

1

2

3

4 U.S. ELECTION ASSISTANCE COMMISSION

5 PUBLIC MEETING

6

7 Taken at 1225 NEW YORK AVENUE

8 NORTHWEST, SUITE 1100

9 WASHINGTON, D.C. 20037

10

11 Taken on the date of:

12 THURSDAY, JANUARY 27, 2005

13

14

15

16

17

18

19

20

21 Start time: 10:00 o'clock, a.m.

22 Taken by: JACKIE SMITH, a Court Reporter

1 U.S. ELECTION ASSISTANCE COMMISSION:

2 Gracia Hillman, Chairman

3 Paul DeGregorio, Vice-chair

4 DeForest Soaries, Commissioner

5 Ray Martinez III, Commissioner

6 Julie Thompson, General Counsel

7 Carol Pacquette, Interim Director

8

9 SPEAKERS:

10 Peggy Sims

11 McCoy Williams

12 Bonnie McEwan

13 Deborah Page

14 - 0 -

15

16

17

18

19

20

21

22

1 P-R-O-C-E-E-D-I-N-G-S

2 CHAIR HILLMAN: Good morning. This

3 meeting of the United States Election Commission

4 will come to order.

5 I am asking everybody to please make sure
6 that your cell phones, pagers, and other
7 electronic devices are turned off so they won't
8 distract from the morning's proceedings. Thank
9 you.

10 Okay. If we could all stand for the,
11 "Pledge of Allegiance."

12 (Pledge of Allegiance)

13 CHAIR HILLMAN: Mr. Hancock, the roll
14 call, please.

15 MR. HANCOCK: Please respond when I
16 call your name. Chairman Hillman.

17 CHAIR HILLMAN: Here.

18 MR. HANCOCK: Vice-Chair DeGregorio.

19 VICE-CHAIR DEGREGORIO: Here.

20 MR. HANCOCK: Commissioner Martinez.

21 COMMISSIONER MARTINEZ: Here.

22 MR. HANCOCK: Commissioner Soaries.

4

1 COMMISSIONER SOARIES: Present.

2 MR. HANCOCK: All present, Madam
3 Chair.

4 CHAIR HILLMAN: Thank you.

5 You have before you the agenda, and it
6 would be appropriate for us to adopt the agenda

7 at this time.

8 COMMISSIONER SOARIES: So moved.

9 VICE-CHAIRMAN DEGREGORIO: Second.

10 MS. HILLMAN: All in favor. All

11 right.

12 Correction and approval of the minutes, we

13 have one minor. Are there any corrections or

14 edits to the minutes that we have in our

15 materials? Okay.

16 On page 6, the paragraph that talks about

17 the executive director recruitment. It is just

18 a correction that the Standards Board and Board

19 of Advisors assist with the recruitment of the

20 executive director, and that they actually do

21 it.

22 So with that correction, if we could move

5

1 adoption of the minutes.

2 COMMISSIONER MARTINEZ: So moved,

3 Madam Chair.

4 VICE-CHAIRMAN DEGREGORIO: Second.

5 CHAIR HILLMAN: All in favor. All

6 right. Thank you.

7 Reports. We will now have a report on

8 Title II requirements payments, an update from

9 Peggy Sims.

10 MS. SIMS: Well, since my last
11 report, EAC has processed only one certification
12 from Rhode Island for its 2004 requirements
13 payment. That was a little over 7 million
14 dollars, which brings us to more than 1.45
15 billion dollars disbursed by the EAC. This is
16 composed of both fiscal year 2003 and 2004
17 funds.

18 Forty-seven states have received their
19 requirements payments. All 47 have received the
20 2003 payments. Thirty-five of these now have
21 received their 2004 payments, a total of 822
22 million dollars.

6

1 The latest disbursement leaves us just over
2 777 million dollars to be distributed from FY
3 '03 and FY '04 funds.

4 Certifications from seven states are
5 pending. Five of these states have not yet
6 received any requirements payments, and two have
7 received their 2003 payment and are awaiting
8 their payment for 2004.

9 One of those, Virginia, their certification
10 just arrived yesterday. Most of the states that
11 are pending, except for Virginia, require some
12 follow-up to insure that the states meet their

13 HAVA requirements for administrative complaint

14 procedures for the five-percent match.

15 In one case, Puerto Rico, EAC is waiting
16 until the revised state plan has been published
17 in the Federal Register for 30 days. That plan
18 was published January 24th of this year, so the
19 clock is ticking on that, as we speak.

20 Four other states cannot certify for the
21 2004 requirements payments until after they have
22 submitted a state plan, and that plan has been

7

1 published by EAC in the Federal Register.

2 One of these states, South Dakota, has just
3 filed its amended plan to us, and we'll be
4 circulating a memo shortly in hopes of getting
5 that published.

6 The other three, Delaware, Montana, and
7 Texas, have not yet filed a plan addressing
8 2004. Texas has indicated that they should be
9 filing shortly.

10 We have three states that have not filed a
11 certification for any requirements payments.
12 That is significantly down from my last report,
13 thank goodness. Those three are Alaska, New
14 York, and the U.S. Virgin Islands.

15 U.S. Virgin Islands, I spoke with a

16 representative from their office yesterday.

17 They indicated that they would be filing a

18 certification shortly.

19 The submission from Alaska seems to have

20 been delayed by the state's effort to amend its

21 state plan. And New York as not yet

22 appropriated the five-percent match, or

8

1 established its administrative complaint

2 procedures. Hopefully, their state legislature

3 will have to deal with those things in the

4 spring, but both of those items are

5 prerequisites to receiving requirements

6 payments.

7 The outstanding balance, which is over 325

8 million dollars represents the 2004 requirements

9 payments for which eight states have not yet

10 certified, though they have received their 2003

11 payments. Nebraska have filed material changes

12 to its state plan, and they did publish that

13 plan in the Federal Register. We expect their

14 certification shortly.

15 Most of the other states are working on

16 finding a full five-percent match or submit

17 certifications for partial requirements payment

18 based on a partial match.

19 The latter approach is in response to EAC's
20 recent decision to accept certifications for
21 partial payments in our effort to expeditiously
22 disburse the funds needed by the states.

9

1 Of the eight states that have not received
2 any requirements payments at all, and those
3 eight states are Alaska, Guam, Illinois, New
4 York, Oklahoma, Puerto Rico, South Dakota, and
5 Virgin Islands, it is likely that several of
6 these will have at least part of their funds
7 within the next 45 days.

8 Are there any questions, Commissioners?

9 COMMISSIONER MARTINEZ: Peggy, the
10 decision to allow the draw down of the
11 requirements payments on a partial match of the
12 five percent that is required, how have we
13 communicated that?

14 MS. SIMS: My understanding is that
15 Julie had sent a letter out to the states to let
16 them know about this. I know that several states
17 have indicated interest. Michigan has been on
18 hold for a while for that issue, although we do
19 need a little bit more information from them to
20 process the request, in terms of exact dollar
21 figures that they are talking about.

22 I understand Oregon, and Hawaii, and New

10

1 Jersey may also be coming in for partial matches

2 for 2004 payments.

3 COMMISSIONER MARTINEZ: Another quick

4 question, Madam Chair, and I just to emphasize

5 that.

6 When states make a material change to their

7 state plan, which we published all 55 state

8 plans back in March, there is an obligation in

9 the state to deliver material changes to the

10 EAC. And our obligation is to publish those

11 material changes in the Federal Register.

12 MS. SIMS: That's correct.

13 COMMISSIONER MARTINEZ: And we're

14 communicating that to the states, the states

15 understand that obligation.

16 MS. SIMS: Yes. As matter of fact,

17 we're probably going to refine them. We do have

18 a training coming up at NAS on February 6th,

19 where we will be going over reporting

20 requirements, and will be reviewing the use of

21 funds based on the different pots of money that

22 are available, Title I funds, and Title II

11

1 requirements payments, and we're going to refine
2 them.

3 And if they want to, they are implementing
4 material changes to the administration of the
5 state plan that they do need to file those
6 changes with us and allow us to publish them for
7 30 days.

8 COMMISSIONER MARTINEZ: Just one real
9 world example, that is the State of Ohio, which
10 recently decided to change their state plan from
11 requiring the local jurisdictions to purchase
12 all the area machines, and to be able to use
13 optical scanning. That is perfectly within the
14 right of the states to do so, but that does
15 change their state plan. And, therefore, they
16 have communicated to us that they will be filing
17 material changes.

18 MS. SIMS: Yes. They told us they
19 published their state plan for public comment
20 material on January 12th. Once that is done,
21 they will be re-submitting a revised plan to us
22 for publication.

12

1 COMMISSIONER MARTINEZ: Thank you.

2 CHAIR HILLMAN: Any other question?

3 VICE-CHAIRMAN DEGREGORIO: Peggy,

4 those eight states and territories that have not
5 certified to us, do you think they understand,
6 very clearly, that even though they haven't
7 certified to us and received any money from us,
8 they still have to be in compliance with HAVA on
9 January 1, 2006?

10 MS. SIMS: Well, actually, there are
11 three that have not certified to us. We have
12 eight that have received payments, three that
13 haven't certified. I know we have spoken to
14 them about this. I know that the Virgin Islands
15 is already working towards this effort, and
16 that's one of the reasons why they want to get
17 this certification in, to get the money. They
18 have already spent some of their own funds on
19 this effort.

20 I don't know whether you perceive that we
21 need to remind them, but several, in
22 conversations with them, they are fully aware

13

1 that they need to meet those requirements, with
2 or without federal funding.

3 VICE-CHAIRMAN DEGREGORIO: We may
4 have to remind them just to, hopefully, get them
5 to take some action, some of the states that
6 have not moved at all.

7 CHAIR HILLMAN: Peggy, I have one
8 question for you. It is my understanding that
9 reports are due from the states about their
10 expenditure of HAVA dollars by the end of March,
11 is that correct?

12 MS. SIM: Actually, that is our next
13 agenda item. Reports, at this point, we don't
14 know how the states, at least EAC has not
15 received reports on how the states have been
16 spending their Title II requirements payments.

17 NAS did do a survey and got some response
18 from 27 states last year, but in accordance with
19 HAVA, Section 258, states are required to file
20 an annual report on their activities for the
21 previous federal fiscal year, and that report
22 isn't due until six months after the end of the

14

1 fiscal year. So that is going to be at the end
2 of March. March 30th will be the first report
3 that we receive from them.

4 CHAIR HILLMAN: Before we segue into
5 the next agenda item, is it likely that these
6 first reports are going to be report on Title I
7 and Title II expenditure, or will those be two
8 separate reports?

9 MS. SIMS: They should be separate

10 reports, and that, we will also be talking about
11 shortly.

12 We're talking about different pots of money
13 with different, different permissible uses.
14 Obviously, 101 has more discretion on the use of
15 101 funds, under Title I.

16 Title II, 102 payments can only be used to
17 replace punch card lever machines. Title II
18 requirements payments are supposed to be used
19 only to meet the Title III requirements for
20 providing provisional voting and voter
21 information at the polling places, setting up
22 the statewide voter registration database,

15

1 implementing voting systems that meet the six
2 voting system standards listed in those
3 requirements, and the requirements for
4 first-time voters who register by mail.

5 Under certain circumstances, that money can
6 be used for other things. For example, if the
7 state has indicated they have already met the
8 Title III requirements, or if they are using a
9 certain minimum amount calculated, using a
10 formula in the law.

11 So we do want reports on those separately
12 because we want to see how they are using the

13 funds within those separate -- how they are

14 using the separate pots of money.

15 CHAIR HILLMAN: Okay. Thank you.

16 Any other questions on Title II payments

17 before we move on?

18 Okay. The next agenda item is a

19 presentation by Peggy Sims on state reports on

20 HAVA expenditures.

21 MS. SIMS: Well, as I noted, the

22 reporting requirements for Title II requirements

16

1 payments are covered in HAVA Section 258, and

2 that requires the annual report that provides a

3 list of expenditures made with respect to each

4 category of activities described for the use of

5 funds, which would be your Title III

6 requirements, or your exceptions, the number and

7 type of articles of voting equipment obtained

8 with the funds, and an analysis or description

9 of the activities funded to meet HAVA

10 requirements, and how such activities conform to

11 the submitted state plan.

12 The first report is going to be due no

13 later than March 30th. We have notified the

14 states of these reporting requirements each time

15 we have made requirements payments. The first

16 report is only going to cover the activity for
17 those states that received requirements payments
18 through September 30, 2004, so we should
19 probably -- we'll be expecting reports from 44
20 states, and reporting on over 1.33 billion
21 dollars, because that is where we were as of
22 September.

17

1 Now, a copy -- we are also asking, as part
2 of this report, that the states provide, fill
3 out SF Standard Form 269 attached to the agenda
4 document 0502. This is a standard form used for
5 reporting financial activity.

6 Unlike the reporting required for Title II
7 requirements payments, HAVA does not explicitly
8 require reports from the states on HAVA Title I.
9 Nevertheless, given EAC's audit
10 responsibilities, it is necessary for EAC to
11 continue to seek information on the use of Title
12 I funds.

13 States have already had to file one report
14 on Title I funds. In a July, 2003 letter to the
15 states, GSA, the General Services
16 Administration, noted that their first reports
17 were due on the early money by January 21, 2004.
18 GSA required the states to file separate reports

19 for the Section 101 and 102 funds.

20 Using Standard Form 269, GSA directed the
21 states to submit verification of actual
22 participant expenditure with these forms. The

18

1 vast majority of the states submitted their
2 forms to the GSA using the short version of the
3 standard form. And seven of the 55 states that
4 received Section 101 funds disclosed that no
5 disbursements were made for those funds during
6 the reporting material which was from the date
7 of the receipt of the funds through December 30,
8 2003.

9 Also, 20 of the 30 states that received
10 Section 102 funds reported making no
11 disbursements from those funds during the
12 period. Of the states that did report
13 disbursements of Section 101 or 102 funds, only
14 a handful provided verification of actual
15 purchases and expenditures required by GSA.

16 Now, GSA's letter to the states also noted
17 the agency would be providing these reports to
18 EAC, which they did last summer, and that the
19 reporting dates were subject to change by EAC.

20 EAC has assumed the responsibility for
21 receiving reports regarding Title I funds, in

22 accordance with the agency's assumption of its

19

1 audit responsibilities under HAVA Section 902.

2 This week, EAC is sending a letter to the chief

3 state election officials directing the state to

4 file all subsequent records regarding Title I

5 funds with EAC by February 28, 2005, to disclose

6 in separate reports for Section 101 and 102

7 funds the financial activity for the previous

8 year on a Standard Form 269, and provide

9 detailed expenditure of Title II requirements

10 payments, which is a detailed list of

11 expenditure by program function or task made

12 with respect to the categories described for

13 permissible use of funds in HAVA Sections 101(b)

14 and 102(a)(2).

15 Also, the number and type of articles of

16 voting equipment obtained with the funds, and an

17 analysis and description of the activities

18 funded to meet HAVA requirements, and also shall

19 conform to the submitted state plan.

20 With regard to the Title I funds, it wasn't

21 mandatory that the states use these funds to

22 meet Title III activities, but many of them

20

1 indicated in their state plans that they were

2 going to do so.

3 The reporting requirements put forth differ

4 from the reporting requirements in the

5 requirements provisions in two ways. First, is

6 the reports on Title I funds disclose financial

7 activity during the previous calendar year.

8 We're asking for reports from January 1, 2004

9 through December 30, 2004, rather than the

10 previous fiscal year specified for the

11 requirements payments in HAVA Section 258. And

12 the reports on the Title I funds will be due at

13 the end of each February until all funds have

14 been expended, while the Title II requirements

15 payments reports will be filed at the end of

16 March each year until those funds are expended.

17 Now, this approach continues the reporting

18 material originally established for Title I

19 funds by GSA, and allows EAC earlier access to

20 information on HAVA Title I financial activity

21 than we have for the HAVA Title II requirements

22 payments. The resulting reports on both Title I

21

1 and Title II requirements payments will provide

2 EAC with information that can be analyzed to

3 determine how states are spending these HAVA

4 funds. They also will provide basic information
5 necessary for any subsequent audits conducted in
6 accordance with Section 902.

7 Are there any questions?

8 CHAIR HILLMAN: That is an awful lot
9 of information there.

10 COMMISSIONER SOARIES: I just have a
11 need for some minor clarification, just to make
12 sure I heard what I think I heard.

13 Did you just tell us that all 55 states
14 received Section 101 funds?

15 MS. SIMS: That's correct.

16 COMMISSIONER SOARIES: And that 30
17 states received Section 102 funds?

18 MS. SIMS: Yes.

19 COMMISSIONER SOARIES: Do we have
20 copies of the reports the states sent to GSA?

21 MS. SIMS: We do. They have provided
22 those reports to us.

22

1 We followed up to try to pursue any
2 amendments that may have been filed since then.

3 COMMISSIONER SOARIES: Does our
4 possession of those copies constitute ownership
5 of the report, or do we have a copy of the
6 report to GSA? In other words, did they

7 transfer the reports to us?

8 MS. SIMS: They didn't transfer the
9 original reports to us.

10 What we have are photo copies.

11 COMMISSIONER SOARIES: Then whose
12 responsibility will it be to evaluate, or
13 review, or assess those reports, if we have a
14 copy of the reports to GSA?

15 Is it GSA's responsibility? And if so, do
16 we engage in any discussion with GSA to talk
17 about the criteria for evaluating or assessing
18 those reports?

19 MS. SIMS: I think the Commission's
20 assumption last summer was that the
21 responsibility was transferred to EAC.

22 We did do some initial follow-up because

23

1 some of those reports, well, there were some
2 errors just in the financial reports.
3 We did do some follow-up with some of the states
4 to get them to file revised reports, to get them
5 to correct those errors or to correct certain
6 anomalies.

7 What we have not yet done, and we need to
8 discuss, is what we want to do in terms of
9 follow-up on back-up information that was not

10 provided.

11 COMMISSIONER SOARIES: Okay. I
12 perceived the possibility of a small gap, and I
13 think you have confirmed that.

14 CHAIR HILLMAN: Before we move on, I
15 will ask the General Counsel to respond.

16 MS. THOMPSON: Just to respond,
17 Mr. Soaries, Section 902 of HAVA specifically
18 states that EAC assumes the responsibilities of
19 auditing funds that GSA has distributed, and to
20 the extent that those reports are part of that
21 auditing activity, certainly, we would have
22 responsibility for reviewing and auditing those

24

1 reports.

2 COMMISSIONER SOARIES: That was my
3 assumption. I do think we should press, not to
4 be cute but to be clear, press the issue of
5 whether or not we have copies of reports to GSA,
6 or whether the GSA has transferred to us and we
7 now own the report.

8 Finally, when you say vast majority, I just
9 need -- I know what majority means, but when you
10 say vast majority --

11 MS. SIMS: The ones that didn't
12 provide back-up.

13 COMMISSIONER SOARIES: I just don't
14 know how to measure vast.

15 MS. SIMS: I distinctly remember a
16 few that have not provided back-up, and I can
17 recall another two.

18 COMMISSIONER SOARIES: I just don't
19 know how to measure vast.

20 MS. SIMS: I don't have exact
21 numbers, but I recall less than ten filing on a
22 long form. Now, I don't think it is worthwhile

25

1 going back on those that didn't make
2 disbursements.

3 COMMISSIONER SOARIES: So is that the
4 vast majority of the 55 that got 101 funds?

5 MS. SIMS: It covers all 55 states, but
6 whether or not some states had to file two
7 reports, some only had to file one.

8 COMMISSIONER SOARIES: Okay. Thank
9 you.

10 CHAIR HILLMAN: Any other questions?

11 COMMISSIONER MARTINEZ: Peggy, help
12 me decipher what you said, but I want to
13 reiterate, HAVA and Title II was very specific
14 about what states need to report to the EAC
15 regarding the use of their Title II funds. And

16 you referenced Section 258, which has some very
17 clear and direct language about what it is that
18 the EAC is supposed to receive in the form of
19 reports. It is not just financial. It is not
20 just a spreadsheet of financial transactions.

21 MS. SIMS: That's right.

22 COMMISSIONER MARTINEZ: It is a

26

1 programmatic assessment of here's where we are.

2 MS. SIMS: Definitely, we're not
3 looking for reports by object class. That
4 really doesn't tell us a lot.

5 COMMISSIONER MARTINEZ: We're looking
6 for a narrative, if you will, of the expenditure
7 of the Title II funds.

8 The problem that we ran into is that in
9 Title I, and there was significant funds
10 distributed before formation of the EAC by GSA,
11 there is no such statutory language in Title I
12 of HAVA that says states have to produce a
13 narrative.

14 Obviously, it is expected that with the
15 audit responsibilities, states have to produce
16 some reports on the use of the Title I funds.

17 And what we're trying to capture is the
18 very same narratives so that we can be informed

19 in the same way of the use of the Title I funds
20 as we are going to be informed of the use of the
21 Title II funds. That's what we're trying to
22 capture.

27

1 And we have communicated our intent to
2 capture that information, or we're about to
3 communicate that to the states in the coming
4 days, with regard to the Title I reporting.
5 Title II is out there. States very read HAVA,
6 and they know what they are supposed to report.
7 We have communicated and reiterated that,
8 obviously, but they can read HAVA and know what
9 they are going to have to give us for Title II.

10 Okay. No more questions. Madam Chair,
11 just a clarification. Thank you.

12 CHAIR HILLMAN: Commissioner
13 DeGregorio.

14 VICE-CHAIRMAN DEGREGORIO: Peggy,
15 Section 102 monies to the 30 states, that is
16 replacement money.

17 MS. SIMS: Solely for replacement of
18 the punch card lever machines.

19 VICE-CHAIRMAN DEGREGORIO: If we find
20 in the reports that they are not using that
21 money for that purpose or having spent it, what

1 MS. SIMS: Well, I'd like legal

2 counsel to be involved in that.

3 COMMISSIONER SOARIES: Who needs

4 lawyers.

5

6 MS. THOMPSON: Vice-Chairman, in

7 response to your question, of course, as I will

8 discuss somewhat later in my presentation, EAC

9 has special audit authority, and it would

10 involve, I think, an assessment of whether or

11 not the discrepancy in the use of those funds

12 was sort of self-evidence, based upon the

13 evidence we received. Or if additional

14 information was needed, there may be need for a

15 special audit.

16 If there is a distinct misuse of funds

17 under Section 102, then our remedy is to

18 recommend to the comptroller general that they

19 recoup those funds for the United States. Of

20 course, as you know, Section 102 also has a time

21 limitation on which those funds may be sent to

22 replace the punch card and lever systems. If

1 that time period has been expired, and those
2 funds have not been used, then there is specific
3 language in Title I, not Section 101, but the
4 later section that says those funds must be
5 returned to the United States Government.

6 VICE-CHAIRMAN DEGREGORIO: And the
7 reports that they will file with us will contain
8 that information, enough for us to make a
9 decision, or at least assess if they have spent
10 the money by that deadline?

11 MS. SIMS: That is correct.

12 CHAIR HILLMAN: I just have one quick
13 questions. Peg, do we have a responsibility or
14 is there a requirement for us to publish the
15 reports in the Federal Register?

16 MS. SIMS: I don't see a specific
17 requirement, but it may not be a bad idea.
18 This is something -- of course, my previous
19 experience with the FAC, they make those reports
20 available to the public.

21 CHAIR HILLMAN: Okay. Thank you.

22 MS. SIMS: Of course, they are

30

1 required to, but it is still probably a good
2 policy to do that.

3 Any other questions?

4 CHAIR HILLMAN: No. I think we're
5 all set. Thank you.

6 The next agenda item is presentation on
7 single items. McCoy Williams, Director, Civil
8 Agencies Financial Management at the Government
9 Accountability Office, affectionately known as
10 GAO.

11 Is Mr. Williams here? Okay. This is
12 interesting.

13 Julie, do you think you could have somebody
14 to call Mr. Williams' office. I assume it is
15 Mr. Williams.

16 MS. PACQUETTE: Madam Chair, I can do
17 that.

18 CHAIR HILLMAN: To find out if he is
19 on his way. We're right on time. We're not
20 early.

21 General Counsel, are you able to discuss
22 the next agenda item, audit authority under

31

1 HAVA? Is it out of place? I know it is
2 sequenced, the items on the agenda, but so that
3 we don't lose time.

4 MS. THOMPSON: I can certainly give
5 it our best shot. And if you have questions
6 that relate back to the single audit discussion,

7 then I will either do my best to answer those
8 questions based upon my knowledge, or request
9 that you be given additional information on that
10 point.

11 MS. HILLMAN: Okay. So our audit
12 authority under HAVA.

13 MS. THOMPSON: Let me just start with
14 a summary of the audit authority that is given
15 under HAVA. What we would anticipate the GAO
16 would provide us with is the information related
17 to the audits provided under Section 901(a) of
18 HAVA, that is regular audit of funding. It
19 would be conducted through the single audit
20 process.

21 In addition to what we would consider
22 regular audit authority, there are also two

32

1 other audit authorities that are permitted under
2 Section 902 of HAVA. The first one is a single
3 or one-time audit that is to be conducted by the
4 comptroller general during the term of the HAVA
5 program, once a year, during that term.

6 In addition to that authority, we have --
7 EAC has been given the authority to conduct a
8 special audit or special examination of the
9 funds which are subject to regular audit under

10 902(a).

11 That is specifically --

12 CHAIR HILLMAN: Excuse me, one

13 second. Is this Mr. Williams?

14 MR. WILLIAMS: Yes.

15 CHAIR HILLMAN: Julie, do you mind?

16 MS. THOMPSON: I will certainly

17 defer.

18 CHAIR HILLMAN: Mr. Williams, we're

19 ready for your presentation, if you would come

20 up to the table. Again, McCoy Williams, and I

21 understand your title is Director, Civil

22 Agencies Financial Management at GAO.

33

1 MR. WILLIAMS: That's correct. I

2 have with me today a couple of staff. One will

3 focus on the single audit issue, that is Ms.

4 Bonnie McEwan, and we also have Ms. Debbie Page,

5 who is here to talk a little bit about an

6 additional provision in the statute that,

7 basically, is a provision that requires GAO to

8 review the various transactions.

9 And if time permits, we would like to talk

10 a little bit about that also, and give you a

11 heads up on what we plan to do in that

12 particular area also.

13 CHAIR HILLMAN: Okay. We have
14 allotted about 25 or 30 minutes on the agenda.

15 MR. WILLIAMS: Yes, I think we're
16 cover that.

17 CHAIR HILLMAN: And since this is our
18 first discussion of the EAC's audit authority
19 and requirements, in making your presentation,
20 would you please assume we don't know very much.

21 MR. WILLIAMS: That's fine.

22 CHAIR HILLMAN: And that we're not

34

1 auditors. So if there is a particular lingo
2 that auditors use, please know we're not trained
3 auditors.

4 MR. WILLIAMS: Okay. I'd like to
5 begin by -- you've got the hand-out of the
6 slides and all. We'd like to start by running
7 through those.

8 Bonnie will take you through those, and if
9 you have any questions at any point in time,
10 free to ask. We'll do our best to try to
11 answer any questions and concerns that you may
12 have.

13 CHAIR HILLMAN: Are you going to do a
14 Powerpoint?

15 MS. MCEWAN: I wasn't planning on it.

16 I just printed out the slides. Everybody has the
17 handout.

18 CHAIR HILLMAN: If she's not going to
19 use the laptop, we can just close that.

20 MS. MCEWAN: Can everybody hear me?

21 CHAIR HILLMAN: We can.

22 Ms. MCEWAN: I was just going to talk

35

1 a little bit about the Single Audit Act. I
2 don't know if I can tell you specifically your
3 responsibilities, or the Commission's
4 responsibilities. Hopefully, if questions come
5 up, Deborah will help me with those answers.
6 Let me just briefly go over how the Single
7 Audit Act came about, and the requirements of
8 the act. The Single Audit Act was passed in
9 1984. It was amended in 1996. It was intended
10 to promote sound financial management, including
11 effective internal controls with respect to
12 federal awards administered by state and local
13 governments, and non-profit organizations.
14 The way it does this is by governing
15 auditing of federal awards made to non-federal
16 entities. So if you have the slides, you can
17 follow along with me.
18 The next one is the general topic of

19 discussion where I just give a little
20 background. Prior to the act, many non-federal
21 entities received awards from more than one
22 federal agency, and frequently the grant audit

36

1 process of the federal agencies was not
2 coordinated, and it resulted in audits that
3 overlapped, or they were conducted at different
4 times, and it was real hard to keep track. In
5 addition, it inflated the cost of doing these
6 audits to the Federal Government, and it placed
7 an undue administrative burden on these
8 non-federal entities.

9 Some non-federal entities may not have been
10 audited at all, and no one would know. So the
11 history of the act is that prior to 1984, there
12 were inconsistencies, there were gaps, and there
13 was duplication of audits. Then the Single
14 Audit Act of 1984 legislatively established
15 uniform audit requirements, and
16 organization-wide audit process for state and
17 local governments.

18 Then the Office of Management & Budget, who
19 is cited in legislature as the organization
20 responsible for implementing financial
21 legislation, issued is circular, Circular A-133,

22 which set the standards for consistency and

37

1 uniformity for audit required by the act.

2 In 1994, GAO issued a report, for example,

3 requires that auditors finding internal control

4 weaknesses be summarized in the reports, so it

5 speeded up delay time and resolution, if they

6 made those changes and other changes to the

7 implementation guidance, as that is what people

8 are using now is the 1996 Single Audit Act

9 Amendments.

10 Currently, the non-federal entities are

11 responsible for getting their own audits

12 conducted. The audits must be performed in

13 accordance with Government auditing standards,

14 which is the yellow book. It gives all the

15 requirements for any entity that is spending

16 federal funds, audit requirements are outlined

17 in this book, which has just been updated in

18 2003.

19 The current threshold for audits, for

20 single audits, that it is required for entities

21 expending more than \$500,000 or more annually in

22 federal money. In 2002, there were 39,000 of

38

1 these types of audits. And in 2002, the
2 threshold was \$300,000, instead of \$500,000.
3 So, when it went to \$500,000, it reduced the
4 number of audits, but there were still in 2003,
5 about 33,000 of these single audits performed.
6 And there are a number of requirements in the
7 audit reports that keep them consistent and
8 comparable.

9 The audits all have to include an opinion
10 on the financial statements, a schedule of
11 expenditure, a report on internal controls, a
12 report on compliance with laws and regulations,
13 and they must all be completed within nine
14 months of the year end.

15 The auditor applies procedures to determine
16 which programs will be audited, and this may be
17 key to the EAC. For example, a state single
18 audit that is conducted will be -- first, they
19 will do a risk assessment. The major programs
20 or any high risk programs are going to be
21 focused on more in that audit under the
22 guidance. Some are riskier than others. Even

39

1 if their dollar amount is small, they might be
2 high risk just because there aren't any controls
3 in place.

4 Audits are performed on high-dollar
5 programs and some smaller dollar programs, just
6 depending on the risk that was identified.
7 Different risk factors are considered, such as
8 the recipient's current and prior audit
9 experience with federal programs. So if these
10 monies are issued to a state, they have been
11 administering federal money for a long time.
12 They should know where to start, what to do and
13 what audit procedures to be implemented.
14 It isn't just such as the establishment of
15 a new Commission, they may have money, but not a
16 lot of prior experience in distributing those
17 funds, or auditing them. Also, results of
18 recent oversight visits, if there are no funding
19 somewhere, and weaknesses in internal control
20 that will raise the risk.

21 And then some programs just have inherent
22 risk. If the money is easy to misappropriate,

40

1 perhaps, that a variety of programs end up being
2 audited all in this single audit. One single
3 audit is done with a big variety of programs.

4 Once the audits are complete, the entities
5 send the audit report to the federal audit
6 clearinghouse, and the clearinghouse receives

7 these electronic audit reports that are all
8 consistent and uniform. It maintains a database
9 of this information, and also distributes it to
10 the federal agencies awarding the money.

11 So in this case, for EAC, it would be HHS.
12 And GSA, it distributes audit reports to them,
13 and those audit reports would have all of those
14 elements that I described earlier, so you could
15 pretty easily see where the finances are, and
16 the weaknesses.

17 The single audit clearinghouse prepares
18 this audit database of single audit information,
19 and it is all available on a web site.

20 One of my slides here has the address, web
21 address, which is,
22 <http://harvester.census.government/sac>.

41

1 I guess the Census Department runs it.
2 That's how it ended up with that web address,
3 but it is real easy. Once you go there, you can
4 get a lot of information on single audits.

5 COMMISSIONER SOARIES: Is the federal
6 audit clearinghouse an agency in the department?

7 MS. MCEWAN: No. It is the
8 Department of Commerce managing the database, so
9 that's how it ended up with their name on the

10 web site, but it is separate in its name. You
11 don't go through the Department of Commerce
12 unless you are going to the web address. So FAC
13 is in the commerce department. It is not a
14 program or office under census.

15 COMMISSIONER SOARIES: To whom does
16 the FAC report -- are they an independent
17 agency?

18 MS. MCEWAN: No. You know, I don't
19 have that information with me right now, but
20 they were established, I believe, through OMB.
21 That information, it is available right on the
22 front page of the FAC, how it was set up. I

42

1 just didn't bring that much detail with me, and
2 I can't remember right now off the top of my
3 head, but I think it is on OMB that set them up,
4 and I believe that's who they report to. They
5 has got to go in and review these reports and
6 take corrective actions to resolve problems.
7 So if a program or a state, for example,
8 performs their single audit and they put it on
9 the web site in the clearinghouse, it is there
10 and it's available, then the state still has to
11 go in and look at it, and read it. Some of
12 these issues that GAO has been considering is

13 how the agency knows if a single audit is being
14 conducted.

15 You should be able to go to the
16 clearinghouse and search for it pretty easily,
17 but there is no specific way of knowing if all
18 the audits are done. So if programs that are
19 receiving money don't perform their single audit
20 that year, there isn't a flag that goes off and
21 warns anyone. You have to kind of go out and
22 look for it. So whoever is the oversight agency

43

1 for distributing the money, it is their
2 responsibility, under that A-133 circular I
3 mentioned, to go in and make sure those audits
4 were done, and they can read the audit reports
5 and the related findings.

6 The President's Council on Integrity &
7 Efficiency is conducting a nationwide single
8 audit sampling project now to assess audit
9 quality because single audits are performed by
10 so many accounting agencies.

11 At this time, nothing's been done on
12 quality assurance to make sure that they are all
13 doing the work they are supposed to do. So that
14 is underway right now.

15 I believe that they have a sample of B-208

16 single audits they are looking at. That is
17 being run by the IG department at the Department
18 of Education.

19 CHAIR HILLMAN: Tell me again the
20 name of the entity that's doing this. You
21 said the President's --

22 MS. MCEWAN: President's Council on

44

1 Integrity & Efficiency. And that's a group, all
2 the office of inspector generals of the
3 different agencies participate in that group,
4 and they come up with different plans, like this
5 project, that are of interest Government wide.

6 VICE-CHAIR DEGREGORIO: Just for
7 clarification, so the 208 sample they are doing
8 is of the 39,000 that they do every year, right?
9 So they are doing a sample?

10 MS. MCEWAN: Of 208, of the single
11 audits, I think they are doing 2002. That would
12 probably be the 29,000. There are 208 audits
13 they are going to sample. They are doing a
14 quality assurance sampling. They are just going
15 in to make sure that the audit was done
16 correctly.

17 COMMISSIONER SOARIES: So the
18 President's Council, Madam Chair, is leading the

19 work, but the work is being managed by the IG?

20 MS. MCEWAN: Right, President's

21 Council on Integrity & Efficiency is a group of

22 these CFO professionals that come together, or

45

1 IG professionals, and they work together toward

2 common problems that surface in the Government,

3 and the quality of single audits has come up

4 several times.

5 Agencies will say they did their audit, but

6 when you look at the audit, it doesn't look as

7 good quality as some of the other audits. So in

8 this sample, people, what they hope to do is

9 project across the uniform of all these and they

10 will be able to say what percentage of those

11 audits were inadequate.

12 MR. WILLIAMS: There have been a lot

13 of complaints that the quality was less than

14 acceptable on a lot of audits performed. No one

15 had any evidence or any specific documentation

16 that they could put their hands on to say look

17 at this audit, for example. You did not look at

18 the number of transactions that you should have.

19 There were some examples in which there were

20 some auditors that had actually performed up to

21 a hundred, and some single audits in a year,

22 which means that they had to be doing something

46

1 in the neighborhood of one audit every three
2 days, and that is almost impossible to do, and
3 get the quality.

4 Since there was no specific evidence, the
5 auditing communities got together with PCIA
6 taking the lead on this. Basically, this sample
7 is designed so that we can say statistically
8 that maybe 20 percent of the audits that are
9 performed under the Single Audit Act have sub
10 quality, and it is an effort to try to improve
11 the quality of those single audits.

12 It is a combination of IG. PCIA is made of
13 the IG community in the Federal Government, but
14 for this particular review, we also have members
15 of the private sector that is also participating
16 in this particular assignment.

17 CHAIR HILLMAN: Thank you.

18 MS. MCEWAN: When they finish with
19 this project, they hope to make recommendations
20 for any changes that might be needed to the
21 requirements and the standards. They don't plan
22 to just put out a report and say these were the

47

1 bad auditors. They hope to make general changes
2 to the requirements so that those types of
3 audits can't fall through the cracks that way
4 again.

5 Now, also the Improper Payments Information
6 Act of 2002 has come about. That requires
7 agencies to identify and report information on
8 their improper payments, and when we use that
9 term, we consider it any payment that shouldn't
10 have been made, whether it was error, fraud, or
11 whatever reason the recipient didn't meet the
12 requirement for the payments.

13 The single audit information can be useful
14 to agencies in identifying and estimating
15 amounts of improper payments. We believe those
16 two things are closely tied together. OMB
17 specifically referred in their guidance on
18 implementing Improper Payments Information Act
19 to this single audit database, and the findings
20 and information that are available there.

21 Now, at GAO, we're committed to monitoring
22 the success and usefulness of the Single Audit

1 Act, and we are required to review all proposed
2 legislation to make sure there are no conflicts
3 with the act, such as additional requirements

4 above and beyond the Single Audit Act. That was
5 the purpose of the act, to make sure that things
6 don't get through that undermine the principles.
7 And that's about it for Single Audit Act.

8 If you have questions related, I brought
9 some of the guidance that I'll be happy to leave
10 here.

11 MR. WILLIAMS: I think that would be
12 the focus. If you're looking for documentation
13 to give you some guidance as to the overall
14 process, I would focus on the A133 circular.
15 That will tell us exactly what you need to do,
16 as well as the yellow book, which would give you
17 the guidance that the auditors are basically
18 supposed to follow.

19 So if you've got those two documents, I
20 think that will give you a lot of insight that
21 you would need.

22 We'll be glad to answer any questions

49

1 before we talk about the last component of this
2 that we wanted to discuss today.

3 CHAIR HILLMAN: Commissioners, we
4 have about eight minutes, if we're going to
5 stick on schedule. So may I recommend that you
6 complete your presentation, and then we will see

7 about questions.

8 MR. WILLIAMS: There was a provision
9 in the legislation that established, that
10 requires GAO to perform a review, and that's
11 what Debbie's going to talk a little bit, to
12 give you some insight as to what we at GAO are
13 going to attempt to do, and how we'd like to
14 coordinate this overall processed, based on the
15 provisions.

16 With that, I will turn it over to Debbie.

17 MS. PAGE: Based on the Help America
18 Vote Act of 2002, which was passed in December
19 of 2003, GAO is required to audit all funds
20 provided under the act at least once during the
21 lifetime of the program. Now, there is not a
22 specific reporting date by which we're required

50

1 to perform the audit. However, we're in our
2 initial preparatory stage of just trying to get
3 an idea of the program's status as of today, and
4 we're aware that GSA was appropriated 650
5 million.

6 HHS received approximately 15 million, and
7 as of December -- excuse me, September 30, 2004,
8 we're aware that the majority of those funds, if
9 not all, have been obligated and expended. And

10 we're also aware that the Commission, well, the
11 Election Assistance Commission was appropriated
12 835 million, and a portion of that funding was
13 to be provided to the foundation.

14 I want to say 1.5 million, and those monies
15 were to be used not only just to establish the
16 Commission, but also to assist, in terms of the
17 operational aspects whereby the EAC is
18 supposedly required to oversee or provide
19 oversight mechanisms to the states, in terms of
20 the states are supposed to report to the
21 Commission, in terms of the amount of monies
22 that were disbursed by GSA and HHS, as well as

51

1 the Commission, to date.

2 Those funds are supposed to come back,
3 well, the information is supposed to be reported
4 back from the states, and the Commission is
5 supposed to do various analyses as well as to
6 report to Congress annually of those dollars.

7 And one of the items that we wanted to
8 follow-up on with you is whether or not there's
9 been any reporting to Congress to date, and also
10 if there is a current annual report. We know
11 that there is a 2003 report that's available on
12 the web site.

13 We're just curious if there has been an
14 updated report of the program activities to
15 date.

16 And that's pretty much it, in a nutshell,
17 in terms of what's required with regards to GAO
18 requirements under the Help America Vote Act.

19 MR. WILLIAMS: And the way we wanted
20 to approach this is, our belief is that the
21 stronger your oversight is under the
22 requirements of the Single Audit Act, the more

52

1 we can rely on the work that you're doing, so
2 that's why we want to make sure that we
3 coordinate, make sure that you're aware of all
4 of the requirements, and that you are
5 comfortable with the oversight role, as far as
6 the single audit's concerned.

7 There's several possibilities, as we get
8 involved, as to the fund actually going to the
9 states, and the single audit being performed at
10 the state level, or if the money's just passing
11 through the states and going down to local
12 election commissions, etc.

13 All of those factors will be part of the
14 equation of looking at exactly what you're
15 doing, as far as oversight under the single

16 audit, as well as what we at GAO would be
17 required to do in order to satisfy the reporting
18 requirements in the legislation.

19 CHAIR HILLMAN: Okay. I'm sure my
20 colleagues have questions. To answer the
21 question that you raised -- actually, two
22 questions.

53

1 We did receive from GSA reports of Title I
2 expenditures that were incurred in calendar year
3 2003. We have a number of questions about those
4 reports, and have been working to get additional
5 information, and are in the process of providing
6 guidance to the states so that they will know
7 the kind of information we need to receive on
8 Title I expenditure so that we can do precisely
9 what you outlined, Mr. Williams. And those
10 reports would be due us by the end of
11 February of this year. And then the reports
12 from the states on the Title II expenditures
13 will be due to us by the end of -- with respect
14 to our annual report, our annual report for
15 fiscal year 2004, will be available next week.

16 We'll be sending it to Congress on Monday,
17 and it will be available next week.

18 MR. WILLIAMS: Okay.

19 CHAIR HILLMAN: Good questions.

20 COMMISSIONER SOARIES: I just have

21 one concern, because I'm not sure I heard you

22 correctly. Did I hear you say that the

54

1 Commission was appropriated money for the Help

2 america Vote Foundation?

3 MS. PAGE: 1.5 million of the 835

4 billion was supposed to be used in terms of

5 getting the foundation operational.

6 COMMISSIONER SOARIES: That's what I

7 thought you said.

8 CHAIR HILLMAN: We will have to get

9 some clarification on that, because for us, we

10 were informed that that was -- that the EAC was

11 a pass-through vehicle, if you would, for the

12 funding of that foundation, and that the

13 foundation is being established by the Board of

14 Directors that was appointed to it.

15 So the money went directly to the

16 foundation. We did not process that payment, to

17 the best of my knowledge.

18 MS. PAGE: Okay.

19 VICE-CHAIRMAN DEGREGORIO: If I may

20 add, Madam Chair, the foundation hadn't been set

21 up. It is a 12-member board, and the President

22 has made his four appointments but the Congress

55

1 hadn't made their eight, to our knowledge, so it

2 is not in existence, of course.

3 COMMISSIONER MARTINEZ: Madam Chair,

4 I will be as brief as possible.

5 Back to the single audit presentation, so

6 Mr. William or Ms. McEwan, one of the slides

7 says, "as a result of recent oversight visits."

8 Who performs oversight visits?

9 MS. MCEWAN: Well, for each program,

10 there is a cognizant assistance agency.

11 Whatever agency is providing the most money,

12 generally is assigned as the cognizant agency

13 over the single audit, but in addition to that,

14 say, for example, if it were USDA, because for a

15 state, most of the money in federal programs

16 were through that, then they would be cognizant

17 agency.

18 They would be performing some review and

19 oversight activities, but in addition to that,

20 other agencies may have some responsibility too,

21 if they have a large program that is running

22 through that state. They should be performing

56

1 oversight activities too.

2 COMMISSIONER MARTINEZ: So we have
3 some obligation, if we're -- what is the term
4 you used?

5 MS. MCEWAN: The cognizant agency.

6 COMMISSIONER MARTINEZ: To perform
7 some sort of oversight.

8 MR. WILLIAMS: That's right. That's
9 an important function. That is something that
10 we look at to see if that function is actually
11 being performed.

12 COMMISSIONER MARTINEZ: Great, that
13 is helpful.

14 I am going to be pressed for time, so let
15 me go to the next question. High risk factors.
16 I assume that one of the factors that would be
17 evaluated, as to whether a program is going to
18 be subject to a single audit, is whether that
19 state agency has ever administered federal funds
20 before.

21 MS. MCEWAN: Right.

22 MR. MARTINEZ: That is an important,

1 important because most of the Secretary of
2 States have never actually administered federal
3 funds before, so it is likely they can fall into

4 that high risk category, as opposed to being
5 passed over for other major federally funded
6 programs.

7 MS. MCEWAN: For example, when I was
8 looking, I think I pulled up one state,
9 Pennsylvania. There are pages and pages of
10 programs that are running through there.
11 When you look at the dollar amount too, the
12 dollar amounts that came through this Commission
13 are so small compared to these others, that even
14 though they are higher risk, they may not make
15 it on the side, but they do have a likely chance
16 of being pulled for that purpose that you
17 stated.

18 COMMISSIONER MARTINEZ: My final
19 question, because I have no background at all in
20 auditing, Mr. Williams, do you consider these to
21 be financial audits that are performed or are
22 they compliance audits? Are they a hybrid?

58

1 What kind of audit?

2 MR. WILLIAMS: We would classify them
3 as financial in nature.

4 COMMISSIONER MARTINEZ: Looking at
5 financials, comparing it.

6 MR. WILLIAMS: Looking at financial

7 numbers, but we're also looking for compliance
8 with laws and regulations. So that is a
9 component of it. We, at GAO, typically talk in
10 terms of a financial statement audit but there's
11 three components to it.

12 One, we're looking to see are the numbers
13 fairly stated, are the numbers correct. You're
14 looking to see if there are good, internal
15 controls under procedures to safeguard the
16 assets, and three, you're looking to see if the
17 program was carried out in accordance with the
18 law, in compliance with the law. Those are the
19 three components of what we typically call your
20 financial statement auditors.

21 MR. MARTINEZ: One last thing. This
22 is not a question, Madam Chair.

59

1 You say that GAO is mentioned in HAVA, but
2 the comptroller general is actually mentioned.
3 Are you all one in the same?

4 MR. WILLIAMS: Yes.

5 COMMISSIONER MARTINEZ: Just a
6 clarification for people who read the actual
7 language of the statute.

8 MR. WILLIAMS: Yes.

9 CHAIR HILLMAN: I have one quick

10 question. That is, program inherent risks.

11 Ms. McEwan, you described it as dollars that are
12 easy to misappropriate.

13 MS. MCEWAN: That's one way.

14 CHAIR HILLMAN: Could you talk a
15 little bit about examples of that?

16 MS. MCEWAN: Examples of higher risk?

17 CHAIR HILLMAN: Well, monies easy to
18 misappropriate.

19 MR. WILLIAMS: May I take that
20 question?

21 CHAIR HILLMAN: Please.

22 MR. WILLIAMS: One of the things that

60

1 we, as auditors, typically do is, we look at
2 programs to see are there some inherent factors
3 that would put it at risk to safeguard of your
4 assets.

5 If you're dealing with a particular program
6 that has a lot of liquid assets and it is easy
7 for someone to walk away with those funds, that
8 is an inherent risk in that program.

9 If you're looking at a program that you
10 have to get the money out the door real quick,
11 and you don't have time to verify whether a
12 recipient qualifies for that money, then that is

13 an inherent risk.

14 When we see those type of risks, which we
15 call inherent, that means that we have to look a
16 little bit closer at that program because there
17 is a higher possibility that that money might be
18 misused, and not used as Congress intended for
19 those funds to be used. That's what we mean by
20 inherent risk in a particular program.

21 CHAIR HILLMAN: Thank you.

22 Could I ask that you will just remain

61

1 seated there.

2 Our next presentation is going to be from
3 our General Counsel about our audit
4 responsibilities, and in the event there are
5 questions from that, that we have for you.

6 MR. WILLIAMS: That will be fine.

7 That will be fine.

8 CHAIR HILLMAN: Okay. Thank you.

9 Ms. Thompson.

10 MS. THOMPSON: Thank you, Madam

11 Chair, commissioners.

12 Having the opportunity to follow through
13 with the presentation from the folks from GAO, I
14 think we can focus more directly on our special
15 audit authority, but just to clarify the

16 essential three types of audit authority that
17 are provided under HAVA, we have the regular
18 audit, which we contemplate under the single
19 audit, the audit that GAO representatives
20 discussed concerning their one-time audit of
21 HAVA funds.

22 And then the third portion of that being

62

1 that audit authorities reserved to the EAC, to
2 conduct a special audit or special examination.
3 That authority lies in Section 902(b)(6), and it
4 covers all of the funds that can be audited by
5 any of the agencies that distributed funds under
6 the HAVA program, including Section 101 funds,
7 Section 102 funds, HHS funds, any of those types
8 of funds.

9 What it does do, however, is it reserves
10 the right of recoupment of funds to the
11 comptroller general in that particular section,
12 so we have the authority to conduct the special
13 audit. These folks have the ability to actually
14 act on that, and recoup the funds, should they
15 find that there is a problem.

16 And when I say they find that there is a
17 problem --

18 CHAIR HILLMAN: Just for the record,

19 these folks being GAO?

20 MS. THOMPSON: GAO. I will try to
21 reframe from pointing and being verbal in all of
22 my responses.

63

1 When this special audit or any audit that
2 we receive and we determine may have a problem,
3 in terms of a discrepancy or noncompliance is
4 turned over to GAO, then their discretion, in
5 terms of recoupment of funds, is limited to
6 situations where they find that the recipient is
7 out of compliance with the program under which
8 the funds have been distributed, or there has
9 been an excessive payment made to one of the
10 recipients.

11 Unfortunately, HAVA does not offer us much
12 in terms of guidance as to how we should go
13 about conducting a special audit. So what I
14 hope to give you today is a presentation on what
15 my proposal is as to how that process should
16 work.

17 First of all, let's start with the basic
18 terms, and that is, what is a special audit.
19 Well, in its most simplest definition, a special
20 audit is an audit conducted at a time other than
21 when the regular audit is conducted.

22 Generally, audits fall into three

64

1 categories; financial audits, compliance audits,
2 and those conducted upon agreed upon terms. The
3 yellow book that Ms. McEwan referred to already
4 has standards that are set up for auditing under
5 any one of those three disciplines, but what is
6 incumbent upon us is to determine what is the
7 proper process prior to instituting a special
8 audit.

9 Let me take a moment to say that, as you
10 are aware, we're in the process of developing
11 and contracting for the services of an inspector
12 general for this agency. And, generally,
13 auditing would fall directly under that office's
14 or that subdivision's responsibilities,
15 including internal and external audits of funds.
16 In addition, they would have responsibility for
17 investigations, internal and external, but in
18 light of the fact that we have not completed
19 those negotiations and do not currently have
20 that office in place, it is still incumbent upon
21 us to consider the good stewardship of these
22 funds, and to insure that we have a process in

65

1 place.

2 Should a situation present itself that
3 requires a special audit as such, I would
4 recommend the following process; first and
5 foremost, that we conduct regular reviews of
6 single audits and of the reports that are
7 provided to us by the states on their Title I
8 and Title II funding.

9 Upon the review of those reports and the
10 single audit, or when other credible information
11 is provided to EAC that reveals a discrepancy or
12 potential lack of compliance on the part of the
13 recipient, the next should then be, take the
14 opportunity to analyze the risk to the HAVA
15 funds, and to the programs, and principles of
16 HAVA.

17 That analysis should identify the source of
18 any threat, as well as the severity of the
19 threat. Once that threat has been identified, a
20 decision must be reached as to whether or not
21 additional review is necessary to fully
22 understand the discrepancies or the lack of

66

1 compliance.

2 If additional review is necessary, then a
3 special audit should be instituted. If the
4 discrepancies are evidence and sufficiently

5 identified by the existing reports, or
6 information, or audit, then we would take
7 immediate steps to refer that discrepancy, and
8 that problem, or noncompliance, to the
9 appropriate officials, be that the comptroller
10 general's office for recruitment of funds, be
11 that the Department of Justice, or action under
12 either criminal or civil statutes, or the
13 appropriate -- any other appropriate state or
14 federal enforcement agencies.

15 The third step of that is once a decision
16 has been made to conduct a special audit, then
17 we should determine what the scope and the type
18 of audit should be, should it be a financial
19 audit, a compliance audit, some hybrid of those.
20 And then in terms of time lines, what time
21 should the funds be audited, from the time that
22 they were received during a fiscal year, and

67

1 what is the limitation of that.

2 And the third part of that decision being
3 which funds are appropriate to audit; is it
4 Section 101 funds, 102, Title II, all of the
5 above, all of these being potential examples.

6 Once a decision has been made as to the
7 scope of the audit and the appropriate

8 discipline of the audit, then a plan must be
9 established, including developing a scope of
10 work. Certainly, that scope of work may be
11 followed up by our own IG's office in the
12 future. We may contract for the conduct of an
13 additional special audit by another Government
14 agency, or we may actually put that out on an
15 RFP, to be conducted by an independent auditing.

16 The last step being that upon completion of
17 the audit and the report, if the findings show
18 that there is, in fact, a discrepancy or an
19 issue of noncompliance, then EAC will take steps
20 to refer that noncompliance or discrepancy,
21 again, to the appropriate officials, be that the
22 comptroller general's office for recoupment of

68

1 funds, to the Department of Justice for action
2 under civil or criminal statutes, and/or any
3 state or federal enforcement agencies that are
4 appropriate.

5 I would recommend that we adopt this
6 process as the process that we use in
7 determining whether or not a special audit is,
8 in fact, warranted. And further, beyond that
9 decision, exactly what sort of special audit we
10 should conduct.

11 CHAIR HILLMAN: Okay. Thank you.

12 Before I ask the Commissioners if they have
13 questions, I just want to ask our GAO guests,
14 did you hear anything in that presentation that
15 caused you to pause?

16 MR. WILLIAMS: First of all, I'd like
17 to say that one of the concerns that I've always
18 had about the various findings, as a result of
19 the single audit, is that the audits are done,
20 the reports are filed with the clearinghouse.
21 However, there is no follow-up action.

22 I commend you for recommending such a

69

1 program. I think the key to this is that you
2 have to implement those policies and procedures.
3 So often, we hear about -- we get these reports,
4 but we don't have the resources to address those
5 issues, and nothing is ever done.

6 There is nothing that I have heard so far
7 that causes me concern. I really commend you
8 for putting those procedures in place.

9 CHAIR HILLMAN: Thank you. I will
10 just say that we have done due diligence with
11 both OMB and Congress to say that we needed
12 funds for auditing, and we didn't have a clue
13 how much that would be, but we certainly do

14 have, I think, about \$350,000 in our budget this
15 year to include the IG and any auditing that we
16 have to do.

17 MR. WILLIAMS: That's good. That's
18 good.

19 CHAIR HILLMAN: Okay, Commissioners.
20 No. You ask too much questions, Vice Chair.

21 COMMISSIONER MARTINEZ: I will get my
22 turn.

70

1 VICE CHAIR DEGREGORIO: Thank you,
2 Madam Chair. I just want to commence you,
3 Julie, for your work here. I know it is an
4 important issue for us, and as the Chair pointed
5 out, we came into this new last year, not
6 knowing how much money to ask for in this
7 process, but I think we have begun the process
8 and we'll have an IG at some point, but I think
9 while that process is going on, it's important
10 for us to adopt a policy such as this, because
11 the amount of funding that has been appropriated
12 by the Congress for HAVA is significant, and the
13 responsibility that we have as a Commission to
14 oversee the funds and how it is spent is also
15 very important.

16 So I think you have explained it to me very

17 clearly. I don't have any other questions.

18 CHAIR HILLMAN: Okay. All right.

19 Commissioner Martinez.

20 COMMISSIONER MARTINEZ: She wasn't

21 going to let me go last.

22 Two quick things. To me, Julie, I see,

71

1 essentially, a six-step process that you have
2 outlined; review of information, whether it is
3 from single audit, other types of audit, or as
4 you say, credible sources. The risk, based upon
5 that review, if we see something that then
6 requires us to assess risk to any of the HAVA
7 funds that we are distributed, an assessment of
8 that risk, additional review, if necessary,
9 based upon that risk. After that, it is to
10 decide what type of special audit.

11 If we decide the risk is great, decide on
12 the special audit, what type of special audit
13 financial audit or agreed upon terms. After
14 that, a scope of work is developed. We either
15 contract it out or have an in-house IG. That
16 entity would carry it forward. And then
17 whatever action develops as a result of those
18 steps.

19 Does that put the framework in place?

20 MS. THOMPSON: That is a very fair

21 assessment of what I am proposing.

22 COMMISSIONER MARTINEZ: The final

72

1 question builds off of what I asked earlier, and

2 that is, the single audit does not, I assume,

3 eliminate the need to perhaps conduct these

4 special audits because we don't know what is

5 going to be captured in the single audit. So

6 many factors go into deciding which programs are

7 even going to be looked at under the Single

8 Audit Act.

9 So, Julie, am I thinking along the right

10 lines there?

11 MS. THOMPSON: You are correct. Not

12 only that, but I believe that our colleagues

13 from GAO would agree that the single audits

14 would be done on a sampling basis, and may not

15 fully represent all the possible issues that

16 could arise with the use of funds.

17 MR. WILLIAMS: That's correct.

18 COMMISSIONER SOARIES: Question, and

19 a brief comment.

20 In your presentation, you say until an IG's

21 office is established. Do we have any sense of

22 timing today as to how long the process of

1 establishment of that relationship would be?

2 MS. THOMPSON: Commissioner Soaries,

3 I would certainly hope that we would have

4 something in place within the next two months.

5 We have begun discussions with regard to

6 acquiring those services from another Federal

7 Government agency that would have sort of the

8 same scope of application of funds that we do,

9 and that is distributing funds out to all of the

10 different states, so to have the capability to

11 assist us with that scope of our work.

12 COMMISSIONER SOARIES: I was so

13 encouraged to hear one of our colleagues from

14 GAO use a term I had never heard before. It was

15 IG community. Now we know that there is a IG

16 community. If we can just find out where they

17 are, it may speed up our process.

18 MS. THOMPSON: See if we can buy a

19 house there.

20 COMMISSIONER SOARIES: I just want to

21 say this, this recommendation is the result of a

22 process that we started as soon as we could.

1 I want to thank you being our sole attorney for

2 doing the work that went into this

3 recommendation.

4 And I also want to say that it would be

5 disingenuous for us to appear to be considering

6 these ideas for the first time today. We have

7 been offering questions to you and giving

8 recommendations for the process, and we have

9 been considering conceptual components of this

10 for the last few months. So I wouldn't want

11 anyone to think that we received this in-depth

12 recommendation today, and saw it for the first

13 time to make a decision.

14 I am prepared to support the process that

15 you recommended and to commend you for the

16 diligent work you have done in helping to pull

17 together our concerns and ideas, and thoughts.

18 MS. THOMPSON: As always, to

19 Commissioner Soaries and to all of the

20 Commissioners, it is my pleasure to serve and to

21 provide my services to gather this information,

22 and to respond to the questions that you have.

75

1 CHAIR HILLMAN: Is that in the form

2 of a motion?

3 COMMISSIONER SOARIES: I move that we

4 accept this recommended policy and procedures

5 for special audits.

6 COMMISSIONER MARTINEZ: I second.

7 CHAIR HILLMAN: All in favor.

8 Okay. Carol, I have a question. How long

9 a process, time wise, would it likely be,

10 whether we were to contract with another federal

11 agency to do an audit, or whether we were to go

12 to an outside entity, just in terms of all the

13 steps we have to take before we can have a

14 contract in place?

15 MS. PACQUETTE: Madam Chair, that

16 could be anywhere from several weeks to several

17 months. And the reason is the first issue is to

18 identify an appropriate source.

19 As the General Counsel has indicated, we've

20 initiated some conversations with IG offices and

21 other agencies. We have actually had some

22 conversations with a consultant who was referred

76

1 to us by OMB, who turned out to not be available

2 for these services. So it is finding a source,

3 insuring that they are available. Once we find

4 an appropriate source of assistance, whether

5 that be another Government agency, which we

6 would be able to do another agency agreement in

7 order to compensate them for their services to

8 provide assistance, or in the private sector, in
9 which case we could be doing a consulting
10 agreement or a contract to make those services
11 available.

12 The actual processing of either the inner
13 agent agreement or the contract is, relatively
14 speaking, not too time consuming, because we do
15 have our own contracting authority. I have been
16 working with the General Counsel to develop a
17 statement of work for these services, but I
18 believe that the most time-consuming aspect is
19 to find the source, an available source, that we
20 can go to.

21 CHAIR HILLMAN: That would be for the
22 IG, right, but for contracting with an entity to

77

1 actually do audits for us.

2 MS. PACQUETTE: My comments really
3 pertain to both.

4 CHAIR HILLMAN: Thank you.

5 Any other questions?

6 Okay. Now, moving on to the next item,
7 which is consideration of a special audit of the
8 State of California's use of HAVA funds, Ms.
9 Thompson.

10 MS. THOMPSON: Thank you, Madam

11 Chair. As you have alluded, a specific
12 situation has come to our attention which
13 requires our consideration under this policy as
14 to whether or not to institute a special audit.

15 There have been some reports that have
16 identified potential misuses of HAVA funds by
17 the State of California, and specifically the
18 Secretary of State's Office. Let me start by
19 giving a bit of background for you so that
20 you'll understand, the funding, and sort of
21 where we are.

22 California has received \$180.594,462 in

78

1 federal funds made available under HAVA. That
2 amount includes \$27,340,830 in Section 101
3 funds, \$57,322,707 in Section 102 funds,
4 \$94,559,169 in Title II funds, and \$1,371,756 in
5 funding distributed by HHS.

6 In 2004, reports began to come in with
7 regards to questioning the use of HAVA funds in
8 California. Just to give you a little bit more
9 background, in order to be able to access
10 funding that has been distributed to California,
11 the Secretary of State's Office is required to
12 provide a budget plan to the Department of
13 Finance, which then is approved. To date, as of

14 the auditor's report from the State of
15 California, the Department of Finance had
16 authorized spending in the amount of 81.2
17 million dollars.

18 In August of 2004, the Secretary of State's
19 Office submitted a spending plan for the use of
20 an additional 15.2 million dollars for
21 activities related to the November, 2004
22 election. That application and request for

79

1 approval was denied.

2 In addition, on August 26 2004, the joint
3 legislation audit committee requested that the
4 state auditor conduct a review of the Secretary
5 of State's use of HAVA funds. Specifically, and
6 I apologize for reading a little bit from my
7 notes here, Commissioners, but I want to be
8 precise.

9 The Joint Legislative Audit Committee
10 requested that the state auditor review and
11 evaluate relevant laws, rules, and regulations,
12 to determine whether the office used HAVA funds
13 only for allowable purposes and in accordance
14 with Section 28 of the Budget Act of 2003, and
15 to determine whether the office implemented HAVA
16 in compliance with federal requirements.

17 In order to accomplish that effort, the
18 auditor selected a sample of expenditure
19 transactions paid for with HAVA funds, and
20 evaluated whether activities and costs were
21 allowable under the state plan and Section 28 of
22 the Budget Act of 2003.

80

1 Those samples include ten personal
2 services, 25 operating, and five grant payment
3 transactions in California fiscal year 2003,
4 2004, and several state fiscal year, 2004, 2005
5 expenditures. They interviewed management
6 employees and consultants. In addition, the
7 auditor spoke with the officials from the EAC
8 regarding provisions of HAVA.

9 The resulting test or the resulting audit
10 tested transactions representing approximately
11 12.5 percent of the dollar amount of Section 102
12 funds expended, and nearly 65 percent of the
13 funding expended by the Secretary of State under
14 Section 102.

15 Let me just for clarify this point and say
16 that they did not test the spending of Title II
17 funds because, to my understanding, none of the
18 Title II funds had been expended.

19 CHAIR HILLMAN: Just for

20 clarification, because I think you just mixed up
21 your numbers. It was 12.5 percent of the dollar
22 amount of Section 101 funds?

81

1 MS. THOMPSON: That's correct, and if
2 I misstated, I apologize.

3 The state auditor issued a report on
4 December 16, 2004. In that report, the state
5 auditor found the Office of the Secretary of
6 State did not use sound management practices
7 that would insure the successful implementation
8 of the Federal Help America Vote Act.
9 Specifically, the auditor found that the
10 Secretary of State did not designate any one
11 position responsible for overseeing the overall
12 implementation of HAVA, nor did it designate
13 individuals responsible for implementing each
14 HAVA activity.

15 Further, the auditor found that the
16 Secretary of State did not have in place
17 adequate management principles and procedures to
18 insure successful results. Under that finding,
19 the following were identified. The auditor
20 found that the Office's lack of planning,
21 delaying its implementation of HAVA
22 requirements, and that the office may not fully

1 implement a computerized, statewide voter
2 registration list by January 2006.
3 The auditor for the U.S. Department of
4 Justice reported numerous instances of
5 noncompliance with HAVA requirements in
6 California polling places during the March, 2004
7 election. The auditor found that, although the
8 Secretary of State took various steps in an
9 effort to insure local election officials
10 complied with requirements that were to take
11 effect in January 1, 2004, most occurred too
12 late to be of assistance.

13 The auditor further found that in August,
14 2003, Secretary of State received authority to
15 spend 4.4 million dollars to train local poll
16 workers and election officials in meeting HAVA
17 requirements, but as of September 23, 2004, had
18 not provided those funds to counties.

19 The auditor found Secretary of State's
20 Office has not used all of the HAVA funds that
21 it was authorized to spend. The auditor found
22 that the Secretary of State's Office did not

1 develop detailed plans proposed in the August,

2 2003 HAVA state plan, and has not made
3 significant progress in implementing that plan.
4 Auditor found that neither of Secretary of
5 State's Conflict of Interest Code, nor its
6 Statement of Incompatible Activities prohibits
7 officers, employees, or consultants from
8 participating or appears to participate in
9 partisan activities. Auditor found some
10 contained neither a conflict of interest
11 provision, or incompatible activities provision.
12 Some contained one or another, and some
13 contained both. Secretary of State was
14 inconsistent in its application of these
15 standards to its contractors.

16 The auditor found that the Secretary of
17 State's Office did not provide job descriptions
18 to employees working on HAVA activities, and
19 found those job descriptions that explained
20 employee roles and responsibilities office can
21 not be sure that employees adequately performed
22 those activities, complied with HAVA, and other

84

1 legal requirements.

2 I apologize for the length of this, but I
3 do want to make sure that you have a full
4 understanding.

5 Let me also just say, for the record, that
6 I believe you all have been provided with a copy
7 of the auditor reports, and have an opportunity
8 to review the auditor reports, found that the
9 Secretary of State's poor administration of HAVA
10 led to question cost.

11 The auditor found that the Executive Office
12 of the Secretary of State's Office did not
13 follow many established control processes in its
14 administration of HAVA programs. The auditor
15 found that many of the requests for contracts
16 came directly from the Executive Office, and as
17 such, many of the established processes often
18 controlled in entering contracts were bypassed.

19 Personnel cost since 2004, no time sheets
20 were used to identify amount of time each
21 employee spent on HAVA activities.

22 Auditor found that the office's poor oversight

85

1 of HAVA consultants also resulted in
2 questionable uses of HAVA funds. Auditor found
3 that of the 169 activity reports provided by
4 contractors, 62 listed, one or more activities
5 that had no relationship to HAVA requirements.

6 For example, some of the consultants
7 reported attending events such as fundraisers,

8 and a state delegation meeting of the Democratic
9 National Commitment representing the Secretary
10 of State in partisan activity. The Office of
11 Secretary of State compensated a law firm
12 preparing speeches that had little or nothing to
13 do with HAVA. Further, the auditor for the
14 oversight of consultant contracts found --
15 resulted in payments to at least one contractor
16 which exceeded the term of the contract for
17 allowable billing.

18 Auditor found that the Office of Secretary
19 of State used questionable practices to procure
20 goods and services related to HAVA.
21 Specifically, that they improperly submitted
22 purchase orders to avoid CMAS procurement

86

1 limits.

2 Further, auditor suggested that the office
3 misused a no bid exception which it received
4 based on urgency to comply with HAVA
5 requirements prior to January is, 1, 2004. The
6 basis for that was that many of those contracts
7 were let after March 2004.

8 The auditor found that the Office of
9 Secretary of State spent HAVA funds on the
10 activity for which it had not obtained spending

11 authority from the legislature. The auditor
12 found that the Secretary of State's Office
13 unnecessarily delayed payments to counties for
14 the procurement of voting equipment. The
15 Secretary of State's Office provided a response
16 to the auditor, which was provided by the Bureau
17 of State Audit. In that response, I will
18 generally say that they addressed the findings
19 and recommendations of the state audit report.
20 As to the recommendations, they discussed
21 how they had already either implemented those
22 recommendations or were in the process of

87

1 implementing those recommendations.
2 There were some specific items that I would
3 like to call to your attention that they
4 contested or wished to clarify with regard to
5 the auditor's findings. First, the audit
6 reports state that the Secretary of State failed
7 to provide funding or guidance to train poll
8 workers or elections officials.
9 Secretary of State and consultants in
10 California developed a program to provide
11 counties with 9.9 million in funding for voter
12 education and poll worker training. The program
13 was approved by the legislature and the

14 Department of Finance on September 7, 2004, with
15 regard to the second clarification.

16 The allegation was that the audit report
17 states that the Secretary of State could have
18 been more pro active in assisting counties with
19 implementing such things as provisional voting
20 procedures, by January 1, 2004, indicating that
21 the office did not provide guidelines until
22 January 21, 2004.

88

1 The response, actually, the Secretary of
2 State provided written guidance on August 12,
3 2003. In addition to the frequent follow-up --
4 sorry -- in addition to the frequent follow-up,
5 verbal advice and memorandum on January 21,
6 2004, as noted in later audit on page 3 of Table
7 A..

8 Third clarification, allegation was that
9 the audit report states that the Secretary of
10 State's Office appears to have split purchase
11 orders to avoid CMAS procurement limits and
12 competitive bidding requirements for information
13 technology services. Actually, contracts for
14 information technology service on voting systems
15 were to address needs from related but
16 completely separate purposes that quickly

17 emerged from emergencies that could not have
18 been predicted, emergencies with potential for
19 misused public confidence in equipment used to
20 cast and count ballots.

21 At the time the separate contracts for
22 information technology related to voting systems

89

1 were initiated, our intent was only to address a
2 series of serious problems as they emerged, and
3 not to avoid CMAS procurement.

4 Just a few more. The auditor, the fourth
5 point of clarification, audit report states that
6 Huntman overcharged the state pursuant to its
7 contract. Actually, we believe that the audit
8 report finding was based on a contract
9 superseded by an amended contract designed to
10 reflect the original intent of the contract. We
11 do not believe that the law firm over charged
12 the state for the critical legal services it
13 provided. However, if it is determined that the
14 law firm did over charge the state, an
15 appropriate offset will be made with respect to
16 amounts invoiced but not yet paid.

17 The fifth point of clarification, the
18 report suggest in many locations, agency was not
19 pro active in communicating with county election

20 officials.

21 The response. For the record, there are
22 nearly 25,000 precincts and 100,000 poll workers

90

1 in the California election. The state's role is
2 provide guidance to county election officials
3 regarding implementation of HAVA requirements.
4 Evidence that we took this charge seriously is
5 demonstrated by the following: Between January,
6 2003, and mid October, 2004, elections staff
7 attended nine HAVA-related meetings,
8 participated in subcommittee meetings with
9 county elections relating to implementation of
10 HAVA, statewide voter registration database,
11 provisional voting, and requirements for first
12 time mail-in registration, and activities to
13 determine if one's provisional ballot was
14 counted, participated in discussions on HAVA
15 implementation at the December, 2002 and
16 December, 2003, annual meeting, workshops,
17 county election officials, visited three other
18 counties to study their statewide voter
19 registration data base items, mailed a dozen
20 county election official memos known as CC/R on
21 versus on topics related to HAVA, including
22 checking ID requirements, provisional ballots,

1 HAVA provisional ballots, and drivers
2 license/voter roll interface, conducted five
3 public hearings throughout the state to develop
4 with county officials input in California state
5 plan, adopted regulations relating to the ID
6 requirements for specified first time mail
7 registrants, created a web site with FAQs for
8 county officials to maintain information about
9 free access, programs ID requirements,
10 provisional voting, military and overseas
11 voting, and links to other resources and laws.
12 Developed the drivers license validate for
13 system for interface with the California voter
14 registration database, disseminated deadlines
15 for implementing provisional voting.
16 The last clarification, allegation was that
17 the audit reports states that the office spent
18 HAVA funds on activities for which it had no
19 spending authority. Actually, the office had no
20 intention of avoiding any obligation to obtain
21 spending authority from the Department of
22 Finance and the Legislature before expending

1 HAVA funds. The Budget Act of 2004 appropriated

2 1.7 million dollars from the Federal Trust for
3 quote, "operational costs," associated with
4 implementation of HAVA. Based on this language
5 in the discussions which occurred when the
6 language was inserted into the Budget Act of
7 2004, the office believed quote, "operational
8 costs," to include any activity authorized by
9 HAVA and conducted accordingly, but recognized
10 there was 1.7 million for 2004/'05. It is
11 determined that if it is determined that
12 operational costs should be more narrowly
13 construed to mean administrative costs, the
14 office will do so.

15 In addition, total information that was
16 provided in this auditors report, I, at your
17 instruction, attended a Joint Legislative Audit
18 Committee hearing that was held on January 10,
19 2005. At that meeting, three persons testified,
20 Doug Chapin, representing electionline.org, the
21 Office of the State Auditor, and Tony Miller, on
22 behalf of the Secretary of State's Office. The

1 information that was provided to the Joint
2 Legislative Audit Committee was background
3 information on HAVA, the protocols and findings
4 of the audit report conducted by the Bureau of

5 State Audits, and the response by the Secretary

6 of State's Office.

7 The information that was elicited at that

8 hearing was similar to that which was contained

9 in the audit report, and the Secretary's

10 response thereto. Additional testimony

11 identifying witnesses and responsible employees

12 was offered by the Secretary of State. In

13 addition, there was information elicited which

14 was, in my mind, clearly identified in the state

15 auditor's report.

16 In my opinion, this hearing confirmed the

17 same information that was made a part of the

18 auditor's report, and further bolstered its

19 conclusions.

20 I will also note for you that we have

21 received a letter and responded to a letter from

22 the Office of the Secretary of State California

94

1 with regard to their statewide voter

2 registration database, and a proposal that they

3 have to amend their California voter system to

4 meet that requirement, which I believe is in

5 response to the auditor's discussion as to

6 whether or not they will timely implement their

7 statewide voter registration database.

8 While the auditor's finding with regard to
9 section 102 funds is disturbing in that things
10 were delayed in their disbursement to the local
11 counties, I do not believe that this represents
12 a direct threat to the proper use and
13 expenditure of HAVA funds.

14 On the other hand, numerous findings with
15 regard to the apparent uses of Section 101 funds
16 for activities not permitted by HAVA, apparent
17 documentation of HAVA expenditure, and the
18 apparent failure to adhere to state procedures
19 in purchasing goods and services using HAVA
20 funds, identifies a significant threat to the
21 federal funds distributed under Section 101.

22 After reviewing the auditor's report, it is

95

1 apparent that a large percentages of the Section
2 101 funds were not tested by the Bureau of State
3 Audits. Thus, the possibility exists that while
4 findings of the state auditor were significant,
5 that they are incomplete, in that they did not
6 identify the total universe of possible misuses
7 of HAVA funds.

8 The testing of transactions involving
9 Section 102 funds was much more complete. I
10 believe that it is only the Section 101 funds,

11 without risk of further investigation at this
12 point. Thus, I would recommend that this
13 Commission institute a special audit to review
14 the use of Section 101 funds by the California
15 Secretary of State's Office.

16 I will take up questions that you have at
17 this point.

18 CHAIR HILLMAN: Okay. Commissioners,
19 we have about 17 minutes. This is a very
20 serious issue, and one that we want to give
21 appropriate time to. So I will just flag for
22 you that we're running a little behind on our

96

1 agenda today, but that we should certainly take
2 the time to ask the questions, and get any
3 further information.

4 And as the General Counsel had indicated
5 earlier, we have over the past several weeks
6 received information from a number of different
7 sources, and so this is not the first time that
8 we're hearing about the findings of the state
9 audit.

10 Questions.

11 COMMISSIONER SOARIES: Madam Chair,
12 one question. We have heard an elaborate
13 presentation on the single audit process the

14 Federal Government has in place.

15 My understanding is that California is
16 currently in the process of their single audit.

17 If we accept this recommendation, how would our
18 special audit process juxtapose or take into
19 account the single audit?

20 MS. THOMPSON: We would expect any
21 audit conducted to consider all of the available
22 information, and that includes the single audit,

97

1 if it is, in fact, reported in a time frame that
2 informs any special audit that you all would
3 authorize at this point.

4 In addition, I would suggest that we also
5 want the auditor to review any reports on
6 findings that we would expect to receive in
7 February and March of this year.

8 COMMISSIONER SOARIES: Thank you.

9 CHAIR HILLMAN: Just a quick question
10 before going to my colleagues.

11 Is it correct that the state auditor's
12 report would not necessarily have looked at
13 issues of compliance with HAVA law and federal
14 regulations?

15 MS. THOMPSON: Actually, the state
16 auditor's report did look at HAVA and federal

17 law. The question that I am proposing or the
18 risks that I see is that it did not apply that
19 to the totality of the funding and transactions
20 that occurred, and thus, may not give us a full
21 picture of what the potential misuses might be.

22 CHAIR HILLMAN: Vice-chair.

98

1 VICE-CHAIRMAN DEGREGORIO: Thank you,
2 Madam Chair.

3 Julie, I know that you went through this
4 audit, which I have here in front of me. You
5 went through the Secretary of State's response
6 to the audit, but there was a state auditor's
7 response to the Secretary of State's comments.
8 And we don't have to go through all of them but
9 they are all here. There's eight responses to
10 the eight responses that the Secretary of
11 State's Office gave.

12 I will just read the very first one, which
13 is indicative of all eight of them. In my view
14 in reading this, based on the evidence reviewed
15 and the test performed, we believe all the
16 issues discussed in the report are accurate and
17 meet audit standards. And then some of them,
18 they make direct responses to the Secretary of
19 State's response, basically saying the office's

20 mistaken, and statement is misleading, and those
21 kind of things.

22 Would you say that the auditor's response

99

1 to the Secretary of State, basically, that the
2 state auditor is staying that our findings
3 stand, based on our procedures?

4 MS. THOMPSON: Based on my reading of
5 the audit report, as well as their testimony at
6 the Joint Legislative Audit Report Committee, I
7 would say that is absolutely correct, that they
8 stand behind their findings.

9 VICE-CHAIR DEGREGORIO: And the funds
10 we're considering auditing, those are Section
11 101 funds?

12 MS. THOMPSON: That's correct.

13 VICE-CHAIR DEGREGORIO: What is the
14 time frame that we're talking about, in terms of
15 the auditing of those funds?

16 MS. THOMPSON: I would recommend to
17 the Commission that you audit those funds from
18 the time that they were received until the
19 present date. It is not an exceptionally long
20 period of time, in excess of the review that was
21 done by the Bureau of State Audit.

22 Just to give you an indication of that, the

1 State of California received its s first Title I
2 payments on April 14 of 2003. Another payment,
3 the final Title I payment, was made on June 16,
4 2003. So it would not extend in excess beyond
5 that review that's already been done but would
6 give us a clearer picture of all reviews.

7 CHAIR HILLMAN: Commissioner
8 Martinez.

9 COMMISSIONER MARTINEZ: Thank you,
10 Madam Chair. I will just ask a quick question,
11 Madam Chair.

12 I would like to make a statement before we
13 move to a vote on this issue. Julie, the
14 Section 102 funds are to be used for a very
15 specific purpose, per the language of HAVA.
16 Section 102 is for voting system replacement.
17 The state auditor of California looked at
18 approximately 65 percent of the transactions
19 funded by Section 102 funds and found,
20 essentially, that perhaps there was a lack of
21 timely compliance, if you will, but didn't find
22 that there was necessarily any misdirection of

1 those 102 funds for other purposes besides what

2 they were intended for.

3 MS. THOMPSON: That's correct.

4 COMMISSIONER MARTINEZ: Section 101

5 monies are discretionary funds. In other words,

6 they can be used by a state to generally improve

7 the process of federal election administration.

8 There are some general principles attached to

9 the Section 101 funds, but unlike Title II funds

10 which are attached specifically to implementing

11 a very specific state plan which is filed with

12 the EAC and distributed for public comment via

13 the Federal Register, the Section 101 monies are

14 much more discretionary, and can be used for

15 much different purposes, but again, under the

16 general principle that they have to be used to

17 improve the process of administration of federal

18 elections, is that correct?

19 MS. THOMPSON: That's correct. There

20 are eight enumerated uses of Section 101 funds

21 that are more liberal, if you will, than the

22 limitations placed on either Section 102 or

102

1 Title II fund.

2 My understanding of the California State

3 Audit Report is they were aware of those

4 limitations, and that their recommendations are

5 based on that knowledge.

6 COMMISSIONER MARTINEZ: And the State
7 of California received approximately 27.3
8 million dollars in Section 101 funds?

9 MS. THOMPSON: Correct.

10 COMMISSIONER MARTINEZ: And the state
11 audit looked at 12.5 percent of the transactions
12 associated with the expenditure of Section 101
13 funds?

14 MS. THOMPSON: That's correct.

15 COMMISSIONER MARTINEZ: Thank you,
16 Madam Chair.

17 CHAIR HILLMAN: Are there any other
18 questions?

19 COMMISSIONER SOARIES: I have none.

20 CHAIR HILLMAN: Commissioner
21 Martinez, you said you had something.

22 COMMISSIONER MARTINEZ: Thank you,

103

1 Madam Chair.

2 The unprecedented federal funds which the
3 EAC is distributing to states for election
4 administration belong to the American people.
5 We hold these funds in trust, and our obligation
6 is to insure that they are utilized in a manner
7 which is consistent with their intended purpose,

8 and which are in compliance with laws and
9 regulations.

10 Government auditing is a key element, as
11 the yellow book says, is a key element in
12 fulfilling our agency's duty to be accountable
13 to the people, and to discharge our statutory
14 and fiduciary obligations.

15 I have read, Madam Chair, and considered
16 the California and state auditor's report, the
17 testimony provided by all parties during the
18 California Joint Legislative Audit Committee
19 hearing held in January 2005, all correspondence
20 and attached material sent to this agency by
21 interested parties, including California
22 Secretary of State's Office, as well as advice

104

1 of our very capable General Counsel.

2 Seeing that questionable expenditure and
3 practices were found by the California State
4 Auditor, by looking at a very small sample of
5 HAVA Section 101 funds, and seeing that
6 Secretary Shelley has himself stated that his
7 office could have done quote a better job of
8 administering these funds, I believe it is our
9 obligation, given these specific set of facts
10 that have been presented to this Commission, to

11 conduct a special audit of the remaining Section
12 101 funds.

13 I believe the EAC should invoke its special
14 audit judiciously, and only after very careful
15 consideration, analysis, and deliberation of the
16 sources and the facts presented.

17 I believe, Madam Chair, that the threshold
18 has been met in this instance.

19 CHAIR HILLMAN: Thank you.

20 Before we move to the question, do any of
21 the other Commissioners have anything they want
22 to state?

105

1 VICE-CHAIR DEGREGORIO: I will just
2 say, Madam Chair, Commissioner Martinez has
3 expressed my sentiments that I have on this
4 subject, and I appreciate the work that he has
5 done. I know we have all looked at this, but
6 you have looked at it very carefully, and we
7 appreciate it. And I concur with the comments
8 that you have made today.

9 CHAIR HILLMAN: Okay. Thank you.

10 COMMISSIONER SOARIES: I appreciate
11 the comments made by you, Commissioner Martinez,
12 in large measure, because a year ago, we were
13 without office, without budget, without

14 significant staff. And we, ourselves, took on
15 certain responsibilities, and the responsibility
16 to keep the word of the Commission to the states
17 for the distribution of Title II payments was
18 submitted to you. Under your leadership, peggy
19 Sims and other staff worked hard to make sure we
20 support the states by distributing fund.

21 While we did not distribute Title I funds,
22 we made a commitment as a Commission to use our

106

1 resources, as they existed, to facilitate and
2 expedite supporting the states with this
3 unprecedented funding. So I appreciate your
4 leadership in this area of funds to the states,
5 and thus appreciate and support the statement
6 you made with regard to our fiduciary
7 responsibility.

8 CHAIR HILLMAN: And I join my
9 colleague in those sentiments. I'm pretty sure
10 that Congress expects us to exercise judicious
11 review of the HAVA funds, as well as, I would
12 imagine, GAO would expect us to do that as well.

13 Legitimate questions have been raised by
14 both the California State Auditor as well as the
15 California Assembly. We have received a wealth
16 of information. We have reviewed it, and we

17 have had good discussions this morning.

18 We have a responsibility to make sure that
19 all states are in compliance. And if questions
20 are raised, I think we have a responsibility to
21 answer those questions sooner, rather than
22 later. And I too think that a special audit

107

1 would be in place.

2 COMMISSIONER MARTINEZ: Madam Chair,
3 I move that we conduct a special audit of the
4 Section 101 funds that have been distributed to
5 the California Secretary of State's Office.

6 COMMISSIONER SOARIES: I second the
7 motion.

8 CHAIR HILLMAN: Motions been made and
9 seconded. All in favor? All right.

10 So staff will take the next step.

11 I notice, General Counsel, that you have
12 provided us with a recommended procedure.

13 MS. THOMPSON: Correct.

14 CHAIR HILLMAN: Or statement of work
15 for special audit services. Given what the
16 interim executive director has spelled out, it
17 may take several weeks before we can actually
18 get everything in place to begin conducting this
19 audit, but we will move with all deliberate

20 speed to get this underway.

21 MS. THOMPSON: Thank you. I will

22 take actions per your instruction.

108

1 CHAIR HILLMAN: I appreciate the

2 efficiency with which you did this meeting.

3 Before adjourning, I do want to remind you

4 that our next meeting is scheduled for

5 Wednesday, February 23rd. We'll be meeting in

6 Columbus, Ohio, and following the meeting in the

7 afternoon, we will conduct hearings, as we

8 continue our work on provisional voting,

9 reviewing our provisional voting is nearing its

10 first year of implementation.

11 Okay. Any other questions or statements?

12 Anything I have overlooked? With that, the

13 motion to adjourn is in order.

14 We're adjourned. Thank you, very much.

15 (Whereupon at approximately 12:00 o'clock,

16 p.m., the above proceedings was adjourned)

17 * * * * *

18

19

20

21

22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

CERTIFICATE OF COURT REPORTER

I, Jackie Smith, court reporter in and for the
District of Columbia, before whom the foregoing meeting was
taken, do hereby certify that the meeting was taken by me in
shorthand at the time and place mentioned in the caption
hereof and thereafter transcribed by me; that said transcript
is a true record of the meeting; that I am neither counsel
for, elated to, nor employed by any of the parties to the
action in which this meeting was taken.

JACKIE SMITH,
Court Reporter in and for
The District of Columbia

=