's a Presidential election year, in case you haven't noticed. Election officials are working very hard to prepare for the upcoming primaries and general election. There are lots of changes in election administration, particularly at the state level. The EAC stands ready to assist election officials with resources, best practices and election management information. And we are in the process of testing voting systems as we speak. The information we prepare about our

voting system program will be very instructive to election officials and most importantly to the public as well.

And now let me give you a brief update about current Commission activities. Our 2008 operating budget has been set at \$16.5 million. Congress has also provided \$115 million in new requirements payments for the states, \$10 million in grants for collection of election data, \$750,000 for the Help America Vote college program and \$200,000 for the mock student/parent vote election program. In a few minutes EAC staff will provide more details about these new budget items.

Last month in Austin in conjunction with our Board of Advisors and Standards Board meeting we had a very successful roundtable discussion about voting system guidelines that was open to the and participants included academics from all across the United States and from outside the United States as well as we had an individual from Britain with us. Issues discussed included risk assessment frameworks, how to encourage innovation, reliable methodologies to test voting systems and the merits of both direct and indirect verification techniques. Concerns voiced at the meeting included more emphasis on performance standards, how the VVSG may impact voting systems used in vote centers or for early voting, and the need for more comprehensive studies on the security and usability of DREs versus paper-based voting systems. All of the testimony, and it is excellent, and the list of participants and minutes, are available on our website eac.gov. We will have more

roundtable discussions with other stakeholders including election officials, voting advocates, manufacturers, test labs and the usability/accessibility community. These meetings will be open to the public and we will let everyone know as soon as they are scheduled.

Our 2008 annual report to the Congress is being bound and stapled as we speak. It is scheduled to be delivered to Congress tomorrow. The PDF will be available shortly on our website and we will notify everyone via email when it is available. The 2007 annual report includes a brief introduction and description of how the Commission is structured. Under EAC operations for 2007 we report that our appropriation was \$16.2 million and it was used in the following program areas: 48.4 percent for improving voting technology, 19.5 percent for EAC administration, 17.1 percent for HAVA funds management, 13.3 percent for our national clearinghouse, 1.7 percent for EAC Advisory Boards. The report provides details about the voting system testing and certification program, assistance for our election officials, HAVA funds management, the language accessibility program, and clearinghouse and research activities.

As most of you know, HAVA mandated many research projects to help establish a national clearinghouse of information, and I wanted to take this time to update everyone on the progress we've made toward meeting these mandates. Many of the research mandates are found in HAVA Section 241. I'll start with the ones we've completed and move to

those underway and those that will come next. We have completed, as many of you know, our effective designs for ballot designs for election design and administration. That has been completed. Our provisional voting report was completed in 2006. Voting fraud and intimidation report issued in 2006 and our very comprehensive “Poll Worker’s Guidebook and Best Practices” was issued in 2006 and 2007. We have underway our statewide voter registration database initiative with the National Academy of Sciences. We are educating voters about registration using voting systems, locating polling places and other aspects of voting underway. It’s our hotline and voter information website which we hope to have available at our next public meeting. Our vote count and recount procedures was recently completed in draft and will be reviewed by the Commission soon and we hope to have that underway as soon as possible.

As to future activities, the information that we collect from projects that I just mentioned will inform us on the best way to move forward on these research projects. Method of election technology and voting systems used in counting votes, certainly many of our management guidelines and VVSG activities will lead us in helping us complete this work. Alternative voting method study, feasibility and advisability of conducting elections with federal office on different days, places and hours and establishing a legal holiday for voting, alternative voting methods, and a date other than Tuesday for

holding elections. This report is in draft form and should be available at either our February or March public meeting. Federal and state laws governing voting eligibility, the ways federal government can assist state and local election officials and what funding levels would be needed, technical feasibility of providing voting materials in eight or more languages, matters relevant to voting in rural and urban areas, methods of registration and timely delivery of ballots for UA HAVA voters which is underway and should be completed in the next month. We are also working with the National Institute of Standards and Technology to provide under the Defense Department Authorization Bill several years ago some standards for future use of the Internet for UA HAVA voters. Voting system performance benchmarks and broadcasting practices. Our research department will be working with the research subcommittee of the Commission to begin looking at our research activities in addition to our 2008 survey, which must be completed this year, and to establish our framework for our research activities as we move forward.

As I mentioned, at all of our meetings EAC distributes a monthly electronic newsletter that provides updates on our activities, upcoming meetings and other HAVA related issues. It is the best way to keep up-to-date on information about the Commission. As always, we can be reached toll free at 866-747-1471. And again we urge you to keep up-to-date on our website eac.gov.

Madam Chair, that is my report for this month.

CHAIRWOMAN RODRIGUEZ:

Thank you, Mr. Wilkey. Are there any questions?

Commissioner Hillman?

COMMISSIONER HILLMAN:

I do have a question, but it goes to the annual report. I know that the report wasn't put before the Commissioners for a vote and I'm not sure what we did in past years, but I'd like to recommend that at least we do a consensus. And I know that it's scheduled to go out tomorrow, but I would think that the Commission should be on record one way or the other as having approved the release of the annual report. And so if I remember correctly, a consensus vote would be that if any Commissioner objects you do so within a designated period of time.

COUNSEL HODGKINS:

24 hours.

COMMISSIONER HILLMAN:

24 hours. So that means that if we got the consensus vote today we'd still have tomorrow that we could release it. But I would just think that we should do that.

EXECUTIVE DIRECTOR WILKEY:

Okay, we'll do that Commissioner.

CHAIRWOMAN RODRIGUEZ:

Thank you, Commissioner.

COMMISSIONER HILLMAN:

Well, that's just my request. I mean my colleagues can differ or agree, but I would encourage us to do that.

CHAIRWOMAN RODRIGUEZ:

I agree and we'll prepare a consensus vote. Are there any other questions or comments for Mr. Wilkey?

EXECUTIVE DIRECTOR WILKEY:

Thank you.

CHAIRWOMAN RODRIGUEZ:

Thank you. I'll take a moment to welcome our General Counsel back. It's good to see you, not that looking at Gavin was bad, but it's good to have you back.

COUNSEL HODGKINS:

Thank you, Madam Chair.

CHAIRWOMAN RODRIGUEZ:

New business. The National Voter Registration Act update on states' requests. Mr. Edgardo Cortes?

MR. CORTES:

Good morning, Madam Chair, Commissioners. I have a listing of what is now six requests for changes to the state instructions on the National Form. Five of those were presented during last month's meeting, but we have had a new submission since then. But I'll run through the entire list for the benefit of those members of the public that were not at the public meeting in Austin.

The first one is from Rhode Island. It's regarding their eligibility requirement for people that are on probation or parole, been convicted of a felony. Previously you were unable to vote until your sentence was completed even if you were on probation or parole. They have since amended their

state Constitution and currently the only restriction applies to those serving a felony conviction that are currently incarcerated.

The State of Colorado has made a change to their mailing address. The Secretary of State's office has moved and their mailing address has changed.

The State of Delaware has changed their voter registration deadline. Previously it was 20 days prior to the general election and 20 days prior to any primary election. The current registration deadline is the fourth Saturday before a primary or general election and ten days before a special election.

New Jersey has also changed their voter registration deadline. It was previously 29 days before an election. It has now been changed to 21 days before an election.

The new one since last month is the State of Georgia. Georgia has requested a change to their ID number instructions. Previously Georgia required a full Social Security number under an exemption they had under the Privacy Act, which allowed them to require that information of people registering to vote. They were taken to court over that exemption and the court ruled that because they had not met all the provisions they were not able to keep that exemption. And so what they have done is they have now switched to HAVA-compliant language where they now follow the directions of HAVA to ask first for, if you have it, the driver's license number. If you don't have that, then the last four digits

of your Social Security number are required. If you do not have either number, then the state will assign a unique identifier to you.

And then the last one is Arizona, which has requested the addition under the ID number section to reflect their state law regarding proof of citizenship and requiring proof of citizenship during the registration process. And there is a list of documents, which they accept in order to give that proof of citizenship.

So those are the six pending requests from states regarding changes to the Form.

CHAIRWOMAN RODRIGUEZ:

Thank you. Are there any questions for Mr. Cortes? Thank you.

Our next item of business is to consider and vote on changes to the National Voter Registration Form. We have two proposals today, one from Commissioner Hillman, which she submitted before the Austin meeting in December and one from Vice-Chair Hunter.

Commissioner Hillman?

COMMISSIONER HILLMAN:

Thank you, Madam Chair. As you all recall, in December I put forward a proposal trying to identify those items on the National Voter Registration Form where I thought the Commissioners had common agreement where we could develop an interim policy and under that interim policy we could consider the requests from states for changes to their

state-specific instructions. And my proposal was not able to be considered in December because it wasn't on the agenda, and so I appreciate that it has been put on the agenda for discussion today.

I did also in December ask the Commissioners to make a commitment that we would move forward to try to find what that common ground is so that we could have an interim policy under which we could consider the now six requests pending before us. And the staff have done what I think is a remarkable job. They have taken what they heard Commissioners say and read from the various proposals that Commissioners have put forward. And we all received yesterday the draft of the proposed policy that the staff put forward based on that work. Because we received it yesterday, obviously it's not on the agenda today. I did not have a chance to thoroughly review it, but I think it has great potential.

And so in light of that I am willing to not request any consideration right now on the proposal that I have but rather suggest that the Commissioners take the time to look at the proposal that the staff has put forward, that we move earnestly to see if there is common agreement on that, and that we take action on it as soon as possible. If it is the desire of the Commission that it be again put before a public meeting, then it would come up at our February 6 meeting. But I think at this point, as I said just based on my preliminary review of the draft document the staff gave us yesterday, I think we're very close

to something and I would hope that we could find agreement on that so we can move forward.

CHAIRWOMAN RODRIGUEZ:

Thank you, Commissioner Hillman. Are copies of all now three proposals available in the back, the Hillman proposal, the Hunter proposal and the staff also? Not the staff?

COMMISSIONER HILLMAN:

Not the staff because that hadn't been on the agenda. That wasn't on.

CHAIRWOMAN RODRIGUEZ:

All right. It's not on the agenda, but I do think we should make it available.

COMMISSIONER HILLMAN:

Well, yes, I would think that -- if we agree that that is a document we will consider, I absolutely agree that we should put it out as soon as possible because, you know, that would give those folks who have a vested interest an opportunity to give us feedback as well.

CHAIRWOMAN RODRIGUEZ:

Thank you Commissioner Hillman. And just for the record, you're not moving your proposal at this time?

COMMISSIONER HILLMAN:

Not. I am not moving my proposal at this time. I am just -- I have no idea whether there's a formality to this or not, but what I am saying is that I am willing to at this moment set my proposal aside so that -- and encourage the Commission to

give consideration to the proposal that the staff presented to us yesterday.

CHAIRWOMAN RODRIGUEZ:

Okay, thank you Commissioner Hillman. Commissioner Hunter, do you want to discuss your proposal?

VICE-CHAIR HUNTER:

Sure. At the meeting in December we discussed this issue I think for the third or fourth time, and what we decided to do was call a question to each and every state request. So the five states I think it was at the time who had a request for a change to the state instructions we voted on them one by one and they were not passed. It was two votes in favor of doing that and two Commissioners abstained. And now we have another state coming before us for a request to change the state instructions portion of the Form.

I put a proposal out back in I think it was October, I'm not sure, that I thought was a good representation of what the current law is. And a staff member went back and actually found the policy that the FEC adopted. As you know, the FEC housed this forum for a number of years and did all the regulations that we have now voted to transfer, the FEC regulations, to the EAC. And just to give you an idea here, the FEC regulations regarding this forum will soon be within our purview. So I thought it fitting for us to consider the FEC policy how they handled state instructions to the Form. And again this isn't the whole Form; it's just a portion and the back because, as we know, the Constitution protects the states'

rights to determine eligibility. And I think sort of a lot of this is much to do about nothing because people are trying to come up with different definitions of eligibility. And for me it's very instructive to just look at the actual law at the National Voter Registration Act, which states in Section 1973GD-7(b), "Contents of Mail Voter Registration Form. The Mail Voter Registration Form developed under Section (a)(2) of this section 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 in other parts of the election process." So the Federal 9th Circuit, as well as the Federal District Court in Arizona both cited that section of the NVRA to say that the state can ask whatever information they deem, the state deems appropriate to assess the eligibility of an applicant. And in the instance of -- I think probably we all can recognize that the most controversial request before the Commission is the one by the State of Arizona -- the people of the State of Arizona have decided that they want this additional information to determine whether or not somebody is eligible to vote. And if the person doesn't provide that information, then guess what? They're not registered. And if you're not registered you're not eligible to vote. So for me it's pretty simple. And one other just little piece of information in the FEC regs Section 8.3(b) it states, "The state-specific

instructions,” that’s the part we’re talking about, “shall contain the following information for each state arranged by state: The address where the application should be mailed and information regarding the state-specific voter eligibility and registration requirements.”

I don’t know why this has been made to be such a complicated issue. Whether or not one likes a law in a state is not relevant to the power of the EAC. I mean the EAC has sort of an administrative role to put together a form and then reflect the proper state law in the state instructions. Now obviously if that state law is overturned by a court of law or if the state legislature votes to go in a different way, then obviously we take that off. But to the extent that it’s the state law adopted by elected state legislators or adopted by the people of the state, then it’s their state instructions and I don’t know why it’s so complicated.

I appreciate the efforts of the staff and Roger in our office to try to come up with something, but I just have to say that I also strongly don’t believe that the EAC has any kind of authority to pick and choose, which kinds of laws we want to put on the Form. “Well, we’ll call this one procedural so we won’t put it on the Form,” or “We’ll call this one,” whatever “and we will put it on the Form.” I mean that’s just not within our purview and I don’t find anywhere in any law, reg, case that allows us to do so. And I know, you know, people can disagree, but I literally cannot find anything that would give us that kind of authority. It makes no sense for a federal body to

say, “We are going to decide which state laws we put on the state instruction portion of the Form.”

So I would like to move for a vote on the FEC policy and I’ll just read a part of it for you, and I forecasted sort of my comments on the proposal that’s being circulated for today, but I’ll just read this. It’s very brief. “The Office of Election Administration,” which is part of, you know, an office in the FEC that I don’t believe exists any longer, it was transferred over to the EAC, but anyway, “the Office of Election Administration has requested a Commission vote on all changes to the Form from the initial development of the National Mail Voter Registration Form in 1993 to the present. Yet changes to state law that in turn require changes to the state information on the National Form are beyond the control of the Commission. Therefore, the Office of Election Administration proposes that in the future all changes to the state information be completed without a formal vote -- without a formal Commission vote. The Office of Election Administration will notify the Commissioners via Information Bulletin as such changes are made. This will enable our office to more quickly update the Form for changes in state information. The Office of Election Administration will continue to submit for Commission vote all other applicable changes, such as revisions to the postcard application or to the parts of the instructions that are not state specific.” And that was adopted by the FEC.

Thank you.

CHAIRWOMAN RODRIGUEZ:

Thank you, Vice-Chair Hunter. Are there any questions or comments on this proposal?

COMMISSIONER DAVIDSON:

Don't we need a second before we discuss it? I'll second it so we can have discussion.

CHAIRWOMAN RODRIGUEZ:

Was that a motion?

VICE-CHAIR HUNTER:

Yes, I move to adopt.

COMMISSIONER DAVIDSON:

I'll second it.

CHAIRWOMAN RODRIGUEZ:

It's been moved and seconded to adopt Vice-Chair Hunter's proposal. Is there discussion on the motion?

COMMISSIONER HILLMAN:

I do have a question. The part of the FEC policy that you're referring to, is it incorporated in the body of regs that the EAC is in the process of having transferred...

VICE-CHAIR HUNTER:

No.

COMMISSIONER HILLMAN:

...from the FEC to...

VICE=CHAIR HUNTER:

No.

COMMISSIONER HILLMAN:

No? Okay, thank you.

CHAIRWOMAN RODRIGUEZ:

I have a question for our General Counsel. Why does this stand apart from the regs that we transferred over -- or are in the process of transferring over?

COUNSEL HODGKINS:

Madam Chair, it is an internal policy that was adopted by the FEC following the adoption of the regulations that we are currently endeavoring to have transferred from the FEC to us. So it is sort of the internal workings of how they would apply those regulations. And it does work with those regulations, which requires states to provide certain information with regard to the state-specific instructions.

CHAIRWOMAN RODRIGUEZ:

So can we assume that this was not posted for comment the way that the other regulations or policies...

COUNSEL HODGKINS:

That's my understanding.

CHAIRWOMAN RODRIGUEZ:

...will be?

COUNSEL HODGKINS:

It was voted on at a public meeting or via their public voting procedure, but my understanding is it was not posted for public comment, as would be a regulation.

CHAIRWOMAN RODRIGUEZ:

Commissioner Davidson?

COMMISSIONER DAVIDSON:

I'd also like to ask the Counsel how are we progressing on getting the regs over to the EAC?

COUNSEL HODGKINS:

Funny you should ask that question. We met with the Associate General Counsel from the Federal Election Commission this week, and as you may be aware they are in a very unique situation in that they do not have enough Commissioners to constitute a quorum. Prior to the end of the year where they would not have a quorum they took some additional steps to identify from the Commission that existed at the time, or the Commissioners that existed at the time what things they felt they could do with and without a quorum and rulemaking activities is one of the things that they felt they could not do without a quorum. So they do not feel that they can take action at this point to transfer the regulations to us to enter into a joint rulemaking activity with us for that activity.

We have discussed some other options, but frankly I don't think that it would improve our timing situation to go with them. I'll explain. In speaking with the Federal Register staff we could essentially adopt the regulations that adopt in the FEC's portion of the Code of Federal Regulations. However, that would in all likelihood require us to do one of two things. Either a notice of final rulemaking, which we would not be able to proceed with finally promulgating those rules if we received any negative comments. Essentially, you know, anyone saying that we should not move those regulations or adopt those regulations. Or we could go

through a full notice and comment process as we would in adopting any sort of regulation.

So we are faced with a bit of a timing dilemma in that the FEC cannot act right now and our only option at this point is to enter into what I believe would be a full rulemaking process in that I don't think it's likely that we would issue a notice of final rulemaking and not receive any negative comments.

CHAIRWOMAN RODRIGUEZ:

Follow-up questions? I have one. We had an administrative law expert come before this Commission a couple of months ago and then we've had a presentation from you, our General Counsel, about the things that we need to do to comply with all of the administrative processes. How would our adoption of a proposal, not necessarily this one, but such as this one fit in with our goals and ambitions to be compliant in our administrative processes?

COUNSEL HODGKINS:

Well, it would very important in adopting an internal policy that you adopt a policy that limits yourself to only those activities over which you have no discretion. If you were to adopt a policy that dealt with issues over which you had discretion, then you may be entering into an area in which you should regulate because that is how you would essentially notify the public of what your discretion is and how you intend to proceed on that. So the policy that the staff has provided to you essentially limits your activities to only those items over which you have no discretion. So items such as the eligibility

requirements that are established by the state through their law or Constitution, making changes that are consistent with the National Voter Registration Act and other federal laws over things such as the registration deadline or something along those lines.

CHAIRWOMAN RODRIGUEZ:

Thank you.

VICE-CHAIR HUNTER:

May I make a comment?

CHAIRWOMAN RODRIGUEZ:

Vice-Chair Hunter?

VICE-CHAIR HUNTER:

Thank you. I guess the heart of the problem is I disagree with the characterization of the General Counsel that we have no authority over whether or not to put something on the Form. If it's part of the state instructions and it's part of what I just read from the FEC regulations, then we have to put it on the Form. So to me there's a distinction without a difference and people are splitting up state laws in a way that I don't think is supported by the facts.

CHAIRWOMAN RODRIGUEZ:

Thank you Vice-Chair Hunter. Is there any further discussion? We have a motion on the table. Are we ready to vote? And just to restate the motion it is to adopt the Federal Election Commission policy for amending state instructions to state law.

I suppose we should do a roll call, Madam General
Counsel.

COUNSEL HODGKINS:

Commissioners the question is whether or not to adopt the
proposal that was made by Commissioner Hunter, which is
essentially the exact same policy that was in place at the FEC.
A vote of yea would vote to adopt that policy. A vote of nay
would vote not to adopt that policy. So please respond by
saying yea or nay when I call your name.

Rosemary Rodriguez, Chair?

CHAIRWOMAN RODRIGUEZ:

No.

COUNSEL HODGKINS:

Caroline Hunter?

VICE-CHAIR HUNTER:

Yes.

COUNSEL HODGKINS:

Donetta Davidson?

COMMISSIONER DAVIDSON:

Yes.

COUNSEL HODGKINS:

Gracia Hillman?

COMMISSIONER HILLMAN:

No.

COUNSEL HODGKINS:

Madam Chair, the vote is two to two. The motion does not
pass.

[The motion failed on a tie vote.]

CHAIRWOMAN RODRIGUEZ:

Thank you. We'll now discuss the disclaimer proposal to the state instructions portion of the MVRA Form as proposed by Vice-Chair Hunter.

VICE-CHAIR HUNTER:

I just thought this made sense while we're trying to figure out what we're going to do next to at least inform the public of the fact that we're aware of requests from states to change their state instruction. And so one disclaimer would be on our website so when people go to the website to download the Federal Form there would be a sentence there saying, "As of," whatever the date, "the following states have requested a change to their state instructions," and then list the states. "The Commission has not yet approved these requests." And then the procedure to update that would be, "The Director of Elections shall update on the website the list of states that have requested changes within 48 hours of the request coming to his attention and the date shall also be updated." Same situation for putting a similar disclaimer on the actual state instructions portion of the Form so that voters are informed of the fact that they're not getting the most recent information. For example, if a voter in Colorado goes to the address for the State of Colorado and mails it to the address on the Form, my understanding is that the mail is no longer being forwarded so I assume that that Form will not be

received by the State of Colorado. That's what I was told even if -- anyway. So this will inform the person that there are issues with that state instructions. Similarly in the State of Arizona, if proof of citizenship is not provided then, you know, that person should sort of be on notice that there's going to be further hoops to cross, if you will. So I just thought it made sense to inform the public of this situation.

CHAIRWOMAN RODRIGUEZ:

Thank you. Is that a motion?

VICE-CHAIR HUNTER:

I move to adopt a disclaimer for both the website and the state instructions portion of the Form.

COMMISSIONER DAVIDSON:

I will second it.

CHAIRWOMAN RODRIGUEZ:

Thank you. Is there discussion or questions on the motion?

COMMISSIONER DAVIDSON:

I have a question.

CHAIRWOMAN RODRIGUEZ:

Commissioner Davidson?

COMMISSIONER DAVIDSON:

The one on the state instruction disclaimer, that would be on the Form itself?

VICE-CHAIR HUNTER:

It says, "The following disclaimer" in italics "shall be added below each state instruction in which the state has requested the EAC to change their state instruction and the EAC has

not.” So for example in Colorado, at the bottom of the state instructions of Colorado -- I have a Form with me if anyone wants to look at it -- there would be a disclaimer added to the bottom of the Colorado instructions and that would read in italics, “The State of Colorado has requested a change to its state instructions. The Election Assistance Commission has not approved this request.”

COMMISSIONER DAVIDSON:

So on our website then we would have that there so that they would know that if they needed to add that it would be added to that state, even on the website. Is that how you see that being done? Or...

VICE-CHAIR HUNTER:

It would be right when you're about to click on the link to the Form a different disclaimer would be written there and then there would be that separate disclaimer at the end of each state instructions for the state that has requested a change to their state instruction.

COMMISSIONER DAVIDSON:

I'm just thinking it through and I'm sorry that I didn't think it through and ask this of you personally beforehand. In doing that, on our website we'd really have any state that had done -- we would have more than one Form up on the website and there would be a special Form for Colorado or the others and they would have that at the bottom. That would already be done. Or would it be a link that we would automatically insert that if it was a Colorado Form or a Rhode Island or whatever?

VICE-CHAIR HUNTER:

No, there would still just be one form.

COMMISSIONER DAVIDSON:

Okay.

VICE-CHAIR HUNTER:

This is the form. If you're pulling up the form and you print out the whole thing and you're from the State of Colorado and you're asked to look at that state's instructions, under Colorado the instructions would stay the same but just at the end of the Colorado instructions that sentence would be added. "The State of Colorado has requested a change to its state instructions. The EAC has not approved this request."

COMMISSIONER HILLMAN:

Question. Are you saying that the disclaimer would state what that request is? Or just a blanket disclaimer that says some change has been requested and we haven't approved it?

VICE-CHAIR HUNTER:

You know I hadn't thought about putting the exact request, but I would be willing to entertain a friendly motion to do so because I think that would provide even more information to the voter. But the proposal at it stands now just says that a change has been requested.

CHAIRWOMAN RODRIGUEZ:

I wonder if the staff who manage the Form might have a moment to talk about -- to react to this just in terms of implementation. I don't know who that would be.

COUNSEL HODGKINS:

I think Mr. Cortes would probably be the appropriate person.

COMMISSIONER DAVIDSON:

And Jeannie.

CHAIRWOMAN RODRIGUEZ:

Mr. Cortes, you manage the Form for the EAC?

MR. CORTES:

Yes, that's correct.

CHAIRWOMAN RODRIGUEZ:

Okay, thank you.

MR. CORTES:

Which question is it exactly that you would like me to respond to?

CHAIRWOMAN RODRIGUEZ:

This disclaimer, is this going to be easily accomplished? Or is it a technical issue for you? Do we need to vote on a policy to add this type of language to the Form, a higher, over-arching policy? I don't know. Just a reaction.

MR. CORTES:

In terms of the technical side of it in terms of putting this up there, making any changes to the state instructions is not difficult because it is in an easily changeable document that we then convert into a PDF for downloading on the website. I think in terms of putting this on the website that it also something that is easily accomplished. In terms of any additional issues, I don't know...

CHAIRWOMAN RODRIGUEZ:

Yes, I was about to ask General Counsel.

MR. CORTES:

...I would turn to the General Counsel Office on that.

CHAIRWOMAN RODRIGUEZ:

Ms. Hodgkins, is this an amendment to the Form?

COUNSEL HODGKINS:

This is a very unique question. Certainly the disclaimer that's on the website I think would actually not appear on the Form, so that would not be a change to the Form. As I read the description, it would appear on the page where the link to the Form exists. So the website disclaimer would not actually alter the Form.

The second proposal would actually be a change to the state-specific instructions portion of the Form in that it would footnote or disclaim the accuracy of the current status of the Form. Now the interesting part of this question, and since you know we're sort of doing this off-the-cuff, is whether or not this is any sort of substantive change to the Form. It doesn't seem that it is. It doesn't change the way that a voter would react to that particular section. So I don't know that there is -- it's just really sort of a notation, not a change to the substance of the Form.

CHAIRWOMAN RODRIGUEZ:

Commissioner Hunter, do you have any thoughts on that to General Counsel's...

VICE-CHAIR HUNTER:

I don't disagree with what the General Counsel said. And I probably shouldn't open a whole new can of worms, so we'll just leave it at that.

CHAIRWOMAN RODRIGUEZ:

We're going to take a break. I was thinking of taking it after we voted, but I wonder do you need -- does the staff need any time to mull this...

COUNSEL HODGKINS:

I think that that would be helpful.

MR. CORTES:

Yes, it would.

CHAIRWOMAN RODRIGUEZ:

All right, then we will take let's say 20 minutes -- just in case we need a little extra time, a 20-minute break at this time.

[The Commission members adjourned at 11:30 a.m. and returned to open session at 11:50 a.m.]

CHAIRWOMAN RODRIGUEZ:

We're going to reconvene. Thank you for living within the time limits.

I'm going to ask our General Counsel, and again I know this is kind of a quick turnaround, but do you have any advice for us at this point on the motion?

COUNSEL HODGKINS:

Madam Chair, I think the question is not so much whether or not this is an appropriate amendment to the Form but

essentially what it does to the Form. And that is a very complicated question because the NVRA requires that the states accept and use the Federal Form and that we promulgate it by amendment in HAVA. We feel like we need some time to determine exactly what that means. What does it mean to add this sort of disclaimer to the Form? How does that alter it? And what does that mean in terms of the states having to accept and use it?

CHAIRWOMAN RODRIGUEZ:

Okay. Let me ask Mr. Cortes a question. Are the requests from the states on the EAC website today?

MR. CORTES:

The document, the memo that I ran through earlier is on the website.

CHAIRWOMAN RODRIGUEZ:

It is posted?

MR. CORTES:

Yes.

CHAIRWOMAN RODRIGUEZ:

But, you know, that's kind of a circuitous...

COMMISSIONER HILLMAN:

Can I ask where on the website it is?

MR. CORTES:

I think it is currently located under the "Items for discussion" at today's public meeting. And then last month's memo was under last month's public meeting items.

EXECUTIVE DIRECTOR WILKEY:

Yes, Madam Chair, anything regarding our meeting and the documents related to any of our meetings are automatically posted on our website.

CHAIRWOMAN RODRIGUEZ:

Okay. Commissioner Davidson?

COMMISSIONER DAVIDSON:

I just was going to ask the Vice-Chair if she would be willing to separate the two and take a vote on the website disclaimer separately.

VICE-CHAIR HUNTER:

I'd be willing to accept that as a friendly amendment. If I could make a comment on what the General Counsel stated. First of all, just for information I did circulate this around to most of the staff and the Commissioners at the EAC in the middle part of December, I don't have the exact date, but December something like 13th or 14th, somewhere around there. And I did announce at the public meeting in December that I would plan to do this. So I hope it doesn't come as a surprise to anybody that I've asked for a vote on this.

Second, I have always been under the impression from previous guidance from our General Counsel's Office that changing the state instructions portion of the Form did not require any kind of regulatory process. In fact, the EAC has changed the state instructions portion of the Form in the past and I don't believe that just notifying the voter that there's been a request for a change in any way clouds the area of the federal use -- accept and use requirement.

COUNSEL HODGKINS:

I guess I'd just like to respond to that if that's okay...

CHAIRWOMAN RODRIGUEZ:

Please do.

COUNSEL HODGKINS:

...because I mean I think we've been quite clear that you can make any changes that are outside of your discretion. Now Commissioner Hunter and I have a difference of opinion on that point, but quite clearly the agency that preceded us identified items of discretion. They identified them in the rule that they promulgated in developing their final regulations in identifying the information that the states were required to provide as a part of the state-specific instructions.

So I certainly want to make certain that everyone understands that we have been consistent about the point that, no, you don't have to take regulatory authority over things over which you have no discretion. When you are entering into a realm of discretion, you must make the public aware of what that discretion is and how you intend to exercise it.

VICE-CHAIR HUNTER:

But it's your initial guidance that -- well, you asked to take some time to look further into it so I will refrain from asking you a follow-up question.

CHAIRWOMAN RODRIGUEZ:

And then Commissioner Davidson has asked that it be split into two. Can you state that -- restate exactly what you mean when you say split this in two?

COMMISSIONER DAVIDSON:

Yes, thank you. I'm sorry I wasn't more clear. I would like to be able to ask for a friendly amendment to be able to vote on the issue separately or just vote on the website disclaimer. I guess the first thing I would like to do is just vote on the website disclaimer.

CHAIRWOMAN RODRIGUEZ:

Okay. I'm going to ask our General Counsel if we separate this motion into two parts, the website disclaimer does that hold -- would you like further time to analyze the website disclaimer?

COUNSEL HODGKINS:

I don't know -- I mean the website disclaimer is not a change to the Form.

CHAIRWOMAN RODRIGUEZ:

Okay.

COUNSEL HODGKINS:

The practical question I think that you probably want to answer in terms of protecting the agency is how we would notify groups and individuals who access the Federal Form other than by going through our website and maybe not having the opportunity to have that disclaimer. So there may be a communication gap there that we want to consider how procedurally to proceed on that point.

CHAIRWOMAN RODRIGUEZ:

Because not everybody has access to the worldwide web.
Commissioner Davidson?

COMMISSIONER DAVIDSON:

Well, there's a lot of things that we do that, you know, obviously we try to inform all of our stakeholders, and I would think that we could send out something that this had been done to all the stakeholders so that they would be aware of it. It would be an email that they would receive, because I agree if we just put it on the website and not inform anybody that would take them a while to see. But I also feel while we're making our decisions on this if we can make sure that people are informed that there is more requirements possibly from a state or a different address, or whatever the issue might be about one of the six states, it would be helpful for them to know to go elsewhere for information so that there wouldn't be the possibility of being disenfranchised in the long run.

CHAIRWOMAN RODRIGUEZ:

Is there any further discussion on the motion, which I'll ask our General Counsel to restate? Are we ready...

COUNSEL HODGKINS:

I'll give that a shot.

CHAIRWOMAN RODRIGUEZ:

Commissioner Hillman?

COMMISSIONER HILLMAN:

Well, just an observation that if the maker and seconder of the motion that's on before us are willing to withdraw them then we wouldn't have to necessarily vote it up or down, but rather if the Vice-Chair is willing to introduce two separate motions for the two separate actions that certainly would be a way to proceed rather than having to vote this up or down.

CHAIRWOMAN RODRIGUEZ:

Well, I think the Vice-Chair accepted the amendment...

VICE-CHAIR HUNTER:

Yes, right.

CHAIRWOMAN RODRIGUEZ:

...that Commissioner Davidson made.

COMMISSIONER HILLMAN:

Right, but the motion before us has to come off the floor. And as I understand it, that can be done by the maker of the motion withdrawing and the seconder agreeing to that. Yes, I think that's right. Otherwise we have to take action on the motion before us.

CHAIRWOMAN RODRIGUEZ:

As amended.

COMMISSIONER HILLMAN:

Amended how? It hasn't been amended.

COMMISSIONER DAVIDSON:

She accepted it to be amended where we're only voting on the website disclaimer.

COMMISSIONER HILLMAN:

I see. So the motion is now only on the website disclaimer?

COMMISSIONER DAVIDSON:

That's correct. That's my understanding.

COUNSEL HODGKINS:

And there will not be a secondary vote on the second question, which is the state instruction disclaimer. Correct?

VICE-CHAIR HUNTER:

There might be. I agreed to separate it out.

COUNSEL HODGKINS:

Okay.

VICE-CHAIR HUNTER:

So I move that the Commission vote to include a disclaimer on its website as read earlier and as in the handout before us, and I further move that we widely distribute this action to our list of stakeholders.

COUNSEL HODGKINS:

Why don't we procedurally back up and do this? We had a motion that was on the floor for both. Why don't we -- I think that Commissioner Davidson offered an amendment. If there's a second to that amendment, then what we can do is vote on the amendment and then get back on track, if that makes sense.

CHAIRWOMAN RODRIGUEZ:

Yes. Okay, so we have a motion on the floor. It's been amended by Commissioner Davidson.

Let's do a roll call and before doing so restate the motion.

COMMISSIONER HILLMAN:

I will second the amendment, but I want to see if I understand what I'm seconding. That the motion will now be the following disclaimer shall be posted -- I don't know about in red. So if it's the wording of this, you know, is the motion the exact wording that's in Commissioner Hunter's December 18th memo under the website disclaimer?

VICE-CHAIR HUNTER:

Yes.

COMMISSIONER HILLMAN:

Okay. Then I'm not seconding the amendment.

CHAIRWOMAN RODRIGUEZ:

Commissioner Davidson, you're the one...

COMMISSIONER DAVIDSON:

I think it dies.

CHAIRWOMAN RODRIGUEZ:

...who made it.

COMMISSIONER HILLMAN:

It dies without a second.

COMMISSIONER DAVIDSON:

Well, I think it dies without a second. So now there could be a new motion taken.

COUNSEL HODGKINS:

Well, actually you'd have to vote on the motion that's on the floor and then you can go to a second motion.

COMMISSIONER DAVIDSON:

But there was no second.

COMMISSIONER HILLMAN:

No, only to the amendment.

COUNSEL HODGKINS:

You seconded Commissioner Hunter's original motion, so that's where we are.

CHAIRWOMAN RODRIGUEZ:

Your main motion has been...

VICE-CHAIR HUNTER:

I have no idea where we are, but just for the sake of expediency I will withdraw my original motion and I move to amend that the EAC adopt a website disclaimer. The disclaimer shall be posted in red on the EAC's website in the section entitled Register to Vote - The National Voter Registration Act. And in quotes it shall read, "As of December 18, 2007, the following states have requested a change to their state instructions: Arizona, Colorado, Delaware, Georgia, New Jersey and Rhode Island. The Commission has not yet approved these requests." And then the procedure for amending that disclaimer shall be: The Director of Elections shall update on the website the list of states that have requested changes within 48 hours of their request coming to the attention of the EAC. The date shall also be updated. That's the motion now.

CHAIRWOMAN RODRIGUEZ:

A motion has been made. Is there a second?

COMMISSIONER DAVIDSON:

And I will second it.

CHAIRWOMAN RODRIGUEZ:

Okay, discussion on the motion? Commissioner Hillman raised a question about the posting in red. Do you want to elaborate on that point?

COMMISSIONER HILLMAN:

Well, I don't know how many other things are on our website in red and what the necessity is for, you know, putting this in red.

So I'm just not comfortable with that. I mean I just don't -- I have to confess I haven't visited all pages of the website recently, so I have no idea how we use colors on our website.

CHAIRWOMAN RODRIGUEZ:

It's certainly part of the logo and the scheme, the color red. Vice-Chair Hunter would you...

VICE-CHAIR HUNTER:

Stephanie Wilson just reminded me that the reason that we put red in there is because the language that was on the website, when we looked at it in December, said that, "Any comments from the public with respect to transferring the regs from the FEC to the EAC shall be provided in such a manner." That sentence was in red. So right there on this very issue there's another example of something in red that, you know, notified the public of something.

CHAIRWOMAN RODRIGUEZ:

And the purpose would be to alert the viewer of something?

VICE-CHAIR HUNTER:

To make sure, you know, that we're transparently advising the voters of this country what the requests are out there.

CHAIRWOMAN RODRIGUEZ:

Okay. Are there any more questions? Any further discussion? Are we ready to vote? Madam General Counsel, will you conduct this vote?

COUNSEL HODGKINS:

Certainly Madam Chair. The question on the floor is whether to approve the proposal for a website disclaimer that would

appear in red on the page of the website entitled Register to Vote - The National Voter Registration Act. The disclaimer would read, "As of December 18, 2007, the following states have requested a change to their state instructions: Arizona, Colorado, Delaware, Georgia, New Jersey and Rhode Island. The Commission has not yet approved these requests." That is the end of the disclaimer. The procedure that would follow should any additional requests be made is that: The Director of Elections would update the website list for the states that had requested changes within 48 hours of the request coming to the attention of EAC.

Okay, so a vote of yea would approve the motion and have this disclaimer posted on the website. A vote of nay would fail the motion and would fail to have this disclaimer posted on the website.

COMMISSIONER HILLMAN:

Can I please ask a question before we go to the vote, and I may need to ask a question of our Director of Communications Ms. Layson, as to when we use different colors in the text on our website.

MS. LAYSON:

We typically use red to indicate when a new item has been posted. So the word "new" would be put next to a category or section of the website to indicate that it had been updated.

COMMISSIONER HILLMAN:

And how long does it stay that way?

MS. LAYSON:

Usually about two weeks. And we also post that new item on the calendar as well to make sure that people are aware that that particular section has been updated.

COMMISSIONER HILLMAN:

And so back to Commissioner Hunter. Is it then your request that it be treated the same way all other red language on our website is treated; that is when it's new it's in red and then after a period of time it becomes a part of the normal font color?

VICE-CHAIR HUNTER:

I was not aware of the font policy of the EAC and, you know, I suppose we could amend the vote if so be, but I envision it being red in all cases just to ensure that people are aware of this important information.

MS. LAYSON:

I think just to be clear, the new item itself is not in red. There is the word "new" beside it in red to indicate that it's new. We can certainly apply that same procedure in this instance as well.

VICE-CHAIR HUNTER:

I mean I assume this is the kind of document that people, you know, pull down from the website over time and just because it's new to us that we're, you know, putting this information on there it's just as important now as it is in two months. If some guy comes along in two months and want to download the Form, I want to make sure that he's aware of this information.

CHAIRWOMAN RODRIGUEZ:

Are there anymore questions? Okay, let's vote Madam
General Counsel.

COUNSEL HODGKINS:

Does everyone understand the motion that's on the table?
Then Commissioners please respond by saying yea or nay as I
call your name.

Rosemary Rodriguez, Chair.

CHAIRWOMAN RODRIGUEZ:

Aye.

COUNSEL HODGKINS:

Caroline Hunter, Vice-Chair?

VICE-CHAIR HUNTER:

Yes.

COUNSEL HODGKINS:

Donetta Davidson?

COMMISSIONER DAVIDSON:

Aye.

COUNSEL HODGKINS:

Gracia Hillman?

COMMISSIONER HILLMAN:

Yes.

[The motion carried unanimously.]

CHAIRWOMAN RODRIGUEZ:

Okay, thank you very much. Now we are going to discuss
our appropriations. Ms. Hodgkins.

COUNSEL HODGKINS:

Thank you very much, Madam Chair. I will try to flesh out what Mr. Wilkey has already provided you, and that is that in December of 2007 Congress approved an omnibus appropriations bill which included in that bill \$16,530,000 for the salaries and expenses of the Election Assistance Commission. Of that money we are directed to, as I said, pay our salaries and expenses, keep the lights on, make sure all of our programs are running. In addition, we are directed to transfer \$3.25 million of that money to the National Institute of Standards and Technology for their work on election reform activities. We are to develop and issue grants under the HAVA college program in the amount of \$750,000. That's a similar appropriation to what we've had in the past. A slightly different change is we are to develop a competitive grant program for funding a mock election program for secondary education levels. The competitive grant amount that we have been given is \$200,000. In addition, it was set aside \$112,500 for our administrative costs related to administering the mock election and another grant program, which I will detail in just a moment. In addition to these salaries and expenses, EAC was appropriated \$115 million for payments to be made to the states under the Help America Vote Act as requirements payments. This is part of the original authorization of HAVA and it is I guess, if you will, another down payment on the total amount that was authorized. Just for historical purposes, the House had proposed \$300 million as a part of their bill. The Senate had proposed no funding in that particular area, and so

they settled on \$115 million. Third, they established a grant program for the collection of election data. EAC is directed to provide five grants of \$2 million each to five states. It is to be a competitive grant program and Congress gave us some timelines in terms of developing those. We have to establish the program I believe no later than March 30th and then issue or award the grants 60 days thereafter. And we are to provide a report to Congress no later than June 30th of 2009, on that grant program detailing the success of those grantees.

And that covers the details of our appropriation and how we're supposed to spend it.

CHAIRWOMAN RODRIGUEZ:

Thank you.

COUNSEL HODGKINS:

If you have any questions, I'd be happy to answer to them.

CHAIRWOMAN RODRIGUEZ:

Commissioner Davidson?

COMMISSIONER DAVIDSON:

I have a question. I just wanted to make sure I understand it correctly. In the number two item of the \$115 million that they appropriated to go to the states, it's my understanding that the states will have to do a new or update their state report to us saying how they will expend that money and they also have to have a 5 percent match to be able to get that. Could you elaborate a little bit?

COUNSEL HODGKINS:

Sure.

COMMISSIONER DAVIDSON:

I think it's valuable for the people that its here because I know that we have a NASS representative here in the audience and I think it would be helpful for her. She always reports on our meetings.

COUNSEL HODGKINS:

Sure. As with the previous requirements payments, the states are required to take the same steps that they were required previously in order to obtain their requirement payment, so that is making a certification that they have complied with I believe it is Section 253(b) of HAVA making certain certifications with regard to the submission of a state plan. I'm making an assumption here, but I believe that most states would have to amend or create a new state plan as this original funding was not available and they could not have anticipated how they might use that. But that assumes that essentially it creates a material change to their original state plan.

COMMISSIONER DAVIDSON:

Can I interrupt and ask a question? I'm sorry. But some states did put in their original plan as if they were going to get the full amount. Even if they only got a portion of it they put in their state plan making the assumption that they would get it. So...

COUNSEL HODGKINS:

I think it would still fall into the category of whether or not it's going to create a substantial or a material change to their plan.

I can't make that assumption for all of the states, but I would believe that many of the states have committed funds in particular ways in order to meet their requirements at this point and they may have different uses or slightly different uses for these funds going forward. It will depend upon how the State intends to use those funds.

In addition, of course the States will be required to provide matching funds in the amount of 5 percent of the aggregate; that is both the state and federal funds that will be provided. So it's not straight five percent, it is a little greater than 5 percent. Just keep that in mind.

And I think that concludes the requirements.

CHAIRWOMAN RODRIGUEZ:

Thank you. Are there further questions?

VICE-CHAIR HUNTER:

Julie might it be useful to just discuss the requirement of the new funds of the \$115 million, that if purchased with federal funds made available after January 1 that those machines must meet the system standards for disability access? Is that...

COUNSEL HODGKINS:

You're correct, Commissioner Hunter. There is a provision in Section 303(a)(3)(c) of HAVA. This is funding that is made available after January 1, 2007. And there's a funds directive statement found in that particular section of HAVA that if systems are purchased with funds made available under Title II, that is requirements payments, on or after January 1, 2007,

those systems must meet the voting system standards for accessibility as outlined in this paragraph.

VICE-CHAIR HUNTER:

I don't have the report in front of me but I think in the report of how states spent these HAVA funds in the past, most of the funding was spent on machines.

COUNSEL THOMPSON:

I believe that is correct, to the tune of 50 or 60 percent.

VICE-CHAIR HUNTER:

Right.

CHAIRWOMAN RODRIGUEZ:

Any there further questions? Thank you very much.

COMMISSIONER DAVIDSON:

Well, I guess I have one other. I know that we're working on notifying the states. Do we have any type of estimate of how soon the information will go out to the states notifying them of the amount of money and the amount of their 5 percent and all the instructions that we've kind of talked about?

COUNSEL HODGKINS:

I'm going to ask Mr. Wilkey if he can answer that question.

EXECUTIVE DIRECTOR WILKEY:

Hopefully that will go out this afternoon. We have a chart showing all of the funding that each state will get, and in addition to that the required 5 percent match, as well as an explanatory letter that will go out to each of the states. We had one slight issue that we were working on, and hopefully that can go out later this afternoon. And that will of course be

immediately posted on our website and all our stakeholders will be notified that it's up there.

COMMISSIONER DAVIDSON:

Thank you. I'm done.

CHAIRWOMAN RODRIGUEZ:

Okay. And now we're going to have a briefing on the new grant program, the election data research grant. Mr. Wilkey, Mr. Cortes and Ms. Lynn-Dyson.

EXECUTIVE DIRECTOR WILKEY:

Madam Chair, we're going to briefly do an introductory. I had hoped to be able to prepare some written comments this morning but my computer decided not to cooperate with me, but I will follow-up with a written statement that can be put in to the record.

As previously mentioned both in my report and the report of our General Counsel, the Congress appropriated an amount of \$10 million with the goal of improving data collection. Let me give you a little background to how that came about. As you all know, we issued an Election Day survey both for the 2004 election and the 2006 election and while states and localities worked very hard to provide us the kind of information that we had requested, the level of that information was in many respects disappointing. While we intend to work vigorously during this year on our 2008 survey, we are already in the process of establishing our data that we feel is necessary. And Ms. Lynn-Dyson will be commenting on that in a moment.

I believe that the Congress saw the need for us to have a vehicle to award five states a grant of \$2 million apiece with the goal of working towards new ways of collecting this data, better methods of collecting this data so that at the end of this period of time we would have a report back to the Congress indicating how well these states did, what resources they needed, how they did it and a whole wealth of information that we hope to glean from this.

When we sat down to take a look at how we were going to proceed with this, I think you well know that we have a lot on our plate this year. In addition to all of the work in the area of the VVSG, new research programs, Election Day surveys and all of the other projects that we will endeavor to complete, administering this program only adds to our burden. So we have decided to move forward in this way.

First, we will contract with a professional grant organization. There are a number of them, as you probably know, here in EAC, about 20 that are on the GSA schedule. And that grant organization would help us in developing criteria along with our staff, drafting the RFP, processing the applications, selecting the review panels that will review those applications and making recommendations to the EAC for who should get these grants. Following that we will do a separate contract with a research firm, and since we will be working in tandem this year with our 2008 survey we had already anticipated doing a research contract, to work with us not only in taking the data and analyzing it and doing the report as they

have in the past, but also providing a great deal of hands-on support to all of the 55 jurisdictions who we will be requesting data from to work more closely with them this year in helping to identify ways and to answer the numerous questions that come up regarding that survey. In addition to that, we will make an additional provision in this contract that this research firm will work closely with the grantees in working through their RFP, what they have said to us, how they are going to respond to this RFP, and then working with us to both analyze and develop that report which will go to Congress in June of next year.

So that is how we intend to work through this grant program. We appreciate the efforts of both the Hill staff and the members of the House and Senate who saw the need for this. We appreciate that very much. We want it to succeed and we feel that that is the best approach that we can take to make sure that it succeeds.

With that in mind I'm going to ask members of the staff, Edgardo Cortes from our Program and Services Division and Karen Lynn-Dyson from our Research Department, to follow-up in the schedule that we have adopted, as well as some of the issues regarding our 2008 survey which will form the nucleus for some of the criteria in our grant program.

Edgardo, do you want to let...

MR. CORTES:

Yes, I think I'll actually let Karen go first and then follow-up with the timeline.

MS. LYNN-DYSON:

Commissioners, thank you. I'm just going to give you a brief, and the public, a brief chronology and overview of timelines and timeframes that I envision for the rollout of the 2008 survey.

As Executive Director Wilkey indicated, staff envisions that we will work closely with the five grantees and with all 50 states who are responsible for completing the Election Day -- 2008 Election Day survey data. And the information that I will provide you here is information that we anticipate will be included in the RFP that will go to states interested in applying for the grant program.

EAC staff along with its contractor, Election Data Services, held a series of conference calls with 43 States in early December to collect feedback on the 2006 EAC survey data collection process.

These conference calls assisted the contractor and EAC with identifying the key data elements we'll want to collect for the 2008 survey, along with helping the EAC consider the best means that we'll use to assist states in their process for collecting and inputting 2008 election data.

EAC and Election Data Services will complete our process of collecting feedback from the states by January 30th. This input will help inform the process EAC will use in order to gather our 2008 Election Day survey data.

I am working with my deputy to finalize the data points, or the key data elements, that will be contained in this 2008

survey. We anticipate that this information regarding the data sets that we'll be asking for states for the 2008 survey will be ready for the public's review by the second week in February.

We also anticipate that these data elements for specific election data that we will be collecting from the States will be available for review in the Federal Register by late February.

In the coming months, as Mr. Wilkey indicated, we anticipate that EAC staff along with the firm we contract with to assist us will work to provide in-depth technical assistance to the states as they begin to assemble these election data and as they begin to develop their database systems and their processes for collecting and inputting their 2008 election data.

So just in closing, I certainly envision that Edgardo and I will work in tandem, we will work very closely together with the rollout of the grants program, and that I will be working very intensively with the five grantees as they seek to improve the collection of their 2008 data.

CHAIRWOMAN RODRIGUEZ:

Mr. Cortes?

MR. CORTES:

Thank you, Madam Chair. As Karen mentioned, she really will be working with the technical aspect of this with the states simultaneous with the implementation of the 2008 survey. My division, as you know, is responsible for federal funding that we have given out in the past and we will be providing assistance with the process of getting money out to the

grantees and providing them support in that regard. And I have provided a draft timeline.

As Tom mentioned, we will have two separate contractors helping in this effort. The first one, that RFP should be posted tomorrow to solicit proposals from vendors on the GSA schedule for grants management assistance. We hope to have that contract awarded by early February at which point we'll begin preparing their request for applications which will go out, which is basically the document that will tell states exactly what they need to do to apply for the grants, what the selection criteria will be for the states and all the requirements of receiving the grant. We hope to release that request for applications in mid March. The appropriations language has tasked us with implementing the program by March 30th, so we hope to have it out a bit sooner than that so that we can, you know, get this funding out to the states and get this project rolling to give them as much time as possible to make these changes prior to the 2008 election.

We will then -- the RFA will be out for approximately a month at which time we'll begin the review process of the applications that come in. Obviously, HAVA defines states as the 50 states, the District of Columbia, Puerto Rico and the three territories. And so we have the potential to receive 55 applications for these grants. As Mr. Wilkey mentioned, there will be five grant recipients of \$2 million each. So based on the applications we get, we'll review them and select, which five states, will be receiving those grants. Then by mid May

we will begin notification of the grant awards and signing the grant agreements with the states. After that point we'll move into the technical assistance portion, which Karen discussed in terms of helping them, providing them technical assistance through our other contractor in making the changes and in answering any questions regarding the information we're collecting. And then our estimate right now is to begin preparation of the report by the beginning of February of next year or possibly sooner. Obviously they need time to collect the data and to compile it in order to provide it to us, and so there will be some time there.

In terms of preparation of the report, I think it was mentioned, I'm not sure at what point earlier in the meeting, but the language in the Appropriates Act requires us to work not only with the five grantees but also with the Board of Advisors of the EAC in preparing this report to Congress. And so we hope to have the report ready to be published by the end of May of next year, which will give us sufficient time to go through the GPO printing process in order to give the report to Congress by the deadline in the appropriation, which is June 30th of 2009.

CHAIRWOMAN RODRIGUEZ:

Thank you very much. Are there questions for the staff at this time? Commissioner Hillman.

COMMISSIONER HILLMAN:

Just a point of clarification. Can you explain to me, whoever, what the difference is between RFP, request for proposal;

RFA, request for assistance; and RFQ, request for quote?
Now I understand that you wouldn't necessarily be getting a quote for a grants program, but the difference between issuing an RFP and issuing an RFA.

MR. CORTES:

In terms of those two, there's not much difference. It has to do, if I'm not mistaken, with language in the FAR and what we're...

COUNSEL GILMOUR:

I would suspect that people are just using different terms to mean the same thing. I would suspect that.

MS. LYNN-DYSON:

It's my understanding that a request for proposal and a request for application...

COMMISSIONER HILLMAN:

Uh-huh.

MS. LYNN-DYSON:

...are fairly synonymous. RFA, request for applications, I've seen often used for federal grant demonstration projects and programs. Request for quotes I have seen used primarily in the world of contracts.

MR. CORTES:

The request for quotes is substantially different.

COMMISSIONER HILLMAN:

Right, I understand that. So when we did the college poll-worker programs in the past, did we do RFAs or RFPs?

MS. LYNN-DYSON:

RFPs. We did RFPs.

COMMISSIONER HILLMAN:

So the difference...

MR. CORTES:

Yes, I would have to go back and...

COMMISSIONER HILLMAN:

That's what I'm trying to figure out why we're doing RFA now and RFP for the college.

MS. LYNN-DYSON:

Yes, I have seen -- and it may be Commissioner Hillman this could truly just be a lay person's understanding of it -- I have seen RFA, request for applications, used when I've overseen federal demonstration pilot projects that states or municipalities have applied to participate in.

MR. CORTES:

The bottom line is there's really not much difference between the two terms. The language that we use in the grants management contract document that will be released tomorrow to hire a contractor. RFA is the language that we used in there, but they're synonymous.

COMMISSIONER HILLMAN:

So six months from now I won't be saying, "So why did we decide to do an RFA instead of an RFP?" Okay, thank you.

CHAIRWOMAN RODRIGUEZ:

Commissioner Davidson?

COMMISSIONER DAVIDSON:

My question is the grant management contractors are they also responsible for making sure and going through the applications and selecting the grant recipients? Is that part of their duty? Or whose...

MR. CORTES:

Well, they don't select the recipients. That is a function that only the EAC can do. What they will do for us is bring together independent review panels of individuals to review the applications that we get in based on the criteria that we set forth. And then they will make recommendations to us based on those review panels and the scoring system and our selection criteria as to which one scored the highest and make those recommendations to us. But the ultimate decision as to which applicants to award grants to will be the EAC.

COMMISSIONER DAVIDSON:

Thank you, that definitely helps explain it.

CHAIRWOMAN RODRIGUEZ:

Commissioner Hunter?

VICE-CHAIR HUNTER:

Thank you, Madam Chair. My question is with regard to the timing. It sounds like you're going to get the person to come in and help with the initial part of it, which Tom described as writing the RFP recommendations and who should get it, the criteria and all that sort of thing, that firm will be hired from the GSA schedule soon. Is that within the next...

EXECUTIVE DIRECTOR WILKEY:

We'll give them five days is the normal course for the GSA schedule.

VICE-CHAIR HUNTER:

We put something out to just people who are already on the GSA...

EXECUTIVE DIRECTOR WILKEY:

On the GSA schedule. There are a number of them.

VICE-CHAIR HUNTER:

...to help us with the grants portion of it.

EXECUTIVE DIRECTOR WILKEY:

That's correct.

VICE-CHAIR HUNTER:

And then the research portion of it, when will that be solicited?

MS. LYNN-DYSON:

Commissioner Hunter, I would anticipate that that request for quote will be ready by early February and that we will be prepared to put that "on the street," as they say, in early February to identify a firm that will assist us with the research.

VICE-CHAIR HUNTER:

And will the firm be involved in the evaluation criteria? Who will be..

MS. LYNN-DYSON:

I would envision that this firm will work very closely with us, with EAC staff. I have a lot of ideas, my deputy has a lot of ideas about the evaluation criteria and we would collaborate on the full development of those criteria; criteria for evaluating the success...

VICE-CHAIR HUNTER:

Uh-huh.

MS. LYNN-DYSON:

...the challenges, the problems, the difficulties that the grantees...

VICE-CHAIR HUNTER:

Because the original piece of information that goes out to the grantees it looks like that will go out to them, I'll guess we're calling it an RFA, March 17th through April 21st. So within that document we'll have the benefit of knowing not only what the criteria is up front but what the evaluation criteria is...

MS. LYNN-DYSON:

Absolutely.

VICE-CHAIR HUNTER:

...because by then we will have on contract both the grants company and the research component of that?

MS. LYNN-DYSON:

That's correct, absolutely.

VICE-CHAIR HUNTER:

Okay.

MS. LYNN-DYSON:

Absolutely.

VICE-CHAIR HUNTER:

Okay.

CHAIRWOMAN RODRIGUEZ:

Any further questions? Thank you very much. I think this represents a tremendous opportunity for the EAC and for the states and I'm pretty excited about it personally.

Mr. Wilkey we're going to now look at the proposed org chart.

EXECUTIVE DIRECTOR WILKEY:

Thank you, Madam Chair. You have before you a document that the staff has spent a considerable amount of time on. As you know, we have been working diligently in a number of areas to get up to "get up to snuff" in terms of our policies and procedures. We are in the process of beginning the development an entire policy and procedures manual for the agency, as well as the administrative procedures. We have a contract out for a number of procedures in that area.

One of the other areas, as you know, that we've also been working diligently on is our strategic plan and we are hopeful that we can get the finalized document of that plan to you by your meeting in March. As part of the strategic plan effort, it is a requirement of OMB/OPM to develop and to provide them as part of the strategic plan an organizational chart. One hasn't been updated since the Commission was first formed. And so we took a great deal of care in looking at where we are today and hopefully where we want to be over the next couple of years and have developed what we feel, after much discussion, an organizational chart that well serves the needs of the Commissioners.

We've also worked closely with the Office of our Inspector General with his long experience in working through organizations, large organizations, small organizations, through his work in the Department of the Interior and he has given us invaluable aid in helping us put forth this document.

So it is there for your consideration. I am open to any questions that you might have regarding its contents.

CHAIRWOMAN RODRIGUEZ:

Are there any questions for Mr. Wilkey about the draft organization chart?

COMMISSIONER HILLMAN:

I do have a -- well it's more of an observation than a question.

EXECUTIVE DIRECTOR WILKEY:

Uh-huh.

COMMISSIONER HILLMAN:

I look at the organization chart as a document that provides the overall staff structure to support the activities that EAC will undertake in its strategic plan as well as the things that Congress has asked us to do, and as such it's a document that would determine or at least would advise the total number of staff people in what the functions of each of the divisions would be, and that at some point under this chart if you realized some adjustments should be made that you would come back to us.

And I think the only observation I have is there's a new position here for Coordinator of the Advisory Committees and it has that person reporting directly to you, and based on my

experience the functions of that position really also need to be closely coordinated with all the positions within the agency departments reporting to the Chief Operating Officer and for those two to be separated could create a certain amount of confusion. And I would ask you to really think about once the job description is laid out the appropriate place for that position, the reporting responsibility, because I don't know that that position will report directly to the Advisory Committees per se because that person isn't, as I understand it, doing the work of the Advisory Committees but helping the EAC to prepare for the Advisory Committee. So that's my only observation.

EXECUTIVE DIRECTOR WILKEY:

Thank you for those comments because I know that you principally have worked with both of those bodies during your tenure and know how they both operate. We're in the process of formulating that job description now and so when we get that completed I think it would be a good idea to take at where it most appropriately will fit on the organizational chart.

Thank you, I appreciate that.

CHAIRWOMAN RODRIGUEZ:

Commissioner Davidson?

COMMISSIONER DAVIDSON:

I guess the question I have is what you're talking about in formulating job descriptions, in hiring new ones there will be job descriptions. The question it gets down to is the Chief Operating Officer and how that works with you and, you know,

dividing up some of the duties. The job description of that individual I think would be very important so that we know how it plays, the Commissioners know how they work together and how we should be working together with the new position as well as you. This almost seems like to me is the beginning and now in the future there will be a lot of work in job descriptions in these arenas and how they play out and how they're going to work with the Commission or the staff really.

EXECUTIVE DIRECTOR WILKEY:

I totally agree Commissioner, you know. This is a first start. Any organizational chart, any kind of policy or procedure that you develop is always subject to change. It's kind of like your roadmap. My previous position that I was in for many years it took us over two years to develop a comprehensive set of policies and procedures for the entire operation. We spent a lot of time on it, put it in a nice book, put it away and it doesn't get looked at again until it's time to change that procedure. But it's really the map that you live by and that's the case of the organizational chart.

Certainly we're still for the most part a Commission that is still in infancy. It's going to continue to grow as our responsibilities grow, as Congress may in the future give us additional responsibilities. So certainly the number of positions and the number of divisions will shift and change and will always be subject to it. But this is a good start and I think this is a good roadmap for where we hopefully will go in the future.

COMMISSIONER DAVIDSON:

Commissioner Hunter?

VICE-CHAIR HUNTER:

I appreciate everybody's work on this, and as you know I've been in many conversations trying to figure out the best way to move forward. I think my view of the EAC right now is that it is a very top-heavy organization. If you count just the person who's in charge of the different boxes, that's 15 people out of an estimated staff of 28. And we don't have 28 on staff now, that's just when we're staffed up. So 15 out of 28 sort of supervisors seems like a lot to me, and I am having a really difficult time understanding why the need for a Chief Operating Officer when we have so many sort of chiefs already who are very strong and who feel strongly about what they do. I don't at this moment see the need. And I know that there's a draft plan out there of, you know, job duties for the Chief Operating Officer and I think it raises many questions because it doesn't really fit somebody who is overseeing all the different what I call silos of the EAC. It seems a little bit more heavy toward the administrative side of things, the financial side of things. And that's good, but then that leaves a lot of the other programs that I think we need some coordination and oversight kind of left hanging. So I personally am not prepared to vote on the organizational chart. I think we need more discussions on this. When I spoke with Roger, our in-house -- what is his title?

EXECUTIVE DIRECTOR WILKEY:

Well, he's formerly our Inspector General.

VICE-CHAIR HUNTER:

Formerly our Inspector General, he came up with yet another idea that sounded interesting to me. But until I have a better understanding of how this person will operate on a day-to-day basis with our Executive Director, what will their duties and responsibilities be between the two of them and how the Chief Operating Officer will work with the other division directors, I'm not ready to sign off on it.

EXECUTIVE DIRECTOR WILKEY:

Thank you very much, Commissioner. I appreciate your comments and you know that I value and respect that and we've had a number of off-side conversations on this. We felt we have made our best effort in coming up with this plan. We feel that the position in question meets the needs of what we need to do in order to function at our maximum capacity. As you know, what I have learned since I arrived here is that while we are a small organization we still have to respond and provide the numerous reports that need to go various agencies in the federal government. We need to comply, our budget continues to grow and we need more support in the area of budgeting analysis and contracting. And so it was in this regard that we had this discussion on this position. At this time this is our best effort. We have had numerous discussions about it over the past several months, and I now again on behalf of myself and the staff make this presentation to you.

COMMISSIONER HILLMAN:

Madam Chair, I move acceptance of the EAC organization chart as just presented by the Executive Director.

CHAIRWOMAN RODRIGUEZ:

Is there a second?

COMMISSIONER DAVIDSON:

I'll second it.

CHAIRWOMAN RODRIGUEZ:

It's been moved to adopt the org chart as presented. Is there discussion on the motion? Are we prepared to vote?

Commissioner Hunter has raised an objection to the org chart as presented, but we have a motion and a second to adopt it.

It sounds like we're ready to vote at this time. All those in favor indicate by saying aye. Any opposed?

VICE-CHAIR HUNTER:

Nay.

[The motion carried. Vice-Chair Caroline Hunter voted in opposition to the motion.]

CHAIRWOMAN RODRIGUEZ:

I do think especially in light of resolving some audit issues at the end of the month that we do need to have an org chart in place that better reflects what the auditors are recommending.

And now is the moment for Commissioners' closing remarks. Are there any? Commission Hillman?

COMMISSIONER HILLMAN:

Just a couple of comments. I truly hope in the spirit of how I know the four of us Commissioners want to move forward that we will make concerted effort, however we have to do that, to come to agreement on an interim policy under which we can consider requests from states for changes to the state-specific instructions on the National Form, particularly in light of the information that the General Counsel shared with us earlier regarding the Federal Election Commission and the inability of the Commission to take any action until it's resolved and how that might or inevitably will slow down our ability to do the transfer of regulations as we had talked about last fall.

And then the other point I would make is that I look forward to working with you and Commissioner Hunter and appreciate the leadership that you will be showing. And while I was surprised about the announcement of the changes in the DFO this soon, I am prepared to help you implement the vision that you have. And if you could just let me know when you want that change to take effect so I can do the necessary work to transfer to Commissioner Hunter what she will need for the Standards Board.

CHAIRWOMAN RODRIGUEZ:

Thank you. Commissioner Davidson, anything?

COMMISSIONER DAVIDSON:

I just would like to make about the same statements that Commissioner Hillman made. We do need to move forward and have an interim procedure put into place on the MVRA and how we work with the states' requests. So I too will most

definitely work in the future with the staff and individually with each of the Commissioners in talking about what we can agree on and what we can't agree on as we move forward.

I will tell you this year as being Chair I learned a lot and I think that we have moved forward as an agency. There is a lot to do. There is a lot of continuance that we need to accomplish that we all do have the same goals of fair, equal and where our elections are transparent to the public and they are very open and fair. So as we move forward I think that I can't wish you anything but luck and I want you to know that you've got my support and I would be willing to do whatever you need and just call and I'll be there.

CHAIRWOMAN RODRIGUEZ:

Thank you.

COMMISSIONER DAVIDSON:

So I wish you the very best. It's going to be a busy year, as we all know, but it probably is going to be a very exciting year too. So I'm here to work with you.

CHAIRWOMAN RODRIGUEZ:

Thank you. Vice-Chair Hunter, do you have any closing remarks?

VICE-CHAIR HUNTER:

I do have a couple. Karen, I wonder if you would care to introduce your new staff member at this time.

MS. LYNN-DYSON:

I'd be delighted to. For everyone, this is Dr. Shelly Anderson. Her title is Research Specialist. And this is her fourth day here

at the Election Assistance Commission and I am very, very pleased that she was able to join us. Shelly has come from the NAACP where she was the Research Director and with that experience I think has a lot of understanding of the need to collect information on a national level and how you go about coordinating those efforts. So she and I have already begun to dig in and we look forward to putting out what I think will be an outstanding 2008 election survey.

CHAIRWOMAN RODRIGUEZ:

Welcome, Dr. Anderson.

DR. ANDERSON:

Thank you very much.

CHAIRWOMAN RODRIGUEZ:

Commissioner Hillman has an introduction, please.

COMMISSIONER HILLMAN:

Surely. As we're introducing new members of the Election Assistance Commission Staff, let me introduce Maisha Leek who will stand. Maisha just started this week. She's been here all of four days as well. And she most recently worked in the offices of Congressman Chaka Fattah in Philadelphia and here in Washington, D.C.

CHAIRWOMAN RODRIGUEZ:

Welcome Maisha.

MS. LEEK:

Thank you.

CHAIRWOMAN RODRIGUEZ:

Mr. Wilkey?

EXECUTIVE DIRECTOR WILKEY:

Yes, Madam Chair. We also have a new addition to our Program and Services Division. And let me also add, and we had hoped to have something available for this meeting but hopefully the next, as many of you know a long-time colleague and staff person Peggy Sims has retired from federal service and we are hoping within the next month to be able to have an appropriate farewell with us. As you know, she has not been in good health of late. Our prayers and thoughts have always been with her. We are hoping that there is an appropriate time in the coming weeks where we can share little remembrances with her and have her here to give her a better send off. And I will keep you notified when we're able to do that.

But Edgardo if you could introduce your new colleague in the Program and Services unit, that would be great.

MR. CORTES:

Yes, thanks Tom. Julianna Milhoffer who is sitting right over here started with us last week. She actually previously worked in the Minnesota Secretary of State's Office and so has some experience working with HAVA funds at the state level and we think she's going to be a great addition to the team here.

We also will have a new staff member starting this coming Tuesday. So we are poised to make sure that all the programs we have under our belt this year get out the door.

EXECUTIVE DIRECTOR WILKEY:

Thanks, Edgardo. And when we meet next month we will be able to introduce that person, as well, as an addition to our

Communications Division. And that will help us increase our responsibilities in the execution of our clearinghouse and we're looking forward to that. So we're very grateful to you and our appropriators for giving us the additional funds to be able to do this.

CHAIRWOMAN RODRIGUEZ:

Thank you. Ms. Hodgkins, do you have anything to add?

COUNSEL HODGKINS:

No, thank you. Just glad to be back here.

CHAIRWOMAN RODRIGUEZ:

Okay. In closing I wanted to announce one other new feature that the EAC is offering to the Spanish-speaking voters. The EAC homepage now includes an "En Espanol" section, which provides information about voter registration, HAVA and the language accessibility program. Also included are the Spanish glossary of election terminology, a voter resources center and resources for military and overseas voters. So if anyone has language needs or questions, please contact Laiza Otero at the EAC 1-866-747-1471, a toll-free number, or by email at lotero@eac.gov. And I want to recognize Laiza's hard work.

I see our friend Leslie Reynolds in the audience and you have a big meeting coming up that might be of interest.

MS. REYNOLDS:

Uh-huh.

CHAIRWOMAN RODRIGUEZ:

Also, don't you have a primary forum coming up?

MS. REYNOLDS:

We do in March, March 6th at Harvard's University Institute of Politics. We're going to talk about the NASS Rotating Regional Primary Plan and look at the primaries that have taken place beginning with this year and talk about -- the RNC and DNC have been talking too about looking at ways to improve the process. They will be there. We'll have lots of people there at the Institute of Politics in early March.

CHAIRWOMAN RODRIGUEZ:

And will there be any discussion on the Lieberman/Alexander/Klobuchar bill?

MS. REYNOLDS:

Legislation?

CHAIRWOMAN RODRIGUEZ:

Uh-huh.

MS. REYNOLDS:

The legislation currently mirrors the NASS Plan, so I'm sure there will be discussion about that. We actually had a meeting in November where Senator Klobuchar came in and talked about her legislation. So she's actually said that she hopes the parties do something so that the legislation would be unnecessary.

CHAIRWOMAN RODRIGUEZ:

And then your Secretaries of State are coming into D.C.?

MS. REYNOLDS:

They will be in Washington, D.C. at the Hyatt-Regency on Capitol Hill from February 7th through the 10th, which is right after Super-duper Tuesday.

CHAIRWOMAN RODRIGUEZ:

And the next meeting of the EAC will be in conjunction with the National Association of Secretaries of State meeting on February 7th.

If there are no other announcements, we'll adjourn an hour earlier than advertised.

[Whereupon, the EAC meeting adjourned at 12:59 p.m.]