

Minutes of the Public Meeting United States Election Assistance Commission

1225 New York Avenue, NW
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Washington, DC 20005

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission ("EAC") held on Tuesday, October 7, 2008. The meeting convened at 10:00 a.m., EDT. The meeting was adjourned at 12:01 p.m., EDT.

PUBLIC MEETING

Call to Order:

Chair Rosemary Rodriguez called the meeting to order at 10:00 a.m.

Pledge of Allegiance:

Chair Rodriguez invited Commissioner Gracia Hillman to lead all present in the recitation of the Pledge of Allegiance.

Roll Call:

EAC Commissioners:

General Counsel Juliet Hodgkins called roll of the members of the Commission and found present: Chair Rosemary Rodriguez, Vice-Chair Donetta Davidson and Commissioner Gracia Hillman. Three members were present for a quorum.

Senior Staff:

General Counsel Juliet Hodgkins, Executive Director Thomas Wilkey

Presenters:

Edgardo Cortes, Acting Director, HAVA Payments and Grants, and Election Administration Improvement Programs, U.S. Election Assistance Commission; Brian Hancock, Director, Voting System Certifications, U.S. Election Assistance Commission; Jon Crickenberger, NVLAP Program Manager, National Institute of Standards and Technology; Ann Griffiths, Regional Vice President, CIBER, Inc; Mary H. Saunders, Chief, Standards Services Division, National Institute of Standards and Technology

Adoption of Agenda

Chair Rodriguez asked for a motion to adopt the agenda for the public meeting of October 7, 2008. Vice-Chair Davidson made a motion to adopt the agenda as printed. Commissioner Gracia Hillman seconded the motion. The motion carried unanimously.

Welcoming Remarks

Chair Rodriguez welcomed all in attendance, noting that there are less than 30 days until elections, and pointing out both Commissioners Hillman and Davidson and Executive Director Wilkey have been involved in national and local media appearances to encourage voters to know their legal requirements, to find out where they need to go to vote and most importantly to be sure to participate.

Old Business:

Adoption of the minutes from the previous meeting

Chair Rodriguez asked for a motion to adopt the minutes from the September 18, 2008, public meeting/workshop. Commissioner Gracia Hillman moved to adopt the minutes. Vice-Chair Davidson seconded the motion. The motion carried unanimously.

Report from the Executive Director

Executive Director Thomas Wilkey welcomed all in attendance, reiterating Chair Rodriguez's earlier statement about the fact that there is less than one month until Election Day 2008.

Mr. Wilkey was pleased to announce that the U.S. Senate confirmed the nominations of the EAC's three existing Commissioners, each being appointed for a second term. Additionally, Ms. Gineen Bresso Beach was confirmed by the Senate to fill the vacancy left by Caroline Hunter.

Mr. Wilkey next reported that EAC will be holding a workshop on Wednesday, October 15, 2008, at the National Press Club to which journalists and election officials are being invited to discuss consideration of time zones, exit polling and voting systems. The agenda for the meeting is available on EAC's Website.

Concerning Election Administration, Mr. Wilkey announced that the General Accountability Office (GAO) confirmed that EAC appropriately obligated the 2008 Requirements Payments and may continue to distribute funds.

Four new Quick Start guides that cover the topics of Canvassing and Certifying an Election, Conducting a Recount, Provisional Ballots and Elderly and Disabled Voters in Long-term Care Facilities were released earlier in the week and are available to election officials. GAO reported that election officials are finding these and previously released management materials to be valuable tools.

Concerning Information for Voters, Mr. Wilkey announced that the Voter's Guide to Federal Elections was recently issued, and the public is encouraged to visit the Voter Information Center on EAC's Website.

Concerning Voting Systems, the University of South Alabama has recently begun working on the contract they were awarded to develop a scientifically-based voting system risk assessment.

Concerning Research, the Alternative Voting Methods Study which was adopted by the Commission as its October 7, 2008, meeting is now available on EAC's Website.

The 2008 Election Administration and Voting Survey instrument that was released earlier in the week will capture information related to the National Voter Registration Act, the Uniformed and Overseas Citizens Absentee Voting Act, various key election administration issues, including the casting and counting of provisional ballots and poll work recruitment; and, information on state laws, definitions and procedures governing election administration. The reports from the survey will be issued in 2009 to the public and Congress.

Background information on the Electoral College that was recently issued and anyone who would like to learn more can download the paper from EAC's Website.

Six tally votes, all which passed unanimously, were held by the Commissioners since the October 7, 2008, meeting. They included the following:

1. Advisory Opinion in response to Sacramento County, CA regarding the use of Section 251 funds for voting system maintenance.
2. Advisory Opinion in response to Sacramento County, CA regarding use of Section 251 funds on electronic poll books.
3. Advisory Opinion in response to California regarding use of HAVA funds for voting equipment reimbursement.

4. Advisory Opinion in response to California regarding use of Section 251 funds for poll worker training and voter education.
5. Advisory Opinion in response to Wayne County, NY regarding use of HAVA funds to pay for poll worker training and lunch.
6. Federal Register publication of changes to HAVA State plans for Idaho, Iowa and Pennsylvania. The State plans for Nevada, Louisiana, Idaho, Iowa and Pennsylvania will be published in the Federal Register later in the month, and all of the advisory opinions will be available on EAC's Website later in the day.

Concerning Website Updates, GAO's decision on HAVA requirements payments, the Commissioners' Senate confirmations and a statement from Commissioner Davidson on EAC suggested guidelines are featured under the "Recent News" section of EAC's Website.

Mr. Wilkey was pleased to announce that the seven principles Commissioner Hillman outlined at the October 7, 2008, meeting which staff are to take into consideration when revisiting/amending the existing advisory on Maintenance of Effort are in the process of being reviewed and an analysis will be provided to the Commissioners at the December 8, 2008, meeting.

Counsel Hodgkins addressed the Commission to outline the type of information that must be reported concerning grants and contracts issued by the EAC per the Federal Funding Accountability and Transparency Act. Beginning January 1, 2009, Counsel Hodgkins reported that EAC will be required to report the same data for subawards and subgrants in the same manner and regarding the same data points as are currently required for grant awards and contracts. OMB regulations further require that certain information be included in the solicitations for contracts and grants so that potential recipients are informed of the reporting requirements.

Questions and Answers:

In response to comments/questions by the Commissioners:

Counsel Hodgkins reported on how states will be affected by the reporting requirement with respect to subawards and subgrants that they will be making to counties and/or local jurisdictions, pointing out that this information was made available earlier in the day on EAC's Website. Mr. Wilkey reported there have been some initial discussions with OMB regarding developing a form that states can utilize for information reporting, and that a training schedule to help states with regard to this new requirement will most likely take place in the spring. Commissioner

Hillman stressed the important responsibility that EAC has to ensure that States are accurately and timely informed about this new reporting requirement; that this is not a discretionary action on EAC's part.

Based upon Commissioner Hillman's recommendation with regard to how staff should proceed with the seven principles she outlined for use when revising/amending the existing advisory on Maintenance of Effort at its September 18, 2008, meeting, Mr. Wilkey agreed that staff should complete its analysis, post the document for a 30-day public comment period and the Commission will take final action on this matter at its December public meeting.

Chair Rodriguez reported that a workshop will be held on October 15, 2008, at the National Press Club. Chair Rodriguez noted that although no public meeting of the EAC was scheduled for the month of November, there is the possibility that an emergency meeting may be required.

Consideration of Draft Working Groups Policy

Commissioner Hillman reported that following a discussion with staff, she agreed that staff should take some additional time to review the draft "Proposed Working Groups Policy" that she presented at the September 18, 2008, public meeting in order to ensure that the policy does not inadvertently contradict anything that the EAC has agreed to, pointing out that following the Commission's review a tally vote will be conducted to publish the draft for notice and public comment.

Update on Federal Funding Accountability and Transparency Act

Mr. Edgardo Cortes informed the Commission that in addition to his division formulating a plan to conduct trainings very early next year that will give states the necessary guidance related to the new financial reporting requirements with respect to any subawards and subgrants that they will be making to counties and/or local jurisdictions, which become effective January 1, 2009, the Office of Management and Budget has created a new reporting form that will be replacing the existing standard Form 269 that states have been using.

Consideration of Draft EAC Guidelines Regarding Material Changes to State Plans

Presenter: Edgardo Cortes, Acting Director, HAVA Payments and Grants, and Election Administration Improvement Programs, U.S. Election Assistance Commission

Mr. Cortes was pleased to present the Commission with the final draft regarding "Interpretation of Material Changes per HAVA Section 254(a)(11)." Mr. Cortes expressed his appreciation to both staff in his division and the Office of General Counsel for all their hard work in helping to develop the document, pointing out that the document encompasses both the Commission's comments and those that were raised during the public comment period, recommending that the Commission adopt the final interpretation so that states will have a clear understanding regarding this matter.

Questions and Answers:

In response to comments/questions raised by the Commission:

Mr. Cortes noted that OMB will most likely defer to the Commission to provide training to states related to the new financial reporting requirements that become effective January 1, 2009, pointing out that he is confident that staff has the necessary training in both the OMB circulars and federal grants management to assist states. The form that OMB has created, which will be replacing the existing standard Form 269, is available for states to review. Consideration is being given towards asking several states to utilize the form on a trial basis in order to gain feedback which will then allow staff to prepare training materials that will address any questions/needs they may encounter.

Commissioner Hillman made a motion to adopt the Interpretation of Material changes per HAVA Section 254(a) (11). Vice-Chair Davidson seconded the motion. The floor was open for discussion at which time Mr. Cortes responded to a question regarding EAC's authority to include the ten percent change in budget that was included in the first draft and thereafter removed from the final draft, concurring with Commissioner Hillman that the ten percent figure is in the Common Rule and it is a requirement that was not created by the EAC. Commissioner Hillman stressed that the EAC should not be afraid to put in writing the applicable rules, regulations and guidelines which will provide clarity to what is required of states' grantees. Mr. Cortes reviewed the changes that were made to the final draft from the previous draft that was presented at the September 18, 2008, meeting. The motion carried unanimously.

New Business:

Discussion of Revisions to Advisory Opinion Process

Presenter: Edgardo Cortes, Acting Director, HAVA Payments and Grants, and Election Administration Improvement Programs, U.S. Election Assistance Commission

Mr. Cortes explained that staff requested that a discussion concerning revisions to the policy the Commission adopted earlier in the year regarding issuing advisory opinions with regard to the use of HAVA funds be placed on this month's agenda in order to inform the public with respect to what EAC will be doing between now and the December meeting.

Mr. Cortes reviewed the various areas of the policy that staff is recommending revisions to, which include the following: Posting draft advisory opinions for public comment as opposed to just the actual requests so that the public knows both the questions that are raised and EAC's proposed responses, allowing staff to respond to questions that were previously answered by the Commissioners through advisories/policies, exempting pre-approval for capital expenditures, relaxing the timeline. Mr. Cortes recommended, following its review of the revised policy, that the Commission consider conducting a tally vote to post the document for public comment in the Federal Register so that any feedback/comments can be placed on the December agenda for consideration.

Questions and Answers:

In response to comments/questions by the Commissioners:

The Commission agreed that it needs to develop a contingency plan with respect to exempting the pre-approval for capital expenditures in order to ensure that states have the ability to spend money in order to meet their responsibilities both prior to and after an election.

The Commission recessed at 11:01 a.m. and reconvened at 11:12 a.m.

Consideration of Accreditation of CIBER, Inc.

Presenter: Brian Hancock, Director, Voting Systems Certifications, U.S. Election Assistance Commission

Mr. Hancock was pleased to present the following four EAC staff recommendations with regard to the accreditation of CIBER, Inc. following both the successful lab assessment from NIST/NVLAP of its technical and management capabilities, and submission/review of all the necessary information as required by EAC:

1. The Commission vote to accredit CIBER, Inc. of Huntsville, Alabama, as an EAC voting system test laboratory pursuant to the requirements of Section 231(b) of the Help America Vote Act.
2. The Commission causes EAC staff to forward to CIBER a certificate of accreditation as an EAC VSTL, noting their scope of accreditation and their successful assessment from NVLAP.
3. The Commission cause EAC staff to post the certificate of accreditation, laboratory letter of application and signed certificate of conditions and practices on the EAC's Website.
4. In light of issues encountered by the EAC over the past 12 to 18 months resulting from inexperienced laboratories and lab test engineers, the Commission directs EAC staff to closely monitor the initial test engagement undertaken by CIBER for an on-site testing observation and technical assessment pursuant to Section 4.5.2 of the EAC Laboratory Accreditation Program Manual.

Presenter: Jon Crickenberger, NVLAP Program Manager, National Institute of Standards and Technology (NIST)

Mr. Crickenberger was pleased to present testimony to the Commission regarding NIST/NVLAP's assessment of CIBER, Inc., which included the following areas:

1. NVLAP's four-day on-site assessment visit of CIBER, Inc., that began on December 17, 2007, and was performed by a NVLAP lead assessor and one technical assessor.
2. Details regarding the 20 nonconformities that were discovered during the on-site assessment.
3. CIBER's response to the nonconformity findings/NVLAP's evaluation of the responses.

CIBER was granted NVLAP accreditation on May 16, 2008, and a letter from the NIST Acting Director was sent to the EAC recommending them for accreditation in the EAC accreditation program.

Presenter: Ann Griffiths, Regional Vice President, CIBER, Inc.

Ms. Griffiths presented detailed testimony to the Commission regarding the following four areas:

1. The history of CIBER as an ITA (Independent Testing Authority.)
2. The experience level of current CIBER staff.
3. CIBER's commitment to the accreditation process.
4. CIBER's support of EAC and the accreditation process.

Presenter: Mary Saunders, Chief, Standards Services Division, National Institute of Standards and Technology

Ms. Saunders noted that while she would primarily be assisting with questions and answers, she clarified that NIST's National Voluntary Laboratory Accreditation Program was established in 1976 and it's an internationally recognized program. The voting system testing laboratory accreditation program was established in response to HAVA in 2006. NIST recommends qualified testing laboratories to the EAC for accreditation so that laboratories can test voting systems under the EAC's voting system certification program. And it was NIST's choice to utilize the NVLAP process to support the NIST director's recommendations of the EAC.

Chair Rodriguez asked for a motion to accept the accreditation of CIBER, Inc. as recommended by staff for purposes of discussion. Commissioner Hillman made a motion to accept the accreditation of CIBER, Inc. as recommended by staff. Vice-Chair Davidson seconded the motion. The floor was open for discussion at which time Ms. Griffiths, Mr. Crickenberger and Ms. Saunders responded to several questions raised by the Commission members. The motion carried unanimously.

Announcement of October 15, 2008, Public Meeting

Chair Rodriguez reminded everyone in attendance that the October 15, 2008, meeting is the final election workshop focusing on "Journalists and Election Officials Working on Behalf of America's Voters." The workshop, which will be held at the National Press Club, will commence at 1 p.m. Although there is no regular public meeting of the EAC scheduled for November, there is the possibility that an emergency meeting may be required, which will be announced.

Adjournment

Commissioner Hillman made a motion to adjourn the meeting. Vice-Chair Davidson seconded the motion. The motion carried unanimously.

Meeting was adjourned at 12:01 p.m.