United States Election Assistance Commission
Public Meeting
Military and Overseas Citizens: Counting Their Votes – Part 2

1225 New York Avenue, NW

Suite 150

Washington, DC 20005

Held on Thursday, December 3, 2009

VERBATIM TRANSCRIPT

The following is the verbatim transcript of the Public Meeting of the United States Election Assistance Commission ("EAC") held on Thursday, December 3, 2009. The meeting convened at 10:02 a.m., EDT. The meeting was adjourned at 3:12 p.m., EDT.

PUBLIC MEETING

CHAIR BEACH:

Good morning. The December 3rd public meeting of the United

States Election Assistance Commission will now come to order. I

ask that everybody please turn off all cell phones, BlackBerries to

silence, and join me in the Pledge of Allegiance.

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[Chair Gineen Bresso Beach led all present in the recitation of the Pledge of

Allegiance.]

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CHAIR BEACH:

Counsel, may I have a roll call, please?

MS. NEDZAR:

Sure. Commissioners please respond when I call your name.

Chair Gineen Beach.

CHAIR BEACH:

Here.

MS. NEDZAR:

Vice-Chair Gracia Hillman.

VICE-CHAIR HILLMAN:

Here.

MS. NEDZAR:

Commissioner Donetta Davidson.

COMMISSIONER DAVIDSON:

Here.

MS. NEDZAR:

Madam Chair, we have a quorum present.

CHAIR BEACH:

Great, thank you. I'd like to thank everybody for joining us today.

And our first item is the adoption of today's agenda. I wanted to

know if there is any discussion on today's agenda.

COMMISSIONER DAVIDSON:

I'd like to move that we remove the election of the 2010 officers and

the update on the Maintenance of Effort from the agenda.

CHAIR BEACH:

Do I have a second?

VICE-CHAIR HILLMAN:

Second.

CHAIR BEACH:

Okay, all in favor to adopt the agenda as amended, say aye.

[The motion carried unanimously.]

CHAIR BEACH:

Okay, motion carries and the agenda as amended is adopted.

Today I wanted to make sure that everybody knows, and I am very excited, and everybody is aware that the Webcast today, will go live for the first time, here at EAC. So, all of you in the audience and people viewing will now be able to view our public meetings in real time.

And before we move to Old Business, I want to just take a moment to congratulate the new Director of the Institute of National Standards and Technology, Dr. Patrick Gallagher. I know, myself and my colleagues look forward to working with him and his staff on these important issues under HAVA and UOCAVA.

With that, I'd like to turn to the Vice-Chair for any opening remarks.

VICE-CHAIR HILLMAN:

Thank you very much. I just -- I would like to use this moment to recognize a very valuable community and civic service that people perform when they serve as poll workers. Even though 2009 was not a federal election year, we do recognize that there were scores of state and local elections held and each of those elections depended on the service of a poll worker. Our recent survey that was discussed at the last meeting from the 2008 election indicates that election officials are still challenged in their efforts to recruit the sufficient number of poll workers that they need. And so, I just think it's important for the Election Assistance Commission to take a

moment to recognize all the people who served as poll workers in 2009, to congratulate and thank them, and to ask that they continue their commitment through the years coming. And, even though we have anecdotally over the years said that the average age of the poll worker is 72 and some people would say, "Oh my," that may not necessarily be true. It may be a lower average age. But irrespective of the age, every election needs all Americans to participate. And we will be issuing more information about that in 2010. And I also congratulate the state and local election officials who take the time to acknowledge and congratulate their poll workers in their own special way. So, again, thanks to all the poll workers, and thanks to the EAC staff who continue to do the research to provide statistical information on the progress that we are making in recruiting and training and placing poll workers across the country.

Thank you.

CHAIR BEACH:

Thank you. Commissioner Davidson, do you have any opening remarks?

COMMISSIONER DAVIDSON:

Yes I do. I'd like to turn my opening remarks and say thank you to our financial team at the EAC. We accomplished a feat this year in having a clean audit. And I'd really like to say my congratulations

to them, and also how hard they worked to try to get that. So, in

working with auditors, as we all know, it's a trying issue, and they

thought it would take a lot longer for us to get to where we're at

today. And I just want to say congratulations to them.

VICE-CHAIR HILLMAN:

Here, here.

CHAIR BEACH:

Okay, thank you. Now, we'll move to the first item under Old

Business and that is the correction and approval of the minutes

from the November 5, 2009, public meeting. Are there any

changes or discussion of the minutes?

VICE-CHAIR HILLMAN:

Move acceptance.

COMMISSIONER DAVIDSON:

Second.

CHAIR BEACH:

Okay, all in favor say aye to adopt the minutes from the November

5, 2009, public meeting.

[The motion carried unanimously.]

CHAIR BEACH:

Motion carries and the minutes from the November 5, 2009, public

meeting are adopted.

The next item under Old Business is the Executive Director's report. I turn it over to Mr. Tom Wilkey.

MR. WILKEY:

Thank you Madam Chair, and I want to thank everyone for being here today. And we certainly hope that everyone had a wonderful Thanksgiving holiday. The end of the year is always a busy time at EAC and this year is no exception.

Under Voting System Testing and Certification, EAC is continuing to work with NIST to resolve comments we collected about Version 1.1 of the Voting System Guidelines. The Commission will begin making policy decisions on the standards after the New Year. After we finish this process, we will publicly publish the final version of the VVSG 1.1. The Technical Guidelines Development Committee will be meeting next week, December 9th and 10th, at NIST. The meeting is open to the public and will be Webcast. Phase II of the Election Operations Assessment is continuing as planned. Our Boards will review Phase II of the report in January and provide comments. Our work with NIST to develop guidelines for the electronic transmissions of ballots is progressing, and we'll hear more about that during today's meeting. In addition, we've posted two new documents in our online clearinghouse: a version 2.0 test plan for the ES&S Unity

3.2.1.0; and a Notice of Clarification 09-004 on the development and submission of test plans.

Under Requirements Payments, so far we've disbursed 62.4 million of the 115 million appropriated in fiscal year 2008 funds and 28.5 million of the 100 million in 2009 funds. Since our last meeting, we disbursed 3.2 million to North Carolina, 4.8 million to Illinois and 500,000 to Rhode Island. I have listed, for your perusal and for when we post this on the Website, our update on the states and the money they have drawn from, and which years they have drawn from. And I might add that we're beginning to see more and more activity in this area, now that states are beginning to update their state plans and request these funds.

In addition, we recently held a webinar on how to complete the new Federal Financial Report SF-425, which I understand was very well received and well attended. This is a new reporting form that consolidates the old financial reports required by the Office of Management and Budget. The training was designed to help recipients of HAVA funds become familiar with the new reporting requirements. The webinar is posted on our Website.

Under Grants, we expect to issue -- and this says "final" and there is a correction here -- it should say we expect to issue the grant notices this month for the HAVA College Poll Worker Program and the Mock Election Program. These are actually for the 2010

programs. We anticipate receiving those funds once our budget

clears appropriations, and so we wanted to get a head start on that

to give recipients plenty of time to do the work that they have to do

in preparation for next year's election. The Accessible Voting

Technology Initiative and the Pre-Election Logic and Accuracy

Testing and Post-Election Audit Initiatives will be issued right after

the first of the year. We built on our outreach strategy from last

year, which resulted in double the number of applications we

received. We'll issue a press release to the roughly 1,400

stakeholders on our email distribution list, post to national service

listserves, and hold technical assistance calls. We'll also provide

the grants information on our Website, to grants.gov, to post-

secondary education and student associations, to minority student

groups, and to education and government reporters across the

country.

Under Research, Policy and Programs, we're moving

forward on translating the National Mail Voter Registration form into

five Asian languages listed in the Voting Rights Act. We expect the

forms to be completed in time for the 2010 federal election. The

60-day comment period for the evaluation of EAC educational

products and the 2010 Election Administration Voting Survey has

ended. And we'll hear more about these initiatives today. OMB is

now accepting comments on EAC's educational products evaluation, and more information is available on EAC's Website.

Under Tally Votes, we held two tally votes since our last meeting; a staff recommendation to adopt the 2008 UOCAVA and the 2008 Election Administration and Voting Survey Reports; and a staff recommendation to adopt five Election Management Guideline Chapters on Building Community Partnerships, Canvassing and Certifying an Election, Communicating with the Public, Conducting a Recount, and Provisional Ballots.

We have posted several documents to our operations this month. And here is where, with your indulgence, I want to digress a little bit. I know it was mentioned earlier about the results of our audit this year, and I appreciate the Commissioner's comments in that regard. You know over the years since I came here and since the Commission was started, we have done just some tremendous things with regard to setting up the first federal certification program or our VVSG standards operations and that hard work, or the work of our Research Division in doing so many of the reports that we've done, the poll worker -- be they poll worker or ballot design, I can't begin to even go through the list of the accomplishments that we have put out the door, in just these past four or five years. It's been a wonderful achievement and a lot of hard work on the part of a very dedicated staff.

But, this year was the -- put the frosting on the cake, so to speak, in that we were able to obtain a clean audit in one year's time. Many people said that we probably would not be able to do that; that it would take one, two or several years. We know that other agencies had similar circumstances where it took a number of years. And so, we're particularly proud of that effort, as we are proud of everything that we've been able to accomplish in just a very short amount of time. And so, I want to also express my deep gratitude and congratulations to our financial team. They worked very, very hard on getting where we are. It's a testament to their work, to the work of the staff and to U.S. Commissioners that we were able to do this, and so that has been posted on our Website, along with our compliance with the Federal Information Security Management Act of 2002. We have some work to do in that area, but given what we have accomplished, I don't have any doubt that at this time next year, hopefully, I'll be able to sit here and say that we have accomplished and got a clean bill of health in that area also.

Madam Chair, that's my report and I'm open to any questions that you might have.

CHAIR BEACH:

Thank you. Vice-Chair Hillman, do you have any questions for our Executive Director?

VICE-CHAIR HILLMAN:

Just a comment, and then a question for you, Mr. Wilkey. The comment I wanted to make was just to further elaborate on the poll worker service acknowledging that colleges and universities and non-profit organizations who wish to partner with election officials to help recruit what we affectionately refer to as the "next generation" of poll workers from the college and university campuses will have an opportunity through the grants program. And it's been one of the programs that we have been able to steadily implement through the years. So, my appreciation again to you and the staff for -- and to Congress for funding the program, but to the staff for carrying forward and giving so many opportunities to so many young people, as well as to the institutions who run the programs.

A question for you, and it's more of a general question. But, as we know, HAVA requires that requirements payments can be used by the states only to meet the requirements of Title III. If a state feels they have fulfilled and met all those requirements, they then can certify to EAC attesting to that, and are able to use any requirements payments they have, in other areas, to "improve the administration of federal elections." Is that correct?

MR. WILKEY:

That's correct.

VICE-CHAIR HILLMAN:

And it's my understanding that there are something around 12 or 14

states, or something like that, maybe, who have certified…

MR. WILKEY:

I think there are 17 Commissioner.

CHAIR BEACH:

17.

VICE-CHAIR HILLMAN:

17? Okay. And I guess, I'm wondering if on the one hand states

aren't compelled to certify to us. If they have requirements

payments funds leftover and believe they've met all the

requirements of Title III, it would seem it would be in their interest to

certify to us that that is the case, so that they can use the

requirements payments for other improvements. But, I suppose if

they don't have funds leftover there may not be that incentive.

So, I guess I have a two-part question. One is whether

we're hearing anything from states as to progress they're making

towards certification. I mean, do we know that states are moving

towards certification? Or is this just sort of something that is seen

as a, "Yeah, we can do that if we need to, but we don't have to"? I

mean, it feels just a little unusual for EAC to not know where the

remainder states are, in terms of being compliant with the Section

251 -- or rather the Title III requirements.

MR. WILKEY:

We -- at least, I, haven't heard directly any concerns from the states as to why they haven't been able to fulfill that piece of HAVA, of certifying. I think that would be -- make an excellent opportunity for us to work with the National Association of Secretaries of States and our State Election Directors Associations to try to figure out why -- what, perhaps, input we can give them, what guidance we can give them. And I'll make sure that those issues are discussed at their upcoming meetings in February, because I think that's an interesting question. There may be some states that don't understand that they still have to do that. I'm assuming they do, but maybe they don't. We've had a lot of changes, particularly in the last year or so, in administration, in a number of the states and they may not be aware of that. So, I think it's time we've made them aware of that, how they can become compliant, what they have to do, and work with them so that they can become compliant. But I think that's a good recommendation and I'll be glad to follow-up on that.

VICE-CHAIR HILLMAN:

And it may be useful information for the Commissioners to be briefed as to whether HAVA requires a state to certify or if that's optional. I mean, I realize that if a state has requirements payments left over and they don't certify, they can't use the requirements payments for other activities. But, you know, for a

state that may be borderline, is it a requirement that they certify or

is that their option?

MS. NEDZAR:

It's a requirement.

VICE-CHAIR HILLMAN:

It's a requirement?

MS. NEDZAR:

Um-hum.

VICE-CHAIR HILLMAN:

Okay. So, you know, as we sit here we would have to surmise that

the rest of the states haven't certified because they have not, yet,

met all the requirements.

MR. WILKEY:

That could be the case, but again, I don't want to make that kind of

statement without being able to have a discussion with some of

these states…

VICE-CHAIR HILLMAN:

Um-hum.

MR. WILKEY:

…finding out where they are. It might be a simple case of, "Well we

thought we couldn't meet the requirement because of," such and

such. And if you take a look at it, they might be able to. And I think

that's an area where we can offer a little bit more guidance to make

sure that if they can meet it, that we can help them meet it.

VICE-CHAIR HILLMAN:

Thank you.

CHAIR BEACH:

Commissioner Davidson, do you have any comments or questions?

COMMISSIONER DAVIDSON:

I don't have any comments today.

CHAIR BEACH:

Okay, I actually have some clarifications. When you discussed the

grants in your report, you referred to the Accessible Voting

Technology Initiative and Pre-Election Logic and Accuracy Testing

and Post-Election Audit Initiatives. Are you referring to the Notice

of Funding Availability that will be released the first quarter?

MR. WILKEY:

Yes.

CHAIR BEACH:

Okay. And do you expect that, would you say, the first month of

2010…

MR. WILKEY:

I would say so.

CHAIR BEACH:

…or the first quarter? Do we have a…

MR. WILKEY:

We will -- Madam Chair, we will try and get that out the end of this

month. But with the Christmas holidays and the fact that our

Grants Director, as you know, has had some medical difficulties, we

decided it would be prudent -- we didn't want get caught into the

holiday rush and I think it would be better just to wait until after the

first of the year, when everybody can focus on it then. Because we

really want to try to get as much feedback, and as much people

applying for these grants, and if we do it at this time of the year, we

may not reach everybody we want to reach.

CHAIR BEACH:

And we're at the stage where this is the final notice that's going out

for applicants.

MR. WILKEY:

That's correct.

CHAIR BEACH:

It's not going to be revised.

MR. WILKEY:

That's correct. That's correct, Madam Chair.

CHAIR BEACH:

Another question I have, I know it wasn't in your report, but do you

have an update on where we are with the NVRA regulations?

MR. WILKEY:

As a matter of fact, Madam Chair, we have recently, as you know, hired a new Deputy Policy Director in our Research and Policy Division. He happens to be a former colleague of Commissioner Davidson and someone who has been in the election community for a number of years, Mr. Bill Boehm. And I understand Mr. Boehm is in the process of preparing a full outline and timetable of where we would want to go and will brief the Commissioners on that probably in the next couple of weeks.

CHAIR BEACH:

Great and I know that was a hire in our Research, Policy and Programs Division. Were there any other hires that we have?

MR. WILKEY:

There was. We recently hired, and I'll let the Director make the introduction.

MS. LYNN-DYSON:

We have Bill Boehm, who Executive Director Wilkey just welcomed, and Marci Reedy.

COMMISSIONER DAVIDSON:

Karen -- I'm sorry, Ms. Dyson, can you come to a mic, because they can't pick it up for the translation.

MR. LYNN-DYSON:

Certainly, I'm happy to welcome as he mentioned, as Executive Director Wilkey mentioned, Bill Boehm, who joins us from the State

of Pennsylvania where he was, among many things, a state policy director, and Marci Reedy, who is our Program Specialist. So, we now have a full complement of staff, and a lot of work to do, and a lot to accomplish.

CHAIR BEACH:

That's wonderful, thank you. Mr. Wilkey, so, with these new hires, how many employees do we have at EAC, currently?

MR. WILKEY:

We're up to 50 at this point.

CHAIR BEACH:

We're up to 50?

MR. WILKEY:

Yes. And I have a feeling that's going to be the marker for awhile, so we'll -- we do have a couple of vacancies that we'll be putting out for -- up on USAJOBS, our Chief Information Officer, and an employee -- a Deputy in our Inspector General's Office. And I think they are already up there, but I can -- they are up there. So, they're up on USAJOBS now, and on our Website, and we hope to get a lot of applications.

CHAIR BEACH:

Okay, great, thank you.

MR. WILKEY:

Thank you.

CHAIR BEACH:

That is it for my questions.

So, we'll move to the first item under New Business. It will be the update of the 2010 Election Day Survey.

This morning we have Ms. Karen Lynn-Dyson, our Director of Research, Policy and Programs. And I believe we originally had Dr. Shelly Anderson, who is going to join her, but I believe she may be arriving…

MS. LYNN-DYSON:

Late.

CHAIR BEACH:

…late.

MS. LYNN-DYSON:

Yes, she had some transportation difficulties. So…

CHAIR BEACH:

Okay.

MS. LYNN-DYSON:

I will, in her absence, go ahead.

CHAIR BEACH:

Okay, and you'll be providing the update on the 2010 Election Day Survey.

MS. LYNN-DYSON:

Yes.

CHAIR BEACH:

The process to finalize the survey, as everybody knows, is a long

one. Our first comment period for the 2010 survey closed on

November 9th. And Ms. Lynn-Dyson and Dr. Anderson will discuss

the comments, provide an update about the process and describe

the next step.

Before Ms. Dyson begins, I would like to enter into the

record a statement that we received from Representative Rush Holt

about the 2010 survey instrument. Specifically, in his statement, he

asks the EAC to include a list of questions with respect to the

performance of voting systems and the accessibility of polling

places. And I ask unanimous consent from my colleagues to enter

this into the record, today.

And with that, I will turn it over to Ms. Lynn-Dyson.

MS. LYNN-DYSON:

Okay, thank you Commissioner Beach. My remarks will be

relatively brief. As you mentioned, we are just completing our first,

what was our 30-day comment period. This for us, this Election

Day -- Election Administration and Voting Survey, as it is technically

named, represents our fourth iteration of a survey. And as I know,

the Commissioners know, but I will note for the public, the Election

Assistance Commission is required by the Office of Management

and Budget to undertake a public comment period for our

Paperwork Reduction Act requirements related to any surveys we

administer. This process, that OMB puts us through, can take up to

120 days. There is one 60-day public comment period, during

which we accept comments, followed by another approximately 30

to 60-day comment period. That first comment period ended

November 9th, and we received, during that period, a total of 18

comments. We will staff in the next 30 days or so, really less, 15

days will be developing a recommendation/paper briefing, if you

will, for the Commissioners to consider, as to staff's

recommendation about how the Commissioners will want to handle

these 18 comments we received. Once the Commissioners have

had an opportunity to review staff's recommendations and make a

decision about changes to be made to the survey, then we again

will go into this 60-day comment period. Again, it's important for

the public to know that the EAC cannot release the final version of

this survey until it receives its final approval from OMB. So, we are

working along, quickly, to get our recommendations to you. And

once you all make a decision, we can begin this second comment

period. I believe it is fair to say that the EAC staff hopes that we

can come to a successful conclusion of this process sometime in

the February time period.

The 18 comments that we received were in three general

categories and they were -- I'll allow Shelly to describe a little bit

more about the comments -- but these three general categories were -- can be categorized as; making no changes to the survey at all, a recommendation by a couple of commenters that some questions be removed in light of the MOVE legislation, or that some clarification be provided for some particular questions. And we had a fourth category of comments that came from advocacy groups and from a member of Congress related to our voting machine technology, to polling place accessibility, to audits, and to methods of UOCAVA ballot transmission and UOCAVA registration.

So, with that, I will let Shelly talk a little bit more about the changes that she has been working on with our contractor around the 2010 survey, tweaking it, and making it, we hope, more accessible, better understood, more useful to our stakeholders.

DR. ANDERSON:

Good morning. Actually, we are still in the process of considering all of the comments that were received. However, in speaking with the states throughout the 2008 survey process, as well as with our 2008 survey contractor, we are aware that there are ways in which the survey can be streamlined in order to ease burden for state respondents. There are ways in which some questions can be clarified to, again, ease burden to make sure that they understand exactly what we are requesting. So, we are considering all of those things at the current moment.

In terms of specifics, I would say, ways to streamline the survey might include bringing about more consistent formatting. So, in the previous survey, there were a number of portrait and landscape pages. We might consider how we can remove some of the inconsistencies there, remove some of the duplicative questions that existed because, in some instances, that caused confusion when states were entering their data into the template. We know that there are certain sections of the questionnaire that caused confusion, in terms of data entry into the template. However, rather than change the actual questionnaire, there are ways in which you can adjust the template to make it easier for states to enter their data. So, we are considering all of those things right now.

And, I think in terms of next steps, staff will provide to the Commissioners, as well as Mr. Wilkey, any suggested changes that we might have regarding very minor tweaks to the survey. And that can be done within the next week. And once an EAC decision has been reached, in terms of whether to make any changes in terms of additional questions to the survey, then we can begin with the second comment period.

CHAIR BEACH:

Okay, thank you. Vice-Chair Hillman, do you have any comments or questions?

VICE-CHAIR HILLMAN:

I do have a question. And I want to mine a little bit, what appears

to be a contradiction between "Don't make any changes", and then,

to one commentor saying that it's impossible for the state to

respond to detailed data requests because of the large number of

city and townships clerks that have to respond, describing the

survey as -- or the response requirements as extremely

burdensome and urge to simplify, and coupling that with requests

to, perhaps, remove some questions that may now be duplicative of

the new MOVE Act. And I hate to refer it to only by an acronym but

I don't know what M-O-V-E stands for, but it does have an awful lot

to do with the citizens and military -- the overseas citizens and

military voters, and timely receipt of their ballots. So, I just

wondered if, in preparing your briefing and recommendations, you

can help bring clarity to that, because I think as we dig into it, it's

not as much of a conflict or contradiction as it would appear to be. I

mean, what I hear is simplification, but what means simplification to

one entity may be something totally different to another. So that

our efforts to make it more user-friendly would require some

changes, and yet there are some people who are saying, "Don't

change a single thing, not one single thing."

MS. LYNN-DYSON:

Yes.

VICE-CHAIR HILLMAN:

So, I don't know how we respond to two different constituencies,…

MS. LYNN-DYSON:

That's right.

VICE-CHAIR HILLMAN:

…some of whom say "Please make this more user-friendly, simplify it, reduce some of the burden, make it more clear," and the others who say, "Don't change a thing. Don't move a period or a comma, leave it as it is."

MS. LYNN-DYSON:

Right, I think -- I will certainly let Shelly respond in detail to that, because she's been working again with the contractor on some of those -- that clarifying language, that simplification of data entry. I do think you have -- you're spot on, as they say, Commissioner Hillman, though in terms of how do we respond to what is really conflicting -- a conflicting message? Because, as I understand it, even were we to eliminate certain questions, the way in which many states have now developed their data entry, their data collection systems, even to eliminate a question would cause them to have to make changes to their database, to their data programs, the way -- the way these things have been programmed now for the last three years, four years. So, I don't think there is a simple answer to that. As a federal agency, you do have that tug and pull of conflicting messages.

Shelly, did you want to say anything about the clarifying and the simplifying?

DR. ANDERSON:

Yes. In terms of clarifying, we really do intend to make use of the instructional manual in which we more explicitly state what we are seeking in each question. There, I believe, are a couple of situations in which some of the questions on the survey itself can be clarified. It would not cause any changes in the types of data that are being requested, just a way of helping the respondents to better understand what's being requested. But, again, that can also be done in the instructional manual.

In terms of the removal of questions, that was regarding an inquiry about the automatic transmittals that are in the UOCAVA section of the survey. And it's my understanding that as part of the Military and Overseas Voter Empowerment Act that there are exceptions. And so, it's unclear whether we wanted to necessarily remove that question, if there are still exceptions allowed in the Act.

So, again, those are the types of things that we'll be considering. But it is definitely a challenge, trying to walk that fine line between absolutely no changes and these very minor tweaks.

MS. LYNN-DYSON:

And I would say, Commissioner Hillman, that -- actually this is thought, just a thought that just occurred to me -- in the staff's

recommendation/briefing paper we give you, I think it might be

instructive to give you some brief description from the perspective

of a data manager, at a state level, and what he or she has had to

do to configure a database system, and what it really would entail,

were we to even do something like eliminate a question or rephrase

a question, so it gives us, I think, lay people, a sense of what this

really involves. So, it's always helpful to me when I talk to

jurisdictions and really get a feel for what they're trying to do in

order to accommodate this request -- EAC's request for data.

VICE-CHAIR HILLMAN:

Thank you.

CHAIR BEACH:

Commissioner Davidson?

COMMISSIONER DAVIDSON:

Thank you. Ms. Anderson, or either one of you, I really don't care, I

have one concern. When you're comparing data from report to

report, when we're trying to clarify, I think we have to be very

careful. And do you see any of those that could cause a problem in

clarification that people might then -- they're comparing apples to

oranges, in the future, instead of knowing -- I mean, I think we have

to be aware that that could happen.

MS. LYNN-DYSON:

Yeah.

COMMISSIONER DAVIDSON:

And do you see any of those issues that are there before you in the

clarification areas?

DR. ANDERSON:

You're absolutely right, in that, if questions are changed to such a

degree that you end up collecting different pieces of data then, yes,

you do end up with a problem, in terms of comparability. At the

moment, I do not see that as necessarily being an issue, because,

for instance, if we were to attempt to change the UOCAVA section,

or Section F that asked for the types of voting equipment, if we

were to significantly change those sections, yes, we could

encounter the type of situation you're describing. But, again, we

think it's best to leave both sections as they are, and to change the

template as a way to reduce burden, so that we can avoid the type

of situation you're describing.

COMMISSIONER DAVIDSON:

And I would agree with that.

DR. ANDERSON:

Um-hum.

COMMISSIONER DAVIDSON:

The other thing that I have is because of the MOVE Act, and time is

of an essence. And I know we've been working with Bob Carey

from FVAP and trying to make sure that we're addressing, because

in the Act, it asks us to work with him on the survey. So how -- in

your best estimate right now -- and you probably don't have a firm

answer -- how soon do you think that we can get this out, so we

can start this 120 days? Because, if there is new programming

because of additional questions, that is going to cost states money,

obviously, that we know of, and it's a time element that trying to get

it accomplished. Even if we -- if we do something like that, is there

a thought that you know -- I mean, I know they're coming to town,

so this is one of the things that I think that they should comment on.

Should any additional questions, maybe, not be, in that they don't

have to go through putting in their computer immediately, that it

could be done by hand? I know that's a lot more burden on the

contractor, and on us, but if it was a few, is that something? Or do

you think that we can handle that and get it out to where the states

can make those changes?

DR. ANDERSON:

I think…

COMMISSIONER DAVIDSON:

That's about 15 questions, and I apologize for framing it the way I

have…

DR. ANDERSON:

That's quite all right.

COMMISSIONER DAVIDSON:

…but I think you -- I think you know what I'm trying to get to.

DR. ANDERSON:

Um-hum.

COMMISSIONER DAVIDSON:

We've got some issues and it's a bigger picture than what we sometimes look at.

DR. ANDERSON:

Exactly, I do think, in light of the MOVE Act, there is a question or two that could be placed on the survey. It would take staff and its contractors a little while to make sure that we have the correct question wording, to make sure that it's consistent with the information we need from the Act, and we can place that on the survey, and get that out for the second public comment period within a matter of a few weeks. My concern is on the data collection end of it, with the states and jurisdictions. Because, for instance, if we wanted to collect information on the methods of UOCAVA registration, in terms of mail versus electronic means, that might require some additional data collection, data programming on the part of the states and jurisdictions. That's something we could investigate with the states, but…

MS. LYNN-DYSON:

I think, for them, that's huge. That's huge.

DR. ANDERSON:

COMMISSIONER DAVIDSON:

    …from that standpoint it could be huge.

COMMISSIONER DAVIDSON:

    I think it is, too, and that's what I really wanted to bring to the forefront, because they're getting ready to come to town for their meeting, and I think the more education we give them, obviously, and that's why we got the afternoon scheduled the way it is, on the MOVE Act, is so that we bring these things to light to the states so they're aware of it. And the more that they're aware I think the more that they can start planning.

DR. ANDERSON:

    Um-hum.

COMMISSIONER DAVIDSON:

    Even if they don't know what the questions are, they know that, you know -- and obviously their input is going to be very valuable in that portion of the survey.

DR. ANDERSON:

    Correct.

MS. LYNN-DYSON:

    Yep, yep.

COMMISSIONER DAVIDSON:

    Okay, I appreciate that. Thank you.

CHAIR BEACH:

Okay, thanks. I know we've been discussing the MOVE Act and how it could potentially impact the survey instrument. Can you, kind of, guesstimate or provide us with a timeline on what you think is the earliest we can have the 2010 survey out to election officials, and what would be required to meet that? And what portions of the timeline is outside the hands of the EAC? Because, I know there are things like the Paperwork Reduction Act and stuff that is out of our, you know, control.

DR. ANDERSON:

Sure, um-hum.

CHAIR BEACH:

Would you briefly describe that or discuss that?

DR. ANDERSON:

Okay, I think there are a couple of options here. If we were to make absolutely no changes, we could get that survey out for the second public comment period within a week, and we could allow that clock to start ticking. There is another 60-day public comment period. However, OMB can respond within 30 days, and so, if they respond within 30 days, then the final version will be out for states.

If we wish to introduce new questions, it will take some time for us to make sure that we have the proper question wording, insert that into the questionnaire, and then, put it out for the second

public comment period. And we would still have to run down the

clock on that. So, that extends the timeline.

Right now, if we were to release the survey for public

comment period, with absolutely no changes, the final version could

probably be out by, maybe late January, early February. If we have

to take time to introduce new questions, think about how those will

be placed on the survey, how the data would be collected in the

template, things of that nature, and then proceed with the public

comment period, we're talking probably March/April. It really just

depends, because we do have to go through this Paperwork

Reduction Act process with OMB. And to the extent that we're

seen as introducing additional burden on the states' data collection

efforts, through adding questions, our approval process could be

impacted, so all of those things have to be taken into consideration.

But, at the latest, probably March or April.

CHAIR BEACH:

And if you can…

VICE-CHAIR HILLMAN:

May I just ask a follow-up on that?

CHAIR BEACH:

Yeah, sure.

VICE-CHAIR HILLMAN:

You gave two options. One was no changes, or adding questions.
What about the option of clarification of any question, or removing
items, what does that do to the process?

DR. ANDERSON:

That would not delay the process, as much. That could be done
within a couple of weeks and we could get the survey out for public
comment.

CHAIR BEACH:

Okay, and just as a follow-up, too, for the 2008 Election Day
survey, the states received it much later than they could potentially
receive it now, so we are ahead of the curve with…

DR. ANDERSON:

Absolutely, we would definitely be ahead of the curve.

CHAIR BEACH:

Okay.

COMMISSIONER DAVIDSON:

I have one more question. But if we put -- and meet the law on the
MOVE Act, what does that do to you?

DR. ANDERSON:

In terms of introducing new questions that would allow us to track
this kind of data, again, that falls into the latter category, because it
involves developing new questions and inserting those into the
questionnaire, allowing the public to comment and then we have to

take those public comments into consideration, we might have to

adjust the questionnaire in some other ways, and still go through

the approval process with OMB. So…

COMMISSIONER DAVIDSON:

With the law saying we have to work with FVAP on this…

DR. ANDERSON:

Um-hum.

COMMISSIONER DAVIDSON:

…how do we think that we can avoid that?

DR. ANDERSON:

I don't know -- we don't -- we don't necessarily want to avoid

working with…

COMMISSIONER DAVIDSON:

No, no.

DR. ANDERSON:

…FVAP.

COMMISSIONER DAVIDSON:

I meant…

MS. LYNN-DYSON:

No, I think she's…

COMMISSIONER DAVIDSON:

…how can we avoid changing our form?

DR. ANDERSON:

That is an intriguing question, and it's one that we'll have to consider.

MS. LYNN-DYSON:

I would say offhand, Commissioner Davidson, it might be -- we obviously have to study MOVE closely, have good conversations with FVAP about this. But, it may mean that to satisfy the requirements of MOVE, we use a different approach. Perhaps, it's another survey. Perhaps, it's, you know, a series of focus groups or conversations. Perhaps, then, it isn't a requirement that we do this through the Election Day survey. So -- or a pilot program or those kinds of options rather than through this. It's one of the -- and I've actually even wondered -- I know that, with the Commissioners, over the last year, we've discussed a number of times our Statutory Overview and one of your former colleagues, Commissioner Rodriguez, speaking very strongly about the idea through our Statutory Overview, being able to ask questions of trends going on in the field, and allowing us to get a feel for what states are doing around some of these election administration practices through the Statutory Overview. Perhaps the Statutory Overview is a vehicle by which we could ask some -- probe some questions around MOVE, and how states are responding to the Act.

COMMISSIONER DAVIDSON:

But we'd have to go back out for 120 days -- well, we'd have to go
back out for the Paper Reduction Act to be able to do something
like that.

MS. LYNN-DYSON:

I don't -- I'll let you comment about the Statutory Overview and how
that fits in.

DR. ANDERSON:

Well, if we were to introduce those questions through the Statutory
Overview, it's the same…

MS. LYNN-DYSON:

Same.

DR. ANDERSON:

…concept of putting it out for public comment. If we were to
develop an entirely new questionnaire, around the sort of questions
that are raised in the MOVE Act, that would require a brand new
120-day process.

MS. LYNN-DYSON:

But, also, let me say while the Statutory Overview would go through
this same clearance process, for the states it might not be the
burden because it could perhaps be collecting information on
procedures -- administrative procedures and practices, as opposed
to actual data around, you know, UOCAVA -- numbers of UOCAVA

voters, ballots, and things like that. Just -- just some ideas off the

top of my head.

CHAIR BEACH:

For clarification with the Statutory Overview…

MS. LYNN-DYSON:

Um-hum.

CHAIR BEACH:

…that was not a mandate on states to answer,…

MS. LYNN-DYSON:

That's correct. That is correct.

CHAIR BEACH:

…but what would be required under the MOVE Act would be a

mandate for states to answer. So, how would we reconcile with an

instrument where they're not required?

MS. LYNN-DYSON:

That's not required, yeah. We have -- for the one time we have

done the Statutory Overview, we have had full cooperation.

Correct?

DR. ANDERSON:

Yes.

MS. LYNN-DYSON:

So, you know, it is -- while it has been voluntary, all states have

participated.

CHAIR BEACH:

And they received that at the same time they received the 2008

survey?

MS. LYNN-DYSON:

Yes.

DR. ANDERSON:

Yes.

CHAIR BEACH:

Okay, do you have a question or comment, Mr. Executive Director?

MR. WILKEY:

Yes, thank you Madam Chair. First, let me reiterate what I said

earlier, in discussing some of the accomplishments of EAC over the

past five years. And here we see another perfect example of the

many things that have -- we have accomplished during that short

period of time. As this survey has gotten better and better, and I go

back to the '04, and then '06, and now '08, I think we've made

tremendous strides; that we're getting much better data. We've

worked very, very hard on capturing and refining those questions,

working very, very closely with the states to make sure that we get

the kind of information that we need. And I know from talking to

researchers, academics, people out -- that cover American

elections, they use this data. They love this data. They work with it

a lot. And so, here again is another prime example of the kind of

work that we have been doing, and I don't think that that should be

overlooked in the laundry list of things that we have accomplished.

I do have one question -- and I'm sorry that we didn't have

this offline, but it might be of interest to the other -- to the

Commissioners -- is that going back to '04, '06, '08, and going

through this laborious effort we have to go through with the

Paperwork Reduction Act and the public comment period, I notice

that we only really have 18 comments. Of the 18, ten are from one

state, and not a very large state either. Does that surprise you?

Are you -- were you taken back by the fact that it's out there for

such a long period of time, we try to make a major effort to make

everyone understand that it's out there, and to get your comments,

and yet we don't seem to get the kind of response that we really

need to make good decisions in some these areas?

MS. LYNN-DYSON:

I would -- I would -- Mr. Wilkey, I might characterize it a little

differently. I know for the last survey and the last comment period

we received 53?

DR. ANDERSON:

Yes.

MS. LYNN-DYSON:

53 comments. My recollection of '04 and '06 is, we received in the

neighborhood of 70 comments. I would characterize it, instead,

that the survey has gotten that much better, and that states are that
much more comfortable with the instrument, especially with the kind
of technical assistance, the real one-on-one, the real handholding
that our contractor and, to some degree, Shelly even has done with
the states. So, I think that's really what's made the difference. You
don't have people out there who are confused, who are frustrated.
It is -- it's a better tool, and they are, with very few exceptions, they
really are able to accommodate this survey and collect these data.
So, I think that's what you're seeing.

MR. WILKEY:

That's kind of the answer I expected, and I'm grateful that you said
that, because I think we have done a tremendous amount of
support that we didn't do in '04 and '06.

MS. LYNN-DYSON:

That's right.

MR. WILKEY:

We put a major effort into handholding…

MS. LYNN-DYSON:

Right.

MR. WILKEY:

…were there for them on a daily basis.

MS. LYNN-DYSON:

Yes.

MR. WILKEY:

"Here's how you do this. Here's how you go about it." And I think

that's, frankly, why you see that. But I wanted that, as a

researcher, from your perspective, not just mine.

MS. LYNN-DYSON:

Yeah.

MR. WILKEY:

Thank you. Thank you, Madam Chair.

CHAIR BEACH:

Okay, are there any other questions or comments at this point?

Okay, we'll break at this time and reconvene at 1 p.m.

***

[The public meeting of the EAC recessed at 10:57 a.m. and reconvened at 1:04

p.m.]

***

CHAIR BEACH:

Good afternoon, welcome to our second part of our public meeting

this afternoon. This part is entitled "Military and Overseas Citizens:

Counting Their Votes – Part 2." This is EAC's second meeting

about improving customer service for these voters.

As I stated when I was sworn in as Chair of the EAC, one of

my top priorities has been working with interested parties in finding

solutions for these voters who have faced obstacles for years.

Today we'll discuss several topics regarding military and overseas voters from a variety of perspectives, beginning with Bob Carey the Director of the Federal Voting Assistance Program. Mr. Carey will talk about how we can work together to improve the process for these voters. We will be having three panels and he will begin on our first panel, and before he begins I would like to just read his bio quickly.

Bob Carey was appointed as Director of the Federal Voting Assistance Program on July 6, 2009. He administers the federal responsibilities of the Uniformed and Overseas Citizens Absentee Voting Act, UOCAVA, for the Secretary of Defense.

A 1985 graduate of the University of Pennsylvania, he was commissioned an Ensign in the United States Navy and reported to the U.S.S. Comte De Grasse, DD 974. After earning his Surface Warfare Officer designation, he reported to Pensacola, Florida, earning his Naval Flight Officer wings in 1989. After additional training, he reported to Attack Squadron 85 onboard U.S.S. America, flying the A-6E Intruder through two deployments, including 37 combat missions during Desert Storm. Mr. Carey left active duty in 1995 after serving on the staff of the Chief of Naval Operations, and immediately accepted a Reserve Commission.

Mr. Carey then served on the staff of two U.S. Senators as a Legislative Assistant and a Legislative Director from 1995 to 2002,

until mobilized from the Reserves to active duty, again to serve on the staff of the Chief of Naval Operations. Upon his demobilization, he was appointed as Senior Policy Advisor to the Secretary of Energy. Again recalled to active duty in 2003, Mr. Carey moved to New York City where, upon his release from active duty, he started Empire-Capitol Strategies, a strategic planning and policy development consulting firm. Mobilized again to active duty in 2004, Mr. Carey deployed to the staff of the U.S. Fifth Fleet serving as coordinator of all coalition maritime forces involved in Operations Enduring Freedom and Iraqi Freedom, as an Executive Assistant to the Fleet Commander.

Mr. Carey returned to Empire-Capitol Strategies upon his release from active duty in 2005 until his return to active duty in 2007 where he served on the staff of the U.S. Naval War College in Newport, Rhode Island. After graduating from the Naval War College in 2008, Mr. Carey became Executive Director of the National Defense Committee, helping to establish the Alliance on Military and Overseas voting Rights, and consulting to the PEW Center on the States' Military and Overseas Voting Reform Initiative. He has also served as a member of the Board of Directors of the Overseas Vote Foundation, and Mr. Carey continues to serve in the U.S. Naval Reserve.

Without further ado, I'd like to turn it over to you for your

presentation.

MR. CAREY:

Thank you very much. You forgot the two most important things in

my biography. One, I've been an overseas civilian voter when I

was in school overseas. And, two, I was obviously a military voter.

In fact what got me involved in this issue was when I experienced

some personal disenfranchisement upon my mobilization in 2004,

and then, again upon my return in 2005 when I was trying to get

back in time for the New York City elections. So, that's what

originally got me involved in this issue. In fact, it was my very first -

- my very first item of involvement was when I represented the

National Defense Committee before the Election Assistance

Commission at a hearing out in St. Louis and I met the Overseas

Vote Foundation folks, the next thing you know I'm on the Board of

the Overseas Vote Foundation and things spiraled out of control

after that. So, here I sit today, but I'm proud to be here. And I

thank you very much for this opportunity to discuss UOCAVA, the

MOVE Act, and what role FVAP and the EAC can play in that.

If we can hand out a presentation. Since I am from the

Department of Defense, we have to do everything by PowerPoint,

and I realize it's difficult to be able to project that here, but I'll make

sure that all the rest of the participants have copies of this.

And my first two slides are basically, sort of the overview of where FVAP sits now, in that the MOVE Act has so fundamentally changed the nature of what FVAP is required to provide that it's going to probably segue into the second panel very quickly.

If you see on our second slide, FVAP has redefined its mission. We're looking at ourselves both as providing assistance and advocacy. Assistance in terms of helping the uniformed service personnel, their voting age dependents, and the overseas civilian voter successfully exercise their right to vote in federal elections equal to that of the general population. That's what's in law, and I think that's needs to be in our mission statement as well. And I've advised all of our Voting Assistance officers as well, that that is our goal, that is our mission, is to provide that level of assistance necessary in order to be able to ensure that overseas -- military and overseas voters have the equal opportunity to successfully cast a ballot as the -- as someone back here in the United States voting regularly.

Second is on the advocacy. We need to identify those areas where military and overseas voters have severe difficulties in being able to execute that right to vote, and we need to identify the ways that we can overcome those.

What that means is that -- on the third slide -- what that means is that we have substantially changed many of our goals. In

the past, FVAP has measured itself in part by the Voting Assistance

Program and its effort within the Voting Assistance Program.

That's important. I mean we need to be able to continue to

measure that from a measure performance perspective and to be

able to see how well we are doing in executing the mechanics of

the Voting Assistance program. But ultimately that doesn't matter.

We can issue hundreds of thousands of federal postcard

applications, hundreds of thousands of Federal Write-In Absentee

Ballots and tens of thousands of Voting Assistance guides, and if

the voters aren't able to vote successfully, it doesn't matter. So,

we're changing our goals and our measures to that which is

actually tied to voting success. And first, you'll see that we talk

about the UOCAVA voting success rate equals or exceeds that of

the general population. And what I mean by that is, does the

UOCAVA voter have the ability to cast their absentee ballot with the

same chance of success as the -- as a regular absentee voter?

And I think that is the most important measure we need to look at

and the most important goal, because the -- we don't require

people to vote. We don't require the military to vote. We can

march them down to the polls if we really thought that was a good

idea, but we don't, and we have a law against that. And that's a

good thing. And so, you know, we need to be looking at where

people say they want to vote, being able to make sure that they

have adequate opportunity to vote. And so, we're going to

measure our success in terms of the absentee ballot cast rate.

Now, in 2006 you measured that absentee ballot cast rate at

about -- I believe at about 26 percent. About 26 percent of the

absentee ballots that were sent -- UOCAVA absentee ballots that

were sent out were returned. In 2008 you measured that with your

UOCAVA Election Day Survey at about 68 percent. And so -- but

for the general population of 2008, the absentee ballot return rate

was about 91 percent. So obviously, that is where we believe the

greatest level of failure lies in the UOCAVA voting process is in the

absentee ballots that are being sent out that are not being returned.

There's a myriad of possible reasons for that, and we need to

examine that, and we're underway in doing that right now, but from

the point of our goals and of our measures that's first and foremost.

Then also the counted rate of those cast. Now, from the

EAC 2008 report, it looked like about I believe 94 percent of those

cast were counted for UOCAVA voters, which is also a little bit

below that of the general population. Now it may not be as -- it may

be statistically greater. It may even be statistically I think double

that of the general population. But, you know, in terms of where the

greatest amount of voting failure lies, it's obviously in the ballots

being sent out not being returned. And then, also we really want to

measure the FWAB utilization and success rate. And what we

mean by this is that we see, you know, one of the things that is being grossly under-utilized, in my opinion, is the Federal Write-In Absentee Ballot. The -- in 2006 the EAC UOCAVA Election Day Survey reported that about 1,400 were cast. In 2008, I believe it was about 28,000. But we had 20 percent of the absentee ballots that were sent out not returned. Now, maybe people just didn't want to return the ballot. But to the extent that they asked for an absentee ballot, I'm presuming they want to cast it. And so, you know, obviously those absentee ballots that are being sent out that are not being returned are not being replaced by Federal Write-In Absentee Ballots at the level that we want. So, we really want to try to encourage greater utilization of the Federal Write-In Absentee Ballot. And, in fact, in the Voting Assistance guide we're saying to voters that if you have not received your absentee ballot by October 2nd, 30 days prior to the November general election, send in a Federal Write-In Absentee Ballot.

The second thing is the UOCAVA voter participation rate. In the past, people have focused immediately on the voter participation rate and compared the military voter participation rate to that of the general population. I think that if we improve the voter success rate we are, by definition, going to be improving the voter participation rate. But -- and so that's why it's our second goal and our second measure. But the other thing I think we need to make

sure is that we adjust those voter participation rates for age and gender. 53 percent of the general population is over 45 years of age. Only five percent of the military population is over 45 years of age. So, you know, we need to make sure that when we compare voter participation rates we adjust it for both the difference in age and in gender, because, you know, the general population is about 52 percent female, but the military is only about 15 percent female. So again, an area where -- and historically men have voted at a lesser rate than women and younger people have voted at a lesser rate than older people.

Third, and similarly, is the UOCAVA voter registration rate equals that of the general -- equals or exceeds that of the general population. And again, to the extent that we improve the voting success rate, we will hopefully also be improving some of the registration rate for those states that allow the simultaneous use of the Federal Absentee Write-In Ballot as a registration and absentee ballot application. Again, we need to adjust it for age and gender and compare that to the general population. I'm also examining whether we can -- whether it make sense to look at the desire to vote, because in our quadrennial survey we measure service members' desire to vote, and see whether there is a comparable national voter desire to vote measure that we can then compare to the national registration rates and see if we can find something

there, as well. Because to the extent that, you know, there's a desire to vote, you'd think those people would want to be able to register to vote. And so, therefore, it's important that we make sure that our registration rate, even if it does exceed that of the general population on a age and gender adjusted basis -- or even not an age and gender adjusted basis, also is making sure that everyone that has expressed a desire to vote is able to vote.

Our fourth goal refers to the overseas citizen population. It's been well documented about the problems of defining what the overseas citizen population is. There are, you know, a number of reasons for that, whether it's because the -- you know, people just don't register in the system with the Department of State because, frankly, they don't really feel a need to have that type of close contact if they're in a country like, you know, Canada or the United Kingdom. And we don't have a requirement that people have to register with the -- with the U.S. embassies. So it's -- and in 2000, Census Bureau tried to do a census of overseas civilians and spent about 7 million bucks and basically said, "We can't do it." One of the things -- we've experienced similar difficulties in our quadrennial survey, and we're trying to figure out how we might be able to do that. We're going to start doing a survey in 2010, as well, and we're going to try some other ways that we might be able to figure out what that overseas civilian population is, maybe going to

outside groups, to finding a -- defining a single county well, in terms of what the U.S. population is, and then trying to define the voter participation rate from that country, and then seeing if we can then extrapolate that to other countries where we know how many votes came out, we know the voter participation rate, maybe we can calculate the population from that.

There's a number of statistical tools we may be able to use, I don't know how useful they'll be, but we are committed to trying to figure out if we can define the actual overseas citizen population. The reason it's so important is that you can't figure out any of these rates if you don't know the denominator. If you don't know the total population of overseas civilians of voting age, you can't figure out what their absentee -- it's difficult to figure out what their voter participation rate is and what their registration rate is. And a big concern that I have is that not having good, you know, quality data doesn't stop people from making estimations of voter participation rates and voter registration rates and voter success rates for the entire population, and that may very well over or underestimate the locus of the problem. And if we believe -- if we have incorrect data leading policymakers to say that there may be a problem here, in fact, there may not be, we may be wasting our scarce resources on those areas.

Do you have…

CHAIR BEACH:

I'm saying we're at our ten-minute mark, sir.

MR. CAREY:

Okay.

CHAIR BEACH:

If you could wrap up for the...

MR. CAREY:

Actually, that's it for those two slides that I had, thank you.

CHAIR BEACH:

Okay, thank you. At this time I'll turn to Vice-Chair Hillman for any

questions or comments for Mr. Carey.

VICE-CHAIR HILLMAN:

No, I think I'll wait until we get further along…

CHAIR BEACH:

Okay.

VICE-CHAIR HILLMAN:

…into the testimony this afternoon.

CHAIR BEACH:

Great. Do you have anything Commissioner Davidson?

COMMISSIONER DAVIDSON:

You know that might be wise. That way we can just…

CHAIR BEACH:

That's fine.

COMMISSIONER DAVIDSON:

...I mean, you're going to be at the panel and some of the questions

may be answered in your next presentation also.

CHAIR BEACH:

Okay, that's fine, we can move forward with that. At this point I'd

like to invite our Attorney Advisor of the EAC, Andrew Guggenheim

up here to present. And before he speaks, we'll be talking about

the Military and Overseas Voter Empowerment Act, also known as

the MOVE Act. I'd like to give a little background on that.

President Obama recently signed in the MOVE Act into law.

This important legislation was a bipartisan effort and we thank

Senators Chuck Schumer, Bob Bennett, John Cornyn, Saxby

Chambliss and Ben Nelson for their leadership and support of

military voters and for helping with this legislation. I'd also like to

recognize Senate Armed Services Chair Carl Levin and Ranking

Member John McCain for their long-time support of UOCAVA

voters and for steering this bill through the Senate process. I'd also

like to recognize the leadership of House Administration Chair

Robert Brady and Ranking Member Dan Lungren and House

Armed Services Committee Chair Ike Skelton and Ranking Member

John Hughes. I'd also like to recognize Representatives Kevin

McCarthy and Carolyn Maloney who have also introduced

legislation in this area and has provided consistent support over the

years to UOCAVA voters. I'd also like to recognize staff at the Department of Defense and the Department of Justice, who also worked to make the MOVE Act a reality. And, of course, the MOVE Act would not have been possible without key Congressional staff working tirelessly on this legislation. They truly made an effort to craft a bill that will improve the process and they sought input from everybody.

So, without any hesitation I'd like to talk about how we can implement the MOVE Act immediately, and I'd like to turn to our Counsel, Andrew Guggenheim.

MR. GUGGENHEIM:

Madam Chair, Vice-Chair, and Commissioner Davidson, as you mentioned, my name is Andy Guggenheim and I'm an attorney in the Office of General Counsel here at the Election Assistance Commission. Thank you for the opportunity to explain the impact of the Military and Overseas Voter Empowerment Act, or MOVE Act. And I'm pleased to be here with Mr. Carey, as well, whose personal knowledge of this issue is certainly going to be helpful as our two organizations move forward in implementation of the Act. As you know, this law was passed as part of the National Defense Authorization Act for fiscal year 2010, that was signed into law by the President on October 28, 2009.

Before I get into the impact of the MOVE Act, I will take a brief moment to provide some background information about the Act, which was originally introduced as stand-alone legislation. And as the Chair mentioned, there are a great number of Senators and Representatives that we can be thankful for this legislation. The bill received consideration by the Senate Rules and Administration Committee where multiple groups with interest in military personnel issues and overseas voting weighed in with support and offered improvements.

The MOVE Act amends, among other statutes, the Uniformed and Overseas Citizens Voting Act, or UOCAVA, and the Help America Vote Act, to develop a system to register and count the votes of members of the military and overseas citizens, who in the past have had difficulty navigating the myriad of state registration and ballot submission requirements. Members of the military have a particularly difficult time registering and voting, given their frequent reassignments and other considerations that go along with their vital service to our nation.

Along with providing assistance to states in implementing the requirements under the new law, the EAC has three primary responsibilities. Section 584 requires that FVAP work with the EAC and state election officials in developing standards for states to report data on the number of ballots transmitted and received. As

you heard during the last public meeting from the Research and Policy Division, EAC released to the public its 2008 Uniformed and Overseas Citizens Voting Act report. The 2008 UOCAVA study attempts to gather data from the 55 states and territories on the number of UOCAVA ballots transmitted and returned. The methodology used by the EAC in compiling this report comes from UOCAVA which requires EAC to collect comprehensive data from the states on all the ballots sent and received by UOCAVA voters. Similarly, FVAP is required to conduct a separate study that uses a slightly different methodology to measure UOCAVA voters. By developing a closer working relationship with state election officials, EAC was able to substantially increase reporting from 2006 to 2008. Based on the success of the latest study, EAC feels confident of its ability to provide quality input on the standards for data collection to meet the requirements under this section.

The second section of the MOVE Act that impacts EAC is a change to the formula under certain circumstances for requirements payments. As you know, EAC provides federal financial assistance to states to implement the requirements of Title III of HAVA. Upon state certification of compliance with Title III, the states may use requirements payments for "improving the administration of elections for federal office." The amendments made by the MOVE Act add a subsection for states to spend

money only to meet the requirements under UOCAVA as amended by MOVE, provided that there is a separate appropriation to do so. In essence, Congress may choose to provide EAC with specific appropriation for states to spend money only on the requirements put in place by the MOVE Act. If EAC receives an appropriation for requirements payments without invoking the new section, states may still be able to use the requirements for MOVE, but only if: (a) they can certify compliance with Title III of HAVA; and (b) the MOVE Act requirements can be considered "an improvement to the administration of elections for federal office." Please note that a final determination on the use of requirements for the upcoming fiscal year will have to wait until EAC receives its annual appropriation.

Third, EAC and the National Institute of Standards and Technology are responsible for providing FVAP with the best practices or standards in accordance with the Electronic Absentee Voting Guidelines set out in the Defense Authorization Act of 2002. It is my understanding that EAC is already working closely with FVAP on a path forward to fulfill this requirement. In addition, EAC is set to work with the Technical Guidelines Development Committee and NIST at an upcoming meeting in December, in the development of risk mitigation standards that can be tested by any pilot program under this section.

Aside from the specific requirements on the EAC and NIST to develop these guidelines, the new law places great emphasis on protecting the security and integrity of the registration and ballot submission process. A technical review of the standards will help states fulfill their obligations under the new law and protect the integrity of elections.

Aside from the specific requirements on the EAC, there are several other important elements of the new law that are worth discussing. One issue is that the EAC is already working with FVAP on is the potential designation by the Secretary of Defense of military installations as Voter Registration Offices. Questions have arisen related to the use of the Federal Write-In Absentee Ballot, and the EAC will continue to work with both FVAP and the Department of Justice to ensure that members of our armed forces, their families or anyone wishing to register to vote at a military installation will have access to the proper registration forms and instructions. Also given the new requirements on states for transmission of ballots and the development of a "free access" system, among other things for tracking ballots, EAC may be asked to provide guidance on the use of federal financial assistance. The Office of General Counsel has been working closely with the Grants Division here at EAC to ensure that the full scope of the new law is

understood and that the EAC will be able to provide guidance to the states, both informally and through the Advisory Opinion process.

Thank you again for asking me to provide a brief overview of the new responsibilities of the EAC as set forth in the MOVE Act. And while the scope of some of the changes in the new law will not be known until later Congressional action is taken, EAC must continue to work on the development of the electronic absentee voting standards and stand ready to assist both the Department of Defense and the states on any implementation issues.

I'm happy to answer any questions you may have about the Act.

CHAIR BEACH:

Okay, thank you. Mr. Carey would you like to comment on…

MR. CAREY:

In my original presentation I had a couple of slides on MOVE Act, so maybe I'll just go over that real quick.

Slide four talks about the federal requirements, and most of these are well known. The Federal Government is required to provide more online tools, such as an online Federal Write-In Absentee Ballot, a state election official database and online voter information portals.

There's also a requirement that the Department of Defense devise methods of expedited ballot return for overseas uniformed

service personnel. Basically any ballot that's put in the military

postal system no later than seven days prior to the election, it

needs to get back to an election official on time. FVAP is working

closely with the military postal system agency right now, on not only

figuring out we might be able to standardize that process, but

expedite it even further, and also, maybe try to provide some online

tracking capability that could coordinate with the state online ballot

receipt requirement as well. So, hopefully we can dovetail those

two in order to be able to help the states achieve that same

purpose and have a continuous tracking of the ballot.

The MOVE Act requires an expanded voter outreach

program. Specifically, the designation of installation voting

assistance offices at every military installation with very clear

guidelines as to when the federal postcard application has to be

provided to those members. Those are already -- those are already

designated in our current DOD directive regarding voting

assistance, but this will also bring that into the installation level.

And then, also, a good deal of advertising and communication to

overseas and military voters regarding many of these new

programs.

As Mr. Guggenheim discussed, there's a lot of improved

data collection requirements in coordinating with both the states

and the EAC on that, and figuring out some method of an online

repository, and we've already been discussing that at length, as well.

And then, as we discussed, there's a number of reports required both for FVAP to report on the Voting Assistance Program and the MOVE Act implementation, and also to make what has traditionally been our quadrennial survey an annual survey. It's not exactly the same, but it's pretty much the same. There is also reports, as Mr. Guggenheim talked about, EAC and NIST, on Internet voting systems, and also one that DOJ has to do on enforcement. There's also a lot of requirements for the states that I think are important to bring up, and that's, the states are required to transmit their ballots at least 45 days prior to an election, transmit them electronically, accept the Federal Write-in Absentee Ballot for all elections and to provide that free online ballot receipt system. And they cannot require a notary. FVAP is looking at -- and we'll discuss this in just a second -- FVAP is looking at a number of initiatives in order to be able to assist the states in meeting the requirements of the MOVE Act, but the requirement still stands for the -- for the states to execute this, even if the Federal Government were not to have done anything. And I think that's important to realize is this is a requirement for the states to do this, although FVAP realizes it has a role in order to be able to try to help the

states as much as possible. And I think we have some programs that will be able to help them considerably.

Why don't we just actually go right to slide ten and I'll talk about those FVAP initiatives. In the past we have had a system of voting assistance which has been predominantly based upon the voting assistance officer, and it is -- it's a hierarchal method of distributing information that was developed before the Internet truly came online. We used to do the same sort of thing with volunteer income tax assistance. Military bases used to have income tax assistance, and they still have them to some extent, and everyone would go down with their W-2 and their 1040 and they'd get help in filling out the form. TurboTax and TaxCut, basically said, "Hey we'll provide you the software for free for your junior military personnel." And those trailers for the income tax assistance are not nearly as busy as they used to be. We'd like to try to have the same model of providing greater, direct to the voter, information and assistance to reduce that reliance and need on the voting assistance officer, and to make sure that we have a more centralized method of relaying that information for quality control and ease of changing that information as changes come in.

We're also looking -- we're going to probably have either an RFI, a Request for Information, or a Request for Quotes come out here this month regarding the establishing of an online voting

wizard. And the vision we have here, is that, basically a voter can

go to the FVAP.gov Website and say, "I want to register", or "I want

to request an absentee ballot", or "I want to vote," click on their

state link and it takes them to a Website. It could be a state-run

Website, it could be a state-run vendor Website, or it could be the

FVAP Website that would -- that would take them through a wizard

that would be intuitive, it would be simple, it would be seamless,

that the voter would not have to understand the UOCAVA process

to be able to fill out the form. And then, to be able to have the

forms automatically populated. We would like to see this up

through and including the online delivery and online marking of an

absentee ballot. Both these stages would still, though, require the

printing out of the actual hard form and the wet signature on that

form to be sent back to the local election official by postal mail or

email or -- in a static form by email or fax or Express Delivery, if the

state so allows. But, we'd like to basically try to expedite the

delivery process, and allow that also online, the marking process,

so that you can take advantage of some of the technology in

reducing undervoting/overvoting that may otherwise spoil a ballot.

The concept we have is FVAP supported, meaning we're looking to

try to see if we can provide some level of federal funding, vendor

provided, using commercial off-the-shelf technology, and allow the

state an opportunity to choose their vendors, state decided, so that

it can also be MOVE Act compliant, and tailored to the individual state's ballot system, and voter adopted. And what I mean by that is that it is so intuitive and seamless and easy that the voter readily adopts it. As I said, we're looking to have this out by Christmas.

We're also looking -- on slide 11, we're looking at improving the data, as well. We really are concerned that sometimes improperly evaluated data may lead to poor policy decisions. So, we have revamped our methodology for our quadrennial survey. We use the Status of Forces Survey now that the Defense Manpower Data Center uses. We believe that's a well established, well regarded, methodologically rigorous method of surveying UOCAVA voters. And we think we are going to have much more detailed and much more statistically valid analysis from that. We're also looking to do this every two years. In 2010 we're looking to possibly see if we might be able to do a full census of the LEOs instead of just a weighted survey, and we'd like to work with you all on seeing if we might be able to combine some of our efforts. Maybe we could combine our survey instrument to reduce the burden on the LEOs. Maybe we try to combine some aspects of our report, have common sections that will reduce the duplication of effort and will also dovetail into the requirements of MOVE Act to be able to have some type of standardized method of collection and repository of that information.

And then, for the Election Official Assistance, we've already talked about the wizards. We're expanding our workshops. We're going out to state election official director conferences, and basically doing the same thing we do with our voting assistance workshops, we're doing election official workshops. And we're also looking to provide them access to our call center access. And our 2008 survey report will also have a state-by-state index of FVAP's effectiveness in being able to convince states to adopt our legislative initiatives. You may very well have seen our legislative initiative letter that on our Website now for all the states where we detail our legislative initiatives at the state level. And to that extent we're also strongly supporting the Uniformed Law Commission effort and encouraging the states in our legislative initiatives letters to do that as well.

Finally, we're looking to -- on slide 12 -- we're looking to try to improve the addresses for overseas and military voters, as well as the mail delivery. Specifically, we're looking to see if we might be able to provide some method of online database that the states could access that they might be able to compare against their statewide voter registration system to ensure they have the proper address, delivery address for at least uniform service voters. And we're also looking to provide greater direct assistance to the LEOs on those addresses.

And the same thing with better mail delivery. We're working very closely with the U.S. postal system and the military postal system to see if we might be able to develop some type of standard envelope that will make it easier for postal officials to be able to identify a ballot and get it into the -- get it into a much more expedited method of delivery, as well as assisting the local election officials if they have issues with their local post offices regarding free ballot delivery. And then, we already discussed the expedited delivery processes and the online ballot tracking.

That was basically it. If, later on, we want to discuss any of the other slides I had regarding Section 104 of -- the repeal of Section 104 and/or, you know, some of the key issues that we found, I'd be more than happy to. But, at this point I'm open for questions, as well.

CHAIR BEACH:

Thank you. At this point I'll turn to Vice-Chair Hillman for any comments or questions.

VICE-CHAIR HILLMAN:

A couple of questions. First, let me just say Mr. Guggenheim, that I appreciated your presentation. Unfortunately, it was so filled with facts, without the benefit of the paper I don't even know what to go back and ask you. So, I'll plot my way through this and something may come up for you to respond to.

But, Mr. Carey regarding the postage, providing, if I understand you correctly, free postage on the return of the ballot by mail?

MR. CAREY:

Well, that's already required under MOVE Act…

VICE-CHAIR HILLMAN:

Right, right.

MR. CAREY:

…the expedited delivery process…

VICE-CHAIR HILLMAN:

Right.

MR. CAREY:

And, under UOCAVA before that, as well, it was supposed to be free.

VICE-CHAIR HILLMAN:

Okay. And who pays for that, do you know?

MR. CAREY:

I think it eventually comes back to the U.S. postal system, and I believe the U.S. postal system gets reimbursed through appropriations by Congress.

VICE-CHAIR HILLMAN:

Okay. In one hearing we had, I believe it was last year, we were talking about alternative methods of voting or something, I don't

remember what, but the U.S. Post Office was represented at the hearing, and one of the concerns they had about reduced or free postage on the return of absentee ballots is that they were not getting their appropriation, and were going further and further in the hole, and finding that it was extremely difficult. And I'm just wondering, if, from the Department of Defense point of view, you can add any clarification as to whether you've heard anything that suggests it's a holdup, is it limiting the number, is there anything about the post office's struggle to be reimbursed or appropriately paid for this responsibility that is interfering in the execution of the program?

MR. CAREY:

I haven't heard anything specifically about that. I have not heard anything about ballots not being delivered because of lack of postage on return.

VICE-CHAIR HILLMAN:

Um-hum.

MR. CAREY:

I have heard -- but that doesn't mean it doesn't exist, and to the extent that we do see that, we would be more than happy to try to help out on that. What I have heard about is local election officials trying to send out -- send out balloting materials with the indicia -- with the U.S. Government indicia on there. And there's a number

on there, I guess it's 39, and some local postal officials thought that

that was a 39 cent indicia stamp when the postal rate is greater rate

than that, and so they were rejecting them. We've been working

with the U.S. Postal Service on that, and, you know, right now

there's not a whole lot of activity on that, but we -- as I said, we're

working with the U.S. postal system on that, and we'll be working

more directly with local election officials as the election ramps up, in

order to be able to try to identify those things earlier. We've been

saying to the local election officials, "If you hear about that, tell us

and we'll see what we can do to coordinate with the U.S. Postal

Service with you, in order to be able to get that corrected with the

local postal official."

VICE-CHAIR HILLMAN:

Thank you. It's clear that you and the members of your staff have

given a lot of thought to what needs to be done under MOVE, and

some strategies and concepts. What do you see are the top three

biggest challenges you know you're going to face, to get this thing

implemented in time for it to be in place for the 2010? You can

name five if you want, but I just thought I'd keep it simple to three.

MR. CAREY:

You know having a final appropriation is always great, because it

allows you to -- it allows you to implement new starts. But, you

know, we'll see if we might be able to figure out ways to be able to start implementation early, as continuing programs.

There's a lot on the plate. I mean, there's a lot to do. Not to say that we don't think we can do it, but it's going to take a concerted effort by all agencies to coordinate the extensive project management that that process will take. There's a number of individual projects that need to be undertaken and executed, many in relatively short timeframes. And so, you know, in government work, oftentimes, the ability to get things done, you know, expeditiously, is sometimes upset by legislative or regulatory requirements that have other purposes, you know, to protect other areas that may very well hold that up. I wouldn't -- I wouldn't put it in terms of, you know, what are the greatest challenges for implementation. I would put it in terms of, you know, it's a significant effort and we realize it's a significant effort and, you know, we're ramping up to get there. And we don't see anything, at this point, that is going to -- that is going to hold us up on that. But, you know, at some point there's going to be -- we're going to be hitting a point where it's going to be difficult to execute if we don't have a final appropriation.

VICE-CHAIR HILLMAN:

Thank you.

CHAIR BEACH:

Commissioner Davidson?

COMMISSIONER DAVIDSON:

Thank you. First of all, both of you can respond to this question, but the way I understand it is the MOVE Act has changed what elections this applies to. It used to, you know, FVAP, the Federal Voter Assistance Program was the general election. Now it is run-off elections, primary elections, Congressional elections, and then, obviously, primary and general. Am I correct in that, the 45 day getting out ballots, the different issues there that fall into place?

MR. CAREY:

There was no requirement before for 45 days prior. There is no -- there is no timeline…

COMMISSIONER DAVIDSON:

Right.

MR. CAREY:

…identified in UOCAVA before MOVE Act.

COMMISSIONER DAVIDSON:

But…

MR. CAREY:

The first time it will apply will be the 2010 general election. Then it will apply to all federal elections after that.

COMMISSIONER DAVIDSON:

But it -- but the -- I guess what I really want to say is that the law

applied to only general elections when it spoke about anything at all

and now…

MR. CAREY:

That was the Federal Write-In Absentee Ballot.

COMMISSIONER DAVIDSON:

That's right.

MR. CAREY:

The Federal Write-In Absentee Ballot…

COMMISSIONER DAVIDSON:

That's right.

MR. CAREY:

…before, was only mandated to be accepted for the general

election.

COMMISSIONER DAVIDSON:

Thank you.

MR. CAREY:

Now the Federal Write-In Absentee Ballot is mandated to be

accepted for all federal elections.

COMMISSIONER DAVIDSON:

For all elections. So -- and that also, now, even goes even further

because of the 45 days that is in there and you have to give a --

really give them a redemption, I guess, or however you want to put

it, of your -- because of their Constitution, or their state law, or something in that manner, that they didn't have to meet that 45 days. And…

MR. CAREY:

There's a waiver authority in the law that the Secretary of Defense in coordination with the Attorney General can grant a waiver under certain circumstances. And we're working with Department of Justice, right now, on developing the -- basically, the methods by which the states can apply for the waiver and the standards under which the waiver will be granted, although the law -- the law is pretty clear.

COMMISSIONER DAVIDSON:

Right.

MR. CAREY:

The law is pretty clear about the standards as to the waiver.

COMMISSIONER DAVIDSON:

That's one place the law is clear, it seems like.

And so, in that area, have you done any research on how many states possibly have a problem with their Constitution or their state laws to be able to, you know, move towards that 45 days and reach that goal? Or do you have any idea?

MR. CAREY:

I haven't -- I haven't seen anything specifically on the Constitutional -- on states having a Constitutional problem. I have -- I have heard of states that have late primaries that are concerned that they are not going to be able to certify their general election ballot in time, in order to be able to get a ballot out 45 days prior to the election. And so, I've seen press reports that they are looking to -- that some states will be looking to ask for a waiver.

COMMISSIONER DAVIDSON:

Okay.

MR. CAREY:

But, mostly it's been…

COMMISSIONER DAVIDSON:

But you don't have any idea how many states are going to be dealing with at this time?

MR. CAREY:

Not at this time, no.

COMMISSIONER DAVIDSON:

Okay, all right. The other question, I guess, that I'd like to ask is, as we move forward with collecting data, have you took -- are you underneath the Paperwork Reduction Act?

MR. CAREY:

There are -- within DOD, exclusively, as I understand, we are not. But since we have obligations to overseas civilians, and we do a lot

of work with local election officials outside -- in other agencies

outside the Department of Defense, outside the Federal

Government, there is a question as to whether that would apply to

us, as well. Our survey had to go through the *Federal Register*

process because of the -- our surveying the non-DOD personnel.

So, your Counsel's office raised that question with me yesterday,

and we'll be examining that to see to what extent the Paperwork

Reduction Act will apply under some of the new MOVE

requirements.

COMMISSIONER DAVIDSON:

Okay, where I was coming from, is, in our last meeting this morning

-- in our meeting this morning we talked about our collection of data

for 2010.

MR. CAREY:

I saw that.

COMMISSIONER DAVIDSON:

And on the agenda, when we were discussing it, we got into the

discussion of how long it would take for us to get the survey out for

comments, if there had to be, you know, things added, because

possibly the MOVE Act, or whatever, and working with you. We

also -- we're afraid that our timing is going to be to where, the data

that states are collecting, because of what they have to collect, if

they don't know it early enough, and I think the next panel will

search into that a little bit more, but in getting that data, I think that

it's not -- in my mind, I have a fear that we're not going to be able to

have really good data the first election, because states are not

going to be aware that they need to be collecting the data, and we'll

have primaries very quickly, and if we don't have that form out for,

you know, that type of -- as we move forward, obviously, I think

we're going to run into how good the data can be, because the

states have got to change their systems possibly, train their election

officials, and go on in that area. And I think this will help and I think

it's really important that we make sure that Congress knows we're

moving to get the very best. And as we have been aware of our

survey in the past, the data that we collect has improved from the

time we started it. 2004 it wasn't near as good as 2006, and then,

2008 it was much better. So, I think that that type of scenario may

take a place in the future, because it's going to take awhile to get

states trained and for them to have the capability of possibly

collecting all the data. I guess, moving with you and working with

you, as we are now, I think a lot of that will come together a lot

better. But I still think we have some issues. And I was hoping you

weren't underneath the -- underneath that Act.

MR. CAREY:

I think there are areas where we are. We had to go through the -- I

was not here when we went through the 2008 survey process, but

that did have to go through the *Federal* Register process and the

Office of Information and Regulatory Affairs over at OMB in order to

be able to get approved because the survey is -- the survey of the

DOD civilians -- the DOD military personnel did not, the uniformed

service personnel. But the survey of the local election officials, of

the -- and of the overseas civilians I know did require that process.

So we'll check on that.

COMMISSIONER DAVIDSON:

I was hoping we could…

MR. CAREY:

We'll get back in touch with you on that.

COMMISSIONER DAVIDSON:

…speed that process up.

MR. CAREY:

I mean one of the things, you know, is that the MOVE Act, you

know, developing the standards for reporting data is under Section

102(c) of UOCAVA which only applies, you know, the states are

required to report data on the regularly scheduled general election.

COMMISSIONER DAVIDSON:

Right.

MR. CAREY:

So, I mean, what they have to report on is the November 2010

election. So, to the extent that we, you know, that anything we do

come up with will be subject to the Paperwork Reduction Act or

other regulatory requirements, hopefully the fact that it's going to be

for the 2010 general election will hopefully provide us enough time

in order to be able to get that out.

COMMISSIONER DAVIDSON:

You may be surprised. So…

MR. CAREY:

Unfortunately I'm not.

COMMISSIONER DAVIDSON:

Thank you. And I'll save the rest of the questions. I think I can get

them at the next panel and you'll still be there. So I appreciate it,

thank you.

CHAIR BEACH:

Okay thanks. Mr. Carey the MOVE Act allows FVAP to run pilot

programs for UOCAVA voters, and I know FVAP has plans to move

forward immediately on that. Can you elaborate and tell us what

you have planned for 2010 and beyond for any sort of pilot

programs?

MR. CAREY:

Well, part of this is going to be in the next panel discussion.

CHAIR BEACH:

Right, but is there anything beyond that that you're looking at?

MR. CAREY:

We're working closely with your staff on this UOCAVA working group to be able to figure out what may be the pilot program possibility for 2010 election and beyond. I think that needs to be tied closely to the overall plan that we need to have. As GAO commented, we need to have an overall plan on how we move forward on this. And we've had a number -- over the years we've had a number of -- FVAP and EAC have developed a number of methods for defining that, and I think we need to move forward with that. And we need to define that overall plan well, not only for the project management aspect of it, but to be able to define what the final goal is going to be, not only to be able to meet the law but also to meet the desires of many of the election officials and the voters.

As the -- the MOVE Act had that -- had the pilot programs as an optional program. The decision has not been made at this point as to whether -- whether the Department will be executing a pilot program in 2010. A lot of that is going to be depending upon what we come up with, as well as what the final funding is going to be for the Department and whether there's going to be funding available to support pilot programs.

CHAIR BEACH:

My last question for you, for this panel, is from your bio, you have experience as a military voter and as an overseas voter. And now that you are the Director of the Federal Assistance Voting Program

and working with EAC, I kind of want to know how you envision

improving the process for UOCAVA voters, how we can work

together.

MR. CAREY:

Well, I mean, I was trying to run some of that past you in some of

the initiatives that we're talking about. I mean, I think that it's

important -- my hypothesis that we are still analyzing our data from

our 2008 survey to be able to figure out if it is, in fact, a correct

hypothesis is that a predominance of the voting failure lies in the

ballot transmission and return. Yes, there are problems in

registration. Yes, there are problems in ballot rejection -- voted

ballot rejection. But that the vast majority of the problems lies in

ballots being sent out and not returned. And so, I think it's

important that we determine, you know, that level of failure, and

focus our efforts there. You know, our initial initiatives that I

discussed here today is, in large part, designed to focus on that.

And as we've discussed with the -- in the legislative initiatives with

the states, we've also been trying to impress upon the states that

we believe that is the area of greatest voting failure and that's why,

you know, such things as 45 days ballot transmission time,

electronic transmission, especially email and online ballot delivery,

and that -- and universal use of the Federal Write-In Absentee

Ballot, not only for federal elections, but for state and local elections

as well, are some of the best ways in order to be able to overcome the inherent problems of mail delivery.

I mean, the Military Postal System Agency is trying to move heaven and earth to get these ballots out and get these ballots back. But, you know, people think that it's -- it's like the U.S. postal system, and it's not. I mean, yes, they can transmit these ballots pretty darn quick to many of the military post offices, and even in the areas of contingency operations. But oftentimes it's that last mile that is very difficult to get to, because, you know, then the mail is competing with supplies for military personnel engaged in combat operations. So, you know, to the extent that we can try to figure out alternative methods of delivering these ballots, we may very well be able to help, you know, alleviate where that greatest level of failure is -- where we think it lies.

So -- but we're also looking at our initiatives in terms of a holistic -- holistic attitude. We're hoping that much of this can play together. We're looking for, you know, our call centers. If we can develop -- we're looking to try to see if we can develop a call center that also has an online check capability, so when someone goes to the online wizard and they have a problem they can click on the help hyperlink and they can hopefully automatically be brought to the call center number and/or to an online check capability. We're looking at being able to tie together our ballot tracking system on

the expedited mail delivery with the states' ballot receipt tracking

system to see if we might be able to help support the states that

way. We're trying to take what we -- the online wizards that we

want to try to develop and see if we can develop those so that

they're compliant, so that states can meet their online ballot

delivery requirements, and their 45-day prior commitments, as well,

for those voters that request that the ballot be delivered online. So,

you know, that's a large part of what we're trying to do, is we're

trying to integrate many of these methods, so that they can apply to

not just, you know, a single -- a single element of MOVE, or of the

underlying UOCAVA requirements.

CHAIR BEACH:

Okay.

MR. CAREY:

Did that answer your question?

CHAIR BEACH:

Yes, you did.

MR. CAREY:

Thanks.

CHAIR BEACH:

Thanks. Do my colleagues have any other follow-up questions?

VICE-CHAIR HILLMAN:

I do, I want to do a follow-up on the waiver for the states. Let me

see if I understand correctly. You said that you were working with

the Department of Justice on…

MR. CAREY:

The law says that the Secretary of Defense has to do this in -- the

exact word I think is -- "consultation"…

VICE-CHAIR HILLMAN:

Um-hum.

MR. CAREY:

…with the Attorney General, to determine the granting of the

waiver.

VICE-CHAIR HILLMAN:

Okay. Is there anything that's going to be available for public

comment before that process is completed? I don't mean the

waiver process, I mean the written instructions or guidelines, or

whatever will be issued as you know guidance to the states or

technical assistance or anything like that?

MR. CAREY:

I'll have to see what the specific regulatory requirements in that will

be. Through most of what we've been doing so far, we've been

reaching out to the states, to the local election officials, the

professional associations, to other government agencies to discuss

methods for many of our new initiatives. And we want to make the

waiver request system as easy and transparent as possible…

VICE-CHAIR HILLMAN:

Um-hum.

MR. CAREY:

…in order to be able to allow the states the opportunity to have

their waiver request -- their waiver application submitted as

seamlessly as possible.

And so, I can't give you a specific answer on that, we'll get

back to you on that. But I do not -- I do not see us moving forward

with a waiver application process that would not have, you know,

some opportunity for some type of comment.

VICE-CHAIR HILLMAN:

Thank you.

CHAIR BEACH:

Okay, thank you, Andrew Guggenheim, you can be excused. And

we are going to now proceed with panel number three.

We, at EAC and FVAP, are leading an effort to help states

conduct pilot studies to improve the process for UOCAVA voters.

Our goal is that working groups will produce a set of testable

standards to certify pilot systems, like multi-jurisdictional kiosks for

overseas voters for the 2010 election. In addition, the work product

will be provided to the Technical Guidelines Development

Committee to help inform their work to develop a full set of

standards, also known as the electronic absentee voting guidelines.

Now, we'll hear from members of the working group,

including Andrew Regenscheid of the National Institute of

Standards and Technology, North Dakota Secretary of State Jim

Silrum, FVAP Director Bob Carey, and Brian Hancock, EAC's

Director of Testing and Certification.

I will now read the bios for Mr. Regenscheid. Andrew

Regenscheid is a Mathematician in the Computer Security Division

at the National Institute of Standards and Technology. Andrew

received his M.S. in Information Assurance from Iowa State

University in 2007. At NIST, he co-authored NISTIR 7551: *A

Threat Analysis on UOCAVA Voting Systems* and continues to

work on the security issues related to overseas voting. In addition,

he conducts research to support development of security

requirements in the Voluntary Voting System Guidelines and

developed test methods for voting system certification. His

research interests at NIST include end-to-end cryptographic voting

schemes, hash functions, and identify-based encryption schemes.

Next we have Jim Silrum, who is the Deputy Secretary of

State of North Dakota. He was appointed by Secretary of State Al

Jaeger in 2003. Since his appointment, Mr. Silrum has worked with

the election community on local, state, and national efforts. His

efforts include the following: Founding member of the Election

Assistance Commission Standards Board, Vice-Chair of the EAC

Standards Board, Voluntary Voting System Guidelines ad hoc

working group member, EAC Uniformed and Overseas Citizen

Absentee Voting Act, UOCAVA, working group, and the National

Association of State Election Directors Executive Board.

And now, we will start with Mr. Regenscheid.

MR. REGENSCHEID:

Chair Beach, Commissioners Davidson and Hillman, EAC staff, and

assembled members of the public, thank you for the opportunity to

appear before you today to give you an update on NIST's research

activities related to improving the election process for military and

overseas voters. Our nation's service members and citizens living

abroad are having significant issues obtaining and returning

absentee ballots, and NIST recognizes the importance of using

technology to improve the voting process. Today I will discuss

NIST's role in improving the voting process for those voting under

the Uniformed and Overseas Citizens Absentee Voting Act. I will

provide a brief summary of our research efforts thus far, and a

description of our current efforts, which include the development of

three documents on the use of technology in the UOCAVA voting

process.

The Help America Vote Act of 2002, the Ronald Reagan National Defense Authorization Act of 2005, and the recent Military and Overseas Voting Empowerment Act have tasked the EAC with helping to improve the voting process for overseas citizens with the use of electronic technologies.

NIST has been conducting research on the use of electronic technologies in UOCAVA voting in support of the EAC's efforts in this area. As the nation's measurement and standards institute, NIST has earned a reputation as an impartial, technically knowledgeable third party with a long history of working collaboratively with academia, industry, and other government agencies. We have worked closely with the EAC and the Technical Guidelines Development Committee on research and requirements related to the development of the Voluntary Voting System Guidelines.

The first phase of NIST's research on UOCAVA voting was completed in December of 2008. At that time we released NIST Interagency Report 7551: *A Threat Analysis on UOCAVA Voting Systems.* This report documents threats to UOCAVA voting systems using electronic technologies for all aspects of the overseas voting process.

The report divides the UOCAVA voting process into three stages: voter registration and ballot request; blank ballot delivery;

and, voted ballot return. For each of these stages, we considered

the use of five methods for transmitting election materials between

voters and election officials. We considered postal mail, fax,

telephone, electronic mail, and web-based methods, such as using

web sites to post or submit materials online. The report identified

threats and potential mitigating security controls for the use of these

technologies, for each of the three phases of the voting process.

The full report can be obtained from the NIST voting website at

vote.nist.gov.

That report was intended to inform future work on UOCAVA

voting by NIST, the EAC and the TGDC. It took a very broad look

at technologies to support the UOCAVA voting process. The

second phase of NIST's work is more focused, researching specific

technologies for specific election processes, and providing

mitigating security controls whenever possible.

Over the past year, NIST has worked with members of the

elections community to support our UOCAVA efforts. We

requested and obtained UOCAVA election procedures from

jurisdictions across the country, including Arizona, Florida, and

Washington. We held a meeting at NIST to discuss security

objectives for UOCAVA voting systems which was attended by

representatives from NIST, the EAC, the Federal Voting Assistance

Program, and included state and local election officials, election security experts and manufacturers of UOCAVA voting systems.

Based on the security objectives discussed at that meeting, NIST is currently in the process of developing three documents on the use of technology in the UOCAVA voting process. These documents include research efforts and the development of best practices. I will now describe each of these three documents.

One of NIST's responsibilities under the Federal Information Security Management Act of 2002 is the development of standards and guidelines for securing non-national security information systems. As such, NIST has a large collection of cyber security resources in the forms of standards, guidelines, tools and metrics.

To make use of these resources, the first document that NIST is developing is *IT System Security Best Practices for UOCAVA Supporting Systems.* The goal of this document is to take the relevant standards and guidelines and summarize them for people making decisions about UOCAVA voting systems. Thus, those people will have, in one document, a summary of NIST's best practices for cyber security, including best practices for user authentication, cryptography, system hardening, and network security. The best practices are intended for any type of UOCAVA voting system, whether it's used for voter registration and ballot request, electronic ballot delivery, or voted ballot return. It

documents a set of minimal security controls and practices that would be appropriate for any system. However, it does not include best practices or guidelines for protecting against UOCAVA system specific threats, such as those that would be unique to ballot delivery or ballot return systems. Mitigations to those threats will be discussed in the other two documents that we're working on. Jurisdictions will need to augment the best practices described in this document to adequately protect against those system-specific threats.

We expect to release a draft of this document for public comment in the first quarter of 2010.

The next document we are producing is *Best Practices for Securing the Electronic Transmission of Election Materials.* This document will provide best practices for using email and websites to allow voters to request blank ballots or deliver those ballots electronically to overseas voters. It will include election procedures and technical controls aimed at protecting the confidentiality and integrity of election materials, as they're being transmitted and after reception. This document is intended to help state and local election officials develop their own procedures and security controls for handling overseas voters and ballots, augmenting the EAC's existing best practices for facilitating UOCAVA voting.

We expect to release a draft of this document for public comment in the second quarter of 2010.

The third document that we are producing is a research document entitled *Security Considerations for Remote Electronic UOCAVA Voting Systems.* This document identifies security objectives of remote electronic voting systems, including Internet voting from personal computers or kiosks. It will define the security objectives for these systems and identify associated security issues that can or cannot be solved with current technology as known in industry and academia.

We expect to release this report in the second quarter of 2010.

NIST is pleased to be working on this important issue with the EAC. We hope that our work will lead to more efficient, reliable and secure overseas voting systems. Thank you for the opportunity to testify. And I would be happy to answer any questions the Commission might have.

CHAIR BEACH:

Thank you. Mr. Silrum.

MR. SILRUM:

Honorable Commissioners, my name is Jim Silrum, Deputy Secretary of State for North Dakota. It is a pleasure to be here. But I have to tell you that as Mr. Silrum was traveling on his way to

Washington, D.C. to testify here today, some interesting things developed insofar as in regard to the testimony I'm about to deliver to you. So, some of the testimony may -- may indeed prove to be wrong, but for that, I say I'm very happy to have it be wrong, because I was here to testify to you about our concerns as states about how the impact of the MOVE Act would -- how its impact on us here in operating elections.

As Vice-Chair of the Standards Board, I was asked by the -- by the Chair and the Executive Board to appear here and talk about specifically Section 588 of the MOVE Act and its impact on states and territories, and the ability of states and territories to participate in the pilot project that I have been working with this group of people, as with others, to develop for remote kiosk voting stations for the 2010 general election. In being here, as well, this morning for the testimony that was heard regarding the Election Day survey, I will have some comments about that, as well.

But as election administrators, we wish to affirm our readiness to carry out the duties of providing voting access to every qualified elector. Since it is the intent of the MOVE Act is to ensure that UOCAVA voters have the opportunity to vote, we applaud the objectives of the Act, even though some of the requirements conflict with current state laws and Constitutions. As elections officials, we will work with our state legislatures and citizens

regarding any conflicts, but ultimately laws are only changed by legislative Assemblies, and Constitutions by a vote of the people.

One little word in the MOVE Act is a concern to states and territories. Section 588 makes the word "only" a powerful word with its placement within an amendment to HAVA Section 251. As Section 588 of the MOVE Act is understood, HAVA Section 251(b) and HAVA Section 257(a) are changed as follows.

If I may say, I have those changes there before you in the testimony, but I'll just draw to your attention, first of all, in Section 257, which is the authorization of appropriations, there is a new subsection added there which states, "For fiscal year 2010 and subsequent fiscal years, such sums as are necessary for purposes of making requirements payments to the states to carry out activities described in 251(b)(3)." Now going back up to Section 251(b)(3), what is added there is, "Activities under Uniformed and Overseas Citizens Absentee Voting Act. A state shall use a requirements payment made using funds appropriated pursuant to the authorization under Section 257(a)(4)," which we just talked about, "only to meet the requirements under the Uniformed and Overseas Citizens Absentee Voting Act imposed as a result of the provisions of and amendments made by the Military and Overseas Voter Empowerment Act."

Now, I do understand that it is the intent of Congress that there would be additional requirements payments, not -- not that the remaining 500 million that is still due to states for full funding of HAVA would be used. But that was our fear at the time when I was asked to come and testify here.

States and territories are still waiting for full funding of HAVA to the tune of nearly $500 million to complete the election administration improvements detailed in HAVA state plans. This undistributed money is critically necessary to bring these advancements to reality. And if the lack of full funding weren't enough, now Section 588 may encumber some of that remaining 500 million, forcing the states to do one of the following:

Either make new plans -- state plans detailing lavish expenses for accomplishing the intentions of the MOVE Act with the money that is hoped for in future requirements payments. The MOVE Act authors certainly must not believe that it will cost states and territories 500 million to implement the state specific initiatives of the Act;

Or, request only the amount necessary from future requirements payments to accomplish unfinished items in state plans that also meet the intentions of the MOVE Act. The MOVE Act authors certainly must know states and territories have been working on election administration improvements benefiting

UOCAVA voters since these voters are full members of our electorate;

Or, finally, apply for future requirements payments, use only the amounts necessary to accomplish the good intentions of the MOVE Act, leave the remainder of the payments in long-term interest earning accounts, and spend only the interest on other state-plan items. The MOVE Act authors certainly must know this will cause a severe slowdown in election administration improvements.

If improvements have already been made to election administration for the benefit of UOCAVA voters, how many of the MOVE Act initiatives remain unfinished in states and territories? As a representative example, North Dakota:

Already utilizes electronic transmission of absentee ballot applications to and from voters. North Dakota already transmits blank ballots to UOCAVA voters. Has ballots ready 40 days prior to election and allows absentee ballots to be accepted up to six days after an election provided they were mailed before -- mailed or delivered before the election. Now in that case, the 40-day deadline for absentee ballots to be available is tied to measure timelines within -- that are stated within the North Dakota Constitution, and that could only be changed by a vote of the people. So, it's impossible that it could happen before the general

election of 2010. North Dakota already allows every voter to track the status, and that's every voter, to track the status of their absentee ballot from the submittal of their application, the mailing of the ballot to the voter, the receipt of the ballot envelope from the voter, and the acceptance of the absentee ballot into the tally on Election Day. North Dakota already expanded the use of the FWAB to allow voters to use it for all offices that would be on their ballot in their precinct of residence and to simultaneously submit the FWAB as their absentee ballot application and ballot. And we do not have any notarization or witness requirements. And we already track requested data concerning UOCAVA voters.

If North Dakota and other states and territories already provide these to UOCAVA voters, what is left from the MOVE Act requirements that it would cost? Not a half a billion dollars.

Is it possible the authors of the MOVE Act are under the impression states and territories have a great deal of unobligated HAVA money? If this is true, perhaps the reason for this incorrect assumption is due to a misreading of the HAVA requirements payments reports submitted by states and territories each year.

Congressional committee members have asked how much HAVA money is left unspent in the state election funds, and the amounts reported have been interpreted as money without a purpose. However, the remaining funds in our election funds do

have purposes, but the invoices for those obligations have not been sent, as they are not due until some date in the future.

Some of the plans for the remaining money seem more exciting than others, but none have greater importance. For example, is it more exciting to purchase and utilize electronic poll books in polling places than it is to use funding for voting machine maintenance contracts, and gradually pass that financial burden on to local election jurisdictions, so they may have time to prepare for those expenditures in future budgets? Yes, but neither detail is more important than another. Both exciting and mundane improvements are obligating the money remaining in election funds because it takes both to run elections. States and territories will be able to accomplish less of these important plans if HAVA isn't fully funded under a new Act such as the MOVE Act, bringing new demands on this money.

With regard to the remote kiosk pilot project we are working on as part of the UOCAVA working group, I will confess initial disappointment with -- when I learned the limitations of the project goals. Time and again the message election administrators receive from UOCAVA voters is that they want the ability to use their own computers to receive their absentee ballot and deliver their marked ballot back to the election official for inclusion in the tabulation on Election Day. I stuck with the working group, despite my

disappointment, because I made a promise to the Standard Board to represent the interests of election officials. I'm glad I held true to that promise because I now see that this kiosk pilot project is the first necessary step toward providing full remote access voting in the manner desired by those serving their country so far away from home. If we are ever to get to full remote access voting, we must see success with the remote kiosk voting first.

North Dakota will not be able to participate in the kiosk project because our law defines the conceptualized kiosk stations as polling places rather than absentee voting. This means we would be required to staff those kiosk stations with election boards for the entire time the stations would be available to UOCAVA voters, which is neither practical nor possible. Perhaps my state's inability to participate has given me the opportunity to be a more objective participant in the working group and allowing me to see the benefits and pitfalls for any state and not just my own.

The working group still has a long way to go to achieve a successful pilot, but I'm confident many valuable lessons will be learned, the privacy of the voter will be maintained, the votes will remain secure, and the tabulation of the votes will be accurate, provided we are given the opportunity to proceed.

The opportunity to proceed is not as easy as it may seem. In our conversations with various states, the critical factors

identified for participation are: authorization for participation under state law, and the availability of funding.

Section 589 of the MOVE Act states that money will be appropriated to FVAP to run one or more pilot projects of this type envisioned by the working group. Yet since no money has been given to FVAP, so far, for this purpose, states are having difficulty giving more than a statement of interest in participation. Given the amount of time and energy already expended for these pilot projects, much of the time spent -- of that spent already has been of the volunteer variety. I certainly hope that necessary funds will be made available to bring these pilot projects to reality.

CHAIR BEACH:

Mr. Silrum, time has expired. Can you wrap up?

MR. SILRUM:

I will.

CHAIR BEACH:

Thank you.

MR. SILRUM:

In addition, relating to the discussion that happened this morning concerning the Election Day survey, if I may quickly state that for a change to come to the Election Day survey, a state -- if it's a new data element that is to be collected by a state official, such as myself, or a local election official, we need approximately nine

months to get that into our database to make that happen. Then we need to train those election officials to capture that information and then we need to -- then we need to actually do that capturing. If we don't know what those requirements are now, but we're expected to start maintaining that information at a certain point, I start receiving applications for absentee ballots on January 1st of this year for 2010. If, for example, I'm supposed to determine whether a ballot was delivered electronically -- excuse me -- if an application was delivered electronically or by hand delivery or by mail, I need nine months just to put that into my programming, which puts me at September, which is right about the time that absentee ballots are due for the general election. So, you see, that's why we, as states, are requesting no changes to the -- to the Election Day survey because of how long it takes us to implement those changes. And we just want advance notice on those things.

With that, I will stand for any questions that you may have for me. I'm sorry that I took too much time.

CHAIR BEACH:

No worries, thank you. Mr. Carey.

MR. CAREY:

You have my presentation in front of you, but let me just go over a couple things.

One, I think it's important that we have some nomenclature issues here. The current -- the pre-MOVE Act law had a requirement for a -- this is on slide number two -- the pre-MOVE Act law had a requirement for a demonstration project, and that was basically based upon whatever guidelines EAC and NIST were to come up with and the EAC was to certify. And it was for a demonstration project to a statistically significant level, to conduct an electronic voting demonstration project among uniformed services voters. That's the first -- that's the first thing that's in UOCAVA.

And then, there's a second part that came in with MOVE which is the pilot project. And that's for, at least one, it's optional. The MOVE Act recommends numerous areas where pilot programs can look at. It says, "Shall not conflict with existing -- or substitute with existing UOCAVA laws or regulations." And it also, as we discussed earlier, calls upon NIST and the EAC to provide best practices and electronic absentee voting guidelines. Those are -- legally those are two separate items. They may very well be able to help -- the pilot programs may very well serve as a good method of helping us to get to the point of the overall demonstration project.

One last thing I want to make sure people understand is in my previous presentation I talked about the wizards that we're looking to try to put together for states. That is not electronic

absentee voting as most people understand it. This will simply be the online delivery, the online marking of a ballot. It would still require the printing out of the ballot and the wet signature on the ballot and the sending back by the currently accepted methods of returning a ballot. It would not be the electronic casting of an absentee ballot under those wizards that we're talking about. So, it's not -- it's not a pilot program. It's not a demonstration program. It's simply a ballot delivery method that we're -- that we're investigating, seeing if we can provide that to the states.

In 2007, GAO made some pretty strong recommendations as to what the electronic voting program should look like. They called for long-term plans that are comprehensive, that are results-oriented, that have a number of specifics for timelines, for goals, for technical milestones, that identifies the safeguards and they also talked about that, you know, they applied this both to the EAC and FVAP, and that it needed to be synchronized between EAC and FVAP, and specifically synchronized with the EAC's guideline development program, and to coordinate with the stakeholders. I believe that what we're working on now is getting us to that point and is a part of that process. And FVAP is very pleased to be part of that process with the EAC.

In May of 2007, IVAS -- there's an IVAS report put out by FVAP -- this is slide number four -- there is an IVAS report where

we talked about our electronic voting plan, and where we --

basically we reported that once those electronic absentee voting

guidelines are developed by NIST and EAC, or EAC with an

electronic -- with a technical advisory agency, basically it would be

about 48 months after that. 24 to 60 months is what we said, 24 to

60 months after that to be able to deploy a program like this. So,

it's going to be important that we coordinate -- if we do get to the

point where electronic absentee voting guidelines are developed

and certified, we're going to need make sure that we coordinate

that development and certification process with the deployment

process to make sure that we don't unwittingly force ourselves to

deploy a system before it's ready. But that would be under the --

that would be under the demonstration program.

So, what are some of the key planning issues I describe in

slide number six? And these are things that we've been grappling

with within the working group is, you know, making sure that we

understand the goal of what this program is for. What is the

ultimate goal? What issue are we trying to address? And do we

think that it's going to address that goal? What is an acceptable

level of risk? Now I understand that, you know, there's work

underway right now to define the current level of risk for current

voting systems. That's great, because I don't think we should

necessarily be demanding that an electronic absentee voting

system for UOCAVA voters have to have a lower level of overall risk than any other voting system. But, you know, level of risk being probability times impact, there may very well be very different probabilities between one system and the other and very different impacts between one system and the other. And I think we need to -- and so, that needs to be weighed in there. And I know there's a lot of -- there's a lot folks that have real concerns about the potential risk of an electronic absentee voting system. And, finally, you know, what are the comparable voter verification and privacy/secrecy standards for national absentee voting systems, the ones that we use currently for both UOCAVA voters and for non-UOCAVA voters?

And the question I would have at this point is, you know, even if -- even if we don't believe that, as NIST, I believe, stated in their -- in their December 2008 report, you know, they do not believe that currently electronic transmission of cast ballots is technologically feasible. I understand their concern on that. And I guess, the question I would have is, can we try to get ourselves to a point where we can be working on electronic absentee voting guidelines, even if we don't believe they're technologically feasible, so the industry then has a benchmark against which to work? And that would also allow the -- those that have criticized previous electronic absentee voting systems to be able to participate in

defining that process and determining whether, you know, an industry solution may very well meet that solution.

You know, as far as the road ahead, you know, I think the Congressional intent was pretty clear. If you look at slide seven, you know, the Senate reports from 2002 that initially required the absentee -- the demonstration program, and then the Senate report from 2005, when that was amended to provide for the EAC certification guidelines -- EAC and NIST guidelines and the EAC certification is I think more along the lines of what Mr. Silrum has talked about, in terms of, you know, a remote electronic absentee voting system where the ballot is cast electronically, and where someone can do it from their own computer. Whether that's technologically feasible or not at this point is something for the technological system to be able to figure out, but I think that we can -- I think it would be great if we could try to define those technological standards for -- to meet the level of risk and verifiability and accountability and secrecy and privacy that we want in any voting system, even if we don't believe they're currently technologically feasible. I think that will probably provide us a great ability to then develop that type of comprehensive, long-term, results-oriented plan that GAO has called for.

That's all I have. If you have any questions, I'd be more than happy to answer those in the future.

CHAIR BEACH:

Thank you. Mr. Hancock?

MR. HANCOCK:

Thank you, Madam Chair, Vice-Chair Hillman, Commissioner Davidson, Executive Director Wilkey and Counsel Nedzar. I appreciate the opportunity this afternoon to provide you with an overview of the EAC's work on our UOCAVA pilot testing program.

I think it's important, first, to reiterate the legal mandates that the EAC is under. And initially both Andrew Guggenheim and Bob Carey certainly noted the MOVE Act Section 589 Technology Pilot Program that states, "The Election Assistance Commission and the National Institute of Standards and Technology shall provide the Presidential designee with best practices or standards in accordance with electronic absentee voting guidelines established under the first sentence of the National Defense Authorization Act of 2002, amended in 2005."

In addition, I think it's very important to note Section 221 of the Help America Vote Act discussing our Technical Guidelines Development Committee. Of course, as you know, the Development Committee is required to assist the Executive Director of the Commission in the development of the Voluntary Voting System Guidelines with technical support from NIST. Talking about that technical support, it says that, "Technical support…shall

include intramural research and development in areas to support the development of the Voluntary Voting System Guidelines under this part, including," and among the listed items at (E) is "remote access voting, including voting through the Internet."

Let me discuss a little bit, the concept of our pilot program. To support the EAC efforts to develop testable requirements for UOCAVA pilot program voting systems, we've enlisted the assistance of one member, each, from our Technical Guidelines Development Committee, the Standards Board, Board of Advisors, one of our voting system test laboratories, representatives from EveryOne Counts and Scytle, as well as staff from NIST, the EAC and the Federal Voting Assistance Program. This group of individuals has met a number of times in person, and numerous times via WebEx meetings, to discuss the development of appropriate testable requirements for voting systems submitted for testing under the EAC pilot program for use by states working with FVAP on pilot UOCAVA voting programs in their jurisdictions.

The pilot program is going to require two distinct work products from the Election Assistance Commission. In addition to the development of testable requirements for pilot UOCAVA voting systems, EAC Certification Division staff will draft a Pilot Certification Program Manual to cover certifications submitted under this pilot project, as well as other, I would say, more standard

pilot certification efforts that state or local jurisdictions might wish to undertake in the future.

Much of our current EAC Testing and Certification Program Manual will remain with additional minor modifications for this effort. We do, however, foresee at least two very major changes.

One would be significant reliance on what's called manufacturer declaration of conformation. In order for a pilot program to succeed as a practical option for states and the manufacturers, we understand that the testing and certification process must be both highly efficient in terms of time and cost. To this end, our initial thoughts are to permit the manufacturer, to the greatest extent possible, to sign and attest, under penalty of law, that they have tested and found that their product conforms to the specific list of testable requirements which we are currently developing. The manufacturer would retain their testing documentation as "compliance records" to be made available to the EAC should the agency decide to conduct an audit of the manufacturer. Our thoughts are that the very valuable four to six-week testing period that we envision for pilot systems be most efficiently used by the voting system test lab to conduct very focused security testing and some fairly significant level of penetration testing, rather than waste valuable resources testing more mundane software and hardware areas. The manufacturer

audit noted will be one part of the Quality Monitoring Activity required in our Pilot Program Manual.

The second major change for that manual would be additional mandatory reporting. The Pilot Program Manual will require that voting system manufacturers provide the EAC with a very detailed report of any election held using their pilot voting system within a specified number of days after the election. And the report will require the listing of all anomalies found during the election, and changes that have been or will be made to the system to avoid such anomalies in the future. Our manual will also strongly encourage, although we can't really require, participating states to also provide the EAC with a report of their pilot election and overall experience using the voting systems for their UOCAVA voters.

Our current timeframe for this project is to have a draft of the Pilot Program Manual completed in January of 2010 in preparation for potential Commission discussion and vote on the Pilot Program Manual, perhaps at the February 2010 EAC public meeting.

I don't think we really need to invent the wheel here as we develop the testable requirements for these UOCAVA pilot systems. The 2005 Voluntary Voting System Guidelines and documentation from previous pilot projects, such as SERVE and the Okaloosa County project, will supply a great deal of the testing requirements, as well as information on potential test methods for

these future programs. Other sources, such as Federal Information

Processing, or FIPS, Standards, ISO standards, and others, can

provide information to fill gaps, particularly in security requirements.

Our current task is to analyze the VVSG and available information

from previous efforts in this area, to identify additional resources to

fill the gaps, and to synthesize these into a comprehensive set of

testable requirements.

The testable requirements developed -- under development

will be for systems with tightly controlled voting platforms, as Mr.

Carey said, specifically manned kiosk systems, because of the

obviously greater security controls of these systems. We do,

however, need to consider, for the sake of our UOCAVA voters,

expanding this approach in the future to consider other system

configurations. Many states are already demanding pilot projects

that go beyond the manned kiosk type system and move toward the

concept of PC-based remote electronic voting for systems for their

military and overseas voters.

The testable requirements we're currently working on for the

pilot UOCAVA voting systems will not be full "standards" or

"guidelines" as envisioned by the Defense Authorization Acts of

2005 or 2010. These requirements can, however, be used as a

basis for the development of such guidelines. Once completed, our

current work product will be submitted to the TGDC as a starting

point for research and discussion on full-fledged guidelines for remote electronic voting systems for UOCAVA voters. As required by HAVA, these guidelines will be worked on and eventually recommended to the EAC by the Technical Guidelines Development Committee. As is also required, the full vetting process will include an extensive public comment period and reviews by both the Standards Board and Board of Advisors.

We do think, however, that the current efforts to develop testable requirements for pilot systems represent the first steps in an iterative process to develop full-fledged remote electronic voting guidelines as envisioned by both HAVA and the Defense Authorization Acts.

Thank you very much. And with my fellow panelists, I'd be happy to answer any questions you might have.

CHAIR BEACH:

Thank you. I'd like to turn to Vice-Chair Hillman for any comments or questions for the panel.

VICE-CHAIR HILLMAN:

I have a question for NIST. And I understand that you're a mathematician, but since you're here I'll ask the question to you. When you develop the products and do the research that you're doing, do you use a prototype system to test your theories or…

MR. REGENSCHEID:

The Federal Voting Assistance Program has been very helpful

throughout our UOCAVA voting efforts in providing a great deal of

the documentation they have on their voting over the Internet

system, SERVE, the IVAS systems. And those have been very

valuable as we've -- as we've done our research. Also, you know,

talking with people from -- you know, at that meeting I discussed in

my testimony, the people from FVAP, the EAC, the state and local

election officials, election security experts, and the manufacturers

have also been very helpful. But we don't have a prototype remote

voting system.

VICE-CHAIR HILLMAN:

So, so far it hasn't been put to a practical application? I mean, it

hasn't been tested on something tangible to see?

MR. REGENSCHEID:

So, what NIST is doing right now is developing best practices, and

those are a bit different than standards. When we say standards,

we mean, you know, clearly defined and testable requirements.

But best practices aren't necessarily testable. They're

recommendations, things that jurisdictions should consider, things

that they should try to deal with. But they're not -- they're not

always going to be testable.

VICE-CHAIR HILLMAN:

Um-hum, okay, Mr. Silrum I appreciate your comments about the

timelines and, in your case, a Constitutional amendment that would

have to be completed in order for you to participate in the program.

Does it put your state in a position where you'll have to request a

waiver, the 40 days that you have? I don't -- because I'm not

remembering offhand what…

MR. SILRUM:

Commissioner Hillman, you are -- you are correct. We would have

to -- we will have to apply for a waiver, because we cannot have

ballots available in printed form before 40 days.

VICE-CHAIR HILLMAN:

And can you talk just a little bit more about having to staff the

kiosks, what your state law requirement is and why you would not

be able to participate in the pilot?

MR. SILRUM:

Commissioner, it's our understanding that a kiosk is more like a

polling place than it is you or I voting by absentee from our -- from

our homes or a UOCAVA person voting from -- from their

temporary place of residence. And so, since there would be -- it's

envisioned in this working group that there would be people staffing

those kiosks, then it becomes -- then it becomes more akin to a

polling place under North Dakota law. And North Dakota law

requires that there be a Republican judge, a Democratic judge, an

inspector, clerks, all of that sort of thing. And for however many of these kiosks we would have across the world, wherever North Dakota voters could possibly appear to vote, we would have to have poll workers there for them, and that's -- that's just not possible for us. So, when we can get to a point of full remote access voting, where voters are able to do that from their own PCs or something of that nature, then possibly we could -- we could see this as a possibility. But we'll even -- it will -- it will be required for us to have some law changes before that could happen, too.

VICE-CHAIR HILLMAN:

So, I'm not sure who this question goes to, but the notion that the kiosk is a polling place versus the kiosk being a thing to transmit a ballot or receive a ballot, could somebody, either Mr. Carey or Mr. Hancock, talk -- is that what was envisioned, that the kiosks are really like polling places?

MR. HANCOCK:

Okay, thank you. I suppose, yeah, you could think of them that way. And if you make the comparison, as Mr. Silrum did, as opposed to remote electronic voting from a PC, you know, in your barracks or your home or wherever you might be, then, yes, it's certainly more akin to a DRE or some sort of set-up, you know, a normal polling place. So, yes, I think that's an interpretation that's plausible, yes.

VICE-CHAIR HILLMAN:

Have we…

MR. SILRUM:

Commissioner?

VICE-CHAIR HILLMAN:

Yes.

MR. SILRUM:

If I may just say, that's North Dakota's interpretation of these

kiosks.

VICE-CHAIR HILLMAN:

Right.

MR. SILRUM:

It doesn't have to be for any other state.

VICE-CHAIR HILLMAN:

No I understand, I'm just -- it's just an interesting -- I mean, I never

believed that only one person -- I mean, it's possible that only North

Dakota, you know, would be confronted with that challenge. But it

certainly is at least worth noting, particularly in terms of how the

voter views it. And I guess my question to Mr. Carey would be,

how would the overseas and military voters view this kiosk? What

would they think the kiosk is? What purpose is it serving for them?

MR. CAREY:

When Okaloosa County did a program like this with Operation

Bravo in the 2008 election, at that point it was -- it was hardware

like a polling place. There were -- as I understand it, there were

election official workers, like a polling place. It produced a written

paper copy of the ballot for the accountability purposes, and I think

that paper copy of the ballot was a key element of the certification

for that, in that those -- those paper ballots are brought back. And

so, it's a lot like a polling place, you know. I think it provides --

because it does have that rigorous security attached with it. You

have poll workers, you have certified hardware, you have paper

ballots that are coming back. It may very well provide a great

opportunity to test the electronic absentee voting technology that

you want to test. And I think that, you know, that's how we should

be looking at this is, it's a very good test platform because you had

that ultimate backup.

MR. HANCOCK:

And it is an interesting question and I think various interpretations

could be made because while in some ways it is as I said like a

polling place, in other ways it's not, because the kiosk, while it's

used to cast the ballot, you know, the votes are stored on a remote

serve somewhere else, unlike an optical scan ballot being stored in

the ballot box at the polling place, or votes stored electronically in a

direct recording electronic or, you know, even a lever machine

where the vote is recorded and stored at the polling place right on

that machine. So, there are some subtle differences, as well as

some similarities.

VICE-CHAIR HILLMAN:

My next question is for you, Mr. Hancock. In your testimony, you

talked about the testable requirements that are currently be worked

on for the pilot will not be the full standards of guidelines, and you

used the word "as envisioned by the Defense Authorization Acts of

'05 and '10." I guess my question is, is there a date requirement in

the law for this? I mean, it's one thing to say the law envisioned

something and it's going to take us several years to get there. It's

another thing if the law says "by date certain there will be this

product." What are we dealing with on that?

MR. HANCOCK:

You know, perhaps one of the Counsels can tell me if I'm wrong,

but as I remember, you know, one of the things we're looking back

to would be the 2005 National Defense Authorization Act. And

basically what that stated is, it essentially precluded the Federal

Assistance Voting Program from undertaking additional pilot

programs for UOCAVA voters and this is a quote, "Until the first

regularly scheduled general election for federal office which occurs

after the EAC notifies the Secretary that the Commission has

established electronic absentee voting guidelines and certifies that

it will assist with the project." Now, there's no date there, but it

does say the EAC should do that. So…

VICE-CHAIR HILLMAN:

All right.

MS. NEDZAR:

The MOVE Act, however, does place a requirement on the EAC to

report on compliance with the 2005 Authorization Act.

VICE-CHAIR HILLMAN:

Do you know what…

MS. NEDZAR:

It's 180 days after the passage of the MOVE Act.

VICE-CHAIR HILLMAN:

But that's to report.

MR. HANCOCK:

Correct.

MS. NEDZAR:

If we have not established guidelines at that point.

VICE-CHAIR HILLMAN:

Right, okay, and I guess my final question is, as I recall from when

the Help America Vote Act was being discussed and debated prior

to enactment, the many issues surrounding the use of DREs and

other electronic methods of voting were not as vigorously debated

as they were after HAVA was passed and after states started

spending money and committed themselves to buying certain kinds

of voting systems. So my question is, do all of these processes

allow sufficient opportunity for the pushback to come early before

commitments are made and we find ourselves headed down the

path where we could likely see either state legislatures or Congress

changing laws to prevent the use of a certain application because

of inherent risk factors?

MR. HANCOCK:

Okay.

VICE-CHAIR HILLMAN:

Anybody?

MR. HANCOCK:

Yeah, that's a difficult question, you know. On one hand we're

seeing Congress ask the EAC and FVAP and NIST to move

forward in this area. But, I agree that there's always going to be

potential for pushback from some circles. You know, I think, as I

noted, when we do a full set of guidelines, as we're used to thinking

of guidelines, for our current testing and certification program, we

will see that, you know, through the public comment period, through

our Board of Advisors and all the other folks that are used to

commenting on our process.

VICE-CHAIR HILLMAN:

And Mr. Carey, do you get any of that, what I call the pushback in terms of the use of risky technology in the transmittal of ballots? And how would you envision factoring that into your decision-making processes?

MR. CAREY:

I would do a risk assessment. As I said before, I define risk as probability as something happening, times the impact, if it does happen. And I think that, you know, we need to define what level of risk we currently accept with our current voting systems. I mean, none of our current voting systems are one hundred percent, you know, secure, accurate, verifiable. I mean, there is some inherent risk in our current voting systems. We try to minimize that as much as possible, but I think we need to accept that there is some inherent risk in our current voting systems. And I think that we should be using that as, sort of, a baseline for defining the risk for -- for, you know, any electronic absentee voting system.

MR. HANCOCK:

And just -- I'm sorry -- just to follow-up, I think that's correct. And, you know, the other risk factor is, you know, there certainly is a current risk now with the disenfranchisement of whatever the number is, whatever we decide, but a very large portion of UOCAVA voters. So, someone -- you know, that policy debate may

have to be had as to whether that risk is more important than the

risk of the systems that would be used to mitigate that.

MR. CAREY:

I concur with that.

VICE-CHAIR HILLMAN:

And I think that's right, because at the end of the day it is about the

eligible citizen being able to cast a properly marked ballot and have

it counted. And I think that person wants to accept a tolerable level

of risk rather than be denied the opportunity because of his or her

circumstances that might have them out of the country, or having to

vote absentee, or living in a rural part of the United States of

America in a horrendous snowstorm, and can't physically get out of

the house to go to a polling place to vote. So I appreciate that,

thank you.

CHAIR BEACH:

Okay, thanks. Commissioner Davidson?

COMMISSIONER DAVIDSON:

Okay, I'll try to start, kind of, in the row and move down. Or we'll try

that anyway.

First of all, in your testimony that you gave on behalf of NIST

you talked about timeframes on the reports. It's my recollection in

working with you that I thought the timeframe was going to be the

end of December, first of all. That was March, when we really set

up the timeframe. That was the goal is to have it done by that.

Then, I think you said later on it may be the first of the year, but

now you're talking about the first quarter, and then one of the other

reports even the second quarter of next year. How has this report

slipped in timeframes?

MR. REGENSCHEID:

When we set the initial schedule for these reports, we -- we chose a

very aggressive time schedule, because we knew that this is a

very, very important topic. Upon getting into the reports and doing

the work, some of those plans changed. You may have noticed

that instead of the initial two reports, it actually got broken out into

three reports now, because one of the aspects of our research, the

more we got into it, the more work it ended up being, and we split it

out into its own -- its own report. NIST is committed to developing

these reports in a timely manner, but we're not going to sacrifice

quality for expediency.

In addition, you know, other tasks, both voting related and

things that aren't voting related, came up at NIST, you know, that

are also important projects. This doesn't mean that this isn't also

an important project, but we are -- we have a lot of things on our

plate.

COMMISSIONER DAVIDSON:

Another thing that I think is unusual that I haven't seen before, you mentioned that in the Best Practices for Security of Electronic Transmission of the Election Materials that you were going to put this out for public comment. Now I -- don't get me wrong, I'm all about public comment. But this is a report that you're providing EAC. Doesn't EAC -- shouldn't they be putting it out for public comment? Isn't this the first time you put something out for EAC that's come back to the EAC like a report?

MR. REGENSCHEID:

I think that's something that, you know, my management can discuss with you and the EAC. I know NIST does think it's important that these materials have a public review, and then have an opportunity for NIST to go back and make whatever changes is necessary to respond to those public comments.

COMMISSIONER DAVIDSON:

And you didn't talk about doing public review, though, except in one place -- I mean, in this one. Is that just it was left out -- you just didn't put it in? Or is that report more important that you felt like it needed to be there?

MR. REGENSCHEID:

So, in my testimony I said that the two best practice documents would have a public review.

COMMISSIONER DAVIDSON:

Okay.

MR. REGENSCHEID:

The third document is a more research-oriented document. There is still being discussions whether it's appropriate for that sort of document to have a public review period or not. That's something that's still being discussed and would be interested to hear your thoughts on that.

COMMISSIONER DAVIDSON:

And the studies that you're doing, I think you answered it with Commissioner Hillman and I understood your answer, but I want to make it completely clean and clear, what you're doing now, we cannot test equipment to for the UOCAVA?

MR. REGENSCHEID:

Right, the goal of our efforts here are, you know, for the first two documents that I talked about are best practices, not standards. And best practices are not necessarily testable.

COMMISSIONER DAVIDSON:

Then I guess, the last one, and you may -- I don't know if you can -- if you want to give me an answer on it, but one of the things that I see as a real problem, currently, as we talked about, there's risk in every type of voting that we have. We have states that have moved to electronic voting, faxing ballots out, faxing ballots back. We know, you know, the issues that is there. Internet -- sending it

out by Internet, even possibly receiving it back by Internet -- or email, I should say. Not Internet, but email. And because of the states moving forward, don't you feel that we would be in better shape if we had testable standards that we could -- guidelines that we can put out there and test equipment to, that makes sure that the states are meeting these requirements?

MR. REGENSCHEID:

Well, NIST is committed to doing whatever it can with our current, you know, knowledge of these systems, and the security issues and other issues related to them. We feel at this time, you know, what we can do is create -- do this research and develop these best practices. That's not to say that in the future we can't do more, but this is where we have to start right now.

COMMISSIONER DAVIDSON:

Okay, Mr. Silrum it's your turn. You talked about the report and I'd like to know a little bit more information, because I think it's important for our audience and for everybody that's watching the cam cast to know, is the timeframe you talked about. But tell me about cost. What kind of cost is incurred if you have to change an element on your statewide voter registration system? And I know every state is going to be different, but can you just give me a little bit of a -- some facts of what it might cost your state? Or -- and we know the larger states may be more, or whatever.

MR. SILRUM:

Certainly, Commissioner Davidson, and let me say first of all, though, that I would be completely remiss and I would be chastised by my boss, when I got back to North Dakota, if I didn't remind you that North Dakota is the only state without voter registration. So, we don't have a voter registration system, we have a voter tracking system, where we -- where we keep track of the voting history of voters.

So -- but nonetheless, there are costs that are incurred with that, and the amount of those costs really depends on the level of complexity to put those into place. Now, we pay -- currently pay $175 an hour to put -- to make changes to our voter tracking database. And depending on the number of hours that it would take, it can add up to, certainly, thousands of dollars, tens of thousands of dollars. And if they're significant enough, if, for example, it would take a restructuring of the -- of the underlying basis of the -- of the database itself, it could even be hundreds of thousands of dollars. So, it is costly to the states to implement those changes, but by and large, most -- most of them are -- most of the changes would cost in the tens of thousands of dollars.

COMMISSIONER DAVIDSON:

Is that just for writing the changes that -- I mean, you know, the software -- changing the software? Or is that also for -- do you

have to pay for testing it and, you know, getting your counties

trained? I mean, do you -- do you lump that into the cost also?

MR. SILRUM:

Commissioner Davidson, no, that's -- that's just the cost that we

pay outside of our -- the work that we do. We -- we expect that the

system is going to be delivered to us as -- as something that's been

tested, as something that works. So, we go through an iterative

process to develop the necessary requirements for the change that

needs to exist, make those changes, then the manufacturer puts

that change through a regression test to make sure that it doesn't

impact the rest of the system, and then, it's delivered to our test

system where we put it through regression testing to make sure

that it goes. But once it's in our hands, we just assume that that's

the cost -- normal cost of doing business. And so I have not

included those costs in there. But it certainly takes us a lot of time

to make sure that everything is working properly and it's ready to

go. Then, of course, we have to train the local election officials on

how and where to capture the data, and then we have to be able to

extract that data. And sometimes that's all -- that's involved again

in writing a new type of extraction utility or reporting utility.

COMMISSIONER DAVIDSON:

In other words, it's not simple.

MR. SILRUM:

Thank you. Thank you for stating it simply.

COMMISSIONER DAVIDSON:

Mr. Carey -- and I think we're going to have to put an extra desk someplace in the office, because we keep asking you to come over and work through some of these issues, and we appreciate your willingness to be there with us and partnering with us, obviously, working through the MOVE Act and everything we've got.

You know, when I think about the kiosk system, I think about possibly other states -- and I know yours can't do it -- but some of the states have talked about, "Jeepers, we could utilize our voters that's overseas to man these stations, and then that way it doesn't cost as much," and so on. I mean, I think that it's important for everybody to know that we started this pilot before the MOVE Act started, so it -- I mean, it kind of fell into place, but we initially decided we had to do something because we have manufacturers that was registered in our department and we had to be able to test them somehow or another. And your willingness to even assist us back then was greatly appreciated.

But don't you think that we could utilize the people that is living overseas in some of those areas to be able to be poll workers if states have rules, regulations that they put into place to allow this?

MR. CAREY:

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I think it would be up to the states. If the states want to allow their overseas civilian voters to be able to serve as poll workers, I think that would be a decision for the states that would be utilizing the system like this, to me.

COMMISSIONER DAVIDSON:

Okay, all right. And I guess, Mr. Hancock, have you heard anything from any of the states in any of the meetings that we've had, about possibly utilizing that type of an effort?

MR. HANCOCK:

Commissioner, we've certainly done some informal discussions with some of the states. There are states that have told us that they may be interested in participating in these pilot programs. But I think as Mr. Carey said, and maybe some other panelists as well, money is very tight in the states, and almost all of them have said it would depend on what type of money would be appropriated at the federal level, from whichever agency.

COMMISSIONER DAVIDSON:

And Mr. Hancock, I have one question because of the response that we have in Andy's presentation, that they can't -- possibly we may not have that final report until the second quarter of next year. We're due with a report to the Hill April 26th. What is that going to do to us if we don't have it, I mean, by that timeframe to, you know, put that in with the report? I mean, obviously, I would think that

would be part of our roadmap of saying, "Here's what we've done so far." What would that -- in your words, is that an important element that we should have by that time?

MR. HANCOCK:

Well, it would be good to have it. Apparently that's not going to happen. But I think what we certainly need to do is inform Congress in that report of everything that each of these agencies has been doing, you know, to try to meet the requirements that were set forth in the Act, you know, and that would obviously include the intramural research that NIST has done. But it is very important to mention all of those aspects.

COMMISSIONER DAVIDSON:

Okay thank you, I'm finished.

CHAIR BEACH:

Okay, thanks. Mr. Regenscheid, thank you for apprising the Commission of the research that NIST is doing.

I just have a question. When NIST is looking and conducting these research and reports, how do they go about balancing security concerns with the disenfranchisement that does exist with the UOCAVA voters? Can you explain that a little bit?

MR. REGENSCHEID:

So, NIST -- it's important to point out that NIST doesn't set the acceptable level of risk when we work with other government

agencies, you know. We focus on the security issues and try to

provide our best recommendations and guidelines and standards

on how to deal with those security issues. It's typically left with

those other agencies to balance their security needs with, you

know, their needs of what they need to accomplish at their agency.

And we continue that same sort of line when we do our work in

voting.

CHAIR BEACH:

Okay, thank you. Mr. Silrum, with this pilot project, and pursuing

full remote voting, do you have -- or can you identify any other type

of voter demographic that may benefit or have an advantage from

using a kiosk type system, other than UOCAVA voters?

MR. SILRUM:

Chair Beach, as far as -- as far as the kiosk based system, I really

know of none. But if we were to get to full remote access voting, I

would see another possible demographic would be people with

disabilities. There have been a number of times that I've heard the

same statement coming to me from -- that I hear from UOCAVA

voters that I hear from people with disabilities is that, "Going to a

polling place to use an accessible device that is unfamiliar to me is

a daunting task, and so, I would much rather vote from home and

vote by way of absentee." Now, if we were able to develop some

sort of remote access using telephones, using computers, that sort

of thing, I think that could be a possibility for those. Whether or not

a person, such as myself, would ever be able to use that, I think

that's a political question and not so much an administrative

question.

CHAIR BEACH:

Okay, thank you. Mr. Carey, as far as the education and promotion

for the pilot project and the kiosks that they will be using hopefully

in 2010, what type of preparation would FVAP be taking if a voter

shows up and their county or state is not participating? Like how

are you going about educating or advertising for that scenario?

MR. CAREY:

Well, I think it's important that we -- we're going to first need to

develop what those -- that level of participation is going to be. And

so, once we've defined that, then we can go through our voting

assistance officers, we can go through the embassies and the

consulates, we can advise them of any type of pilot program that

may be underway, in order to be able to give them the opportunity

to make sure that the people know that this is available.

We've also expanded our outreach capability. We have a

very aggressive online email service, an RSS service. We're on

Twitter. We're on Facebook. We have state individual Twitter

accounts now, as well, so that -- and then, we have our normal, you

know, information delivery systems through the voting assistance

officers, that we could use all those methodologies to get the word out about -- about this being available.

CHAIR BEACH:

Okay, that's good to know, thank you. Mr. Hancock, when do you expect the testing for these pilot systems to begin? And do you anticipate that they will be available for states for use in the 2010 general election?

MR. HANCOCK:

We have a very aggressive timeframe, you know. Should states wish to participate, I think we'll be able to do that. We have sort of a draft timeline. I think we'd like to get states that are interested to start the testing process probably around the April/May timeframe with the hope of getting certifications done by July, so states can start implementing August/September timeframe for a November election. We can't do any less. I mean, it has to be. Those are pretty tight deadlines.

CHAIR BEACH:

Okay. And you had mentioned the Okaloosa County, you know, has already conducted a pilot for UOCAVA voters with the manned kiosk. How will these pilot programs build upon this previous effort, if at all?

MR. HANCOCK:

Right and they certainly would. While they would be similar, I think

one of the things that hasn't been done yet is to have a manned

kiosk that's used by, potentially, a number of states, you know.

Okaloosa County, it was voters essentially from one county using

several systems around the world. You know we would hope that

we would get more than one state involved, voters from numerous

counties, and potentially from numerous states. So, you know, it

would be an expansion of that same concept, but a fairly large

expansion, I think.

CHAIR BEACH:

Okay. And my last question for you is you mentioned in your

testimony efficiencies that you're building into the pilot certification

process. Will these efficiencies lead to any cost savings for states?

MR. HANCOCK:

Well, I think so. I think one of the things we heard when we first

looked, you know, at doing these type of pilots was if the testing

and certification was expensive, you know, they really wouldn't be

worth the effort for manufacturers. Because when we're talking

about pilots we're intentionally talking about a limited timeframe,

usually one election period program. And so, it would be very

difficult for manufacturers to spend, you know, potentially millions of

dollars or jurisdictions, in fact, to spend whatever amount of money

they may have to spend for real short-term projects. So I think it's

imperative that we keep the cost as reasonable as possible.

CHAIR BEACH:

Okay, and I guess for the benefit of the public also, when will the

working group be convening again? Will they be having another

meeting this month or in the future?

MR. HANCOCK:

Right, the next scheduled for the group is the 16th of this month.

CHAIR BEACH:

Okay, thank you. I don't have any further comments or questions.

Do my colleagues have anything?

Okay, well thank you very much. This has been very

informative for us here at EAC, for the voters, our constituencies,

and states, everybody involved.

And I'd like to now adjourn -- officially adjourn the meeting.

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[The public meeting of the EAC adjourned at 3:12 p.m. EDT.]