

Transcript of the Public Meeting

United States Election Assistance Commission

1225 New York Avenue, NW

Suite 150

Washington, DC 20005

Held on Thursday, June 19, 2008

VERBATIM TRANSCRIPT

The following is the verbatim transcript of the Public Meeting of the United States Election Assistance Commission (“EAC”) held on Thursday, June 19, 2008. The meeting convened at 1:00 p.m., EDT. The meeting was adjourned at 5 p.m., EDT.

PUBLIC MEETING

CHAIR RODRIGUEZ:

Good afternoon. Welcome to the June 19, 2008, meeting of the United States Election Assistance Commission. I'm Rosemary Rodriguez. I'll call this meeting to order.

And our first action is to say the Pledge of Allegiance.
Please join me.

[Chair Rosemary Rodriguez led all present in reciting the Pledge of Allegiance.]

CHAIR RODRIGUEZ:

Madam General Counsel, roll call please.

COUNSEL HODGKINS:

Thank you, Madam Chair. Members please respond by saying “here” or “present” when I call your name.

Rosemary Rodriguez, Chair.

CHAIR RODRIGUEZ:

Here.

COUNSEL HODGKINS:

Caroline Hunter, Vice-Chair.

VICE-CHAIR HUNTER:

Here.

COUNSEL HODGKINS:

Donetta Davidson, Commissioner.

COMMISSIONER DAVIDSON:

Here.

COUNSEL HODGKINS:

Gracia Hillman, Commissioner.

COMMISSIONER HILLMAN:

Here.

COUNSEL HODGKINS:

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

CHAIR RODRIGUEZ:

And do we have a motion to adopt the agenda?

COMMISSIONER HILLMAN:

So moved.

VICE-CHAIR HUNTER:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded. I believe there's some changes to the agenda. Are you taking something off?

VICE-CHAIR HUNTER:

Would it be okay if I explained that when it got to that point? Is it okay, just at least, to address it, and then I'll explain that I don't have a specific proposal.

CHAIR RODRIGUEZ:

All right, then. Are we prepared to vote to adopt the agenda? All those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Okay, we've adopted the agenda.

I'll give a couple of brief opening remarks just to say that I'm pleased that Commissioner Hunter is still with us, even though she's awaiting her appointment to the FEC and that Commissioner Hillman just ran a two-day meeting of our Board of Advisors along with her special assistant, Maisha Leek. And I thought it was a very productive -- it was a lot of work and a lot of hours spent in preparation, but a very productive two days. And so, I want to publicly thank Commissioner Hillman for leading us through that.

COMMISSIONER HILLMAN:

Thank you.

CHAIR RODRIGUEZ:

Okay, old business. We'll look at the April 30th minutes. Are there any -- is there a motion to adopt the minutes of April 30, 2008?

COMMISSIONER DAVIDSON:

So moved.

COMMISSIONER HILLMAN:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to adopt the minutes of April 30. Any discussion? Commissioner Hillman, I thought you had some changes. Are they satisfactory to you now?

COMMISSIONER HILLMAN:

I was just flipping through to make sure that -- and I believe that is correct, but please give me one second, because I don't remember. Yes, they look fine. Thank you.

CHAIR RODRIGUEZ:

All right, then. Any more discussion on the minutes of April 30th?

All those in favor of approving the minutes of April 30th, please indicate by saying aye. Are there any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

And more minutes. We'll turn to the minutes of May 22, 2008. Is there a motion to adopt these minutes?

VICE-CHAIR HUNTER:

So moved.

COMMISSIONER HILLMAN:

So moved.

CHAIR RODRIGUEZ:

And a second. It's been moved and seconded to adopt the minutes of May 22, 2008. Does anybody need time to review these, or are we prepared to vote? Any changes? All those in favor of approving the minutes of Thursday, May 22nd indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

And so now we'll go to the report of the Executive Director, Mr. Wilkey.

EXECUTIVE DIRECTOR WILKEY:

Thank you, Madam Chair. I certainly want to welcome everyone today at this meeting. It is -- our busy Presidential primary season

is behind us and we are now focusing on activities to help officials prepare for November.

Under election administration, last week we mailed hundreds of Asian language glossaries of election terms, to election officials and non-profit civic organizations throughout the country.

Our election glossaries are available in six languages: Spanish, Chinese, Japanese, Korean, Vietnamese and Tagalog. To request a copy of the glossaries, call our office and ask for Laiza Otero or Edgardo Cortes. Also, they may be downloaded free on our website eac.gov.

Our Election Management Guidelines working group met recently to discuss ways to help election officials comply with language accessibility provisions of the Voting Rights Act. In addition, the Language Assistance Working Group met to discuss tools such as pictorial translations to aid voters who speak Alaskan Native and American Indian languages.

We've just issued a Quick Start on the Central Count Optical Scan Ballots and will issue six more Quick Starts before the election, on topics including, conducting a recount, provisional ballots, and canvassing and certifying an election.

We'll be issuing eight new chapters in the Election Management Guidelines series, which we'll hear more about at today's meeting.

Under grants, several grants have been awarded recently. The Election Data Collection Grants went to five States: Illinois, Minnesota, Ohio, Pennsylvania and Wisconsin. Winners of our Mock Election and College Poll Worker Grants were also recently

announced. Details about the winners and the grants are available, again, on our website at eac.gov.

Our Board of Advisors met over two days this week to discuss our elections research, among other topics. We'll be carefully considering their suggestions as we move forward on new projects.

Under website events and updates, we want to, again, remind everyone, both here and who will be looking at the webcast, that we put a tremendous amount of information on our website. We hope you will look at it, periodically, at eac.gov. And we have posted the following new information:

The IG recently submitted two new reports: An audit report of New Mexico and a semi-annual report to Congress. Both, of course, are available on our website.

We are now publishing requests for advisory opinions on our website. Since advisory opinions are issued for each request, we'll publish them in the same section of the website. We are soliciting comments for each advisory opinion request, and instructions on how to submit them are on our site.

We have reorganized the Research, Resources and Reports section of our site, to make it easier to navigate EAC research, and find other election data and resources.

We have posted a revised test plan under our certification section on Premier Solution's Assure 1.2 system.

And, finally, a webcast of this event will be available for viewing by tomorrow evening. Archived webcasts of our meetings, going back to April are also available.

And one final note. It gives me a great deal of pleasure to introduce our new staff person, Emily Jones. Emily, take a wave, Emily will join us on July 7th in the position of staff coordinator. She will be coordinating these public meetings, as well as meetings of our Advisors, Standards Board and the numerous other meetings that we have throughout the year on various topics. And we want to welcome you Emily. We're glad to have you with us.

Madam Chair, that is my report for this meeting.

CHAIR RODRIGUEZ:

Thank you, Mr. Wilkey. And two things. We took a couple of tally votes over -- since the last meeting. The first one, on the Data Collection Grants and then the College Poll Worker Grants. And I just wondered if you would explain why we had to do those, via tally votes and weren't able to do them at a public meeting.

EXECUTIVE DIRECTOR WILKEY:

Yes. As you know, we are always reluctant to do things that way. We have made an effort to bring these issues to our meetings, so that we can publicly vote on them. But those two grants, particularly the grant program for the five States, by statute, had to be done by a certain date. So, we needed to take a tally vote on that.

Likewise, we did not want to wait another three or four weeks before we got the information to the college poll worker grantees, because they have a lot of work to get started in order to get their programs up and running. So, that was basically the reason we needed to do the tally votes. It was one of expediency and efficiency, really. And I know that we like to always try to bring

these issues to you so that they can be discussed in public, but on these, there were statutory and other reasons for them getting done the way they were.

CHAIR RODRIGUEZ:

Thank you. Are there any questions or comments for Mr. Wilkey?

All right. Commissioner Hillman?

COMMISSIONER HILLMAN:

No questions. But on the topic of EAC staff work, I think it's worth noting, for the record, at this meeting, the wonderful complement that the EAC staff, in particular our communication staff, received for our website, the transparency of our website, the amount of information we have on our website. And I think I'm correct in saying, that it was cited as an example, in Federal government of openness and transparency. And I may not have those words correct, but the sentiment is there.

So, I would just want to make certain that our record shows that our progress is being noted. Sometimes it's painful to get there but, you know, when there's a big rainbow at the end of, you know, a heavy rainstorm, it sometimes takes away all the misery. So, I just wanted to note that.

EXECUTIVE DIRECTOR WILKEY:

If I may add -- thank you very much for those comments Commissioner. I know I sound like a broken record when I keep reminding, at these meetings and our other meetings for everyone to take a look at our website because I think we put a tremendous amount of information up there. We update it just about every day. Our communications staff does a marvelous job. They're working

towards getting all their updates on there as we move forward and tweak them a little bit more, so that we can get even more information out there. I'm very proud of the work they are doing in addition to the other work in the agency, and I appreciate your comments, on behalf of the staff.

Thank you, Commissioner Hillman.

CHAIR RODRIGUEZ:

And then you're testifying in Congress again, next week. It's a regular thing now.

EXECUTIVE DIRECTOR WILKEY:

Yes, I hope they give you, like testifying mileage points or something like that. I think I'm going back on Tuesday to talk about another great program that we have recently completed, our ballot design program. And I think that's a wonderful opportunity for us to not only let Congress know, but to get everything in the Congressional record about some of the great features of our projects.

CHAIR RODRIGUEZ:

Very good. And then we, in various combinations of Commissioners and staff, are attending a few meetings over the next 30 days.

EXECUTIVE DIRECTOR WILKEY:

That's correct. We have our large organizations are meeting over the next two months. The National Association of State Election Directors meets next week, followed by the International Association of Clerks, Recorders and Election Officials, IACREOT, and then immediately following that, the National Association of

Secretaries of State round out their meeting in Dallas, in August with The Election Center annual conference. So, we have all of our election officials meeting within the next two months. We look forward to participating with them.

CHAIR RODRIGUEZ:

Very good. And the California Clerks also are meeting and I'll be going out for that. So, lots of election travel over the next two months. Very good.

The next item on the agenda is submitted by Vice-Chair Hunter, the consideration and vote to modify Advisory Opinion 07-003-A regarding Maintenance of Effort, pursuant to HAVA Section 254(a)(7). Vice-Chair Hunter.

VICE-CHAIR HUNTER:

Thank you, Madam Chair. My proposal, which was originally proposed, I believe at the April public meeting and we've talked about it a couple of times, since then, is to amend the advisory that was put out by the EAC in September of 2007. Specifically, Advisory 07-003-A, to amend it to state that the Help America Vote Act only requires a Maintenance of Effort on the part of the States and does not require Maintenance of Effort on the part of the counties.

And I've walked through this argument numerous times, but just briefly, it is my view that the Help America Vote Act would have included the words "units of local government" within a specific section that requires Maintenance of Effort. And because Congress does put in that term "units of local government", in two other parts of that same Section 254, it is my belief that that is

relatively clear indication that Congress did not attend for the units of local government, which is usually the counties, to have a Maintenance of Effort requirement.

This issue is one that the Commission has spent a considerable amount of time talking about and studying and we have highlighted in past meetings the number of public comments we've received. It's a pretty substantial number, I think we're somewhere 80, something in that neighborhood, public comments. I think all of the election officials in favor of it.

The Chair just slipped me a note that I have to formally take -- we have to remove my proposal from the table. Okay, sorry about that.

CHAIR RODRIGUEZ:

Remove it and then we can discuss it.

VICE-CHAIR HUNTER:

Okay. I move to take my proposal off the table.

COMMISSIONER DAVIDSON:

I'll second the motion.

CHAIR RODRIGUEZ:

All those in favor of consideration of the motion proposed by Vice-Chair Hunter indicate by saying aye.

[The motion carried unanimously.]

VICE-CHAIR HUNTER:

So, we received a lot of public comments on this issue, and I think that's good. I think we've all learned from the involvement of both election officials and advocacy groups on this issue. And I think,

ironically, we all have the same goal, which is to make sure we follow the mandates of the Help America Vote Act and make sure that no State, and that sort of includes locals, supplants the efforts that they were doing prior to the passage of the Help America Vote Act. In other words, nobody hopes or wishes that any State or any county takes Federal dollars and puts them in place of what a county was already doing before the Help America Vote was passed.

The problem, though, in my view, is that the Help America Vote Act doesn't require counties to have a Maintenance of Effort requirement. And so, that's not something that I think the EAC should impose on counties. And there is no legislative history on this. Of course, if there were, that would be instructive and it would guide the EAC. In the absence of it, I don't think it's within the purview of the EAC to pass that requirement along to the counties.

With respect to the conversation that we've had regarding OMB circulars, the EAC, as we all know now, said in several letters to the States when monies were first distributed, that OMB circulars apply. And in this case, we've kind of interchanged the words Circular A-102 and the Common Rule. I know there's been a lot of talk about that, but generally speaking, I'll refer to it as A-102, even though, I think it's technically called the Common Rule. And agencies are supposed to adopt this Common Rule in their own Code of Federal Regulation section, and the EAC has not done so. So, we refer to other parts -- other versions of the Code of Federal Regulations, either through the GSA site, the OMB site or other ones. And they're virtually -- a lot of them are virtually the same.

So, that was a whole other conversation that we've had and we've gone to several outside sources to get their opinion, because nobody wants to make the wrong decision on this. We talked in our last public meeting about a meeting that we had with OMB and because of a very good conversation I had with a gentleman named Conrad, I think it's Rischer, from the Office of Charles Gonzalez after one of our last public meetings, he said he would consider asking Congressional Research Service to look at this question for us. And I think Chairwoman Rosemary Rodriguez is going to talk about their opinion in a little while, but they have also sent us an opinion.

So, I think the point is, we've all tried very hard to do our own research, to talk to our own people, to ask outside sources about whether or not this circular applies. In my opinion, it does not apply. I know that there are varying opinions on this, but I think, what I take away from the Congressional Research Service and others, is that it really is up to the EAC. And there are times when we have to make very difficult decisions and I think this is definitely one of them. Whether or not the circular applies, is not a black and white issue. Even though I'm comfortable in believing that it doesn't, I understand it's not a black and white issue.

And something that we talked about in the last public meeting, is, if this provision was one that "follows the money," this provision, the Maintenance of Effort requirement, then does that then mean that counties have to submit an entire State plan? Because, as you know, the Maintenance of Effort requirement is part of the overall State plan requirement. And this is something

that we talked about a little bit in the last public meeting. And I don't think that makes sense and I don't think anybody does, to require counties to submit a State plan.

And specifically, we've talked to the Office of General Counsel and I believe she might be looking into this, but right out of the Common Rule, there's a specific exemption -- or is it exception? It's an exception from the provision of the Common Rule that we've all been referring to, which is 105-71.137, which says, by their own terms, certain provisions of this part do not apply to the award and administration of sub grant. And then, it refers specifically to the section of the CFR 105-71.111, which is entitled "State Plans." So, within this own Common Rule, it specifically exempts State plans from the provision. And we're all looking into this and learning as we go along, but the Maintenance of Effort requirement is part of the State plan requirement. So, in my mind, you can't cherry pick the parts of the State plan requirement that you wish counties to follow.

So, that is the proposal, Madam Chair, and I'm happy to take any questions. I love talking about Maintenance of Effort, so, anything else we can do let us know.

CHAIR RODRIGUEZ:

Thank you. I have a couple of questions for our Inspector General, Mr. Crider and for our General Counsel.

We'll go with Mr. Crider first, thanks.

MR. CRIDER:

Good afternoon, Madam Chair.

CHAIR RODRIGUEZ:

Hello, thank you. I wondered if -- I believe, in a past meeting you have explained your new relationship with the Department of Interior, as your Counsel.

MR. CRIDER:

Right.

CHAIR RODRIGUEZ:

My understanding is, one of the first things you asked them to do was, to look at this Maintenance of Effort issue for you and you sent us some, what I believe, are excerpts...

MR. CRIDER:

Yes.

CHAIR RODRIGUEZ:

...from an opinion that they gave you. Can you discuss what exactly you asked them for and what they provided to you, for the record, please?

MR. CRIDER:

What we asked them to provide us, was their assessment of whether or not Maintenance of Effort applied to the local jurisdictions. The counties are the other political jurisdictions within a State and whether or not A-102 would apply and would that requirement then follow the money. They responded back to us here, about three or four days ago, and their response was, that they took a very literal reading of the statute and they do not believe that Maintenance of Effort applied to the local jurisdictions. But they said, you know, you need to take -- they did not assess the intent of Congress. They felt that was something the EAC needed to do. Theirs was just a very literal reading of the statute without

taking into consideration the intent of Congress. And they said the intent of Congress, once you determine that, could alter how you interpret that particular section of the statute.

CHAIR RODRIGUEZ:

And then, yesterday, we received something from the Congressional Research Service.

MR. CRIDER:

Yes.

CHAIR RODRIGUEZ:

Have you had an opportunity to review that?

MR. CRIDER:

I looked at it very quickly this morning.

CHAIR RODRIGUEZ:

Okay. And do you have any -- would you care to give us your interpretation of that communication?

MR. CRIDER:

That is something...

CHAIR RODRIGUEZ:

That opinion.

MR. CRIDER:

...I think the EAC will have to interpret. That is something that they gave to the EAC, in terms of what their thought process was. I don't feel comfortable trying to interpret something of that nature, because I think that's a programmatic decision, that management and the Commissioners will have to decide, what does it mean and how do you want to apply it. I think it would be inappropriate for me to do that.

CHAIR RODRIGUEZ:

Okay. Are there any further questions for Mr. Crider? Will you stay up here just in -- oh, do you have something to offer?

MR. CRIDER:

I do have a -- the opinion that we received was an opinion to the Office of Inspector General.

CHAIR RODRIGUEZ:

Uh-huh.

MR. CRIDER:

It is not binding on the agency.

CHAIR RODRIGUEZ:

Correct.

MR. CRIDER:

The agency has to make its own decisions. And I just want to make sure everybody understands that. It was an advisory opinion to me. Okay?

CHAIR RODRIGUEZ:

I appreciate that.

COMMISSIONER HILLMAN:

I do have a question for Mr. Crider.

CHAIR RODRIGUEZ:

Commissioner Hillman.

COMMISSIONER HILLMAN:

Because I was in the meetings for the past two days, I didn't get a chance to, really absorb, the written response that you received to your question. So, I guess, on a high level, over-arching -- and I appreciate exactly what you said, it was an opinion you sought

after, it was advice to you, and the EAC can take it into consideration...

MR. CRIDER:

Right.

COMMISSIONER HILLMAN:

...but ultimately, we make our own decision.

MR. CRIDER:

That's correct.

COMMISSIONER HILLMAN:

But on a high level, what did you walk away from with that letter? I mean what did it help you digest?

MR. CRIDER:

It crystallized, in my own mind, that this is really not a clear-cut issue, all right? And it's as Commissioner Hunter says, there is a number of different ways of reading things and taking into consideration all the comments that had been received and that this is not a clear-cut decision. There is a lot of gray area in here, in terms of, how you would interpret this matter. So, like I said, it's just a matter of, I think the Commission has to decide, in terms of,, how do they want to apply the various things that they've received. General Counsel has rendered you an opinion. You have -- Congressional Research Services has now weighed in on it. You have a number of comments now, from various States and other advocacy groups on both sides of the issue. And how you take those into consideration will help you -- hopefully, help you make your decision, in terms of how you apply MOE.

COMMISSIONER HILLMAN:

Thank you.

CHAIR RODRIGUEZ:

Again, please stay, because I do have a question for our General Counsel. Madam General Counsel, I asked you to look at the snippets or paragraphs, I guess, from the Interior letter, because my understanding is, we have not been provided with the entire letter. And you had an opinion that I thought, seemed more informed than the snippets would -- or the paragraphs would convey. And I just wondered if you've had a chance to read the entire letter from the Department of Interior.

COUNSEL HODGKINS:

Mr. Crider did provide me with a copy of the entire document, which I have reviewed. It's not exceptionally more elucidating than what is in the snippets or summaries, if you will, that were provided by Mr. Crider to the Commission.

I think the major point on the first question, and the first question I'm going to paraphrase, because I don't have the document in front of me and Mr. Crider can correct me if I'm wrong, the first question was, what is the meaning of the term -- or what is the meaning of the Maintenance of Effort requirement in Section 254(a)(7) and whether it applies to States only or to States as an umbrella for the State government and local government? In response to that question, they answered that they believe that the term "State" meant State only and referred to provisions that are in the Help America Vote Act. They addressed the question, or addressed the fact that the Help America Vote Act does, in fact, define the term "State," but that the term, as defined, is not helpful

to the determination that is on the table, and that is, it merely defines the term to include the territories and not to define what, in fact, is included within the concept of State.

I think that there's a very important caveat that is placed on the opinion that was given by the Department of Interior, and that is to say, that they did not have access to information relative to whether or not States previously funded elections using, both State funds and local government funds, or whether or not they were funded exclusively by the State government. And they also did not have any information as to whether or not Congress was aware of what the situation was at that time.

As many of you know, I was a State election official -- a lawyer for a State election official prior to the time that HAVA was passed and certainly my prior experience tells me that, in fact, States relied upon the funding of local governments, then, and now, to fund the operations of, not only State and local elections, but also Federal elections. And it is my personal belief that Congress was aware of that fact, at the time that they wrote HAVA.

And I think there are a couple of provisions of HAVA that indicate that that is the case. For instance, there are several sections of 254 that indicate that Congress intended for the State to pass the money down to the units of local government. I don't think that that provision would have been in place had it not been for the idea that that was already happening and that was the regular course of business. It also provides in Section 254(a)(8), that the State is supposed to measure how well the units of local government are, in fact, managing those funds. So, I think there's

a strong case for the idea that Congress both knew that units of local government funded elections and that they intended for that practice to continue.

So, that's the first question, I guess, my thoughts on the first question. I would agree with the way that it was written by the Department of Interior, including the caveat that they did, in fact, not have and did not consider information relative to the source of funding prior to the passage of HAVA.

As to the requirement with regard to the application of Circular A-102, to be quite honest, right now I can't remember the basis of that opinion. Perhaps Mr. Crider can offer some explanation because I don't recall what the...

MR. CRIDER:

They follow the same logical argument that Commissioner Hunter did, in terms of the requirement, did not follow the money, because there was no requirement for it, okay, in terms of the MOE. So, it was the same basic argument that Commissioner Hunter has proposed on A-102.

COUNSEL HODGKINS:

So, is it a fair characterization to say, that they said, because they answer the first question as defining "State" as "State"...

MR. CRIDER:

Because they answered the first -- right.

COUNSEL HODGKINS:

...therefore...

MR. CRIDER:

It did not apply.

COUNSEL HODGKINS:

...there was no reason for A-102 to then...

MR. CRIDER:

That is correct.

COUNSEL HODGKINS:

Okay. And I think that my response to you the other day, when you asked sort of the same question, was that we have a contrary opinion from the agency that actually administers the circular, the Office of Management and Budget, and that I would have given that greater deference in my mind.

CHAIR RODRIGUEZ:

And the opinion you referred to was the verbal opinion? Or do we have something in writing from Office of Management and Budget?

COUNSEL HODGKINS:

I have not received anything in writing. I'm referring to the meeting, and I don't recall the exact date, but the Commissioners were present with several officials from the Office of Management and Budget, in which case, they were asked specifically, whether or not the Maintenance of Effort requirement would pass through a subaward or sub-grant of funds from a State government to a unit of local government, a different spending authority, if you will. And they responded in the affirmative.

CHAIR RODRIGUEZ:

Commissioner Hunter has a question. And then, I'd like to ask you some more about the Congressional Research opinion we received yesterday.

COUNSEL HODGKINS:

Okay, sure.

CHAIR RODRIGUEZ:

Vice-Chair Hunter.

VICE-CHAIR HUNTER:

Of course I was present at the meeting with OMB and they did say that OMB Circular A-102 would follow the money, as they called it. However, as I think I stated in the last public meeting, I have since followed up with them in an email, asking them the specific question that I referenced earlier, which, does that mean to them then, that the entire State plan, you know, follows the money? And they have not gotten back to me. And also, we have the new question now, of the specific exception in the Common Rule for State plans. So, I think there's two follow-ons to the point that OMB did make in that meeting and I, as you said before, I'm the one that requested the meeting and was very dogged about having it with them, but I was a little bit surprised when, at least, one of the participants there said that he had not had an opportunity to read the Help America Vote Act. So, I hope we can get something in writing from them. I think that would help us. But I think there's some caveats to that.

I also think this is a great country, because we can all look at the same section and have varying interpretations, because I think it's, in my personal opinion and I don't know that it's relevant without some specific information, but Congress, of course, knew that units of local government spent funds on elections. Of course, they knew that. And that is why they require the States to work with counties on their State plans. That's also why they require States

to ensure that the counties are properly spending the money. And so, that's the whole reason that the State plan is there and requires States to work with the counties. But they drew a bright line, in my opinion, by saying that the State is the one responsible for doing this.

And the State -- the dynamics in the Help America Vote Act changed things. A lot of what used to happen at the counties, now has to happen at the State, and one example of that, is the voter registration database. And States are responsible for Federal funds in the same way that -- regarding elections, in the same way they weren't before. So to me, because Congress knew that counties and local jurisdictions did spend money and often run elections, then they would have known to add that requirement in the Maintenance of Effort section. So, for me, it exactly makes the opposite argument that our General Counsel is making. And, you know, we can respectfully disagree, but I don't -- that's the way I see it.

CHAIR RODRIGUEZ:

So now, I would like to talk a little bit about the Congressional Research opinion. And I didn't know Vice-Chair Hunter had requested it, but, you know, it was welcome information.

VICE-CHAIR HUNTER:

Well, just to clarify, I didn't specifically request it...

CHAIR RODRIGUEZ:

Oh, okay.

VICE-CHAIR HUNTER:

...or else I would have told you. But I did have a conversation with a staffer and told him that we were trying our best to get proper information on this and nobody wanted to be accused of, you know, squandering Federal resources. And we had a conversation about the Congressional Research Service and he said, you know, "What do you think about asking them?" And I said, I think it would be a good idea. But he never did call me back and say he was going to do that. Otherwise, I would have let my colleagues know. So, I did not know that he, in fact, did that until the letter was sent to us two days ago.

CHAIR RODRIGUEZ:

And for the record, Congressman Gonzalez, whose staffer requested the opinion, wanted us to be sure to have it for today. And also, recall, that Congressman Gonzalez asked us not to make a decision in a vacuum but to seek as much information as possible, before, I believe it was the May -- was it the April 30th meeting. So we've -- as a former Judge, I really appreciate his assistance in all of this.

But now, how would you, Madam General Counsel, advise us to read the opinion from the Congressional Research Service?

COUNSEL HODGKINS:

Well, I think the Congressional Research Service opinion is, frankly, neither supportive nor detractive of any particular position, other than to say, that EAC as the agency authorized and charged with administering the Help America Vote Act, has the authority to make this decision, which of course, we knew, because that's why we're here talking about this issue.

They point to the fact that we have, in fact, interpreted this question through previous advisories. And they also point to the fact that we have reached a similar conclusion in another advisory that has to do with matching funds, in terms of -- in other words, we -- to date we have been consistent in the idea of interpreting the term "State" to include both States and units of local government in that concept. We have allowed States to use local money to match their -- as a part of their matching requirement. They talk about the fact that, there again, it all circles back to the idea that we have the ability to make this decision. They talk about the deference standard that we've talked about before, in Chevron, that in fact, unless there's some sort of arbitrary reason or arbitrary decision that's not based in law, then that decision is going to be, generally speaking, upheld by the courts. And I think, for the point of saying that they believe that either position could be argued under the law.

In terms of the application of A-102, they, again, outline the arguments that there are -- there's the ability to say that it does pass through and there are the abilities -- there's the ability to say it does not pass through.

So, I didn't find this particular opinion extremely helpful on one side or the other of this particular argument.

CHAIR RODRIGUEZ:

It seemed to me that it emphasizes, that the EAC is going to have to decide this and wrestle with it, which we do month after month.

Okay, are there any further questions for either Mr. Crider or Ms. Hodgkins? I'm not yet, unfortunately for Commissioner Hunter who has been very patient, able to vote to adopt or reject this policy

today. But I haven't said, I don't think, in my review of the previous meetings, I haven't said how strongly I want to communicate to the States and to the local units of government across the country, that supplanting previously expended funds with Federal funds, is not acceptable to me. And I thought that I should go on the record and say that, I'm not looking for ways for anybody to supplant previously expended funds with Federal funds, in any way, shape or form. And I realize that I had not yet said that, so thank you for letting me enter that into the record.

And I'll respectfully request that Vice-Chair Hunter table, yet again, her proposal.

VICE-CHAIR HUNTER:

Okay. Should we vote on that?

CHAIR RODRIGUEZ:

We have to vote on tabling it. Do you want to move...

VICE-CHAIR HUNTER:

I move we table the proposal to modify the relevant circular -- I mean the relevant advisory opinion on the Maintenance of Effort issue, as proposed.

COMMISSIONER DAVIDSON:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to table Vice-Chair Hunter's proposed policy. All those in favor...

VICE-CHAIR HUNTER:

Point of information for the General Counsel.

CHAIR RODRIGUEZ:

Discussion, sorry.

VICE-CHAIR HUNTER:

If we table this again, I just can't remember right now, is the language that we adopted with it the first time that we tabled it, still enacted, which is, the current advisory is suspended until such time as EAC votes to adopt a new Maintenance of Effort proposal?

COUNSEL HODGKINS:

That's my recollection. That's my recollection of the way that that motion read, was that it hinged itself on a subsequent vote on a different proposal, and thus far we have not had a vote on any new proposal.

VICE-CHAIR HUNTER:

Okay. So, do you think I should say that now, just to be clear about it? Is that...

CHAIR RODRIGUEZ:

I think it's implied.

COUNSEL HODGKINS:

You can, certainly, if you want to. I don't think it's necessary, in that I think that you have yet to vote on a new proposal. Vote to adopt.

VICE-CHAIR HUNTER:

Okay, so it's not necessary to do that because the current Maintenance of Effort will be suspended to the extent it affects counties and local governments until such time as the EAC votes on a new Maintenance of Effort...

COUNSEL HODGKINS:

Correct.

VICE-CHAIR HUNTER:

...advisory? Okay, thank you.

CHAIR RODRIGUEZ:

All right, then, are we ready to vote on tabling the motion again? All those in favor indicate by saying aye. Those opposed?

COMMISSIONER HILLMAN:

No.

CHAIR RODRIGUEZ:

The motion is adopted.

[The motion carried. Commissioner Hillman voted in opposition to the motion.]

COMMISSIONER HILLMAN:

Madam Chair and Commissioners, I just want to reexplain why I continue to vote no, because I don't think it has been my position, that EAC should be considering an outright policy that exempts counties and units of local government from MOE. And that's why I continue to vote no. I just don't even think that policy belongs on the table.

CHAIR RODRIGUEZ:

Thank you, Commissioner Hillman.

Okay. The next item on the agenda is new business, the presentation of EAC draft chapters of the Election Management Guidelines project, Laiza Otero. And Laiza is the Program Specialist with the Election Assistance Commission.

MS. OTERO:

Thank you, Madam Chair, Commissioners, General Counsel and Executive Director, for the opportunity to speak to you, once again, on the Election Management Guidelines program. I thank the

Director for briefly updating you, on the status of some of our current programs.

We did receive, yesterday, the hardcopies of the Central Count Optical Scan Ballot Quick Start Management Guides and I've already received today, a request to send additional ones to a jurisdiction. So we're very excited about that. And for the audience, there are hardcopies out in the lobby area, in case they want to take some. So, just quickly to mention that.

As you recall, on March 20th in Denver's public hearing, we submitted to you eight chapters of the Election Management Guidelines to review. And then, we also sent it to the EAC Boards for their public comment. The chapters covered absentee voting and vote by mail, acceptance testing, ballot building, uniformed and overseas voters, developing an audit trail, polling place and vote center management, contingency planning and change management, and pre-election and parallel testing.

I'm very excited to say that the Boards, in spite of us giving them five days to comment this time, as opposed to a week or longer than we did last time for three chapters, we received comments from 16 of the Board members. So, we're very excited about that. I submitted to you yesterday, an Excel spreadsheet that showed the comments and what we did with them. I'm happy to say that we incorporated most of them in whole, and some of them in part, and we just refined the Guidelines a little bit further.

So, we strongly believe that the information contained in these chapters will assist election officials across the country to develop some best practices for administering elections. We

recognize that the elections in November do not permit for some of these recommendations to be implemented in time, but we do believe for the next Federal elections, they will help out. And we would rather release that information now, rather than holding on to it until after the election.

And I'll be brief. Just, again, the chapters are here, as you see. The Quick Start Management Guides for these chapters have, most of them, been released and have been distributed to election officials. If they were to be approved today, they would, once again, be mailed to all 5,200 plus election officials that we have on the mailing list, and they would be available online, for downloading. They would also be available upon request by a jurisdiction, in case that they would like additional copies.

So, therefore, the EMG staff recommends to the Commissioners that they vote to adopt the Election Management Guidelines as presented today.

Any questions, I'll be happy to answer.

CHAIR RODRIGUEZ:

And did you list the chapters by title?

MS. OTERO:

Yes.

CHAIR RODRIGUEZ:

Okay, sorry.

MS. OTERO:

If you'd like, I can repeat them.

CHAIR RODRIGUEZ:

Is there any discussion? Is there a motion to accept the staff recommendation?

COMMISSIONER DAVIDSON:

First of all, I would like to thank you for all of your hard work on these. These are very valuable and I really do appreciate. I think that we know the locals and the States are utilizing this, to, you know, the greatest of really of our desires and I really feel like it has been a great project for the EAC. Thank you. I know that you've led this throughout and met with people -- advocacy groups on different issues and really worked hard on this. And I do want to thank you.

MS. OTERO:

Thank you.

COMMISSIONER DAVIDSON:

And by saying that, I also would like to move that we accept the recommendation and that we move to adopt the Election Management Guidelines, as presented.

CHAIR RODRIGUEZ:

Thank you. Is there a second?

COMMISSIONER HILLMAN:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to accept the staff recommendation and adopt the eight chapters of the Election Management Guidelines. Are there further discussion or comments from the Commission?

COMMISSIONER HILLMAN:

I do have questions. Laiza, could you, because I have not been able to read the comments that you sent me, could you give an indication, as to the types of comments that would have resulted in changes to the draft chapters or if changes were not made, based on the comments why not?

MS. OTERO:

Sure. And when you do get a chance, that's why I prepared the Excel spreadsheet for you, because we were trying to be more formal in our process for reviewing the chapters and when we received comments. So, we had markings whether we incorporated it in whole, in part, not at all, or other.

Some of the comments that we did incorporate were just honestly, really good suggestions and recommendations to include into the Guidelines, because when we hold working groups and when our two lead contractors developed the materials, we're only sampling from -- anywhere from five to six election officials, and so, it's not, like truly representative of the whole nation. So, when the Boards get to comment, we get to hear other points of views from practices that they conduct in other States, that have worked out. So, when we were able to review those comments, we were like, "Wow, that's a really good idea. We should include that in there." So, that's one type of comment.

There were other ones that were just general observations, not necessarily things to include in there. I think some of them even just cited some State statutes, so we were unsure as to how to manage them and incorporate them, so those were not. So -- and I think they fall mainly into those categories, again, just general

observations. Other ones, you know, "These are what we do," or some comments as to, you know, "In my State, I did this" and, "I know it may not apply, but how can we do it?"

So, if you have a chance to look at that spreadsheet, that's what we did for purposes of this. So -- and I would say that probably about 90 percent of them, we incorporated of the comments. So...

COMMISSIONER HILLMAN:

Thank you.

MS. OTERO:

You're welcome.

CHAIR RODRIGUEZ:

Well, ditto for Commissioner Davidson's comments on your hard work.

MS. OTERO:

Thank you.

CHAIR RODRIGUEZ:

I know that these chapters represent a great deal of work. And we're always pleased when we get feedback, when they are introduced and I'm glad that you're already getting reinforcing feedback.

I think we're prepared to vote, then, on accepting the staff recommendation. All those in favor indicate by saying aye. Any opposed? No?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Congratulations and thank you again.

MS. OTERO:

Thank you.

CHAIR RODRIGUEZ:

We have to take a break at 2:15 because of the videotaping.

Our next item on the agenda is the draft of EAC Guidance to States Regarding Updates to State Plans. And Mr. Edgardo Cortes is the Acting Division Director for HAVA Payments and Grants and Election Administration Improvement Programs for the United States Election Assistance Commission. Mr. Cortes.

MR. CORTES:

Yes, thank you Madam Chair. Good afternoon Commissioners.

Let me get the correct papers for this discussion.

The document that I am presenting today, which we have some hardcopies of in the back of the room that we posted, in case any of the members of the public would like to see it and it's also been posted to our website, stems from some discussions that the Commissioners had earlier this year. After Congress appropriated additional requirements payments for fiscal year 2008, we started getting many questions from States, about whether or not State plans had to be updated. And our response has been, "Well, HAVA requires, that if you've had a material change in the administration of the plan, then you have to update the plan and that needs to be done prior to your certification, so that you can access the funding available."

Now the follow-up question to that, from the States has been, "Well, what is a material change in the administration of the

plan?” And the EAC has, to date, not put out any specific guidance on what constitutes a material change, and so, what this document attempts to do is take the general Federal guidelines for amending State plans, which are contained in the Common Rule, OMB Circular A-102, and takes that and basically customizes it to the needs of the States under HAVA.

And so, there are five specific instances, in where, States would have to -- or should amend their State plan, when they’re making changes. And this document is meant, basically, so that when -- not just in regards to this current round of funding, but any time that States are making a change in how they’re administering the HAVA program, they can refer to these guidelines and say, “Okay, well what I’m doing is a material change and I should go through the process of updating the plan before I implement that change.”

The first item would be, new or revised Federal laws or regulations which affect HAVA implementation. That includes, for instance, if Congress passes legislation that amends the Title III requirements and adds new requirements or changes what States have to do, that would obviously require States to do certain things differently. That would be one instance, where that would be a material change and the States would have to update their plan.

Number two would be, a new or revised State law, organization, or policy affecting HAVA implementation. And that’s where, you know, you have a change in any of these things that change the scope, the budget, the period of availability of funds. So, for instance, the two examples that we cite here are that the

State passes legislation which changes the type of voting equipment that the State plans to use to implement Title III. So, originally a State had planned to use direct port electronic machines to implement Title III and they, have now, under State law, decided that they want to switch to optical scan. That's a change in how -- that's a change in State law that affects how they implement Title III and that would be -- that would need to go through the State plan updating process.

The second one has to do with the organization, or basically, the office responsible for implementing the plan. The example that we give of this, is actually based on a State that has recently done this, where previously the office in the State responsible for implementing HAVA was the Office of the Attorney General. They have recently changed that responsibility over to the Secretary of State. And so, that would be something where the actual office responsible for implementing has changed and that would be a material change. That would not include, though, where you have a change in administration. So, a Secretary of State, you know -- there's an election and a new Secretary comes in, that would not be encompassed in this.

Number three is a budget change of ten percent or more, of HAVA fiscal year's cumulative budget across budgeted programs, activities, functions or activities. An example under that would be, if you have a change in how you're budgeting your funds of more than ten percent. So, for instance, if you had budgeted a certain amount for your Statewide voter registration list implementation and you get to the end of that implementation and -- or you have to add

more funding to that and that change is more than ten percent, so, from the registration list you take money from there and you use it for improvements to the administration of Federal elections. That would be an instance where it would be a material change. So, you have a change from one budget category to another of greater than ten percent of your available funds.

A revision in the scope or objective of the project. The examples, under here, that we've given, are that the State, for instance, decides to purchase equipment at the State level instead of sub-granting funding to counties for them to purchase it. This has happened on some occasions where, originally, the State planned a sub-grant and later on they decided it would be easier or more cost effective for the State to make a purchase and then provide the equipment to the counties. That would be a change in the scope. The State changes how they're going to develop their Statewide voter registration list. For instance, they go from a bottom-up system to a top-down system, run at the State level. If the State files a certification under Section 251(b)(2), which indicates that the State has met all of its Title III requirements and will now use the remaining requirements payments for improvements to the administration of Federal elections. Now this would only be applicable if the State didn't account for this when they made their original State plan. And then number four, and there's some overlap here, but the State changes the type of voting system that they had planned to use for Title III compliance. So, for instance, instead of a DRE, which they may have originally planned for, they're now using optical scan with a ballot marking device.

And then number five would be an extension in the period of availability of the HAVA funds. So, if there's an increase in the amount of funding authorized under HAVA appropriated to the State, which was not provided for in the original State plan, or the funds that they have remaining, are in a fiscal year not covered by the original State plan. So, for instance, for the fiscal year 2008 payments, the Congress appropriated that but the previous State plans -- you know, some States haven't filed their plans since 2003 and some of those plans only went through fiscal year 2006. We're now in fiscal year 2008, so, the original plan did not cover these additional years. So, that would be an instance where that would be applicable. And the same, if they have -- you know, if the State has funding still left. They -- for instance, they said they were going to use other funding by 2006 and they still have a large chunk of money left and it's now, you know, two fiscal years later and they're still continuing to use that money into the future, they would have to update their plan to reflect the extended usage of the funding.

Like I said, these guidelines are, essentially, taking the requirements for updating State plans that are contained in the Common Rule and making them applicable or explaining to States how HAVA fits into the specific requirements. And what we'd like to recommend today, is that the Commissioners take this under consideration, but also put this out for a 30-day public comment period to take comments and get some feedback from States and other interested parties on this.

Just to give a little bit of background here, like I said, this came from a request, earlier in the year from the Commissioners,

about this question, about what is a material change in the administration of the plan? How do we define that? You all asked staff, I think it was after the -- around the April public meeting, to begin working on some sort of document to -- that would give some guidelines to States on how to do that. We created this document. We then provided a copy of this document to the Commissioners' subcommittee that's responsible for the items in our division, to get some feedback from them. That would be Commissioners Hillman and Davidson. They have provided us some initial feedback and then we're presenting this today to the full Commission for consideration, certainly not for a vote. I don't think it's, in any means, a final document. It's really a first crack at getting this done but getting it done as quickly as possible, because there are a lot of questions coming in from the States about whether or not they have to update their State plan before they can access the 2008 requirements payments. And I think this will help to solve a lot of -- to answer a lot of those questions out there. So, we want to put it out for public comment and get some feedback, but also be able to do that to allow you all the opportunity to make a decision.

CHAIR RODRIGUEZ:

Very good. Are there -- just help me out a little bit. I don't have my calendar with me. So, if we posted it today for 30 days, we...

COMMISSIONER HILLMAN:

We'd barely make the July meeting, because it's...

CHAIR RODRIGUEZ:

But we might not have time to incorporate any changes.

COMMISSIONER HILLMAN:

The July meeting would be 32 days, so, it would mean that the staff would have to figure out a way to do feedback.

I know that -- if I can just give a little background on this. I think Mr. Executive Director points to an internal procedure process that we really need to tighten up a little bit and that is, how we don't let something sit because staff isn't clear what a no response from the Commission might mean. And by that, I mean that this policy needs to move. We certainly can't wait until the September meeting. We don't have a meeting scheduled for August. If we aren't able to vote on this policy at the July meeting, then I would strongly recommend that we do all the transparency, but be prepared to vote, tally vote, because I think waiting until September would just be much too late for the States, in terms of those States that are going to be ready to request their funds.

When the document came to us it was a draft and Commissioner Davidson and I each individually gave our feedback to Mr. Cortes, and the subcommittee did not meet again and mostly because travel schedules and other things prevented everybody from being in the same place. And then, I think there was the loss of the few days as a result of that, so we were not able to share the draft document with you and Commissioner Hunter, so that you could give your comments and feedback, so that it could have been posted by now.

And that's the piece I'm talking about, Mr. Wilkey, that is to say, that we need a timeline. And sometimes documents might have to come with a timeline checklist, "This is due by Tuesday at 5 p.m., and the next step is, it goes like this" so, that Commissioners

are reminded what needs to happen, so that we don't hold things up. And that's not, you know, a critique or a criticism. It's just an acknowledgment that we can't comfortably do 30 days, when we've only got 32 days to a public meeting.

But I think the document, as written now, captures all the components of what we felt needed to be addressed. There may be some questions that you and Commissioner Hunter will have, to Mr. Cortes, and if we can't address them at the meeting, then the question is what kind of time you want, before the document gets posted. But I just don't see -- even if we post it this afternoon at 5 o'clock, I don't see any way that we're going to be able to do 30 days; incorporate the comments, give it back to the Commissioners for review and then have it scheduled for a vote. It's a very tricky thing, so we've got to somehow figure this out.

CHAIR RODRIGUEZ:

Well, how about, if we post it today and you brief us on the comments at the July meeting? Understanding that you haven't, you know, there may be some really good comments that you'll want to incorporate -- or that we'll want to incorporate, but just so we have an idea of what kind of feedback we've gotten. And then, do a tally vote, within, I don't know, two weeks of when the -- of the deadline. How does that, sort of a schedule, sound?

MR. CORTES:

And if I could just mention that publication in the Federal Register usually takes two to three days.

CHAIR RODRIGUEZ:

Right.

MR. CORTES:

So, we could send it over -- at this point, we would sent it over first thing tomorrow morning, but it's possible that, depending on how quickly they get it published, the comment period would end either at or immediately after the next public meeting. So, I could certainly give an update at that time, on comments that are received, you know, so far. And perhaps, you know, since we're out there with some election officials, if there's a day or two left, we could remind them, you know, if they have any comments on this, to please submit them. But I could certainly be ready to do that.

CHAIR RODRIGUEZ:

And then we'll incorporate notification of the posting into all of our talking points, as we go to the various meetings.

Commissioner Hillman?

COMMISSIONER HILLMAN:

Well, I was just going to say, I think it would be particularly helpful if we could have this posted, I understand the Federal Register, timeline, so that it can be, at least distributed at the NASED meeting, next week. And that would be one of the principal constituencies.

MR. CORTES:

Well, and certainly we can get it up on our website later today.

COMMISSIONER HILLMAN:

Well, I don't think we can post two different 30 days. In other words, it would have to be 35 days on our website and 30 days for the Federal Register. I mean, it has -- people who get the Federal Register notice would have to have the same...

MR. CORTES:

Correct. I'll work with Jeannie Layson to coordinate how we put that.

COMMISSIONER HILLMAN:

Right. Right, but...

MR. CORTES:

.But we can get it out, so at least people -- and it's up there under the meeting documents for today, so people can already access the actual document and start taking a look at it.

CHAIR RODRIGUEZ:

Any further discussion for Mr. Cortes? Commissioner Davidson.

COMMISSIONER DAVIDSON:

I do have some questions. And Mr. Cortes knows that I have some issue with it, because we've been discussing the Common Rule A-102 and, you know, in the future, if we decide that A-102 -- I mean this is the part that says ten percent -- a budget change of ten percent or more. And that has been left to the States' discretion on the amount of the budget change, on the amount. And my question is, if Common Rule doesn't apply in one place, should we be considering it in this place?

MR. CORTES:

As far as I know, and I've worked with the -- we've worked with the Office of General Counsel on putting this together, and my understanding is that, this is applicable to States. And so, the issue of ten percent -- we're not telling States that they can't change their budget. We're just saying that if it's a change of greater than ten

percent, that they need to go through the process of updating their State plan.

COMMISSIONER DAVIDSON:

If I understand you right, it's a mandate. If they change it more than ten percent, they'd have to file a new State plan?

MR. CORTES:

Correct.

COUNSEL HODGKINS:

Madam Chair, if I might, I'd just like to remind the Commissioners that the current vote of the Commission, and mind you, it's before a lot of you were here, but the current vote of the Commission, is to apply Circular A-102 to this. So, in addition to a question, as to whether or not the States have been given fair notice of that question, there is also the issue that the Commission, has in fact, voted to adopt those circulars.

CHAIR RODRIGUEZ:

Commissioner Hunter.

VICE-CHAIR HUNTER:

Mr. Cortes you stated that this, in your view, is sort of a summary of what the circulars require, vis-a-vis State plans and we're just codifying it. And you also write in your memo, "These two sections of the circular provide clear guidelines, as to the instances under which States plans would need to be revised." Yet, you're citing, in part from the State plan section of the circular and in part from a completely different section of the circular that has nothing to do with State plans. So, I think your comments, both orally and in the memo are misleading, at best. And it's very -- I mean specifically,

the section on State plans is referred to Section 1, subpart one and two of your memo, but the other three sections, as you cite in here, are to sections that have nothing to do with State plans.

So, you know, I haven't had a chance to really review this.

As somebody noted, I just got a copy of it a couple of days ago.

But, I, for one, am not in favor of posting it in its current form. I think we need to have a more thorough discussion, and maybe this is the appropriate place to have it, as to why we picked those certain provisions from a part of the Common Rule, that again, have nothing to do with State plans and that are part of, from what I can tell, in a sort of off-the-cuff reading of this, is, changes that States want to make when they want to rebudget funds that the Federal government has given to them. Now, of course, we're different than the rest of the world because -- we're different than the rest of Federal grantees, because, yes, we require a State plan, but States are not required to get our approval of their State plans before they receive the money. They're only required to submit the State plan to us and have it be posted in the Federal Register for 30 days. But we're not in the business of approving or not approving their State plans.

So, this, to me, is a completely -- and again I'm just reading this off-the-cuff -- but it's a completely different scenario as to why these provisions are in the Common Rule. It has nothing to do with the State plan. And so, I just would like a further explanation of why those two provisions were added in and why they specifically were chosen. It seems to me, that Section 1 and 2, properly encapsulate some of the major changes that we would envision a

State plan going through. And I'll read those two, just for clarity. Number one, "New or revised Federal statutes or regulations." And number two, "New or revised State law organization, policy or change in State agency operation." And I don't know why we go any further than that, if our intent is to memorialize what's in the circular, vis-a-vis, State plans.

MR. CORTES:

The other section that -- and you are correct, they come from two different sections of the circular. The first section is 41 C.F.R. Section 105.71.111, which is the State plan section and it does say, you know, "a State will amend a plan whenever necessary to reflect, number one, new or revised Federal statutes or regulations;" or, number two, "a material change in any State law, organization, policy, or State agency operation."

The other section that we cite to is 41 C.F.R. Section 105-71.130, which are changes -- let me find the -- this is under the section for post-award requirements and changes. And the first part of that section begins, "Grantees and sub-grantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency." And that is where we -- from the sections that follow here, or these other -- the part about the ten percent of the budget change, a revision in scope or objective of the project and the extension of availability of funds come from.

VICE-CHAIR HUNTER:

Okay. And why do you think that that's relevant to the State plans?

MR. CORTES:

Because we're talking about post-award requirements for Federal funding that was given to the States.

VICE-CHAIR HUNTER:

But what you just read, "grantees and sub-grantees are permitted to rebudget within the approved direct cost budget." We're not approving any State budget. I don't understand how that's relevant.

MR. CORTES:

Because the budget is a requirement under the State plan section of the Help America Vote Act.

VICE-CHAIR HUNTER:

Again, on the cuff, the way I read this is, if a Federal agency grants somebody an award, and in many cases, as you know, you have more experience in this than I, the recipient, you know, has to follow a very specific budget and they can't spend the dollars in any other way and it's much more micromanaged, than in our scenario. Our scenario is, all they have to do is submit a State plan, which we then don't approve and we only post for 30 days.

MR. CORTES:

So, then the suggestion there would be, that the States then, are not bound in any way by the State plan or can make changes and go outside of that and not have to amend it?

VICE-CHAIR HUNTER:

No, what I said was, if your intention is to use the Common Rule as a basis to codify some guidelines for the States, on when they're

required to amend the State plans, that seems perfectly reasonable. And to go to the section entitled, "State plans" also seems perfectly reasonable. But to go outside of that into this other post-award requirements for something, that to me, is not parallel to what we're doing at the Election Assistance Commission, I'm asking you, why go there? Why are you going to that section and why pick those specific things where, it seems to me, you should stick with what is required of an amendment for a State plan in the Common Rule?

COMMISSIONER HILLMAN:

Commissioner Hunter, might I ask you a question? When it talks about an approved budget, the budget that's in the State plan was approved by the chief State election official or the chief Executive Officer, which would be the Governor, whether the Governor delegated to the chief State election official or whether the Governor retained that responsibility. So, unless the guidelines are saying, meaning a budget approved by the Federal agency, it would seem to me, it's not unreasonable. And it's been my experience throughout State and Federal government, and even with non-profit organizations, that any time there's a change in a budget over a certain amount, it does require some kind of posting or review for people to know. Secretaries of State have put in their State, plans to the public, to the nation, to their constituencies, "This is the budget we'll follow." If they change that budget, it seems to me, it's not unreasonable that they have to repost, "Oh, by the way, we took X number of dollars from voter registration systems and put it into buying new voting systems." That may or

may not serve the constituency well, but it would seem to me that the Election Assistance Commission does, under HAVA, have a responsibility to make sure that the States are fully disclosing significant changes they're making, through the State plan process.

VICE-CHAIR HUNTER:

Thank you, I appreciate your insight on that. I'm trying to find the specific section on the budget, I think it's 254(a)(6), I think. "The States' proposed budget for activities," and I'll read it. "The States' proposed budget for activities under this part based on the States' best estimates of the cost of such activities and the amount of funds to be made available, including specific information on; (a) costs of the activities required to be carried out to meet the requirements of Title III; (b), the portion of the requirements payments which would be used to carry out activities to meet such requirements; and (c) the portion of the requirements payments which will be used to carry out other activities." So, the State is simply required to include in their State plan, their proposed budget based on the State's best estimates.

So, I appreciate what you said Commissioner Hillman and you, too, have more experience in grant stuff than I do, but that, to me, is not a definitive budget that would require us to micromanage when someone has made a ten percent change. And if a State wants to do that, under their own State laws or auditing requirements, then they should do it. But I don't see any authority on our part, to require them to do that.

CHAIR RODRIGUEZ:

Okay. So, I guess I want to hear from the General Counsel about your opinion, about the language in the proposed State plan guidelines.

COUNSEL HODGKINS:

At this point, from a policy perspective, I think that's the way that I would answer this question. I think the basis, as I appreciate it, for these items, is to identify a policy of, when we believe, the agency believes that a State plan should be amended. And again, it's sort of like the same question of interpreting, what is the meaning of State or to whom does MOE apply? This is a responsibility that falls to the agency that is charged with administering the funds. So, the idea here, is that we are giving the States an idea of when we believe it's important for their State plan to be amended, the first portion, clearly, based upon A-102 and its statement of when State plans are required under its rules or its rubric to be amended. That, I think, probably sets the floor if we continue to operate under this concept, which we have in the past, that A-102 applies to this agency and to this particular grant program.

From the perspective of these other items, I think it's important to note that the State plan process was put in place for a reason, and that is, that Congress was very emphatic about who was going to be on the State Plan Committee developing this, the groups that were going to be represented, the people that were going to come to the table, that had interest in elections and the way that they were run. Now, to allow a State to make a change without seeking the input of those individuals, may be within our discretion, but I guess, from a policy perspective, I would ask, is

that the right decision to make, in light of the fact that Congress obviously wanted input, not only from a specific group of people, but from the public based upon a policy of requiring not one, but two publications for public comment? So, I don't know that that specifically answers your question, but I think that that's about the best that I can do in terms of the law, the intent that I would glean, sort of, on a 30-second recitation of what I believe Congress was thinking about when they drafted this particular section of HAVA.

CHAIR RODRIGUEZ:

Okay. And Vice-Chair Hunter wants to speak. We have five more minutes before we have to break. This was recommended by a subcommittee of the Commission, so, I think -- I mean I think -- well let me just ask. I ask, since it was recommended by a subcommittee of the Commission,...

VICE-CHAIR HUNTER:

But excuse me, I don't know that that -- is that true, that it was recommended by the subcommittee? I haven't gotten that sense.

COMMISSIONER DAVIDSON:

It was reviewed with this. I don't know that there was an agreement amongst us that, you know, we move forward. We gave input. I've always had concerns about this one section, as Mr. Cortes knows. But, you know, I was also told, and I think this is another piece of information that I don't think has been made clear today, that originally when the HAVA grants were given out, that States signed letters to the fact that they would follow the Circular 102 -- A-102. Is that correct?

MR. CORTES:

States were sent letters notifying them of the payments that included the requirements, one of which was Circular A-102.

COMMISSIONER DAVIDSON:

And that goes back to 2000 and...

MR. CORTES:

That goes back from when they received the...

COMMISSIONER DAVIDSON:

2004?

MR. CORTES:

... requirements payments, correct.

COMMISSIONER DAVIDSON:

So that's another question that I kind of had is how does that fit in?

Obviously we can change, you know, what the direction is for the States, but in working with Mr. Cortes, the way he explained it to me, this is just information that really is defined that they signed just a blanket, kind of a statement, that they would follow the circulars.

COMMISSIONER HILLMAN:

A different answer to that, is that Commissioner Davidson, you and I did agree, before this meeting, that we thought this was ready to go out for public comment; that there's a public comment process and we can take whatever comments and revisit it for that. What I hear Commissioner Hunter saying is, she doesn't even want this out for public comment. So, the recommendation from the subcommittee, if there's a recommendation, is that this be posted for 30-day public comment, so this Commission can get itself in gear to pass a policy, real soon, before September, to be able to give guidance to the States. If we're here in September dealing

with this, we will deserve every bit of criticism we get from everybody for having to take this long to come to a decision on this issue.

And I understand how awkward it is, and this is the point I was getting to earlier, Mr. Wilkey, where, if we don't have really defined timelines to factor in the variables of how this Commission works and how a document gets, we're going to be in a position where a Commissioner is going to see something and not like it and not want it to be posted. And that's fair and that's legitimate, but Commissioner Davidson and I did feel, that though each of us had different things to say about the draft, we thought it was ready to be posted for 30 days.

COMMISSIONER DAVIDSON:

And another reason why, is because we do have conferences coming up so that we can get direct input from the individuals at the conferences.

CHAIR RODRIGUEZ:

Thank you both. Vice-Chair Hunter, and then we'll take a break.

VICE-CHAIR HUNTER:

It's not that I don't want public comment on something, because, of course, I always want public comment on things. Now how long we put it out there for public comment is another matter, but I absolutely would want public comment. But at the same time I personally don't think this is ready to be posted because, with respect, I don't think that we've had a chance to really flesh out why these provisions were put in here. And I don't think that we've answered that question. And again, I'll just read from the very last

sentence of the memo, "These two sections," the two sections of the Common Rule that we're talking about, "provide clear guidelines, as to the instances under which State plans would need to be revised." And that is simply, in my view, not an accurate statement. And so, I'm not interested in posting something that we have not appropriately discussed. I don't know why that sentence is in there. And I, also don't know why those specific three provisions of a section that, to me is not relevant for the work of the EAC, are posted in there. So it's not, to me, ready to be posted. I think it's important that we post things to the public that are thoughtfully considered.

And just one follow-up question to the General Counsel. I agree with the bulk of what you said, that the EAC does have within its discretion to come up with a policy for our stakeholders, in this case the award recipients, the States, as to when they have to amend their State plans. So, I agree with everything you said in that regard. But then when you said, we have to be sensitive to when they make changes, do they have to run it by, you know, the local election officials or not? And I'm not sure -- are you saying -- I'm not sure what you meant by that, other than, are you saying that these are three instances where the EAC staff has determined that it rises to a sufficient level to then have to consult, per HAVA, with local election officials? Is that what you were saying?

COUNSEL HODGKINS:

I'm being a time out signal.

CHAIR RODRIGUEZ:

We're going to have to stop there, for some reason, because of the filming or something, but we will allow the General Counsel to respond and give that question full treatment in 15 minutes. Thank you.

[The Commission recessed at 2:28 p.m. and reconvened at 2:46 p.m.]

CHAIR RODRIGUEZ:

Okay, we are adjourned. Madam General Counsel, do you need Commissioner Hunter to restate the question or are you...

COUNSEL HODGKINS:

No, I think I can remember it.

CHAIR RODRIGUEZ:

Why don't you summarize it, just so we can get back on track.

COUNSEL HODGKINS:

Well I think, and Commissioner Hunter will certainly correct me if I'm mistaken, but I believe the question was, whether or not it was my understanding that this was the staff's recommendations as to the types of changes that should be subjected to the State plan process. Is that a fair summarization?

VICE-CHAIR HUNTER:

Yes.

COUNSEL HODGKINS:

Okay. My response to that would be, I will allow Mr. Cortes to tell you what the staff's recommendation is.

However, in reading those things, it would be, certainly my belief that those are things that the Commission should consider as

items to be listed under the rubric of what constitutes a material change, because of the fact that the State plan did include a budget which was developed, of course, with input from various different folks and the fact that it would seem, if there's a significant change, and A-102 certainly has defined what is a significant change in a budget, that that change should be subjected to the same process by which the plan was originally developed.

CHAIR RODRIGUEZ:

Okay. And Mr. Cortes.

MR. CORTES:

I guess the short answer is, yes, these would be the areas where the staff believes that State plans should be amended to, you know, reflect and allow input from the public through the process that's laid out in HAVA for how the State is implementing the requirements.

And I'd just like to say as well, that, you know, in putting this together we did work with the subcommittee that the Chair assigned for us to work with. And I think, Commissioner Hunter, that your disagreement with some of these portions are exactly why we're recommending that this be put out for public comment, because I do think it is ultimately a decision that the four Commissioners will make and there may not necessarily be agreement. And that's why we feel it's important for it to be out there, for you to get comments from those -- not only from election officials but also from others that are interested in the administration of elections and may have some valuable feedback on this document.

And so, our recommendation continues to be that this be put out for public comment, so that you can take all that into consideration and have these discussions, which I think are very valuable before you make a decision.

CHAIR RODRIGUEZ:

Thank you. Will you tell me exactly what would be put out for comment? Is it your briefing memo?

MR. CORTES:

No, the memo was just an internal memo to the Commissioners. What will be put out is, this two-page document which is in the back, which says "Guidelines on HAVA Section 254(a)(11): Material Changes in the Administration of HAVA State Plans." So, it would be this document here, which talks about the five distinct areas which we feel would constitute a material change and also gives some examples that we came up with, under each of those sections to relate it specifically to things going on in the States, to put it into context for States. Rather than the broad statements, give some examples so that States have clear guidance, because States have been asking the question of, what is a material change now for quite some time. And I think that, you know, it's good that we're working on this process and that we work through it, as quickly as possible because those questions are out there, in terms of getting access to the FY-08 requirements payments.

CHAIR RODRIGUEZ:

I have one more question and then I'll go back. Madam General Counsel, you said that, because the State plan includes a budget that, at least point number three should be included. So, Mr.

Cortes, should we say something about -- clarify that the budget is the one in the State plan? Or do you think that this is clear enough that that's what we're talking about? "A," is that what we're talking about, the budget that is included in the State plan? And "B," is this clear that that's the budget we're talking about?

MR. CORTES:

Yes, we are talking about the budget contained in the State plan.

We thought it was clear. If it's not clear, certainly we can work with you or any of the other Commissioners on the wording, but the intention was to talk about the budget contained in the State plan, as required under Section 254.

CHAIR RODRIGUEZ:

Vice-Chair Hunter.

VICE-CHAIR HUNTER:

I think Commissioner...

CHAIR RODRIGUEZ:

Oh, I'm sorry, Commissioner Hillman.

COMMISSIONER HILLMAN:

Okay, so, before we went on break, when Commissioner Hunter was offering her opinion on this, she did say two things that I feel compelled to respond to.

She described, at least certain sections, as not being relevant to EAC's work and that there was not thoughtful consideration, or something to that effect. And just want to be on record to say that, I think that the staff and the subcommittee worked very hard to address the issues that were specific to State plans, specific to EAC's responsibility. I don't like the suggestion

that I would put forward something that's not relevant to EAC's work and I think there was very thoughtful consideration put in. And I just want to make sure that Mr. Cortes and the General Counsel and the people who work with Mr. Cortes know that I think that they did in put some thoughtful consideration and did a lot of research. And that's part of why we're up against a tight timeline because they were really trying to gather all the information to make the best recommendation they could make.

CHAIR RODRIGUEZ:

Vice-Chair Hunter.

VICE-CHAIR HUNTER:

I appreciate your comments Commissioner Hillman. And as I said to you at the break, I did not intend to suggest that the subcommittee was not efficient in their duties or didn't put something forward that they didn't think was an appropriate document to put forward. I have been very supportive of the subcommittee process and I think it served the EAC well, so I appreciate the work of the subcommittee and the work of the staff in this regard.

What I said, and if I wasn't clear I apologize, but what I was trying to say, is that both in the -- there's a memorandum, I think there's some confusion because there's a memorandum written to EAC Commissioners from Edgardo Cortes that I was referring to, which is different than the document that was placed out here outside of the door. They're similar, but they're somewhat different. The memo to Commissioners cites specifically to the relevant sections of the Common Rule, and so, that's what I was referring

to. And what I was trying to say, is the sentence which states, "These two sections," and that's two sections of the Common Rule, "provide clear guidelines as to the instances under which State plans would need to be revised." And this is my opinion, I understand that. My opinion is, that is not an accurate statement. And by saying that, I'm not saying that the subcommittee, you know, intended to put something out that was not accurate or anything along those lines. But these two sections are not two sections that provide clear guidance, as to the instances under which State plans should be amended.

Now, it may be the decision of the EAC to use part of the latter section as thoughtful guidance to States as to when to modify their State plans, but to me, those are two very different considerations. And I just, am trying to draw that bright line in people's minds that don't say that you're basing it on clear guidance from the OMB circular, when the second section of which three of these guidelines are culled from, has nothing to do with State plans. And, in fact, it's not the entire section of changes to post-award requirements, it's only certain portions of that Common Rule section.

So, what I was trying to get at in my question to the General Counsel, and I think she responded -- she did respond, which was, so, did the staff look at that section and say of those various things these are the three areas that we find most important to include in an amendment to a State plan? And her answer was "yes." So, that's fine, but I just think we need to be very responsible -- I may not agree with it, but that's fine -- we just need to be responsible as

to how we characterize. And also, even though I'm not in favor of posting this at this moment, if that later happens, I hope that we will also post the memorandum that I've been referring to in this public meeting because I think it's useful for the public to have the specific citations and see the specific sections that the EAC relied on, to write this guidelines on HAVA.

And one, just last, quick question about this budget issue. Maybe I'm missing something, but a budget change of ten percent wouldn't that, almost certainly, or at least for some States, mean that every time they receive additional Federal funds that's going to be a ten percent change?

MR. CORTES:

No. Actually I don't think that -- I don't have a number for the minimum payment States, but for instance Delaware -- or actually, I do. Delaware, which is a minimally funded State, that would be, in terms of the minimum payment amount, it's a bit over \$1 million. And so, the amount that they're getting this time, for instance, in the fiscal year 2008 appropriations, I think -- I don't have those numbers in front of me -- but I think it's approximately 600,000 that they're getting under this new appropriation, based on the formula that's out there.

VICE-CHAIR HUNTER:

So wouldn't...

MR. CORTES:

And I can get those numbers for you, if you'd like.

VICE-CHAIR HUNTER:

Okay. So you're saying it wouldn't meet the threshold, just by virtue of getting the additional Federal funds that were appropriated at the end of last year? As best we can tell, no State would meet that ten percent threshold?

MR. CORTES:

I will get the numbers for you. I'll ask my staff to pull those numbers during this -- Julie or Tamar, can you ask someone, either Julie or Julianna to give me the numbers of the FY-08 payments?

CHAIR RODRIGUEZ:

Commissioner Davidson.

COMMISSIONER DAVIDSON:

I think it's also important to note, that if a State budgeted for the full amount that Congress had put in the original legislation, the bill itself, you know, the law itself, if they did that, then I think that they could still be without -- wouldn't have to file a new plan because they were budgeting for the full amount, so that if the -- in my opinion I think that that would mean that they wouldn't have to file another plan.

COMMISSIONER HILLMAN:

But I think it depends on what they did within the budget. If they took more than ten percent of their budget and switched it from one activity to another, irrespective of what the total amount of the budget was, you know -- you can't budget for money you don't have. I understand that a lot of States put forth a budget in anticipation of receiving full funding. They didn't receive full funding and at some point they accepted the reality that they couldn't budget for money they didn't have. So, I think we have to take that

into consideration because we're talking about a good amount of money that States wouldn't have access to. And States don't budget for money they don't have. At least I hope they don't.

MR. CORTES:

And I think it would also depend on, you know, other realities within that, whether or not -- or how far into the future they thought their money was going to go and, you know, what years they plan that for. So there's a lot of...

COMMISSIONER DAVIDSON:

Variances.

MR. CORTES:

You know, there's a lot of variables in there. And what we tried to do with these five points, was kind of cover everything that we thought was relevant to the States, in their consideration of answering this question of, is what we're doing a material change in the administration of the plan.

And so, the minimum payment amount to States, at least this time around, is 575,000.

VICE-CHAIR HUNTER:

I'm sorry?

MR. CORTES:

575,000 is what minimum funded States will get through the FY-08 requirements payments.

VICE-CHAIR HUNTER:

Can I just make one last comment?

CHAIR RODRIGUEZ:

Okay.

VICE-CHAIR HUNTER:

One last comment...

CHAIR RODRIGUEZ:

Vice-Chair Hunter.

VICE-CHAIR HUNTER:

...is, from the section of the Common Rule regarding State plans, one of the things that Mr. Cortes read to us, is that, "If there's a material change in any State law, organization, policy or State's agency operation." And I'd just like to point out that, back in March when we were talking about the reasonableness policy and whether or not States had -- whether or not it was reasonable for States to purchase machines that they already purchased, the previous machines with Federal funds, we didn't know the answer to whether or not they'd have to submit a new State plan. You know, for example in the State of Florida, when they completely changed their systems, would they have to file a new State plan? And I think I wrote in one of my statements, that I would hope that a State would do so, in that kind of circumstance. And I'm glad that under the Common Rule section regarding State plans, the State of Florida would be required to do so, because it's a material change in their State law and in most States, it would either be a State law or a policy change. So, I think regardless of how the State is structured, that State, in those scenarios, would have to file a State plan. I think that's important. And I also think it's important that they work with the county officials to make sure that the county officials, you know, have sort of signed on to that overall process.

So I'm encouraged that that's covered by the section on State plans in the Common Rule.

CHAIR RODRIGUEZ:

Very good. Is there any further discussion on this?

COMMISSIONER HILLMAN:

Well, I'd like to know where we are. I urge that we move forward to post the document for comments, so we can get the process started.

CHAIR RODRIGUEZ:

Are we going to -- Madam General Counsel, should we vote on it since there's disagreement? Or is the subcommittee's recommendation sufficient to post?

COUNSEL HODGKINS:

Are we posting this in the Federal Register? Remind me, are we...

CHAIR RODRIGUEZ:

Yes.

COUNSEL HODGKINS:

...posting this in the Federal Register?

MR. CORTES:

That would be my recommendation, that as part of the public comment process, that it be posted in the Federal Register.

COUNSEL HODGKINS:

Then I think it would require agency action to instruct the staff to do that.

COMMISSIONER DAVIDSON:

I have a question. Is a posting, the title of it and then stating that it's on our website, like what we've talked about in other things?

MR. CORTES:

I don't know. That's something...

COUNSEL HODGKINS:

We can certainly use that idea. Let me just flesh out what I think Commissioner Davidson is referring to.

COMMISSIONER DAVIDSON:

Thank you.

COUNSEL HODGKINS:

And that is, that we would post a notice that we are seeking comment on a particular proposed policy, provide the public with information as to where they can obtain a copy of the policy, which would, of course, be posted on our website, in addition, providing the public with the ability to obtain a hardcopy by calling our office, writing our office, et cetera, and providing them with the information as to where and how they would submit comments. Now, we would not actually post, as I appreciate what Commissioner Davidson is saying, the actual text of the proposed policy in the Federal Register, for cost saving measures but would make the text of that available to the public on our website and in other places, but merely use the Federal Register as a mechanism by which to point them to those locations.

CHAIR RODRIGUEZ:

Vice-Chair Hunter.

VICE-CHAIR HUNTER:

Even though I don't think I would vote for this policy, as written, I don't support it as far as I can tell with the information in front of me, I would not object to posting it, if my colleagues would agree to

amend the same sentence that I keep reading, and I'll spare you reading it again, and the sort of sister sentence to it in the guidelines. And if my colleagues would also agree to simultaneously post the memorandum "To: EAC Commissioners, From: Edgardo Cortes. "

CHAIR RODRIGUEZ:

Okay. Was that a motion to post it and then...

COMMISSIONER HILLMAN:

I'd have to know what the amended language is. I can't agree to language that I haven't seen written so, you know, I'd like to know what the amended language is being recommended.

CHAIR RODRIGUEZ:

Okay.

VICE-CHAIR HUNTER:

Well, I'm not going to make the motion though. Does somebody want to move to post it?

COMMISSIONER DAVIDSON:

I'll move to post it, so that we can get the...

COMMISSIONER HILLMAN:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to post the "Guidelines on HAVA Section 254(a)(11): Material Changes in the Administration of HAVA State Plans" in the Federal Register.

VICE-CHAIR HUNTER:

Okay. So, the amendment -- I'm sorry, was the motion to post both documents? I'm sorry.

COMMISSIONER HILLMAN:

I am not in favor of posting both documents, unless we -- I mean, the first document, it can be available to anybody who wants to see it, but it's not for public comment. It was an instructive/informative memo to the Commissioners. So, you know, I'm not sure what we're trying to accomplish. And I'm almost ready to pull back my second, because I think this has gotten beyond confusing and I'm not at all comfortable where we're going.

CHAIR RODRIGUEZ:

Well, right now, the motion is, post the draft guidelines.

COMMISSIONER HILLMAN:

Right, okay. Thank you.

CHAIR RODRIGUEZ:

That was seconded.

COMMISSIONER HILLMAN:

All right, that's the motion I seconded.

VICE-CHAIR HUNTER:

Well, what I was trying to say, is that I'd be in favor of it if it was to post both. So, would the mover consider amending your motion to post both documents? And my reasoning is because the document that's now on the table back here, does not provide the specific citations to the Common Rule. And I just think it's important that the public be provided with the citations.

CHAIR RODRIGUEZ:

I think we could take it that way or they could be two separate actions. This is the one that we are going to take comments on. If

we post it, the briefing memo, it wouldn't be for comment but for information.

VICE-CHAIR HUNTER:

But I don't know why we wouldn't want to get comments on that, too. I mean I don't know why we can't just say, comments on -- I mean...

COMMISSIONER HILLMAN:

Call the question Madam Chair, please.

CHAIR RODRIGUEZ:

So, we vote on whether or not to vote, right?

COUNSEL HODGKINS:

Correct.

COMMISSIONER HILLMAN:

Right.

VICE-CHAIR HUNTER:

Whether or not to vote? I'm sorry.

CHAIR RODRIGUEZ:

Gracia's called for an immediate vote.

VICE-CHAIR HUNTER:

Oh, okay.

CHAIR RODRIGUEZ:

So, we vote on that motion.

COUNSEL HODGKINS:

Well, you need a second on that.

CHAIR RODRIGUEZ:

On the question.

COUNSEL HODGKINS:

Yes.

COMMISSIONER DAVIDSON:

I'll second it.

CHAIR RODRIGUEZ:

All those in favor of ending discussion on the motion to post the guidelines, indicate by saying aye.

COMMISSIONER HILLMAN:

Aye.

COMMISSIONER DAVIDSON:

Aye.

CHAIR RODRIGUEZ:

All those opposed.

VICE-CHAIR HUNTER:

Nay.

CHAIR RODRIGUEZ:

I'm going to abstain. There's two ayes to end discussion. So discussion will continue for lack of a majority.

[The motion failed for lack of a majority with a vote of two in favor, one opposed, one abstention.]

CHAIR RODRIGUEZ:

So, the motion on the table is to post the "Guidelines on Material Changes in State Plans." Is there further discussion on the motion?

COMMISSIONER DAVIDSON:

Yes. Commissioner Hillman would you state what you would like to change in both of the documents, so we really understood that, you know, the sentence how you would change the language?

VICE-CHAIR HUNTER:

Are you talking to me?

COMMISSIONER DAVIDSON:

I'm sorry, Commissioner Hunter.

VICE-CHAIR HUNTER:

But in advance of that, I'd like to know if you'd accept as a friendly amendment to your motion, that you move to place both documents in the Federal Register and both for public comment.

COMMISSIONER DAVIDSON:

If we put the other one in the Federal Register or, you know, post it I think it has to be very, very clear that this is just an instructional portion of what we're posting with the guidelines themselves. I think there should be...

VICE-CHAIR HUNTER:

Okay.

COMMISSIONER DAVIDSON:

...wordage to make sure that's clear.

VICE-CHAIR HUNTER:

Okay.

COMMISSIONER HILLMAN:

If the concern is, that there isn't citation of the applicable circulars, I would say that we just footnote in the draft document, the sections of the circulars that apply to what has been proposed as policy.

VICE-CHAIR HUNTER:

That's fine with me.

CHAIR RODRIGUEZ:

So, the motion, if I could restate it, is to post the “Guidelines on Material Changes” as will be amended, with citations to the source for each of the changes.

COMMISSIONER DAVIDSON:

For each of the guidelines.

CHAIR RODRIGUEZ:

For each of the guidelines.

VICE-CHAIR HUNTER:

And a further motion, to revise the second statement -- the second sentence of the guidelines, which now reads, “These guidelines are based on the general Federal requirements for updating State plans contained in the Office of Management and Budget Circular A-102.” If we could amend that sentence to now read, “These guidelines are based on the general Federal requirements for updating State plans and” -- I should say, “These guidelines are based in part on the general Federal requirements for updating State plans contained in the Office of Management and Budget Circular A-102 and changes to post-award requirement/changes of the circular.”

COMMISSIONER HILLMAN:

But if we’re identifying the applicable sections through footnotes, I think we take care of that issue.

VICE-CHAIR HUNTER:

I actually, with respect, I don’t, because I think the guidelines aren’t just based on the Federal requirements for updating State plans. These guidelines are also based on general Federal requirements for changes to post-award requirements. So, as long as we add

that in there to that sentence, then I'm fine with it. That's the change I seek.

COMMISSIONER HILLMAN:

I would ask the General Counsel and Mr. Cortes for a little feedback here, as to what the implication would be of changing that. I mean that wasn't put in there in the first place. I would just ask what we're doing here.

COUNSEL HODGKINS:

I don't know that there's -- go ahead.

MR. CORTES:

If I could perhaps offer, to say these guidelines are based on the general Federal requirements contained in the Office of Management and Budget Circular A-102.

COMMISSIONER DAVIDSON:

And that would cover both?

COUNSEL HODGKINS:

And strike...

COMMISSIONER HILLMAN:

It just says A-102.

MR. CORTES:

It would essentially take out the phrase that says...

COUNSEL HODGKINS:

Strike for...

MR. CORTES:

..."for updating State plans."

VICE-CHAIR HUNTER:

What about just, "These guidelines are based on Office of Management and Budget Circular A-102"?

COMMISSIONER DAVIDSON:

I think that's what Gracia said.

VICE-CHAIR HUNTER:

It's a little different.

COMMISSIONER HILLMAN:

Madam Chair, could we maybe, I don't know what the technical Robert's Rule is, set this aside, so we can proceed with other items and give Commissioner Hunter some time to draft out? Because we're wordsmithing and we're writing as we're going along here and valuable time is slipping away here.

COUNSEL HODGKINS:

The parliamentary procedure would be to lay it on the table and then you can remove it from the table.

COMMISSIONER HILLMAN:

So it would be table it?

COUNSEL HODGKINS:

Uh-huh.

COMMISSIONER HILLMAN:

So we're tabling the motion? What's the...

COUNSEL HODGKINS:

It's the pleasure of the Commission as to what you want to do but...

COMMISSIONER HILLMAN:

No, what's the wording of the...

COUNSEL HODGKINS:

You would move to table the current motion.

COMMISSIONER HILLMAN:

Okay.

COUNSEL HODGKINS:

There would have to be a second and then vote to table.

COMMISSIONER HILLMAN:

Okay. Well, let me just get a sense. I mean I just think it's confusing for...

CHAIR RODRIGUEZ:

How long will it take?

VICE-CHAIR HUNTER:

Five minutes.

CHAIR RODRIGUEZ:

Okay. So why don't we take five minutes, because Mr. Cortes is the next person on the agenda. Why don't we just take the five minutes, or less, necessary to work collectively, on the language.

COMMISSIONER HILLMAN:

So then take a five-minute recess. Is that what we're going to do?

CHAIR RODRIGUEZ:

Unless, Madam General Counsel you want to start on the administrative regulations.

COUNSEL HODGKINS:

It's the pleasure of the Commission. I certainly can. I don't want to short Commissioner Hunter of the scintillating presentation that I'm going to make on that point.

VICE-CHAIR HUNTER:

Go for it.

COUNSEL HODGKINS:

All right.

CHAIR RODRIGUEZ:

Okay. So we need to vote -- someone -- if we want to table this motion, we need a motion.

COMMISSIONER DAVIDSON:

I move that we table the motion and let our Counsel go ahead and start in with the Freedom of Information, Government and Sunshine and Privacy Act requirements.

COMMISSIONER HILLMAN:

The motion is to table. I second the motion to table.

CHAIR RODRIGUEZ:

It's been moved and seconded to table the current motion to publish the guidance on State plans. All those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

All right, so we'll now go to the consideration of administrative regulations and give Mr. Cortes and Commissioner Hunter a few minutes.

Madam General Counsel.

COUNSEL HODGKINS:

Thank you, Madam Chair. I think I will piggyback on Commissioner Hillman's analogy of a rainbow after the storm in making this presentation.

As we all, probably painfully, recall, there was some criticism in the middle part of last year about whether or not this agency had

taken action to adopt administrative regulations under the Administrative Procedures Act, and this agency made a commitment to the House Administration Committee at a hearing on August 2nd that we would in fact adopt those. And it is my great pleasure to bring the first set of those regulations to you today.

Just so you'll get a sense of how this is going to go today and in the future, the Office of General Counsel will present administrative regulations to you for your adoption in a series of three different steps. The step that we are covering today are those administrative regulations that are required by law to have comments by the public. Now those include regulations under the Government and Sunshine Act, the Privacy Act and the Freedom of Information Act.

In a second set of recommendations, which we will bring to you at a later date, we will be providing you with a recommended set of regulations under a case called Touhy which essentially allows for third parties to request an expert witness or documents from the Federal government in a third party litigation. So if the government is not involved in the litigation and they want one of our employees or former employees to testify, this will dictate the terms by which they request that information or that testimony. There will also be a set of regulations on standards of conduct which covers general ethics requirements, conflicts of interest, financial disclosures and Hatch Act regulations. These will be primary references that we make to other regulations that are promulgated by the agencies that are responsible for administering those particular Acts. And the last in that set, the second set, would be

non-discrimination on the basis of handicapped. And that particular regulation has application across government, and I'm going to get some other non-discrimination things that are limited to application in our funding processes.

But it's critical to understand that these regulations that we are promulgating are for outside parties. It has nothing to do with our employees and how they make a complaint of discrimination. That is governed by internal rules and internal procedures on how they make those complaints.

The third set that you will be receiving will include regulations on non-discrimination on the basis of age, race, color, national origin and also regulations regarding grants. And we lumped all of those together because they all do apply to funding provisions whether it be requirements on contractors to the Federal government, requirements on grant recipients that are -- awards that are made by the Federal government. So that's why we sort of grouped these things the way they are.

So what you have in front of you today is the notice of proposed rulemaking that would be sent to the Federal Register to be posted. We have recommended that the agency post this notice of proposed rulemaking for 60 days. That is the longest period of time that is required by law for one of these Acts. The other two are 30 days, but rather than create a situation of confusion where we have one notice out for 30 days and one out for 60 days it's our recommendation that we consolidate and go with a single 60-day notice and request for comment.

The three Acts that are covered by these proposed regulations are the Government and Sunshine Act, the Privacy Act and the Freedom of Information Act. The Government and Sunshine Act, of course, governs the way in which a public body, a collegial body as yourselves, operates, establishes when a meeting occurs, how it's called, et cetera.

And let me take the time to point out at this juncture that Tamar Nedzar, who is with the Office of General Counsel, has been primarily responsible for this work, and while I am giving you the high points, if you have specific questions with regard to any of these regulations, I would certainly encourage you to ask and she may be in fact the person better capable of answering that particular question. But I did want to acknowledge, first of all, that she did most of the work on this and that she did an excellent job.

EXECUTIVE DIRECTOR WILKEY:

And that also, Madam Chair, today is her birthday.

VICE-CHAIR HUNTER:

Happy birthday.

CHAIR RODRIGUEZ:

Happy birthday.

MS. NEDZAR:

Thank you.

COUNSEL HODGKINS:

All of the regulations that you see before you track the regulations that other Federal government agencies have promulgated in the past and/or will promulgate in the future.

One thing that I would draw to your attention is that under the Freedom of Information Act there was an amendment to that Act passed in 2007, called the Open Government Act which changed the provisions of the Freedom of Information Act, particularly with regard to what constitutes a media outlet. And so, what we are doing is groundbreaking today, in that we will be the first Federal government agency to post regulations that encompass the Open Government Act changes to the Freedom of Information Act. So, in that respect we are breaking new ground and breaking new ground in a good way. We will, in fact, be the agency that other agencies will copy in the future.

So, with that I will say to you that I recommend that you certainly adopt these, direct the staff to have these draft regulations posted for a period of 60 days and that you direct us to consider the comments and bring back to you at a time that is appropriate the final proposed rules.

CHAIR RODRIGUEZ:

Thank you, Madam General Counsel. And so, we would actually be required to adopt them before we post them or...

COUNSEL HODGKINS:

Right now you will be directing staff to post in the Federal Register a notice of proposed rulemaking. So it does require an action of the Commission, in that this is a statement of the Commission of what it intends to do. Now that, of course, will not be a final document. That will be adopted by a later vote after we have obtained comments and considered those comments, presented them to you for your final adoption.

CHAIR RODRIGUEZ:

Okay, thank you very much. Thank you, Tamar. Are there any questions regarding the proposed regulations or the process? Commissioner Davidson.

COMMISSIONER DAVIDSON:

Well, first of all, as you can tell by the size of this document you've done a lot of work and I want to thank you. It gets us moving on what really Congress has asked us to do, and I appreciate your hard work on it very much so.

Right now I don't have questions, but I just wanted to make that statement and thank you very much. I will let others ask questions as they see fit.

CHAIR RODRIGUEZ:

Thank you, Commissioner Davidson. Any further comments?

COMMISSIONER HILLMAN:

I do have a question. The open meeting section of this pertains to Commission meetings. Do we have to do a set of these -- are these regulations or rules?

MS. NEDZAR:

Regulations.

COMMISSIONER HILLMAN:

Regulations. Do we have to do a set of regs with respect to the open meeting applications to our Advisory and Standards Board?

MS. NEDZAR:

No, there are existing FACA regulations that apply government wide. So we don't have to adopt our own.

COMMISSIONER HILLMAN:

I mean I'm just learning that even when there is something existing that we have to follow, that we're supposed to adopt it as our own and codify it. Do we have to do it with -- no?

MS. NEDZAR:

The FACA regulations apply by their terms to each Federal agency, so we do not need to adopt them.

COMMISSIONER HILLMAN:

We don't? Okay.

CHAIR RODRIGUEZ:

Vice-Chair Hunter.

VICE-CHAIR HUNTER:

Just to echo everybody else's comments, thank you to both of you for your hard work on this. It's good to see this come to fruition.

And I move that the Commission vote to post the administrative in the Federal Register for a 60-day public comment period.

COMMISSIONER HILLMAN:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to post the regulations in the Federal Register for public comment. Is there any discussion on the motion? All those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Very good, then, the real work begins. Thank you.

VICE-CHAIR HUNTER:

Thank you. Happy birthday.

CHAIR RODRIGUEZ:

Way to celebrate.

Okay, so Vice-Chair Hunter, do you have some language for us?

VICE-CHAIR HUNTER:

Yes. I move to take the proposal to submit “Guidelines on HAVA Sections 254(a)(11)” off of the table. Is that the right way of doing it?

COUNSEL HODGKINS:

Uh-huh.

COMMISSIONER HILLMAN:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to take off the table the tabled motion. All those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Vice-Chair Hunter.

VICE-CHAIR HUNTER:

So, I think this is actually simpler than I originally thought. And I think we can do this by adding three or four words. And I'll first read you the words that I'd like to add and then I'll read the sentence in full. The words that I propose to add are “and post-award changes.” So, now I'll read the full sentence. Second

sentence of the guidelines, as proposed would read, "These guidelines are based on the general Federal requirements for updating State plans and post-award changes contained in Office of Management and Budget Circulars A-102."

CHAIR RODRIGUEZ:

Circular A-102.

VICE-CHAIR HUNTER:

I'm sorry. "Budget Circular A-102." And then, at the end of that sentence to provide the citations to both sections. So it would read, "See 41 CFR Section 105.71.111 and Section 105-71.130." And then as, I think we agreed to earlier, provide the citation for each of the I believe it's five -- yes, five examples of where a State would need to amend their State plan in the body of the guidelines.

COMMISSIONER HILLMAN:

Are you moving that as an amendment?

VICE-CHAIR HUNTER:

Yes.

COMMISSIONER HILLMAN:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to amend, as delineated by Vice-Chair Hunter, the "Guidelines on Material Changes for State Plans" and to post in the Federal Register for public comment for a period of 30 days.

Discussion on the motion. All those in favor -- we're just voting on the amendment?

COUNSEL HODGKINS:

That's right.

CHAIR RODRIGUEZ:

Okay, we're just voting on the amendment. All those in favor -- unless discussion on the motion, all those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Okay, and now we need a motion to publish as amended.

COMMISSIONER HILLMAN:

The motion is on the table already. We just need to vote on it.

COMMISSIONER DAVIDSON:

I made it.

CHAIR RODRIGUEZ:

That's right. Okay, are we ready to vote on the original motion...

COUNSEL HODGKINS:

As amended.

CHAIR RODRIGUEZ:

...to publish the amended guidelines? All those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Very good, thank you. Mr. Cortes and all Commissioners, subcommittee, General Counsel, thank you all.

Okay, Mr. Cortes the HAVA State spending report to Congress, you're going to brief us on that?

MR. CORTES:

Yes. I'm going to brief you today on our progress, so far, in preparing that report. And we did...

CHAIR RODRIGUEZ:

And this is tab eight?

MR. CORTES:

I'm not sure. I don't have the binder in front of me.

COMMISSIONER DAVIDSON:

Yes.

CHAIR RODRIGUEZ:

Tab number eight, thank you.

MR. CORTES:

Okay. And basically I'm going to give you an update as to how -- the process we've done to get the information that will be contained in the report. The report will be ready for release next month, and I would encourage the Commissioners to add it to the agenda for next month's public meeting as it will be ready.

CHAIR RODRIGUEZ:

July 21st.

MR. CORTES:

Yes.

CHAIR RODRIGUEZ:

Okay.

MR. CORTES:

And essentially, the EAC is responsible for dispersing and monitoring the funds under Sections 101, 102 and 251 of HAVA. And one of the way that we monitor the use of the funds is by

reviewing the reports that are submitted by States on an annual basis regarding their use of these funds.

To ensure that all the States are treated fairly and equitably in the review process, we have previously established a uniform review process for the State reports. It's a three-phased process, which is laid out in this document, which essentially consists of us doing a preliminary review to make sure that all the reports have been filed on a timely basis and to look at some of the top level data to see if there is any questions there. Then it continues on with a comprehensive review where we compare the reports to previous years' reports and we look closely at the narrative that's been included to look at how the funding has actually been spent and to see if there are any questions that we have. The final phase is the EAC production of a report to Congress on the spending of funds, a report to Commissioners on potential compliance problems in the States, and also the creation of reporting tips and any other assistance to States on reporting that's available on our website.

And I will caveat this by the fact that the information in this report is current as of the 16th. The written document that is before you is as of the 16th. I'm going to mention one small change that's happened between now and then. We'll get an updated report to you all. Basically this covers -- the Section 101 and Section 102 reports covers calendar year 2007. And the reports for Section 251 funds cover the Federal fiscal year 2007 which would be October 1, 2006, to September 30, 2007.

We indicate here a number of letters that have been sent through phases one and two to States regarding issues that we

encounter with their reports. We have here also the number of amended reports pending and States that have not yet submitted reports.

In total we sent 115 letters out during this year's review process, 29 letters regarding Section 101 reports, ten letters regarding Section 102 reports and 43 letters regarding Section 251 reports. We also sent out 18 general information letters which were letters that did not require States to amend the report, providing them information in terms of record keeping or issues that we identified in their letter but that required no action from the States, and also any compliance issues that we found that we had questions about and required further information but unrelated to their actual reports. Then we had 15 non-filer letters, which were at the time, States that had not filed an initial report with the EAC.

We are currently awaiting six amended reports. The report here says five, but we have -- since I issued this New Jersey has submitted their Section 251 report and we now have reviewed it and have some corrections that they need to make to it and are working with them to get an amended report. We expect to have all the amended reports in by this Friday. We have been in contact with all the States that still have amended reports. Everybody is working on them.

I will say that our new staff, Julie Ruder and Julianna Milhofer, have done an excellent job working with the States, and I'll get to that in a second.

So, we have six amended reports that we should have in by the end of the week. And then we have two States that have not

yet submitted reports. Those would be Guam and New Hampshire. And they have not submitted Section 101 or Section 251 reports. Neither State received Section 102 funds.

Next is a summary of our reporting issues. Now, this is kind of initially -- we're going to look at these in detail and this will be where we get some of the reporting tips and assistance to the States that we'll provide later on before next year's reports are due. We've had several issues regarding the State five percent match. Many states did not report either -- how much they had appropriated for their State match or the amount of interest earned on the State match. We also identified in this year's report a number of concerns regarding the proper appropriation and deposit of the State match into the State election funds. In terms of interest, we identified there was a failure to report how much interest they've earned cumulatively and during the reporting period and also a failure to add that to the amount of total Federal funds authorized. We think that will be an easy issue to resolve for next year with some additional guidance to the States.

In terms of recipient outlays, there's a failure to report expenditures towards their five percent match. In other words, they've appropriated it but they're not indicating to us that they've actually spent the State match and we were able to, after contacting the States, get them to fix that in a lot of instances.

And the other issue was that some States had been reporting their Maintenance of Effort expenditures as recipient outlays which essentially inflated the amount that they showed for State match spending.

This year we identified some program income issues and I'll remind the Commissioners there was an advisory that was issued last year regarding program income, and so we still are getting some issues worked out with the States as to how to properly report that. We've been working everybody and they are seeming to catch on.

As I mentioned, our new staff has allowed us to carry out the fastest and most thorough review of the State reports to date. We had a very quick turnaround. The 101 and 102 reports were submitted -- were supposed to have been submitted by the end of February and the Section 251 reports were supposed to have been submitted by the end of March. And we've not only reviewed those but we've also sent out those 115 letters, had a back and forth with the States and worked with everybody to get amended reports in.

This year we also saw the biggest improvement in the timely submission of reports by the States and also the accuracy of the reports. And so I think that our process that we started really in earnest last year with a lot of the materials we put up on our website regarding reporting has paid off for us, and we hope to continue and add to that in the future to make sure that States have the proper guidance out there to fill out these reports. Most of the States have been receptive to our requests for additional information and have worked with us to get us the information in a timely fashion.

And so, like I said, the report will be ready for release next month and we hope to be able to present detailed numbers about spending at next month's public meeting.

CHAIR RODRIGUEZ:

Very good. Are there any questions? Commissioner Davidson?

COMMISSIONER DAVIDSON:

Not a question but, you know, a statement that you made that we have gotten a lot better in the timeliness of the report and of the accuracy of the reports from the States. If my memory serves me correct, this is half the amount that we had last year, if not more.

MR. CORTES:

The number of letters may be close to the same, but the issues were certainly not as severe as they were in the past. And they've been resolved much quicker. Some of the issues, I would say, were mainly due to the fact that there was a lot of turnover in the States between last year and this year, and so, there were a lot of new people dealing with the reports that weren't quite sure how to report certain things. But the accuracy overall -- I would say the majority of letters that went out were more minor reporting issues than major ones.

COMMISSIONER DAVIDSON:

I guess what I was trying to say is, a lot of the States had a problem in every one of the funding, you know, the 251 funds, the 101 and 102.

MR. CORTES:

Yes.

COMMISSIONER DAVIDSON:

So that would mean three letters going out.

MR. CORTES:

Yes.

COMMISSIONER DAVIDSON:

And that was -- they really have improved a great deal.

MR. CORTES:

Uh-huh.

CHAIR RODRIGUEZ:

Very good. Any further questions or comments, discussion?

COMMISSIONER HILLMAN:

I do have a question. On the second page of your report, when you talk about letters sent, so did a separate letter go -- if a State had to get a letter on 101, 102 and 251, did they receive three separate letters?

MR. CORTES:

Yes, they did.

COMMISSIONER HILLMAN:

Okay. So, this 115 is out of a possible total of 165? 55 times three.

MR. CORTES:

Well...

COMMISSIONER HILLMAN:

101...

MR. CORTES:

...it's out of 140 because only 30 States received...

COMMISSIONER HILLMAN:

Oh, the 102. Okay.

MR. CORTES:

...102 funding.

COMMISSIONER HILLMAN:

Okay. And so, my other question is, of the States that have not yet submitted reports, Guam and New Hampshire, is that just for this last reporting cycle? Or are there some delinquent reports from previous reporting cycles in here?

MR. CORTES:

There are some delinquent reports from previous reporting cycles.

COMMISSIONER HILLMAN:

For both Guam and New Hampshire?

MR. CORTES:

Yes.

COMMISSIONER HILLMAN:

I see. And maybe for the General Counsel, maybe for Mr. Cortes.

So, this is the third reporting cycle. Am I correct in that? They would have had 2005, maybe 2004?

MR. CORTES:

It depends what the funding is for.

COMMISSIONER HILLMAN:

Four, five, six, seven.

MR. CORTES:

Section 101 funds, the first report would have been due in January of '04.

COMMISSIONER HILLMAN:

Okay. So, this would be the third or fourth reporting cycle, depending on which section. Okay.

So what, if any, responsibility -- what can EAC do if we have entities that have received HAVA dollars and just haven't reported on what they're doing with those HAVA dollars?

MR. CORTES:

We've actually begun to have some internal discussions about that. I think there's several options that we have at our disposal. The first one is we have been working -- with Guam we've not received a response yet to any of our letters. New Hampshire, I will say, did respond but essentially told us that they believe that we lacked the authority to require them to submit financial reports on their spending.

I think our options, regarding on how to proceed, are several. We could, number one, conduct a site visit. And that's where basically the program staff, which are the folks in my division, somebody would go out to the State to take a look and meet with the State and -- it's kind of like a mini-audit but it would be a site visit, but it would be on the programmatic side to look at and try and figure out what they're doing and work with them on the reports. Now we have done some site visits already this year with States that have needed help with reports and we couldn't coordinate or there have been questions about spending. We've gone out to kind of look at their books and take a look.

The other option that we have is, that we could refer the matter to the Office of Inspector General and request that there be a full-blown audit conducted of the State to try to figure out how the funds have been spent so far.

COMMISSIONER HILLMAN:

Thank you. Madam Chair and Commissioners, I just think it's going to be important for EAC to not just appear to be closing its eyes to the fact that we've got two entities that just have not reported to us.

I don't know what the total is, but it's millions of taxpayer dollars that we can't report on because we have no information. And if there are extenuating -- I heard what you said about New Hampshire. If Guam has extenuating circumstances and needs some assistance, they ought not be shy about indicating what that is. And in the case of New Hampshire, well, one can interpret HAVA as ones interprets HAVA.

CHAIR RODRIGUEZ:

Are either of them scheduled for audits?

MR. CORTES:

No, they're not. They're both minimally funded States and the Inspector General has not, as far as I know, scheduled them for a regular audit yet.

CHAIR RODRIGUEZ:

Commissioner Davidson.

COMMISSIONER DAVIDSON:

My question is, with the question of whether they have to follow, we have the authority to have them file, whatever the word we want to use, has the Attorney's Office -- General Counsel looked at that, Madam Counselor? I mean I think...

COUNSEL HODGKINS:

Well, I think that -- I have not rendered a specific opinion, as I have not been asked a specific question. The language that New Hampshire is relying upon, is in Section 258 of the Help America Vote Act that says, "Not later than six months after the end of each fiscal year for which a State received a requirements payment under this part, the State shall submit a report to the Commission

on the activities conducted with the funds provided during the year and shall include in the report," and then it lists out several things. I think that their reading of that section would be that they only have to file a report in a year in which they received a requirements payment. Now I don't know that they've actually even reported in each year that they received a requirements payment. So...

MR. CORTES:

They have submitted one report. They received other funding where they did file one report for that.

COMMISSIONER HILLMAN:

I'm not hearing you. Please...

MR. CORTES:

They did file one report...

COMMISSIONER HILLMAN:

For...

MR. CORTES:

I would have to go back...

COMMISSIONER HILLMAN:

...for 101 or 251?

MR. CORTES:

...and look for 251. I can go back and look what the last reports were that we received from them.

COMMISSIONER HILLMAN:

Okay, thank you.

COUNSEL HODGKINS:

But I think it's important to remember, as we have discussed in the past, that HAVA is not the only law that requires the U.S. Election

Assistance Commission to monitor and assure that States are appropriately using Federal funds. I will be happy to brief this issue for you all. I feel confident that we can require reporting on a regular basis, but I will be happy to provide you with that information.

CHAIR RODRIGUEZ:

Commissioner Hillman, I agree with your concern. And this is the type of thing, Mr. Cortes, that we would mention in our report to Congress? If we decide to refer the matter to the Inspector General, could be the type of thing either in a cover letter or even in the report itself that we would mention, isn't it?

MR. CORTES:

Yes, if it's done before the report is released. And we did indicate in last year's report that New Hampshire had not filed the report, you know. We indicated for those States that hadn't filed last year. As of the time we released the report which States had not filed, but we could highlight it more in the report.

And certainly, if the matter is referred to the Office of Inspector General and they do conduct an audit, his audit report would be public as would our resolution of it. And it would also be included in the Office of Inspector General's semi-annual report which goes directly to Congress.

CHAIR RODRIGUEZ:

Have we spoken with either State about this matter? Do they take our calls?

MR. CORTES:

New Hampshire wrote back. We've not responded to the -- they sent an email in response to our letter, which basically said they didn't think we had the authority to do it, they would probably submit a report at some point, they did not give a date, they have not submitted. We've not responded to that. I forwarded it to the Executive Director. And that's why I said we've had some initial discussions as to what approach would be the best one to take, so that we could recommend to the Commissioners what next steps to take.

As for Guam, we've not had any luck in reaching them. We've, not only for this matter, but we've historically had problems getting a hold of Guam. There's issues in terms of the time. They're out in the Pacific and the time when their offices are open and our offices are open, in terms of mail service to them. There's been a lot of issues in the past, but we have been making every effort to get in contact with them. We have sent not only letters but we've attempted calls during times where we believe their offices would be open and we've also sent emails to the last contacts that we had in that office. So, we're making every possible attempt to contact them to figure out what the issue is with their non-submittal of the reports.

CHAIR RODRIGUEZ:

Mr. Wilkey?

EXECUTIVE DIRECTOR WILKEY:

Yes, Madam Chair. Just to, as a matter of record, I personally called the secretary's office in New Hampshire on a couple of occasions during the last reporting cycle. You know, we certainly

do not want anybody embarrassed if there was any miscommunication or they did not understand what we were seeking. But unfortunately that call was not returned.

CHAIR RODRIGUEZ:

Okay. Any further discussion? So for the July 21st agenda you will have submitted the final report?

MR. CORTES:

Yes. It may be ready before then for Commission action, and since it goes to Congress, if the Commissioners choose to do a tally vote before that time and then report on the actual report. But we can provide you a date when it will be ready for you to consider.

CHAIR RODRIGUEZ:

All right.

MR. CORTES:

But it will be next month.

CHAIR RODRIGUEZ:

Thank you. Now the NVRA form and requests.

COMMISSIONER HILLMAN:

I have a question for Mr. Cortes before we switch subjects.

It is my understanding that in New Jersey, they were transferring responsibility for elections from the Attorney General's Office to the Secretary of State. Has that transfer been completed? Is it now the Secretary of State in New Jersey who is...

MR. CORTES:

It is. And that was one of the reasons we -- like I said, we just received their 251 report. And one of the reasons with the communications issue in New Jersey was that there was a change

in office as to who was responsible for implementing HAVA and for filing these reports. But we are in contact with the Secretary of State's Office. They do have a HAVA coordinator that they put in place and we've been working with them to make sure that, you know, their reports get not only filed but that we get back to them to make any amendments that are required before we release the report to Congress.

COMMISSIONER HILLMAN:

Thank you.

CHAIR RODRIGUEZ:

We are now ready for the NVRA presentation. Mr. Cortes.

MR. CORTES:

Thank you. There are currently three requests for changes to the State-specific instructions of the National Mail Voter Registration Form. They've been officially submitted to the EAC. The Chair has requested that I provide additional information regarding these requests for today's meeting.

The three States that have submitted requests were Maryland, Louisiana and Michigan. Michigan I provided a briefing on at a previous public meeting. We're still awaiting additional information from Louisiana and Michigan in order to be able to provide a recommendation regarding their requests. So I would recommend that the Louisiana and Michigan requests be moved to next month's public meeting agenda and hopefully that will provide the States sufficient time to provide us the information that we've requested. Louisiana I think we're very close. I had a conversation with them this morning. I think we clarified the mix-up and we

should have that probably in the next -- probably sometime the middle of next week.

And so, what I'm going to present today, is, in detail, the request from Maryland and our recommendation for action. Essentially, Maryland's request is similar to one that the Commission considered not too long ago from Rhode Island and it has to do with their voter eligibility requirements regarding felony status. Currently the State instructions indicate that you -- it says, "To register in Maryland you must: not have been convicted more than once of a crime of violence, not have been convicted of an infamous crime, number one, unless you have been pardoned, or have you have the court-imposed sentence for the first conviction, or at least three years have passed since you've completed the court-imposed sentence for your second or later conviction. Infamous crime, under this, means any felony or other crime involving element of deceit, fraud or corruption. And court-imposed sentence includes probation, parole, community service, restitutions and fines."

They had a change in their State law and they have requested us to change that last portion to now read, "To register in Maryland you must not have been convicted of a felony, or if you have you have completed serving a court-ordered sentence of imprisonment, including any term of parole or probation for the conviction." And the specific language contained in this memo.

As we've discussed previously, the Constitution grants States authority to set their respective voter eligibility requirements. The NVRA requires that the EAC specify each State's voter

eligibility requirements on the Federal form. Therefore, we recommend that the Commissioners approve this change to Maryland's voter eligibility requirements in the State instructions of the Federal form.

CHAIR RODRIGUEZ:

Okay. Are there any questions for Mr. Cortes? Is there a motion to adopt the Maryland change to the form -- to the State instructions?

COMMISSIONER DAVIDSON:

I so move that we approve the change in the instructions for Maryland of their State instructions for Maryland.

COMMISSIONER HILLMAN:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to adopt the Maryland State-specific instruction. Discussion on the motion? All those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Very good. I just want a sense of the Commission. If we get the Louisiana and Michigan requests shortly, would that be something that you would want to consider in a tally vote?

COMMISSIONER HILLMAN:

I have to admit, it depends on what they come back with. Given the nature of Michigan's request, I would like more information. So, you know, if they get back tomorrow I certainly would consider it,

providing we have some way to post on the website and let people know what it is the Commission is going to be considering.

CHAIR RODRIGUEZ:

Okay, thank you. I know we are trying to get these done.

Okay. Next on the agenda, Commissioner Hillman.

Consideration and vote of proposed replacement advisory opinion 07-003-B regarding Maintenance of Effort.

COMMISSIONER HILLMAN:

Okay, so it seems a little odd to bring this up now, considering the lengthy discussion and action we took earlier under old business. But let me just say, that my purpose for proposing the policy was to try to move the advisory along, to respond to what I heard were two things. When we had with the meeting with OMB officials, and it was, again, sort of stated by the CRS in the opinion it provided to Congressman Gonzalez, that when a unit of local government receives HAVA funds, that the Maintenance of Effort would follow. And what I recalled that the Office of Management and Budget said was that, unless the law specifically says that the local units are not included, the presumption is that the Maintenance of Effort follows the dollars. If there's a situation where there are 20 counties and only ten received HAVA dollars, then the intention that I had put forward was, only those ten counties would be subjected to the Maintenance of Effort requirement.

Secondly, it was clear that we were going to take far longer to come to any agreement with respect to definition of "State," and I really felt that on the one issue of the Maintenance of Effort following the dollars to the local units that we could provide

guidance to the States on that issue. With respect to how the State did the formula for its Maintenance of Effort, my draft replacement advisory would leave that to the States' determination; that EAC would not be saying that the State must do it. Many States have done it and that that would certainly be their discretion.

And I understand that there is some push-back that the advisory should not be acted on unless "A," it defines State; and, "B" we resolve the issue of the circular. I happen to be of a different opinion. I happen to be of the opinion that, I think that this Commission has received sufficient information to be able to make a clear decision on when MOE applies to units of local government.

I did, at our last meeting, urge that we move forward with a working group with State election officials, so that we could have an open discussion, an airing of this with a request that that group, the activities of that working group would be reported back to us at this meeting, and that we could also have the discussion with people at the National Association of State Election Directors' meeting next week. That has not happened, so time has gone by.

I received conflicting comments as to whether the State election officials did or did not want to engage a working group. I was assured this week during the Board of Advisors meeting that, in fact, the State election officials not only would welcome a working group, but that they would be ready to provide names of individuals who could participate on the working group on the MOE issue and that they were surprised that EAC would give further consideration to the MOE issue without following through on a working group. So, you know, that is the response that I had

initially believed would come from the State election directors and it did come. But we are now in a posture where the NASED meeting is next week, we don't have a working group formed, and so we are no further along in that issue.

The issue of the working group on the MOE is separate and apart from a discussion we will be having in a couple of minutes about EAC establishing a joint Federal/State task force to deal with certain issues concerning HAVA spending. At this point, I am not withdrawing my recommendation from consideration. I will, however, ask that it not be voted on today because I do think that we could benefit from a well devised working group between EAC staff and members of the State election community, whether it's Secretaries of State, State election director, commissioners, I don't know who those individuals would be, so that we could at least identify for me two things. Clarity on the issue of MOE following HAVA dollars to local units of government. Secondly, the issue of documentation of that. The push-back that I have heard directly, is less on whether MOE follows the dollars to the local units of government that receives and spends it, as to how that is documented. And in my proposed replacement advisory, I had said that's the States' responsibility, but that the documentation has to be there so that EAC can openly report how the dollars are being met and that the intent of MOE in HAVA is not being ignored or otherwise not being followed.

The other issue is for those States that didn't have an MOE requirement following its sub-grants to units of local government, how they would be able to resolve that in this day going backwards

is what I described that as what has already happened versus clarity of documentation requirements this day going forward. And I know some States are still walking and reeling from the audits that they have gone through, always having said that the auditors are polite and thorough and, you know, they've been given all due consideration. But I understand the first time you go through a Federal audit, when you're at the State or local level, it can be a bit overwhelming. And I think some of the jurisdictions are really nervous about what's going to happen if the MOE requirement is retroactive and then they've already been through their audit. Will they have to go through it again? What is the data...? Okay. I think those are the things that we need to talk out. Otherwise we're going to be making decisions based on individual conversations, written responses posted in response to draft policy statements that are posted. And, you know, once people are in a room and talking it out things begin to get clearer.

So, I am hoping and I am asking for a nicely scripted timeline and plan as to how we're going to get from where we are today, three months later on this issue to where we need to be very, very soon. And as far as I can tell, we don't have a plan. All we do is put it back on the agenda and revisit it again, and that's not helping. The tension with the States isn't easing, although they're a little bit distracted now by certification of voting system. So the MOE doesn't seem to be because they're not being pushed on audits. But we need a plan of action. We need a tightly scripted plan of action how are we going to get from A to Z as soon as possible. And I don't know who does that, but it's pretty clear to me we need

that. If we have this discussion again, in July, with nothing else having happened between now and July, it will be most unfortunate.

So that's all I have to say on that for now.

CHAIR RODRIGUEZ:

Okay. So it looks like you rolled in the last item on the agenda into...

COMMISSIONER HILLMAN:

No, not really. That's a separate -- no, no.

CHAIR RODRIGUEZ:

Separate. So you do have a draft policy for this working group? Or is this a different working group?

COMMISSIONER HILLMAN:

No, I'm just making a report on that. I'm only talking about my proposed replacement advisory opinion, and what I'm saying is, I'm not asking the Commission to vote on it. It would be fruitless, I think, given the discussion and action we took earlier in this meeting.

I am saying that the issue of a working group has just been left hanging there and a month has gone by, and so, we've yet had another meeting to discuss MOE and nothing has come out of it except that we need more time. And so, what I'm asking for is a working plan -- more time to -- what are we going to do between now and the next time this issue comes up at a public meeting? And is it going to get us any further along than where we are now? Some things can be resolved by taking no action, some things can be. I don't know if this is one of them. I doubt it. So I would really

encourage us to not let a lot more time because if we don't have a conclusion on this in July, it means we would be in September. And I'm sure this is not the kind of issue we would want to take a tally vote on.

CHAIR RODRIGUEZ:

I agree with that. So you're not moving your proposed replacement advisory opinion?

COMMISSIONER HILLMAN:

No I am not, but I am saying that I am not taking it off the table.

CHAIR RODRIGUEZ:

Okay.

COMMISSIONER HILLMAN:

I am just reserving my right to keep the issue alive until I get some sense of how we are going to make progress toward resolving where we are now.

CHAIR RODRIGUEZ:

All right. Is there any discussion on Commissioner Hillman's statement? Commissioner Davidson.

COMMISSIONER DAVIDSON:

Well, we do go to the NASED meeting and surely we ought to be able to, while we're there, to discuss a plan and timeframe and find out who is going to be on the committee. And I imagine that there will be Secretaries of State that may want to be added. Obviously, we don't want a huge committee because it's always very difficult.

But there we could really set some timeframes, a plan in place, talking it over at least with Mr. Wilkey, our Executive Director, so that we're not taking any action on something at a time when it's

not a meeting. So I think it would give him some direction that we would like to see a plan come out of that meeting, and we could even start with currently, with that currently with the Chair of NASED. A suggestion, and please feel free to add to that.

CHAIR RODRIGUEZ:

I had some discussions yesterday and the day before, also, with various folks at the Advisory Board and I think that what we heard in our earlier discussion from just about everybody who participated, was that the EAC has to make, and again, just from Commissioner Hillman, we have to make some decisions. It seemed to me, at least from the two conversations I had, that there was more interest in talking about how the States demonstrate that they're not supplanting funds and less about the actual language of the Commission's policy on MOE. My sense was that they figured that was our job and what they really wanted to get to, was the issue of demonstrating that they're not supplanting.

So we can -- I thought the last item on the agenda was the policy to establish the group which would...

COMMISSIONER HILLMAN:

It is.

CHAIR RODRIGUEZ:

Okay.

COMMISSIONER HILLMAN:

...but this would take 60 days. That's why I urged us to do a working group that we could put together on this issue. I understand that the EAC has to make the decision with respect to the policy. I personally believe we had all the information we

needed to make at the last meeting. I believe we have the information we need to pass a good policy at the current meeting. I received no feedback from the three of you with respect to what I had proposed, although Commissioner Hunter and I did talk and we -- it appeared that the issue of defining State was a major sticking point, with respect to her being able to consider even proposing amendments to the document, because I was -- I see that defining State is going to take awhile. And I tested every way I knew to see if what I recommended in my replacement advisory, could at least get the conversation moving without then taking the definition of State. I admit I was capitulating and saying with this particular issue, the States can determine the formula when they talk about the State MOE, but when they sub-grant HAVA dollars to the counties, MOE requirement follows the county. I wasn't getting into, do counties have to develop State plans. I don't see how a county can develop a State plan. I don't see anything in HAVA that talks about county plans. If a State wants to require a county to develop a plan as a condition of the receipt of the HAVA dollars, that's between the State and the county. Everything in my proposed advisory suggests it is the State's responsibility to ascertain how the counties will document MOE, but that that documentation has to be there. What the State of Washington said to me is, "Well we're telling you they're doing it." And I said, that's very nice but, you know, anybody can tell me anything. And that is not disparaging to anybody with respect to their feeling, yes, well we take the county's word for it. And an audit -- you know, I wish if IRS would ever audit me my word would be good enough, but I'm

sure it wouldn't be. So, at some point, the States understand that. And I was hoping we could parse those two things out.

But for the benefit of Commissioners who need more information from or reassurance from the State or however we get to being able to say, "Here are the issues we need to move forward on now" and have the States say, "These are the issues we want to work out," those are implementation issues. If there's anything in those issues that would cause people heartburn against a policy that we would pass, you know, then we could say, "Okay, now let's go back and look at the policy." But without that conversation -- quite frankly, it's been a lobbying effort that's been going on, you know. And even -- legislative bodies carve out some folks who go off in the corner to staff and hammer out the issues and come back and the lobbyists do what they're going to do. We'll we've been lobbied on this issue but that hasn't been a conversation. I've had conversations. Each one of us has had conversations. We had not had EAC staff collective conversation, to really be able to get at what the issues are and which of those issues affect the advisory that we need to take final action on.

So, ideally, if we already had this task force, the working group would come out of the task force and that's what I was going to talk about. But we don't have the task force and I'm not recommending we wait 60 days. I was really recommending that we move expeditiously on having a conversation with the people who are most angst about the MOE documentation. And I agree with you, Madam Chair, that everything I've heard is it's less about the policy than it is about the documentation both this day going

forward, this day being from when we pass the policy going forward, and this day going backwards, yesterday going backwards which means, how do we do the documentation when the counties weren't prepared to do that. What are acceptable forms of documentation for that? So...

CHAIR RODRIGUEZ:

Vice-Chair Hunter wants to be recognized. But I'll just say, I requested an opinion from OMB that I still need, and I know we had a conversation with them, and the good news is, checking on the status of the opinion, that they found it yesterday. So, that's the good news. I'm hoping -- in fact I may -- in fact, I will resubmit it with a deadline this time, which worked with GAO, and I should have done it with OMB.

Vice-Chair Hunter.

VICE-CHAIR HUNTER:

Commissioner Hillman referenced she and I did have a very useful conversation, I thought, about her proposal. And I was hoping that we could come up with some kind of agreement and compromise on it, and unfortunately that didn't work out. And it's true that one of the things that I was concerned about, is our previous advisory, the one in September of 2007 states that the counties have a responsibility under HAVA, to have a Maintenance of Effort requirement. And so, for me, it was really important to close that loop and then say in the new advisory that our determination is that HAVA doesn't require that. And I understand Commissioner Hillman's arguments and I totally understand where she's coming from, but for me that was not something that I was willing to sign off

on, because it left it too open. And what if a completely new Commission, you know, sometime next year, decides to say, "Well, no, in fact it doesn't require or it does require it"? I mean it's something that could then later, be changed. And also, without defining it, we have no way of knowing what the Inspector General - - that would give him the authority to make his own determination which, you know, is fine, except that we don't know what that would be and he may have a completely different determination and go out and audit to that finding. So, for me, it wasn't something I was willing to sign off on unless it definitively stated that HAVA doesn't require counties to maintain the effort. And, of course, I've always been in favor of saying, if States want to require their counties to have a Maintenance of Effort that's a completely different matter and of course that's permissible and I think it should be encouraged if States so choose. But what we're talking about is the requirement of HAVA.

And the second point I'd like to make is, I'm all for working groups and I think talking with people is always useful. My only concern with having a working group, and I'm not going to be opposed to a working group, but I was sort of imaging, sitting down with a group of election officials or whoever it is and the question is, what is our charge here today? If there's a vote of the Commission that OMB Circular A-102 applies, then that's a completely different conversation than if we make a determination that OMB Circular A-102 doesn't apply in this regard. So, it would seem to me, more efficient to make that decision on the front end and then talk to

States about the ways they document and the way they do the sort of things that Commissioner Hillman was talking about.

COMMISSIONER HILLMAN:

And for me, Commissioner Hunter, it would be instructive to me in considering the applicability of the circular, to know what the issues are. I don't mean the inflammatory, rhetorical issues about EAC has no authority. I mean, you know, let's blow past the smoke and get to the issues. What are the issues that the State are confronted with? And to what extent does the 102 circular, whichever circulars we're talking about, directly address those concerns or not?

Because some of the concerns, now I think, are out of perspective, and I always find it useful when people are coming from different places to be able to have -- and I personally don't feel that the Commissioners should be at the table having that discussion, so we aren't blowing past any Sunshine laws unless we want to, you know, notice the meeting and have the working group in an open meeting -- but to be able to clarify what the issues are. And it's the documentation issues. It's really not the, does EAC have the authority or not. It is the clarification issues. It's not even what HAVA says or doesn't say. I just don't see how I could have a good debate about the circular without having the benefit of information as to what is the angst? What is the real issue here? And I don't know what that is.

CHAIR RODRIGUEZ:

Okay. So Commissioner Hillman do you want this to be placed on the agenda next month?

COMMISSIONER HILLMAN:

Yes, I think that would be good.

CHAIR RODRIGUEZ:

And I -- depending on when we hear from OMB -- well I won't say anymore.

Okay, next agenda item consideration of draft policy for notice and public comment.

COMMISSIONER HILLMAN:

Right.

CHAIR RODRIGUEZ:

Commissioner Hillman.

COMMISSIONER HILLMAN:

I'm just going to step back this way because I always find it hard to -- I'm sort of talking over my -- but I want to make sure.

Unfortunately, and I apologize for this, that your briefing book initially had the first draft. The draft that's being posted for consideration is the one that just simply has draft watermark. It doesn't have the draft with a date on it, and I think you all have the correct copy now.

I just need three or four minutes to put this in context because I've got some developing information to share with you and it will make more sense with context.

The purpose of this policy, which is called "Notice and Public Comment Policy" is because EAC wants to have a process and some, my mind just went blank on the word, to know that we're all following the same procedures when it comes to posting for public comment proposed policies. And it is to cover all items that are not otherwise regulated by the Administrative Procedures Act, the Help

America Vote Act, the National Voter Registration Act or any other Federal law or regulation that dictates how and when a proposed public policy must be posted for public comment.

I think the discussion we had a little while ago, about the administrative regulations, is a good example. There is -- is it the APA?

COUNSEL HODGKINS:

Uh-huh.

COMMISSIONER HILLMAN:

The Administrative Procedure Act makes it very clear the process we have to go through to post how many times, period of time and so on and so forth. So what this policy is meant to do, is to mirror those requirements and say, "On all of its policies EAC wants to do that." And we have been doing that, but sometimes it's been ten days, 20 days, 30 days. Sometimes it's been just a blank white piece of paper posted on a Commissioner's page. Sometimes it's - - so this is to bring some uniformity to the process.

And there were some differences of opinion about the length of time that a document should be posted, about whether it should be in the Federal Register or not, and so on and so forth. And I think we agreed that through the comment period we would exchange information to all who have input into that and see where people come out with respect to the particular posting time.

In sending this to the Federal Register for the first time, I think ever the Federal Register, and maybe because of the subject of this, took it upon itself to comment on what we were doing and to edit the document. And in so doing they tied it up for several days.

And because my head was so buried in the Board of Advisors meeting I wasn't able to sort of step back enough to say, "What are we doing here?" So, what I'm recommending, because it is not required that this be posted in the Federal Register, I am recommending so that we can get this started, because it now can't even come before us in July if we're going to post it for 30 days, that we post this on our website only, that we notify our stakeholders that it's on our website and that we bypass the Federal Register because once we adopt this policy, we have to post it in the Federal Register, not for comment but just as notice to the public that we have adopted this policy. So, it will get into the Federal Register but not for comment.

In one place -- I'll give you an example of where the Federal Register weighed in. They wanted to change every time there was "shall" in here to "will."

COMMISSIONER DAVIDSON:

To what?

COMMISSIONER HILLMAN:

"Will." Instead of "shall" it was "will." I was willing to say, "Is that a big deal? Is that where we -- we can always change it back." Staff even suggested to the Federal Register staff they could comment on it during the comment period if they had comments to offer. But they were then asking us, "Are you going to post it here? Are you going to follow that?" As if to say, until all those questions were answered they weren't going to post this.

So, I am recommending to you all that against my own belief, because I was the advocate, yes, it should be in the Federal

Register, that we not put this proposed policy in the Federal Register so we can get going on the public comment period and that we use every avenue to let people know that this is available on our website for comment and move on.

It's really most unfortunate, but General Counsel, I told her I thought she had spent more than enough time trying to explain to the Federal Register what we were doing and why we were doing it and that that was not a good use of her time, especially since it's not required for us to put it in the Federal Register.

Do you have anything you would like to add?

COUNSEL HODGKINS:

The only thing that I would add, is that this would be -- this policy, if adopted, would be a rule of general applicability that applies to our constituencies equally, and thus as Commissioner Hillman alluded to, under the Administrative Procedures Act would be required to be posted in final form, so that the public would be notified of what the procedure is. But as she stated, it is also correct that there is no legal requirement for it to be posted in the Federal Register prior to its final adoption.

COMMISSIONER HILLMAN:

I have to tell you, just when I thought it couldn't get anymore interesting, and I think of all the things we've ever posted in the Federal Register this is the first time -- spelling error fine, grammatical errors, you know, but that they commented on the content and were recommending to us what our policy should say. Not that those comments wouldn't be useful, but to hold up the posting of it for that was, just for me, unacceptable.

CHAIR RODRIGUEZ:

Okay. I have a note that we -- if we don't finish by 4:45 we'll need to load a third reel of tape and take another break. So that might inform our discussion here.

I'll just go first. I mean I know what -- I regret that the Federal Register took that avenue because I do appreciate what you're trying to do here. And I guess I'll ask, why can't we just go through the Federal Register process and vote on it in September?

COMMISSIONER HILLMAN:

Because we're negotiating with the Federal Register over what would be in our policy, and that's our decision, I think. And so, we'd have to get their comments, come back to you all, and then you all would individually, and then they'd be synthesized and then we'd be back to you with changes. I mean, I really do think that, as I said, while -- the Federal Register may have useful comments. For example, to give you one issue, we have never waived the minimum requirements of the APA or HAVA or NVRA. They are suggesting to us that this policy should say that we would do that, we would have a waiver clause in here for things that apply to the APA. That was not the intention of this policy. This policy was not meant to at all address what we would do under the APA, it was meant to address the documents that do not apply to that.

I just -- you know, the only thing I can say is that I just don't think it's the best use of our staff's time right now to negotiate the contents of our draft policy with the Federal Register. But if that's what this Commission would advise, then I would just say that, you know, we will continue in that vein. It's going to take a lot of back

and forth. And this would be where I would get to timelines to say, you know, if we're going to take their comments, synthesize it, get it back to you, then we have to be very disciplined about when and how we respond.

CHAIR RODRIGUEZ:

Okay. Vice-Chair Hunter.

VICE-CHAIR HUNTER:

Commissioner Hillman and I also have discussed this in the past and I, for one, didn't think that we should require ourselves to post it in the Federal Register. I mean, I think we should, if we can and all that kind of stuff, but this is another example of why I think we shouldn't require ourselves to do this. As Commissioner Hillman suggested, it is not required by any kind of law or regulation that we post anything with the Federal Register and it by definition slows us down. I think a good case scenario is three to four days, and obviously it seems like the issue at hand is sort of the worst case scenario. But to me, I don't think it's something that we should require ourselves to do because it's not required by anything and because it slows us down.

And, second, I also don't think that we should require ourselves to always post something for 30 days because that, too, is also not required by the APA to have a 30-day comment period. And Commissioner Hillman did add in, sort of, an emergency 21 days for comment if the Executive Director has a good cause and has demonstrated for reducing public comment. Under no circumstances shall the period of public comment be less than 21 days.

And I appreciate, as well, where we're going with this. I think it's important and I appreciate Commissioner Hillman for doing this. I think it's a good move that we have a set policy on this. My only comment was not to require Federal Register posting and to consider having fewer than 21 days in the event something is some kind of emergency. And I don't know what that would be. I can't contemplate it right now. But I think we should consider making that a shorter number of days, if necessary.

COUNSEL HODGKINS:

Madam Chair, if I might. I think that I understood where Commissioner Hunter was going, but I think there may have been a slight misspeaking there, so I wanted to just clarify.

I think where you're going is that, actually, the APA for things that are covered, do require 30 days.

VICE-CHAIR HUNTER:

Right, right.

COUNSEL HODGKINS:

But the types of things that we are talking about doing are either in excess of the requirements of the APA for documents that only require for instance posting the final document for notice to the public, or that are not covered by the APA at all.

VICE-CHAIR HUNTER:

Right.

COUNSEL HODGKINS:

And in those cases there's no requirement under the APA for a 30-day comment period.

VICE-CHAIR HUNTER:

That is correct. Thank you for clarifying that, but this is now a separate question. Does the APA require specifically 30 days in a general matter for posting policy?

COUNSEL HODGKINS:

It does. If a matter is covered by the APA, it requires a minimum of 30 days posting. There are also other Executive Orders that would extend that for certain agencies and for certain actions.

CHAIR RODRIGUEZ:

Commissioner Davidson.

COMMISSIONER DAVIDSON:

First of all I'd like to ask also, is there also an emergency where you have less days on the APA? And what timeframe is that?

COUNSEL HODGKINS:

There is an ability for an agency head to waive the provisions of the APA for good cause shown, and that is in fact the provision that Commissioner Hillman alluded to the Federal Register wanting us to include in this policy. But as she stated, and it's my understanding of what her original policy is, there was never intention that that is what we were wanting to do with this policy was to provide a waiver which frankly already exists in law, but to provide a waiver to this additional step that is being proposed through Commissioner Hillman's policy.

COMMISSIONER HILLMAN:

So, just to answer you, what I did in this policy was to apply the same principles of the APA; 30 days notice for good cause, less than 30 days notice, but no less than 21 days. What we have heard is, it is very difficult, and we've heard it from various things --

I don't mean about heard it on this because this hasn't gone out for public comment yet -- but that on various things that we've done, it is very difficult for individuals and groups to respond to us with a ten-day notice because they're covering many, many issues and they're in many different places and they have small staffs. And so, you know, 21 days, minimally 14. But, you know, I assume we're going to end up negotiating around this anyhow. But I just tried to mirror in this policy what the APA would require.

COMMISSIONER DAVIDSON:

Except for the emergency.

COMMISSIONER HILLMAN:

No, there's no waiver provisions in here.

COMMISSIONER DAVIDSON:

Right, but it's 21 days instead of...

COMMISSIONER HILLMAN:

Well, I don't know what it is under the APA.

COUNSEL HODGKINS:

It doesn't specify. It just allows for a waiver upon -- an exception upon good cause being shown. It doesn't define what good cause is, you know, et cetera, et cetera.

COMMISSIONER DAVIDSON:

I happened to be out of town at a conference when Commissioner Hillman put this up, so we had our conversation on the telephone. And I asked for the ability to have an emergency and I did feel, you know, when you take -- as we heard today, it takes at least two, maybe three days to get in the Register a notice and that's what we're counting from. So, when you think about an emergency of 21

days, we're putting it at 23 to 25 days before for comments, I mean until we can take action. So, I just think that there's sometimes that it's going to happen that we're going to need an emergency policy. And my question is, because I did suggest that and the timeframe is less than the 21 days, do I make my comments on the comment of when we post this? Or do we just discuss that in our meeting when we have it and propose an amendment?

COUNSEL HODGKINS:

Well, that's a very interesting question, because generally speaking, if I were advising you with regard to something that you posted in the Federal Register for notice and comment under the APA, I would tell you that your comments need to be included in the document that you post because that is the agency's statement on what is moving forward. But in this instance, what we have is one Commissioner's proposal on what a particular policy should be. It is not a statement of the agency. So, I think that the response that I would have for you is, either one.

COMMISSIONER DAVIDSON:

Okay.

VICE-CHAIR HUNTER:

Point of order. Should we clarify that it's Commissioner Hillman's proposal when posted in the Federal Register? I don't think it says that right now.

COMMISSIONER HILLMAN:

Well, you know, in developing our procedures we need to be clear. I agreed to carry the water on this because somebody needed to advance it, but it was something we all agreed needed to be done.

So, I wasn't taking ownership of this, but because of our procedures, somebody has to take ownership of it. I was really hoping it would be advanced as a policy. We're stuck on the, is it 30 days? Is it 21 days? Is it, you know -- I mean, I really think, and this is just my own personal, that when something is put out for public comment -- the APA picked 30 days, I'm sure they had good reason, that was commented on to death, it's been around for a long time -- that EAC would adopt a policy to do less than that. Now we could always figure out whether -- and I didn't use the term emergency, I put, time sensitive, in here because I just can't imagine that we've got anything we deal with, is an emergency, but there are time sensitive issues in here. And so, I would think that in the comment period we could certainly, you know, take into consideration what comments, what our own feelings are about this. I mean, we could hold this up and try to negotiate this out, and it means that we'll just have it in September. So, it's Madam Chair your...

CHAIR RODRIGUEZ:

Commissioner Hunter.

VICE-CHAIR HUNTER:

This is similar to the proposal that we talked about earlier, which is, we agreed to post it even though we didn't necessarily agree to the substance of it. I certainly didn't agree to the substance of the previous one, so I'm willing to do that again, in this case, if the body feels that's the appropriate move.

COMMISSIONER DAVIDSON:

Do you want to make a motion?

VICE-CHAIR HUNTER:

Okay. I move that we post the proposed “Notice and Public Comment Policy” on the EAC website for 30 days to receive comment on the policy and it will be later voted on in July? No?

COMMISSIONER HILLMAN:

No.

CHAIR RODRIGUEZ:

We can't do July.

COMMISSIONER HILLMAN:

September.

VICE-CHAIR HUNTER:

In September.

COMMISSIONER DAVIDSON:

I'll second the motion.

CHAIR RODRIGUEZ:

It's been moved and seconded to post the draft policy for “Notice and Public Comment” and calendar it in September for consideration. Any discussion?

VICE-CHAIR HUNTER:

September or in the event we meet at an earlier date. Maybe we could add that in. Is that...

CHAIR RODRIGUEZ:

And just post it for 30 days. How's that? Any discussion on the motion? All those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Commissioner Hillman, Consideration of Draft Policy for Joint Partnership Task Force of EAC. And I wonder, if we should just stop here and change the tapes.

[The Commission recessed at 4:39 p.m. and reconvened at 4:41 p.m.]

CHAIR RODRIGUEZ:

Commissioner Hillman.

COMMISSIONER HILLMAN:

Okay, I stopped in my process to draft a policy on the joint Federal taskforce because I was getting mixed signals and I honestly didn't -- while I was preparing for the Board of Advisors meeting I had limited time and didn't want to spend a lot of time drafting a proposed policy if there were people who fundamentally thought this was not a necessary thing for us to do.

So, let me just explain what my thinking was behind recommending a joint partnership taskforce. And I'm using a taskforce that, I believe it's Wildlife and Fisheries, or something, from the Department of Interior. But the taskforce was put together to do a couple or three things; clarify ambiguity, get information when it came to the "unique" relationship between the Federal agency and the State and local units of government. And it just seemed to apply so well to some of the issues that we occasionally confront where we find it useful to have a conversation with, in this case particularly, the State election officials, around the use of HAVA funds. This is not a replacement for the policy we have

when people seek advisories because they're asking specific questions about spending money. This is on the general issues.

And the one that immediately popped to mind was, if we had such as taskforce some of the issues would come up first before they became an issue, before EAC passes a policy and then people react to the policy that we could get some good information in a discussion regular setting.

And the MOE would have been one of them. I mean, it would be envisioned that there would be a taskforce and that the taskforce could appoint working groups. And the people on the work groups wouldn't necessarily be the people on the taskforce because different people with different expertise and experiences could lend more information to an issue than perhaps others.

But it was envisioned to be a rather quick turnaround on items that need consideration sooner rather than later. Yes, we have a Board of Advisors and, yes, we have a Standards Board. But those Boards were not structured to consider issues like MOE or the process to document under any of our existing policies. And just by their nature, it would be six to nine months before the Standards Board and the Board of Advisors could go through the complete process to give us feedback on those kind of issues.

So, I am, because it's something that I believe would be a very useful tool for the EAC, am prepared to proceed to draft the policy up. But I have to admit that I don't want to do it if the Commissioners don't think it would be a useful thing to do. You know, I'm not looking to write a draft policy just to write a draft policy. I was looking to do it if we thought this is something that

would be a useful tool as we proceed. I mean, we're giving out more requirements payments, more and more issues are coming up. We don't know what the next one is, but we also know that the election officials have issues they'd like to bring to us, and not necessarily always in a seeking a formal advisory but be able to just think some things through out loud and find out what are the pros and cons and put some things on our screen that we need to consider.

So, if I get a sense of this Commission that I should move forward to draft a policy, I will. But the email traffic really sent me mixed signals and I was like, okay.

CHAIR RODRIGUEZ:

And I think that part of the reaction was to draw election officials from our Boards. That was my sense, but I didn't come up with that answer so I should look to one of the folks who came up with -- perhaps Commissioner Davidson would opine.

COMMISSIONER DAVIDSON:

I agree. I think a policy of having a working group, that at times they have the ability to come to us with issues or that we can go to them and really work with it builds more than just being able to work things out ahead of time. It lets them know that their input is valuable to us, which I think is very important. It puts us more -- yes, we're an agency and we have responsibilities but it also makes us open to their issues. So I think it's a plus.

And I think that at times there may be an area where that it may affect more than the election officials. For instance, if funding came to us for the disability community, we may want to bring in

some of those individuals, as well as the States, because it definitely would be important.

So that's one of the reasons why I said we have Boards, because we have that kind of representation on those Boards if we needed to pull from. Normally it would be just election officials I agree, but at times it may go over that arena. And our Advisory Board I just thought was a great area that we could pull from those individuals that have been in our meetings before and know a lot about the area of HAVA and understand it. So it wouldn't be like we would be, you know, educating. We could work with those people. So I think it's a good opportunity to bring in people because I think that when we had done that before in our data collection, we've had conference calls with -- our staff did with election people on, you know, what we were trying to gather, what kind of information we should be gathering, I think that was a really good process. And as we move forward in that I think it will be very beneficial.

CHAIR RODRIGUEZ:

Commissioner Hunter, do you have any thoughts? I guess I had recommended for the taskforce that we include advocacy groups. And I thought that the initial comments were opposed to that, but now Commissioner Davidson just said bring in advocacy groups. So I kind of view it as an opportunity not only to get buy-in from election officials but we heard from a lot of groups on Maintenance of Effort that we, you know, I didn't expect would -- I thought they'd be thinking about voter registration and other things like that, but then they got pretty deep into Maintenance of Effort. So, I thought

this was a way to create a forum for hashing out those issues and that's why I, you know, in my opinion -- or when I expressed my opinion I stated that I thought we should have a couple of advocacy groups on it.

One experience that I've really learned from a great deal as a Commissioner has been these roundtables on the VVSG, and just hearing a variety of input on the voting system guidelines has really to me been an educational experience. And I really have appreciated, you know, the variety of perspectives that we have been exposed to. And I just think that's kind of a model that we could apply to a whole bunch of situations, realizing that our core constituency is going to be our State election officials.

Vice-Chair Hunter.

VICE-CHAIR HUNTER:

I agree with everything that's been said. I think it's obvious, but just to make the point that having the whole Standards Board, for example, opine on some of these issues would be unwieldy.

There's a hundred and...

COMMISSIONER HILLMAN:

Ten.

VICE-CHAIR HUNTER:

110, I knew that. 110 members on the Standards Board.

CHAIR RODRIGUEZ:

It's your Board.

VICE-CHAIR HUNTER:

So that would be difficult. But I think we could come up with a subcommittee or sort of a taskforce within the Standards Board and

I know that since I've been working with the Standards Board several of the members have said, you know, if you ever come up with a side group to work on, for example certification issues, or other different issues, they've all expressed -- several of them have expressed interest in serving on separate little groups on these things. So I think coming up with subcommittees as Commissioner Hillman did with the Board of Advisors. She came up with a research subcommittee group for the Board of Advisors, and I think that went quite well. So following after that model I think would be important.

Another thing that just occurred to me as Commissioner Hillman was talking is, maybe those subgroups could then invite other people to join in the discussion. Just because, for example, Leslie Reynolds isn't on the Standards Board, you know, I'm sure we'll need her guidance and advice on more than one occasion and we can invite her to join in on those sort of subcommittee groups on certain issues.

CHAIR RODRIGUEZ:

I think Commissioner Hillman that there's interest in proceeding with the taskforce.

COMMISSIONER HILLMAN:

Okay. So I'll just take these comments into consideration as I draft a configuration for you all to respond to.

VICE-CHAIR HUNTER:

Will the taskforce be part of an existing Board of Advisors/Standards Board?

COMMISSIONER HILLMAN:

No, I'm not recommending that because there are very specific regulations with respect to how they meet.

For example, yes, the Board of Advisors had a Special Committee on EAC Research. However, that Committee could not give advice directly back to EAC. That Committee worked to give recommendations to the Board of Advisors. The Board of Advisors then took action on those recommendations and passed resolutions back to the EAC. So what I would propose would not be a sub-structure of any Board because otherwise all it would be, you know, it would just create a process that they'd have to go through.

CHAIR RODRIGUEZ:

So they would have to report -- and is that because of the FACA?

COMMISSIONER HILLMAN:

Right, right. I mean if a committee -- if the Standards Board decided it wanted a committee that could function to give recommendations directly to EAC. For example, the Executive Board, does not give recommendations directly to EAC. The Executive Board makes its recommendations to the Standards Board and the Standards Board gives recommendations to EAC because the Executive Board does not notice and meet in public. If the Executive Board were to give recommendations directly to EAC, its meetings would have to be publicly noticed and they'd have to hold their meetings in public.

VICE-CHAIR HUNTER:

But that would be the only requirement in order for them to provide guidance directly to the EAC, is that their meeting be held in public?

COMMISSIONER HILLMAN:

Well, their own bylaws. I mean, obviously their own bylaws but that would be one of...

CHAIR RODRIGUEZ:

Well can I ask this, that we have a briefing on the various requirements and reporting hoops that we would have to jump through with a couple of different variations if we compose this committee with -- I guess we need a briefing on what the FACA rules are and how they might apply, or not, to a taskforce.

COUNSEL HODGKINS:

If I may be so bold as to make a suggestion, I would be happy to, either myself or one of my staff members, work with Commissioner Hillman to come up with several different possibilities.

COMMISSIONER HILLMAN:

Uh-huh.

COUNSEL HODGKINS:

Because I think that your intuition is exactly correct. The Federal Advisory Committee Act is going to sort of intertwine all over this process and it's just a matter of what it is that you guys want to end -- where you want to end up in terms of what this Board -- what you want them to do, whether or not you want them to make a collective recommendation to you or if you're looking for individual comments. So, you know, let me work with Commissioner Hillman to come up with some suggestions.

COMMISSIONER HILLMAN:

And I think one of the first things from the outset we have to decide, that I wasn't envisioning this as a body to make recommendations to EAC. I wasn't envisioning it as a tool to have conversations, to

hash issues out, to keep below the FACA radar screen, so we didn't have to publicly notice. Not that the discussions couldn't happen, but that's two weeks notice. It was just to be able to say, "We've got this issue coming up. What's good thinking on this issue"?

CHAIR RODRIGUEZ:

I understand. So could we -- next Thursday I believe we're all gone and that Thursday is typically the day for our staff briefing, so we could schedule a special briefing the following week on Monday, Tuesday or Wednesday or have it on Thursday, which is July 3rd. So I won't pin anybody down on that, but we could try to do it within two weeks.

VICE-CHAIR HUNTER:

Not July 4th.

CHAIR RODRIGUEZ:

Not July 4th. I'd like to keep some momentum going but at the same time give Commissioner Hillman enough time to prepare a draft.

Anymore comments on that taskforce? Okay, the next item on the agenda is Consideration of Draft Policy Regarding Allocable Cost Principles for HAVA Funding. Commissioner Hunter.

VICE-CHAIR HUNTER:

Thank you, Chair Rodriguez. Mercifully, I don't have anything to present right now. I was going to talk a little bit about it, but I think it's best reserved for a later date. And I do have something in draft form but I decided to work a little bit more with some of the

Commissioners and some staff members before we present it to the public, so, I do not have anything to present at this moment.

CHAIR RODRIGUEZ:

Okay, thank you Vice-Chair Hunter.

So, I'll quickly go through what I have, as of right now, for the July 21st public meeting. We're going to do a contingency planning workshop. This meeting will be in Arizona at IACREOT which stands for something.

EXECUTIVE DIRECTOR WILKEY:

International Association of Clerks, Recorders and Election Officials.

CHAIR RODRIGUEZ:

Okay.

VICE-CHAIR HUNTER:

Very good.

CHAIR RODRIGUEZ:

And Treasurers, too.

VICE-CHAIR HUNTER:

And Treasurers.

CHAIR RODRIGUEZ:

The "T." So part of that meeting will be the contingency planning workshop. We will consider the EAC Laboratory Accreditation Program Manual. Mr. Cortes has said that we'll have the HAVA spending report, and we may actually vote on that in a tally vote before the meeting. We'll have Commissioner Hillman's replacement advisory opinion 07-003-B. And Commissioner Hunter possibly yours, too.

VICE-CHAIR HUNTER:

Possibly the allocable costs issue also.

CHAIR RODRIGUEZ:

Okay. And your advisory opinion also?

VICE-CHAIR HUNTER:

Yes.

CHAIR RODRIGUEZ:

Okay.

VICE-CHAIR HUNTER:

Well that one was tabled at this point, right?

CHAIR RODRIGUEZ:

Right, it's still tabled.

VICE-CHAIR HUNTER:

Okay.

CHAIR RODRIGUEZ:

Okay. And we may have the allocable cost issue and then, of course, Commissioner Hunter's advisory opinion 07-003-A. It's a full agenda already. Do you have anything else for it?

COMMISSIONER HILLMAN:

Well, I think it would be good to put on there just at least for update, it won't be ready for comment, but the "Notice and Public Comment..."

CHAIR RODRIGUEZ:

Okay.

COMMISSIONER HILLMAN:

...Policy." The draft on the taskforce. I'll just call it a joint taskforce so we won't get hung up on whether it's State election officials, whatever.

EXECUTIVE DIRECTOR WILKEY:

And I'll have some suggestions for you, Commissioner.

COMMISSIONER HILLMAN:

Okay. And then are we supposed to take up the -- or at least we should put on the changes to the State instructions.

CHAIR RODRIGUEZ:

The NVRA.

COMMISSIONER HILLMAN:

The NVRA.

CHAIR RODRIGUEZ:

Right, we'll put it on. And again if they're not dramatic we may do a tally vote on those just to get them done.

Okay, any announcements or business? Mr. Wilkey.

EXECUTIVE DIRECTOR WILKEY:

Madam Chair, just for the record, Mr. Cortes has informed me, based on the report he was giving earlier, that the last reports filed by Guam and New Hampshire were received in 2005 covering the period for 2004 for both Section 101 and 251 funds. So that should go on the record.

CHAIR RODRIGUEZ:

Thank you very much. Any other announcements? So we'll be on the road a little bit in the next few weeks in Arizona July 21st.

Is there a motion to adjourn?

VICE-CHAIR HUNTER:

So moved.

CHAIR RODRIGUEZ:

Second?

COMMISSIONER DAVIDSON:

Second.

CHAIR RODRIGUEZ:

All those in favor aye.

[The motion carried unanimously.]

[The public meeting of the EAC adjourned at 5:00 p.m.]