

FINANCIAL SERVICES AND GENERAL  
GOVERNMENT APPROPRIATIONS FOR 2011

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HEARINGS  
BEFORE A  
SUBCOMMITTEE OF THE  
COMMITTEE ON APPROPRIATIONS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED ELEVENTH CONGRESS  
SECOND SESSION

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SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT  
APPROPRIATIONS

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NOTE: Under Committee Rules, Mr. Obey, as Chairman of the Full Committee, and Mr. Lewis, as Ranking  
Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

LEE PRICE, BOB BONNER, ANGELA OHM, and ARIANA SARAR  
*Subcommittee Staff*

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**PART 7—FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2011**

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# **FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2011**

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THURSDAY, MARCH 4, 2010.

## **FISCAL YEAR 2011 BUDGET FOR THE CONSUMER PRODUCT SAFETY COMMISSION**

### **WITNESSES**

**INEZ TENENBAUM, CHAIRMAN, U.S. CONSUMER PRODUCT SAFETY  
COMMISSION**  
**NANCY NORD, COMMISSIONER, U.S. CONSUMER PRODUCT SAFETY  
COMMISSION**

### **INTRODUCTION OF WITNESSES—CHAIRMAN SERRANO**

Mr. SERRANO. The committee will come to order. We welcome you to this very cozy room.

Today the subcommittee meets to discuss the fiscal year 2011 budget request of the Consumer Product Safety Commission. Joining us today are the Chairman of the CPSC, Inez Tenenbaum, as well as CPSC Commissioner, Nancy Nord. We thank you both for joining us today.

### **CHAIRMAN SERRANO'S OPENING STATEMENT**

For fiscal year 2011, the budget request for the Consumer Product Safety Commission is \$118.6 million. The agency has seen its responsibilities grow enormously for the last few years. In response to a large number of product hazards and product recalls, Congress enacted the Consumer Product Safety Improvement Act of 2008. This law, together with other recent legislation addressing pool and spa safety and the protection of children from gasoline burns, provides for important consumer protections but has also essentially doubled the workload of the CPSC. It is important to determine whether the agency staffing levels are adequate to fulfill these responsibilities.

In 2007, when I became Chairman of this subcommittee, the agency had fewer than 400 full-time employees. Funding increases provided by this subcommittee have enabled the CPSC to grow to 530 full-time employees in fiscal year 2010, a more than 30 percent increase in staffing in 3 years. However, this is still far less than the agency staffing 30 years ago when it had 978 employees.

A strong CPSC is more important than ever. This is particularly evident in the area of imported products. The volume of imported products has doubled in the last 15 years, and while imports account for 20 percent of all consumer product purchases, they account for more than 80 percent of recent product recalls. GAO re-

ported last August that the CPSC's ability to monitor imported products is limited by staffing shortfalls. The Fiscal Year 2010 Appropriations Act included funding to help address this problem, and I am pleased that the fiscal year 2011 budget requests additional resources for the agency and for the import safety initiative. It is important for this subcommittee to determine whether these resources are truly adequate to ensure the safety of imported products.

The Commission has worked hard to implement the many provisions of a Consumer Product Safety Improvement Act. At the same time, we have heard about confusion among manufacturers, distributors and retailers about particular requirements. I am interested in knowing how implementation is going right now, whether industry is complying, and whether the CPSC is devoting adequate resources to enforcing the new laws, and many important consumer protections.

In addition to implementing these consumer protections, the new law directed CPSC to establish a public Internet-accessible database on the safety of consumer products. The agency is also preparing to move into a modernized laboratory facility designed to enhance its research on product hazards. Furthermore, the agency has begun an effort to work more closely with manufacturers and regulators in China by opening an office in Beijing. I am interested in hearing about the status of all of these efforts and how budget requests will enhance them going forward.

Chairman Tenenbaum joined the Commission in June 2009. She has a long history of public service, including 8 years as South Carolina's State superintendent of education.

Commissioner Nord is no stranger to this subcommittee. This is her third appearance before us. She has served on the CPSC since 2005 and served as Acting Chairman from 2006 to 2009.

We thank you both for your testimony. We look forward to a very informative discussion. And I also look forward to a great baseball season where the Cardinals will do almost as good as my Yankees.

Mrs. EMERSON. Hey now, we have really, really done a great job on recruitment this year, so I am not certain of that, Mr. Chairman, I must add. But Debbie and I are actually the cochairs of the congressional softball team, and we start our practice next week. You will be happy to know that since we are playing the women of the press, that we actually think we will prevail this year since at least there is not such an age differential where we set ourselves up for failure last time and Debbie broke her leg. But other than that, we are getting all ready, we are getting all ready for a wonderful, wonderful baseball season. And I truly am excited. I don't know anything about this new Brad Penny, this new pitcher we have gotten, but he has been around a while. Do you know anything about him?

Mr. SERRANO. Yes. He is good, unfortunately.

Mrs. EMERSON. Thank you. Thanks, Mr. Chairman.

Mr. SERRANO. Jo Ann Emerson, ladies and gentlemen.

Mrs. EMERSON. I have the app on my phone so I can get all the Cardinals news, like Google alerts, Cardinals alerts.

Mr. SERRANO. Who says Members of Congress are not regular people?

## MRS. EMERSON'S OPENING STATEMENT

Mrs. EMERSON. I do love my Cardinals, I must tell you.

Anyway, thanks for holding this very important hearing. Thank you all very much for being here today. We do welcome you for your first appearance, Madam Chair.

And, Commissioner Nord, thank you for being back for the third time? Third time.

Anyway, as the Chairman said, you all have received large funding increases since 2007 compared to other agencies, and I really am anxious to hear how you all are spending those funds and hiring the necessary people to do the important work that we keep laying upon you all.

I also want to say that I did vote for the Consumer Product Safety Improvement Act. And I, like most members of the committee, believe that protecting consumers should be our top concern of the business community and the regulatory community. And facilitating those goals should be one of our most important, if not the most important, responsibility we have.

But we are also charged here in Congress with addressing the unintended consequences of its actions. And with respect to the CPSIA, this means realizing that in addition to the benefits of the statute, there has been some avoidable damages to small businesses, domestic manufacturers, thrift stores and charities. And I think we can all agree upon that. However, our economy isn't as resilient today as it has been in the past, so it is really very, very important that we not ignore those jobs lost or those that could be lost due to unnecessary aspects of this statute.

The 2010 appropriations bill directed the Commission to provide recommendations to the Congress on changes needed to CPSIA, and for whatever reason that I cannot understand, I don't know why these recommendations have become politicized in this body, but it appears, as usual, that logic and sensible actions are not immune from partisanship in Washington.

Let me close by stating that regulation is a balancing act so that consumers, especially children, are protected, but businesses are able to operate without unnecessarily burdensome requirements. And I want to say this because as we try our best to jump-start the economy, I have met with hundreds of small business people over the last month, all of whom tell me that you can give me a tax credit, you can take away my—the need for me to pay payroll taxes, but at the end of the day, it is the uncertainty in the economy and the burdensome regulations that are thrust upon my business each and every day that no other country or competitor faces that are causing me not to hire people. This is what they have said across the board. So that is worrisome, and that is why I am hopeful that we will all be able to work together to maximize the benefits and minimize the detriment of this statute and the work that you all are doing.

So thanks, and I look forward to hearing your testimony.

Mr. SERRANO. Thank you.

Mr. SERRANO. Now we will take your testimony. Please keep in mind that we would like you to keep your testimony to 5 minutes. And then, of course, your full text will be included in the record.

## CHAIRMAN INEZ TENENBAUM'S OPENING STATEMENT

Ms. TENENBAUM. Thank you. Good morning, Mr. Chairman, Ranking Member Emerson and Members of the Subcommittee on Financial Services and General Government. I am so pleased to be here to discuss the U.S. Consumer Product Safety Commission's fiscal year 2011 budget request.

During the past 8 months, as Chairman of the CPSC, I have had the great opportunity to see firsthand the great work that the Commission undertakes every single day, from new regulations to ensure the safety of cribs to enforcement actions against children's jewelry with harmful levels of lead, cadmium and other toxic metals, the CPSC is once again an agency that means business when it comes to protecting the safety of the American consumer.

Much of this progress would not have been possible without the reauthorization of the Commission through the Consumer Product Safety Improvement Act of 2008 and the additional funding received by the agency in 2009 and 2010. I greatly appreciate the increased resources that members of the subcommittee have supported all through the past 2 years and can assure all of you that those resources have been put to good use through increased staffing, improved import surveillance, and rapid and robust responses to new and emerging hazards.

The results of this new commitment to the CPSC are really very encouraging. One concrete example of this is the increased staffing and resources at the agency. During 2008, the number of CPSC full-time employees had dropped to only 385. This was the lowest level in the agency's history and down from a high of 978 in 1980. Section 202 of the CPSIA required the agency to increase its FTEs to at least 500 by the end of 2013, and I am pleased to report to you that we have already reached that milestone and currently have approximately 501 FTE positions filled at the CPSC as of March 1, 2010. In addition, we are currently interviewing another 16 FTE positions, and have open announcements for another 9 FTE positions. Taken as a whole, this puts us well on track to meeting our approved FTE ceiling of 530 in 2010.

But employee numbers are only one indicator of change. Another key metric is results. One concrete example is that of our ability to stop dangerous products before they enter the stream of commerce. In fiscal year 2007, the CPSC collected approximately 750 samples of suspect products entering our country. In fiscal year 2009, that number rose to almost 1,600. At the same time, we started to see a commensurate decrease in the number of voluntary recalls, from 563 in 2008 to 466 in 2009.

The Commission's proposed 2011 budget request of \$118 million, \$600 thousand is designed to accelerate this forward momentum by continuing internal modernization and rebuilding efforts. It is noted in my written statement the proposed fiscal year 2011 is only \$400,000 over our 2010 level, but it will allow the Commission to support the key above areas of emphasis by reallocating \$13.9 million in funds used for 2010 nonrecurring activities.

Specifically, the proposed budget will allow the Commission to pursue new and enhanced initiatives in four key areas. The first is the Commission's compliance initiative. Since passage of the

CPSIA, Commission staff have worked diligently to promulgate and implement the numerous rules required by that law. In 2011, the CPSC's work will shift from developing rules mandated by the CPSIA to enforcing those rules, both within our borders and at ports of entry. To further facilitate those efforts, the CPSC's 2011 budget requests \$4.6 million and the addition of 41 full-time employees to support additional responsibilities associated with three key elements of the compliance program, and that is regulatory enforcement, import surveillance and defect investigation.

The second area is information technology modernization and the Commission implementation of a searchable public database of consumer product safety information. Section 212(b) of the CPSIA requires the Commission to upgrade its information technology systems and develop a database that allows consumers to submit incident reports that can subsequently be reviewed by all members of the general public. In response to this mandate, CPSC is developing a single integrated Web-based environment, the Consumer Product Safety Risk Management System, the RMS, which will change the way the Commission receives and analyzes data.

The Commission has already allocated approximately \$20 million to fund many of the initial planning and design costs of the RMS and deeply appreciates this subcommittee's past support of this program. In fiscal year 2011, funding requirements will largely shift from design and build costs to maintenance costs. Therefore, the 2011 budget requests \$1.8 million for staffing combinations of eight FTEs and other contract positions to maintain the system and comply with the OMB's requirement for information technology governance, cybersecurity and privacy.

Now, the third area of focus is consumer outreach and education. Providing consumers with recall and product hazard information that helps make families and communities safer is one of my top priorities. This year and in fiscal year 2011, the Commission plans to accelerate efforts to conduct grassroots education and advocacy in hard-to-reach and vulnerable populations. In August 2009, the GAO released a report recommending that the CPSC increase its focus on reaching minority populations. Mr. Chairman, I know that this is a key priority for you. Since becoming the Chairman of the CPSC, I have directed the Commission staff to explore additional outreach efforts to underserved populations, and this will remain a key priority going forward.

We also continue to focus on public education and outreach efforts to prevent drownings and entrapments involving children in residential and public pools. Congresswoman Wasserman Schultz has been a tireless advocate of increased safety measures and outreach in this area. And I am pleased to note that the 2011 budget contains \$1 million specifically to continue the pool and spa safety education. This funding will build on the previous funding of \$8.1 million in fiscal year 2009 and 2010 to continue to help the agency drive down the 300 child drownings each year.

And fourth, the 2011 budget proposes an additional \$200 million for CPSC to support the National Nanotechnology Initiative. In the last few years, there has been increasing public concern over the potential health impacts associated with the technology. Although nanomaterials may have the same chemical composition as non-

nanomaterials, at the nanoscale they may demonstrate different physical and chemical properties and behave differently in the environment and in the human body. The \$2 million proposal will allow the Commission to conduct exposure and risk assessment of nanomaterials, allow database updates to properly flag reports of nanotechnology incident reports in consumer products, and conduct consumer outreach efforts such as public meetings.

Mr. Chairman, Ranking Member Emerson, thank you again for the opportunity to testify on the proposed 2011 budget for the U.S. Consumer Product Safety Commission. And I look forward to working with you and other members of this subcommittee on the budget request. And I will be happy to entertain your questions after Commissioner Nord makes her statement.

Mr. SERRANO. Thank you so much.

[The prepared statement of Chairman Inez Tenenbaum follows:]



**Statement of  
Inez Tenenbaum  
Chairman  
U.S. Consumer Product Safety Commission**

**Before the**

**House Committee on Appropriations**

**Subcommittee on Financial Services and General  
Government**

**March 4, 2010**

Good morning, Chairman Serrano, Ranking Member Emerson, and Members of the Subcommittee on Financial Services and General Government. I am pleased to be here today to discuss the U.S. Consumer Product Safety Commission's (CPSC) fiscal year (FY) 2011 budget request.

During the past eight months as Chairman of the CPSC, I have had the opportunity to see first-hand the great work that the Commission undertakes every day. From new regulations to ensure the safety of cribs to enforcement action against children's jewelry with harmful levels of lead, cadmium and other toxic metals, the CPSC is once again an agency that means business when it comes to protecting the safety of American consumers.

Much of this progress would not have been possible without the reauthorization of the Commission through the Consumer Product Safety Improvement Act of 2008 (CPSIA), and the additional funding received by the agency in FY 2009 and 2010. I greatly appreciate the increased resources Members of this Subcommittee have supported over the past two years, and can assure all of you that those resources have been put to good use through increased staffing, improved import surveillance, and rapid and robust responses to new and emerging hazards.

The results of this new commitment to the CPSC are already very encouraging. One concrete example of this is increased staffing and resources at the agency. During FY 2008, the number of CPSC full-time employees (FTEs) had dropped to only 385 – the lowest in the agency's history. Section 202 of the CPSIA required the agency to increase the number of FTEs to at least 500 by the end of FY 2013. I am very pleased to report that we have already reached that milestone, and have 501 FTE positions filled at the CPSC as of March 1, 2010.

But employee numbers are only one indicator of change. Another key metric is results. One concrete example of that is our ability to stop dangerous products before they enter the stream of commerce. In FY 2007, the CPSC collected approximately 750 samples of suspect products entering our country. In FY 2009, that number more than doubled to almost 1600. At the same time, we started to see a commensurate decrease in the number of voluntary recalls—from 563 in FY 2008 to 466 in FY 2009.

The Commission's proposed FY 2011 budget request of \$118.6 million is designed to accelerate this forward momentum by focusing on modernization efforts that will flag emerging hazards – and help us to keep those products out of our country and the hands of children.

While this request is only \$400,000 over the FY 2010 level, it will allow the Commission to increase the FTE level by 46 in FY 2011 (for a total of 576 FTEs), fund a broad new compliance initiative, implement the second phase of the Commission's continued Information Technology (IT) modernization, continue to improve consumer outreach, and direct \$2 million in support of the federal National Nanotechnology Initiative by reallocating \$13.9 million in funds used for FY 2010 nonrecurring activities.

### The Commission's Compliance Initiative

Since the passage of CPSIA, Commission staff have worked diligently to promulgate and implement the numerous rules required by that law. In 2011, the CPSC's work will shift from developing rules mandated by the CPSIA to enforcing those rules – both within our borders and at ports of entry.

To further facilitate those efforts, the CPSC's FY 2011 budget requests \$4,647,000 and the addition of 41 full-time employees (FTEs) to support additional responsibilities associated with three key elements of the compliance program: regulatory enforcement, import surveillance, and defect investigations.

#### Regulatory Enforcement:

Experience shows that enforcing new rules takes considerably more resources than enforcing an existing rule that has been in place for a number of years. The number of rules mandated by CPSIA during FY 2009 and FY 2010 are more than double the number of rules promulgated by the Commission since 1990 – and will result in a dramatic increase in enforcement responsibility.

The FY 2011 budget, therefore, requests \$1,647,000 and 15 FTEs to enforce the new rules. This includes 4 new compliance officers, 5 field investigators, 3 lab testing and other technical specialists, 2 attorneys, and one FTE to coordinate with state and local authorities.

#### Import Surveillance:

The Commission's import enforcement workload will also increase as investigators ramp up efforts to verify testing certifications and collect increasing numbers of suspect product samples at our Nation's ports. The need for more staff and better coordination with U.S. Customs and Border Protection (CBP) was highlighted in an August 2009 Government Accountability Office (GAO) report, and the Commission is eager to fully address this issue.

Accordingly, the FY 2011 budget requests \$1,965,000 to expand coverage at the ports, verify third-party testing certifications, collect samples of suspect products, and – most importantly – stop unsafe products from entering the country. This request will support an additional 16 FTEs dedicated to import surveillance (5 investigators and analysts that will be stationed at ports, 2 compliance officers to process additional import samples, and 9 FTEs for lab testing and other specialties), as well as \$100,000 for destruction of goods refused at the ports by CPSC.

**Defect Investigations:**

The number of product incident reports the Commission receives almost doubled between FY 2003 and now. With the rollout of the public database by March 11, 2011, we expect that the number of incident reports will grow exponentially. These reports often provide critical information and data to the CPSC. However, with current resources, CPSC staff is only able to thoroughly investigate a very small number (approximately 10 percent) of the total reports received.

Increased resources are needed to enhance our defect investigation capability, and ensure that the Commission can adequately review and process the rapidly increasing number of product incident reports. Therefore, the FY 2011 budget requests \$1,965,000 and 10 additional FTEs (3 compliance officers, 5 field investigators, 1 technical specialist, and 1 attorney) to support this critical effort.

**Information Technology Modernization**

Section 212(b) of the CPSIA requires the Commission to upgrade its information technology systems and develop a database that allows consumers to submit incident reports that can subsequently be reviewed by all members of the general public.

In response to this mandate, CPSC is developing a single, integrated, web-based environment, the Consumer Product Safety Risk Management System (RMS), which will change the way the Commission receives and analyzes data. Current systems at the Commission are fragmented, and information flows often have to be manually sorted by staff to identify new and emerging hazard patterns.

With the new RMS, CPSC will be transformed. The Commission will have one powerful database for the input and analysis of multiple sources of data. This capability will be absolutely critical as data streams from the new public database start flowing into the Commission. In addition, the system will have new predictive "data mining" tools that will allow the CPSC to compare new incidents electronically with all prior incidents. Overall, this new capability has the potential to uncover more defect patterns for staff to examine. This, in turn, could lead to an increase in recalls of defective products and the prevention of injuries and deaths.

The Commission has already allocated approximately \$20 million dollars to fund many of the initial planning and design costs for the RMS, and deeply appreciates this Subcommittee's past support of this program. In FY 2011, funding requirements will largely shift from design and build costs to maintenance items. Therefore, the FY 2011 budget requests \$1.880 million for a staffing combination of 8 FTE and contract positions to maintain the system and comply with Congressional and Office of Management and Budget (OMB) requirements for information technology governance, cybersecurity and privacy.

### **Consumer Education and Outreach**

Providing consumers with recall and product hazard information that helps make families and communities safer is one of my top priorities. Over the past year, the Commission has made great strides in consumer outreach by re-establishing our presence on network television, in national newspapers, and on the radio. The agency also launched “CPSC 2.0,” a social media initiative that is reaching tens of thousands of consumers via YouTube, Twitter, Flickr, the OnSafety blog, and our Recall Widget. This year, the Commission plans to further accelerate this initiative by expanding the platforms we use to include cell phone text messages.

The Commission also plans to accelerate efforts to conduct grassroots education and advocacy in hard-to-reach and vulnerable populations. In August 2009, the GAO released a report recommending that the CPSC increase its focus on reaching minority populations. Mr. Chairman, I know this is a key priority for you. Since becoming Chairman of the CPSC, I have directed Commission staff to explore additional outreach efforts to underserved populations. In carrying out a special Minority Outreach initiative, we will increase our use of existing tools, such as the Neighborhood Safety Network (NSN) program – which provides vital information to more than 5,600 community organizations and leaders – as well as use new tools, such as targeted, grassroots programs for Hispanics, African-Americans, American Indians, and other minority groups. This will also remain a key priority of the Commission in FY 2011.

One of the most tragic subjects the Commission deals with are drownings and entrapments involving children in residential and public pools. Congresswoman Wasserman Schultz has been a tireless advocate of increased safety measures and outreach in this area, and I am pleased to note that the FY 2011 budget contains \$1,000,000 specifically for continuing pool and spa safety education. This funding will build on the previous funding of \$8.1 million in FY 2009 and FY 2010, and continue to help the agency drive down the 300 child drownings each year and increase compliance with the Virginia Graeme Baker Pool and Spa Safety Act.

### **Nanotechnology**

The CPSC’s FY 2011 budget also proposes \$2 million to support the federal National Nanotechnology Initiative, and seeks to collect additional data and explore environmental, health, and safety issues related to the increasing use of nanotechnology in consumer products.

In the last few years, there has been increasing public concern over potential health impacts associated with this technology. Although nanomaterials may have the same chemical composition as non-nanomaterials, at the nanoscale they may demonstrate different physical and chemical properties – and behave differently in the environment and the human body.

The \$2 million proposed will allow the Commission to conduct exposure and risk assessments of nanomaterials, allow for database updates to properly flag reports of nanotechnology incidents with consumer products, and conduct consumer outreach efforts such as public meetings. Perhaps even more importantly, it will also allow the Commission to take a very proactive approach to this emerging issue, rather than merely reacting to incident reports after they are received.

\* \* \* \* \*

Mr. Chairman, thank you again for the opportunity to testify on the proposed FY 2011 budget for the U.S. Consumer Product Safety Commission. It provides the funding necessary to continue the transformation of this agency from what some have described as a "teething tiger" into the world's leading lion of consumer protection.

I look forward to working with you and other members of the Subcommittee on the Budget Request, and would be happy to now answer any questions you may have.

## COMMISSIONER NORD'S OPENING STATEMENT

Mr. SERRANO. Thank you, Commissioner Nord. Welcome back.

Ms. NORD. Thank you so very much. I am delighted to be here with my friend and colleague Chairman Tenenbaum to fully support the agency's 2011 budget request. And I also want to thank this subcommittee for all of the support that you have given us to help us push forward our ongoing safety initiatives.

Chairman Tenenbaum has mentioned the initiatives that we plan to undertake in the next fiscal year, and these initiatives build on the growth and the progress that we have made over the last 2 years, and that is a direct result of the support that this subcommittee has given us.

Since Inez has given you a good overview of our request, I want to spend my time with you talking about a related issue, and that is the agency's implementation of the Consumer Product Safety Improvements Act. The CPSIA is landmark legislation. It gave the agency important new tools, tools which we requested, are grateful for, and which we are using. But as we implement the CPSIA, we have seen where more flexibility in the law would help us respond more appropriately to real-world situations in order to avoid consequences that we don't believe that Congress really intended.

You asked us for a report on ways in which to improve the CPSIA to help the agency better carry out its mission, and we sent that report in January. So let me suggest a couple of key issues on which we could all focus.

First, I think we need to focus on products that present real risks of injury. I know you want us to be using public resources in the most efficient way, to address the most pressing safety issues, and the CPSIA identifies lead poisoning as one of those. And to be very clear, all of us believe that lead should be removed from children's environments. That is not open to debate, as far as I am concerned. But under the law, we are spending immense amounts of staff time and resources to examine and regulate things that really do not present a lead risk to children.

Just to give you a couple of examples, we spent hours debating whether we needed to prohibit 12-year-olds from using ballpoint pens. The little tip that holds the ball in place has more lead than the law allows. So that was a real question that the agency had to deal with.

A question is presented whether your preteen daughter can have rhinestones and lead crystals on her ballet costume. Under the law right now, the answer is no. Any glitz is going to have to be plastic.

The question of children's bicycles. The little Schrader valve, the little air pressure tire valve, the tip of it has brass in it. It needs to be there for the threads. But brass has lead in it above the statutory limits, so it violates the statute right now. And speaking of brass, we have ruled that it has to be removed from children's products, even though our scientists have found that it does not pose a risk, and that they would have no qualms letting their children use the products that we are banning.

And finally, I think all of you have probably heard from your libraries. Older books may have lead in the ink that violates the

statute. So this presents a real question for libraries and what they are going to do loaning out older books.

We do not see a risk, real risk, with these products, but as currently written, things like pens, books, bikes are being pulled into this regulatory net.

Secondly, I think we need to focus on effective testing, trying to minimize needless burdens. Some facts here. I think all of us agree that a very rigorous testing program should be required to ensure the safety of children's products, but the law requires that all children's products be tested by a third-party independent testing laboratory. And in some cases, that probably isn't necessary. We certainly know it adds expense to the process, and it increases costs to consumers. And some flexibility, I think, needs to be given to the agency.

Representative Emerson referred to small businesses that I know all of you have heard from. We have, too. A small company just reported that they spent \$50,000 having their inventory of educational products tested even though they knew there was no lead in them. I just talked last week to a U.S. furniture manufacturer who has decided not to go into children's furniture line, which he had been planning to do, because of CPSIA. We heard from a very small business with eight employees that adapts products, toys, for use for special needs children. They told us they probably can't survive because of this law. The agency needs some flexibility to deal with these situations while still giving safety in appropriate ways.

Finally, I think we need to be focusing prospectively rather than retroactively in how we regulate products. When I say retroactivity, what I mean is we are dealing with products—we are banning products that are already in the stream of commerce rather than looking at their manufacturing date. But that phenomenon really hits retailers, especially resellers, much more dramatically than others. The president of Goodwill Industries has written to us about his concerns, and to quote his letter, he says that the CPSIA unnecessarily puts local communities at risk. That is what he told us. The Kentucky Goodwill has advised our colleague Commissioner Northup that they have seen a very large drop in the number of child items through their stores across the State of Kentucky. The Honolulu Salvation Army has closed its entire children's section because of liability fears.

Surely Congress did not intend this, but the agency really needs the assistance of Congress to make this right. Our concern is that we are now regulating products that do not present a real risk, and it really does raise the question of best use of scarce public resources. Whether we have two Commissioners, three Commissioners or five Commissioners, all of us are committed to making this law work, but we have also united in our request for greater flexibility. We need your assistance, and we stand ready to do everything we can to, as you indicated, have this law maximize benefits and minimize burdens. That is what we all want.

Thank you so much.

Mr. SERRANO. Thank you.

[The prepared statement of Commissioner Nancy Nord follows:]



## U.S. Consumer Product Safety Commission



### TESTIMONY OF COMMISSIONER NANCY NORD, U.S. CONSUMER PRODUCT SAFETY COMMISSION

SUBMITTED TO  
THE SUBCOMMITTEE ON FINANCIAL  
SERVICES AND GENERAL GOVERNMENT

March 4, 2010

*Saving Lives and Keeping Families Safe*

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**TESTIMONY OF COMMISSIONER NANCY NORD TO THE SUBCOMMITTEE ON  
FINANCIAL SERVICES AND GENERAL GOVERNMENT  
MARCH 4, 2010**

I am pleased to be here with our new chairman, Inez Tenenbaum, who is providing solid leadership at a time of exciting growth for the agency. I want to extend my personal appreciation for the long standing support and interest of Chairman Serrano, Ranking Member Emerson, and members of this subcommittee in the activities of the Consumer Product Safety Commission.

The Commission submitted a fiscal year 2011 budget request for \$118.6 million that I fully support. The increased funding the agency has received over the past two fiscal years has enabled us to put in place the foundation on which the current budget request builds. We have made much progress, thanks to the support this subcommittee has given the agency.

As an example, Chairman Serrano has been a strong advocate of the agency, especially with respect to our efforts to improve outreach to underserved populations. We are building on our Minority Outreach Campaign aimed at increasing awareness of product safety in the home such as safe sleep for babies, TV/furniture tip over and poison and drowning prevention. Staff will expand the Neighborhood Safety Network program and also plans a more focused and concentrated effort to conduct a grassroots initiative to connect with hard-to-reach and vulnerable populations.

As another example, the Virginia Graeme Baker Pool and Spa Safety Act, which went into effect in December 2008, has generated a great deal of activity at the agency. Funding for the act has enabled us to initiate an expansive national education campaign on pool and spa safety. We have been working especially closely with Representative Wasserman-Shultz as we implement requirements of the act. Funding for the pool and spa safety education initiative is proposed at \$1 million for FY 2011. This builds on the previous funding of \$8.1 million used over the past two years to implement grassroots safety education and advocacy campaigns to address child drowning and the hidden hazard of drain entrapment. These campaigns are designed to warn the public, target underserved populations, and educate state and local jurisdictions and affected industries about requirements of the Virginia Graeme Baker Pool and Spa Safety Act. The act provides the CPSC an important opportunity to work with state and local health organizations as they are our on-the-ground partners at the community level.

In the past two years, our staff has grown from 396 to over 500 employees. With the recruitments pending, we are on target to reach our planned level of 530 staff for FY 2010. This has been an extremely aggressive and successful recruitment effort given that it takes an average of 115 days to bring a new employee on board. The FY 2011 request enables us to add an additional 46 staff people for a total of 576 employees. These new hires are necessary for the successful implementation and enforcement of our expanded authorities.

With passage of the Virginia Graeme Baker Pool and Spa Safety Act and the Consumer Product Safety Improvement Act (CPSIA) at virtually the same time, the agency has been challenged to promulgate a number of new requirements as well as advance its ongoing, existing safety agenda and meeting that challenge has been the agency's focus over the past two fiscal years. In FY 2011, work will shift from mandating new requirements of these laws to enforcing these rules, and that requires a dramatic increase in enforcement capabilities. The FY 2011 request includes a significant increase of \$1,647,000 and 15

FTEs to enforce the growing number of rules issued under CPSIA. With the increased enforcement workload, we need more investigators and compliance officers, along with technical, laboratory and legal staff to support their efforts.

Critical to this expanded compliance effort is the Import Surveillance Division. Set up in 2008, the division started as a small program that provided the first full-time presence of CPSC investigators at key U.S. ports. It grew last year and is growing again in the budget before you with a request to fund five additional investigators to expand coverage at the ports.

Another related development to enhance compliance activities was the establishment of a CPSC office in China, an effort that has been in the works since early last year. We now have the first staff person located in China and anticipate hiring a second staffer to work on CPSC issues at the U.S. Embassy in Beijing. The CPSC staff in Beijing will facilitate efforts to promote a clearer understanding of U.S. product safety requirements by producers in China, the largest exporter of consumer products to the United States. Representative Kirk has been especially supportive of these efforts.

Our laboratory provides critical support to both the agency's compliance and hazard identification activities. As was reported to you in earlier budget presentations, we have undertaken a focused, multiyear effort to upgrade and improve our laboratory facilities. As a result, in the spring of 2009, we signed a lease for a new modernized facility. The build-outs are underway and we anticipate a move-in date later this year. This new, up-to-date testing laboratory facility will be a tremendous asset for our expanded enforcement and hazard identification activities.

When the agency asked for funding to overhaul our IT system to provide the foundation needed for the public database mandated by Congress, you gave it to us. Building on the success of our Early Warning System (EWS) pilot program that enables staff to mine data for similar hazard patterns for cribs, bassinets and play yards, we are developing a single, integrated web-based environment. Based on the positive results from the EWS, this predictive search capability will expand to all product categories and greatly enhance product hazard identification. The FY 2011 request allocates over \$9 million for the integrated database that Congress directed us to establish. The CPSC will complete the first phase of the public database in March 2011. When fully operational, the database will allow the public to submit incident reports, have immediate access to safety information and will provide a single, integrated IT structure, with new data-mining tools that will greatly improve the way staff identifies hazards. We are currently tackling a number of issues as we reengineer our IT system, including assuring accuracy of information in the new public database. These issues will be the focus of our attention over the coming months.

The request before you proposes \$2 million to continue support of nanotechnology research relating to the health and safety of consumer products, including exposure and risk assessment of nanomaterials. This is an area where I have an especially strong interest and am pleased to see the agency take a strong role as nanomaterials transition from the research laboratory to the consumer marketplace.

However, the bulk of the focus of the agency's work over the past 18 months has been implementation of CPSIA. This landmark legislation gave the agency many new authorities and resulted in a modernization of our statutes that has been very helpful. In addition, the new law also gave us significant new responsibilities to be implemented under aggressive deadlines. As the budget document before you notes, the number of rules mandated by CPSIA during 2009 and 2010 is more than double the number of rules promulgated by the Commission since 1990.

As the agency has worked aggressively to implement the law, we have found some problems that the agency cannot solve and will require Congressional action to fix. In the Consolidated Appropriations Act of 2010, this committee specifically asked for our views on the need for amendments to the law and the agency has been unanimous in its view that amendments giving us more flexibility would be useful (although we have differed on the substance of those amendments). Attached is a copy of my statement that accompanied the Commission Report to Congress Pursuant to the Statement of Managers Accompanying P.L. 111-117.

To summarize, I believe the statute would be strengthened by the following suggested changes:

- *Focus on products that present real risks.* The lead exclusion provisions of the law (Section 101) need to be amended so that the agency can focus its attention on products that actually present a risk rather than spending scarce public resources regulating products that do not present real risks, as is happening now. In this regard, various solutions have been proposed and they merit close examination. One suggestion put forward is to consider the “functional purpose” of the lead in the product. While there is no agreement over the reach of this language or the products it would actually cover, such an approach would result in a resource intensive product-by-product approval process. Instead the law should direct the agency to regulate products based on whether a child’s interaction with a product results in a measurable increase in blood lead levels.
- *Focus on the most vulnerable population group.* The law treats all children—from infants to preteens—the same even though product interaction at various ages is quite different and the risks are different. The scope of the law should be narrowed to apply to products intended for younger children, especially since the agency has the authority to regulate other products if they indeed do present risks at higher age limits.
- *Focus on effective testing, without needless burden.* The law should provide more flexibility with respect to third party testing (Section 102) which adds costs to products and has proved to be especially burdensome on small manufacturers. The agency should have the ability to set appropriate testing requirements as long as those requirements provide for a reasonable testing program and provide reasonable assurance of compliance with the underlying safety standards.
- *Focus on prospective rather than retroactive implementation.* Another needed change is to limit the retroactive aspect of the law which hits especially hard on retailers, small businesses, charities and other resellers.

Small businesses have been especially hurt by the sweep of this law. The agency has not done a full economic impact on the effects of CPSIA on small businesses; however anecdotal information puts the impact in the billions of dollars range. We know that many small businesses have been put out of business or have left the children’s products market.

There is only limited action the agency can take under CPSIA to ease the burden it places on small businesses while still protecting consumers. Nevertheless, we are trying to do what we can. For example, we have put out information and education materials to explain the law to the small business community and these activities will be enhanced by the budget we have submitted. The component testing enforcement guidance is intended to push testing obligations upstream and take some of the test burdens off the final producer, including the small manufacturer. The Compliance: Continued Testing Rule, which will come out this fall, will impose significant new testing obligations on producers in

addition to those now in place. We hope to ameliorate the adverse impact this rule will have on small businesses by delaying some of the testing burdens for small volume producers. While we hope that these actions will be helpful, we will not know the success of their efforts or their impact for some time. In the meantime, small businesses are suffering now and the agency needs the authority to ease unnecessary and counterproductive regulatory burdens. In my view, the component testing enforcement policy and a possible small volume provision for additional testing requirements, along with education, are not sufficient to address legitimate small business concerns. I recommend Congress give the Commission additional flexibility to ease the regulatory burdens on small businesses and charities while still providing the strong consumer protection that we all desire.

With the changes outlined above, the CPSIA could become a much stronger tool for consumer protection. These changes would allow the Commission to focus its efforts and its limited resources on the real hazards that impact consumers, a goal that we all can agree is needed.



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
 4330 EAST WEST HIGHWAY  
 BETHESDA, MD 20814

STATEMENT OF COMMISSIONER NANCY NORD  
 ON THE COMMISSION REPORT TO CONGRESS PURSUANT TO  
 THE STATEMENT OF MANAGERS ACCOMPANYING P.L. 111-117  
 January 15, 2010

My fellow Commissioners and I, together with the agency's staff experts, have been working diligently to respond to the request of Congress for recommendations on how to change the CPSIA. Our bipartisan approach has produced a report that is a good step in the right direction. While the report identifies several recommendations with which all the CPSC Commissioners agree, it stops short of addressing all the issues that need to be considered before the CPSIA can truly become the constructive force for consumer protection envisioned by the Congress when it passed the legislation. The law contains a number of useful new tools, many of which were requested by the agency, to better position the CPSC to act more quickly and effectively to protect consumers. However, there are aspects of the law that limit the flexibility of the agency to act appropriately and, as a result, we have seen unfortunate, unintended consequences flowing from the law's implementation. I have been requesting for some time that the Congress address these problems and I appreciate the opportunity to contribute to that process. The recommendations in the report represent a good start, but the conversation about how to fix the problems with the CPSIA needs to go further. I have listed below some of the critical changes that need to be made to the law.

**1. Lead Exclusions and the Process for Granting Exclusions**

There is absolutely no disagreement over the need to limit children's exposure to lead. However, the language of the CPSIA is drafted so tightly that the exclusions process in the law, which Congress intended for the agency to use, is not workable. The law limits the agency's ability to focus on products that present actual injury or harm to children. The CPSC scientific staff has told us that they are not aware of any product that could meet the exceptions requirements of the law and hence have had to recommend denial of each of the petitions for exclusions that have been considered. This is in spite of the fact that staff has told us with each petition for exclusion that the products in question do not present a risk of harmful exposure to lead.

Over the past 18 months, staff has taken thousands of hours away from dealing with ongoing, significant safety concerns to consider issues such as the following:

- Determining whether to exempt ball point pens, which have a tiny brass tip that holds the ball. That brass tip contains lead over the statutory limit. After much deliberation, the Commission decided that a pen that is used by both adults and children is not a children's product and is not subject to the law but if that same pen is decorated with brightly colored cartoon characters it may fall within the reach of the law and if so, could not be sold.
- Determining that it is illegal to sell children's products containing crystals or rhinestones which, by necessity, contain more than the statutory amount of lead and for which there is no suitable substitute. This is true even though the lead in rhinestones and crystals does not easily leach out and even though a child could be exposed to more lead from products that meet the statutory requirements than from

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exposure to rhinestones and crystals.

- Determining how to allow for the continuing sale of children's bicycles even though some parts contain lead, e.g. the Schrader valve used to put air in the tire. Many bicycles are made with recycled metal that also may contain lead at levels that are unpredictable and not easily controllable but which may exceed the statutory limits. In this case, a stay of enforcement was the only way to avoid an unacceptable regulatory result – banning children's bicycles – flowing from applying the statute to this product.
- Determining that a brass collar and other brass components of die-cast toys are prohibited even though staff reported there is no real risk of harmful lead exposure. The implications of this decision for other products containing brass, not only those in the home, but also in our schools – such as desk hinges, locker handles and coat hooks – are significant and far-reaching.

The agency needs flexibility to deal with products that contain lead over the statutory limits but which do not present a risk to children. The Congress specifically asked the agency to look at risk and exposure in crafting a solution to this problem. To solve the problems we have had in applying the exclusions language of the current statute, Congress needs to give the agency the flexibility to look at whether there is a real risk of lead exposure based on the child's interaction with the product and the extent to which that interaction results in a measurable increase in the child's blood lead levels, rather than the absolute language that is now in the statute. This would address the conferees direction to look at risk and exposure and the many concerns expressed by individual members of Congress, including primary sponsors of the law, who have indicated that they thought the statute contained this flexibility. As we do this analysis, it is important to look at how other jurisdictions and agencies address lead exposure so that we consider consistent requirements where appropriate.

In addition, additional thought should be given to the scope of the law. There are certain products – most toys and children's metal jewelry, for example – that warrant aggressive regulation with respect to lead. There may be others – books, educational products, sporting equipment and apparel, for example – where there is less concern. Congress should either write the law specifically to spell out what they want included and excluded, or they should give the agency sufficient flexibility to regulate appropriately. This could be done either by product category or by age. With respect to age, the agency has extensive experience in dealing with the ways that children of different ages interact with consumer products. The CPSIA does not allow flexibility for the agency to utilize this expertise. It treats all children – infants to pre-teens – the same, and, as a result, our regulatory decisions cannot be tailored to meet the requirements of the age of the child and thereby apply the most effective solution for the greatest risk and exposure. Lowering the age requirements of the statute and making clear the agency's ability to regulate upward as safety circumstances warrant, would go a long way to solving many of the problems in the law and keeping the agency's resources focused on providing real protection for consumers.

## **2. Testing and Certification/Small Manufacturer and Crafter Concerns**

The agency and the Congress have heard from many small manufacturers and crafters that are being severely and adversely impacted by the CPSIA. Indeed, a website has been established that tracks the demise of businesses attributed to the law. The testing and certification requirements are at the heart of the complaints being made by small manufacturers and crafters. The agency has worked hard, within the confines of the statute, to deal with the issues small manufacturers and crafters are facing as they struggle to meet CPSIA's requirements, but our options are limited. Our report points to the guidance booklets we have published, the component testing enforcement guidance and possible regulatory relief in the so-called '15-month rule' dealing with frequency of ongoing testing. It is not clear that the problems small manufacturers and crafters are having now can be adequately addressed with more education, a policy on components that is still unimplemented and unproven, and by the promise of future regulatory action, months from now, that treats only part of the problem.

While independent third party testing is the most robust way to provide assurance of compliance, it is also the

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most costly and least efficient. The requirement that all children's products be third party tested has raised the cost and added to the complexity for many small producers of children's products. The application of this requirement to handcrafted products made by individual artisans has raised serious concerns about their continued viability. While we hope that our component testing enforcement policy will address some of this concern, we have been told that this is not a panacea and more must be done. In addition, small producers face higher testing costs, are receiving conflicting information from testing labs about what must be tested, and are facing barriers from retailers who are requiring redundant testing or additional testing to be done by laboratories they specify, often at prohibitive cost.

Given all this, Congress should consider whether child safety can be served by other testing alternatives that will assure adequate compliance testing without the cost and complexity of third party testing. Specifically, the agency should have the ability to establish, by rule, alternative testing requirements for certification under section 102 of the CPSIA for manufacturers based on small volume or other appropriate criteria, as long as the requirements provide for a reasonable testing program and such other provisions as the Commission deems necessary to provide reasonable assurance of compliance with underlying consumer product safety rules.

### 3. Retroactivity

The report's recommendation that retroactivity not apply when the lead provisions of the statute transition from 300 ppm to 100 ppm is the minimum that must be done to address the significant losses that businesses have incurred because of the retroactive nature of the statute. The problems with retroactivity have been exacerbated by retailers who have required the lower limits ahead of their implementation dates in the statute, stranding safe inventory that cannot be sold. Although it is unfortunate that a recommendation could not have been made and acted upon a year ago to forestall the economic losses that have already been suffered, it is imperative that it be implemented as soon as possible.

We are seeing the same phenomenon occur with respect to phthalates, where the testing process to determine the presence of phthalates is much more difficult than is that for lead. The CPSIA permanently banned three types of phthalates and banned, on an interim basis, three other types until more health data could be assembled and analyzed. A Chronic Hazard Advisory Panel is being convened according to the timetable set out in the CPSIA, to look at the health effects of the various phthalates banned on an interim basis by the statute. The Commission is trying to define the universe of products to which the phthalate ban is applicable, is still working on a test method to determine the presence of phthalates in those products, and has not yet approved a laboratory accreditation process. Unlike lead, there is no screening test to more easily determine the presence of phthalates. It is unreasonable to require that retailers and resellers either face potential liability or go back through their inventory to try to determine the presence of phthalates when we do not even have a test method in place, putting aside questions of testing practicality and affordability. Congress should consider clarifying that this provision will not apply in a retroactive manner. At the very least, retroactivity should apply only to the three permanently banned phthalates.

Finally, the recommendation with respect to retroactivity does not go far enough since it does not treat sales by charities, consignment shops and other resellers. For example, we have been told that many of the charities are not selling children's apparel because of the potential liability imposed by this law. Obviously, it is crazy for people not to be able to buy their children winter coats or boots at a Goodwill store or at a yard sale. Yet that is where the CPSIA leads us and I doubt Congress really intended this result. The agency has an excellent working relationship with charities such as Goodwill and the Salvation Army, and our regulation of these groups should focus on stopping the sale of recalled products. Congress should act to assure that the products parents need to buy are available in the resale market.

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**Conclusion**

This statement is not intended to be a comprehensive description of all the implementation issues we have seen with respect to the CPSIA. I have focused for the past 18 months on the major challenges we have faced in implementing this law. As Congress reflects on the implementation issues presented by the CPSIA, there are a number of other things – both technical and substantive – that should be considered, including coordination with the state attorneys general in enforcing the law and issues related to improving the agency's database.

Please be confident that the Commission shares the commitment of the Congress to assure American families that products on store shelves do not present an unreasonable risk of injury. These recommendations are given in the spirit of finding a path forward that, while minimizing unnecessary regulation, assures parents that the products they buy are as safe as possible for their families.

## CPSIA IMPLEMENTATION

Mr. SERRANO. And thank you both for your testimony.

Let me put aside for a second the questions I had prepared, because you bring up an interesting point and one I think that merits both dealing with the points you bring up, Commissioner Nord, and also with a little bit of history. And my question then would be how do we create a fair and just balance? Perhaps Congress legislated in a way that it has created some issues that we have to address. That is possible. It happens all the time. But why did Congress legislate? Because of the lack of oversight in the past and the ability to give everybody flexibility created an unsafe environment for children and for all Americans. So every so often in this country, we do this. We do this with everything, not just legislating. We do it with all kinds of issues in the House where there is a crisis, and we react to it, and then we go perhaps beyond what we were supposed to. I am not suggesting that is what we did. That is what you are suggesting.

So my question is how do we now make sure that we don't have to legislate a few years from now or a generation from now to deal with the fact that we had such a problem before us? Yes, there are Salvation Armies and Goodwill and other people who are saying you did too much. But we had to because we had a mess on our hands, and we had a very unsafe environment for our children and for our citizens.

So my question is how do we adjust that that we have to adjust if it is true we have to adjust, if there is a need, without going back to the days where no one cared what came into the country and what happened? This was not done because one day Members of Congress got up and said, oh, what do we do today? Okay, let us pass a new consumer law. No. It was because we were being hit hard and people were demanding action from us. I remember the time. People were saying, you have got to do something. We are trying to do something. How do we balance it?

Ms. TENENBAUM. First of all, we have been working very hard to implement the CPSIA, and we very much are mindful of the strains on small businesses and low-volume manufacturers. We responded to your request to come up with the report. We all worked on this report. It was a bipartisan, unanimous report that we sent to Congress asking for flexibility.

But in the interim we at the Consumer Product Safety Commission have tried to provide flexibility as well. We have issued 41 Federal Register notices, and we will have 12 more additional rules in the next 8 weeks, because industry has told me, "We want to have predictability. Hurry up with these rules so we know how to respond."

Second of all, you had inaccessibility, and you had lead in electronic products as an exemption to the lead requirements. So what we also came up with were lead determinations for textiles, for other materials that we said you don't have to test. If you make a shirt we know it won't have lead in it. Now, if you buy buttons from a button maker who can say they are lead-free, then you don't have to test the shirt at all.

So we have tried to use common sense in the implementation. We put out a guide for small businesses and reseller stores like the Goodwills. I have been on many nonprofits, and so has my husband, that have sponsored these resale stores. We try to educate these resellers on what they can look for in products to pull them from the shelves. We have done this kind of education with resellers.

We also have come up with an enforcement policy which would allow for component part testing so that if you buy a component part, and it is lead free—like, if you are making blue jeans, and you buy lead-free zippers, which YKK is making now, the button manufacturers are making lead-free buttons, then you don't have to test if you buy it and you have a reasonable assurance that it does not contain lead.

So we are working to do all of this, but at the same time we, in that report to Congress, realized that we needed flexibility. And we all agree that the “any lead standard” was something that was a little too tough. It was tough for bicycles and ATVs, and we gave a stay of enforcement so we would not be enforcing this law against them. It was too tough for books in terms of those published prior to 1985. The books that are now published don't really have a lead problem because the process does not contain lead. If you have a book with a spiral binding, you might have a different problem because it might contain lead. But the publishers now know what to do, and they don't have to go test every book because they are lead-free.

But we have asked to have this flexibility, and now it is in the Commerce Committee. We are working with them to try to see what is the best way to approach the flexibility. We propose that if you could show us that the lead was needed because it was impractical to remove, or it really did not pose any measurable adverse health effect to the consumers, then that was the functional purpose.

Now, we understand that there are some people in the ATV industry that have supported that amendment to the CPSIA. The bicycle industry supported that. So now it is the issue of whether we have functional purpose or whether we have a risk-based approach. Any way you approach it, it is going to be more work for the CPSC.

What you [Congress] did was establish a bright-line test. You said no more than 300 parts per million, which is where we are now, in the content of lead in a product, or 90 parts per million in terms of lead paint. So that is what we enforce. But what we have all agreed on is that the ATVs and bicycles do not pose the risk to the consumer, and the ATV industry has also assured us that they can manufacture an ATV where the rider does not come in contact with lead. So this would work for us.

#### FLEXIBILITY IN CPSC IMPLEMENTATION

Mr. SERRANO. Let me ask you, Commissioner, you were very clear in supporting the report that says, give us flexibility. But in the meantime are you satisfied with some of the steps that have been taken to give some flexibility outside Congress giving you that?

Ms. NORD. Well, the agency is doing what it can within the confines of the law. But on the Commission level, on the staff level, we are very clear that our hands are tied in a number of different ways. As the Chairman said, we are looking at component testing, but that is out in the future. Hopefully that will help small businesses. We don't know yet. We are doing some other things. But we don't have the ability to address the underlying systemic problems that we have seen come up.

Your question is important. When the crisis with imports hit, obviously the Congress was very concerned, the agency was very concerned, and we were all working together at that time to get our arms around this, also working with an admittedly and incredibly constrained budget.

Perhaps the most effective thing to address this issue is the fact that you all gave us resources to set up an import surveillance division so that we would have people at the ports. And our strategy has been to push safety as far back up the manufacturing chain as we possibly can and then have an ability at the ports to look more broadly at the products that are coming in, and that is because of our agency is working with this subcommittee and your Senate counterpart to make that happen, and that has been really effective.

Now, obviously we understand that Congress was concerned about this and wanted to address it, but the provisions in the CPSIA do tie our hands in a number of different ways. And it really ends up making us focus on all products with lead whether the child is exposed to the lead or not. And that is the concern we have, and that is what we would like to address.

Mr. SERRANO. I can speak for myself, but I tell you, I think Congress would be open to revisit, but I don't think Congress on either side of the aisle is interested in going back to the days when the situation got so out of hand, it created the situation where we had to react.

Mrs. Emerson.

#### LEAD STANDARD CHANGE

Mrs. EMERSON. I am not disagreeing with you, Mr. Chairman, that we need to keep the bill, but here is just a list for you of all the companies that have either been hurt or closed as a result of this act, all of which are small businesses, I might add.

Chairman, you mentioned 300 parts per million of lead, and that is due to be reduced to 100 parts per million by August.

Ms. TENENBAUM. If technologically feasible.

#### LEAD CHANGE FEASIBILITY

Mrs. EMERSON. If technologically feasible. But it is pretty darn hard for a lot of companies to meet even the 300 parts per million. In other words, companies are having to decide to use different types of materials to make things, and, of course, they break, and it costs the companies money. There is just a chain reaction, if you will. So how do you determine if it is going to be technologically feasible, number one? And number two, what is going to happen if companies cannot, cannot find the products that they need with-

in that 100 parts per million to make whatever item it is they are making?

Ms. TENENBAUM. Well, we are grappling with that now at the CPSC on what will companies have to show us to prove that reducing it to 100 parts per million is not technologically feasible. Our scientists and engineers will review the criteria that companies present us to determine if the lead is needed in the product to make it stronger. If you need the lead, then we will allow you to continue the 300 parts per million.

And so the other thing is that in the report to Congress in January that we filed, we asked that that 100 parts per million be applied prospectively and not retroactively, because there are companies now who are meeting the 300 parts per million standard. They will be applying to keep that standard if they feel like it is not technologically feasible to go down to 100. While we are reviewing their application and making these findings, we don't want stores to be in limbo or the companies to be in limbo on what the limit will be. So we are asking that to be applied only prospectively.

Mrs. EMERSON. I would hope so, given the fact that we have all these companies.

But let me hear from Commissioner Nord on this question.

Ms. NORD. One of the concerns that I have about migrating down to 100 parts per million is in order to hit the technologically feasible standard, companies are going to have to individually come in and make that case to us. So it could potentially be an incredible drain on resources for the agency, because, for example, as I indicated, brass has got lead in it, but we can't give an across-the-board exemption. We will have to be looking at these things on a case-by-case basis.

We also get into the situation where perhaps it is technologically feasible. I mean, it is technologically feasible. Recycled metal has lead in it. You can have virgin metal. It is technologically feasible. It is very expensive. But you can meet the 100 parts per million requirement, but to do it is requiring these companies to spend resources reengineering their products in a way that hits the statute, but doesn't necessarily address safety or advance safety.

Again, my concern is that the agency really needs to be focusing on products that are unsafe and that harm children. That is our mission, not dealing with ballpoint pens and bicycle tire valves where nobody gets lead poisoning from riding a bicycle. So we would like to get off that and back onto our core mission.

#### JOB LOSS AND CPSIA

Mrs. EMERSON. Okay. So then I will pose the question to you, which is obviously not part of your core mission, but the question is begged nonetheless, and that is has the Consumer Product Safety Commission or any other agency in the Federal Government or executive branch, I should say, estimated the number of jobs that will be lost as a result of this new law?

Ms. NORD. The agency has not done an economic analysis of the impact of this law. I think it would be something that would be very, very helpful.

Mrs. EMERSON. What do you think, Chairman?

Ms. TENENBAUM. No, we do not have the ability to do that, but I have not seen any other agency in federal government who has done it as well.

But going back to what the Chairman mentioned, this law was passed because of a number of egregious cases where there were high levels of lead in paint, and in toys. Congress spent hours listening to testimony on how lead affects the developmental and brain development of children. It was mentioned many times that there are no safe levels of lead.

Now, Commissioner Nord talks about that the staff does not think that there are risks. What the staff at one point, before you passed the CPSIA, had to rely on was the Federal Hazardous Substance Act, and at that point, they had established that 1 microgram per deciliter, a blood lead level increase was the standard. That was the standard until Congress set this bright line of 300 parts per million, and 100 parts per million if technologically feasible, and 90 parts per million for lead in paint. So it has helped the industry to know where the bright line is. We are struggling with the same thing now on cadmium, cadmium and other heavy metals, that we found in high levels in jewelry.

#### CADMIUM REPLACEMENT FOR LEAD

Mrs. EMERSON. Is cadmium now being used to replace lead?

Ms. TENENBAUM. I have sent a strong warning in my speech to the APEC, the Asian Pacific Economic Council, in my speech to APEC in January. I said, do not use cadmium and other metals in place of lead. The AQSIQ, which is our counterpart in China, has made that same stern warning just in the last few days to manufacturers, "Do not use cadmium and antimony, barium and other heavy metals in place of lead."

So we have warned them, but we also are looking now at establishing what the limits are on cadmium in children's jewelry that we find safe and unsafe. And that is what we had to do on lead repeatedly, item by item.

#### ECONOMIC IMPACT ANALYSIS

Mrs. EMERSON. I understand. In my district, 97 percent of all the lead that is mined in the United States comes from my district, and I am very sensitive about having lead in soil and harming children, and that is why I was very supportive of this particular bill. But I do think that sometimes things get out of hand, as you all well know.

May I ask if both of you, even though you don't do it today, would you support having an economic impact analysis done on the effects of this law on jobs in the United States?

Ms. TENENBAUM. I would have no problems at all having someone do an economic analysis.

Ms. NORD. I think that would be incredibly helpful. How can you regulate if you don't know the impact of your regulations? I think it is something we desperately need.

Ms. TENENBAUM. But we also want to make sure that we maintain a very high level of safety for children, and that economic impact does not override the concern for safety. And we really agree that we need flexibility. All five Commissioners think we need

flexibility on lead. How we get there is how we disagree. There were some who want to set a *de minimis* level, and there are three of us that would rather have a level where you have to show that you really need this lead in the product, and it is impracticable for you to remove it, and that you can show that there are no reasonable or demonstrable or measurable health risks to children.

So we agree on this but not on how we get there. And Congress will have to determine what is the most common sense way to get there.

Ms. NORD. There is a great deal of agreement. I guess my response would be that once you have shown that there is no risk, then isn't that the end of the analysis? I mean, that is really what we are trying to focus on is deal with risky product, harmful product. If the product has no risk, then I think we don't have any business regulating it.

Mrs. EMERSON. Okay. There are so many questions, and it is complex, but maybe we should let Debbie go.

Mr. SERRANO. Before we turn to Debbie, again, this is an issue, in my opinion, of balance, because at the expense of making the business community angry, which I tend to do at times, if Congress said, let the business community write all consumer protection laws in this country, the end result might be zero consumer protection laws in the country. It was never the intent, nor should it ever be the intent, to legislate on behalf of the consumer and the American public by getting rid of jobs. But also we can't take an economic crisis and assume that everything we legislate here is going to cost jobs, so we can't do health care because it will cost jobs, we can't get out of Afghanistan because it will cost defense jobs, we can't do Consumer Product Safety Commission stuff because it will cost jobs. I am not sure that that is—really at the end of the road what happens.

So we have to continue to be protective of the people we represent, while being sensitive to the fact that you are right, if something is found not to be harmful, then maybe we will move away and do something else. But I can tell you that as I turn to her, when Debbie Wasserman Schultz spoke about pools and spas, I was asked by reporters, why are you dealing with that? In fact, one had the nerve to say there are not too many pools in the South Bronx. I say that is not the point, right? Well, no one questioned that what she did was very important. What a build-up.

Ms. WASSERMAN SCHULTZ. Thank you.

Mr. SERRANO. And we do have a couple of pools in the South Bronx.

#### CPSIA FLEXIBILITY

Ms. WASSERMAN SCHULTZ. Thank you very much, Mr. Chairman.

I can appreciate the need for flexibility. Flexibility is fine, but I think that, Commissioner Nord, you are starting from an unfounded premise that somehow the size of the business and what it manufactures makes it more likely to manufacture a safe product versus a large business. So it is popular now to carp about the need to protect small businesses and to save jobs and make sure that we cannot lose jobs. I agree with all of that. But I come to this debate as the only person around this table with young children.

Mrs. EMERSON. I have grandchildren.

Ms. WASSERMAN SCHULTZ. I mean, I am the mother of twin 10-year-olds and a 6-year-old. And I will just give you my own anecdotal example. While it might not seem like a ballpoint pen with lead in it at the tip is a dangerous product or poses a potential risk to any child—the other day when I came home from Washington, I saw a scratch up my son’s arm from about midforearm to midbicep, and I asked him how he got it. And he said, Mom, I accidentally scratched myself with a pencil.

Now, I mean, it was a scabbed scratch. Now, my son is not self-mutilating. This was just an accident. But it happens. And if there is an unsafe level of lead, a pencil, pen, it could have easily have happened with a ballpoint pen. Fortunately he is in elementary school, and they are still requiring the use of pencils and not pens, but that could cause him harm.

And during the whole debate on the CPSIA, I found that I had one of those products in my home—this was at the time my youngest daughter was 4—that had those little pieces that were not meant to be placed in any child’s mouth, but that children were placing in their mouth, and they were lead balls basically. Here is another example of a product that was manufactured by a small business. You just recalled baby bracelets and pacifier clips last month because of high levels of lead, and that was manufactured by a small business.

#### CPSC RESOURCE NEEDS

Commissioner Nord, with all due respect, in 2007 I had an exchange with you prior to the passage of this law, and you argued that the Commission didn’t need more resources and didn’t need more staff. So today you are praising the fact that you have more resources and more staff. So your position is inconsistent, with all due respect.

Ms. NORD. Thanks for the question because it gives me an opportunity to clarify what my position was. I have never—and I think we can go back to the record, and I would love to do that with you—argued that we should not have more staff. What I did, Commissioner Moore and I presented a budget that allowed us to do certain things with the budget in front of us, but when asked, I have always welcomed more resources.

Ms. WASSERMAN SCHULTZ. The exchange was with me, Commissioner, and I asked you specifically. My recollection is clear. You said specifically that you didn’t ask for more resources, you didn’t think it was necessary, you just thought the size of the staff was adequate to do the job that you needed to do. That was our exchange.

Ms. NORD. With all due respect, I would disagree. My recollection is different.

But nevertheless, getting to the core question, no one is arguing that small businesses by definition will never produce an unsafe product. What we are arguing is that we need to be focusing in on the products that cause harm, not regulating things across the board in the kind of rote way that we are doing it now. And that is what the CPSIA does not allow us to do.

With respect to minimizing regulatory burdens on small businesses when we don't think there is going to be a risk, that is what we don't have—

## LEAD IN TOYS

Ms. WASSERMAN SCHULTZ. Let me ask you, since you are making that argument. From the perspective of what parents think, we think—and I think I can speak for lots of parents—that it is really not understandable why a product has to have lead in it. There are some products that I agree, the lead, but why is it that there are certain toys that have more lead than necessary? Why can't they just reduce the amount of lead below the limit?

Ms. NORD. If the toy has lead in it that is going to expose the child to the lead in any kind of measurable amount—

Mr. WASSERMAN SCHULTZ. I just gave you an example from this week.

Ms. NORD. I am sorry to hear about your child, but the scratch on his arm is not going to give him lead poisoning. Lead poisoning is a chronic hazard. And the question should be should we remove ballpoint pens from children's environments.

Ms. WASSERMAN SCHULTZ. Why not just reduce the lead in the tip of the ballpoint pen?

Ms. NORD. The problem is that the lead is there for a purpose. And, yes, we could do that, and your child would not be using ballpoint pens because they would be unaffordable. As I said, brass is the example I used.

Ms. WASSERMAN SCHULTZ. I am sorry. That is a blanket statement that you have no qualification to back up.

Ms. NORD. I am more than happy to provide you with that.

Ms. WASSERMAN SCHULTZ. Ballpoint pens would be unaffordable unless we have lead in the tip of them?

Ms. NORD. The lead serves a purpose there. It would meet the functional purpose.

Ms. WASSERMAN SCHULTZ. So if we don't have lead in the tip of ballpoint pens, they would be unaffordable?

Ms. NORD. You would replace it with something more expensive.

Ms. WASSERMAN SCHULTZ. Unless you can show me a documentation and economic analysis of that, I have a hard time understanding that.

Ms. NORD. I would be delighted to give you what we have. But again, if the agency had done more economic analysis of these issues, we would be in a better place to regulate, and that is something I think we do need to be doing.

Ms. WASSERMAN SCHULTZ. I support flexibility. I do not support making sure that children are exposed to lead unnecessarily.

Ms. NORD. Then we agree.

Ms. WASSERMAN SCHULTZ. But we don't agree with the difference between the majority of the Commission and the minority in one which you serve where you allow a de minimis level of lead versus ensuring that it is inappropriate for—or not possible for a company to follow the law. The law was debated and discussed and supported for a reason, because there was an absence of regulation. There was no one minding the store. And parents became scared and tired of it. And I will tell you as a mother of young girls who

wear the jewelry around their necks, and I see them playing with it in their mouths all the time, even though that is silly and they shouldn't do that, if unbeknownst to them and to me it has an inappropriate level of lead in it, then they could get lead poisoning.

Ms. NORD. We all agree on that point, And I think there is no debate. And we want to work with you to make that happen.

#### POOL AND SPA SAFETY ACT GRANTS

Ms. WASSERMAN SCHULTZ. There appears to be some debate.

Turning, Mr. Chairman, if I can, just to two other subjects, one being my appreciation for you for providing the resources, and also to the Commission for your excellent enforcement of the Virginia Graham Baker Pool and Spa Safety Act, both under your chairmanships. I am a little bit frustrated that the grant program, the State grant program, even though it has been fully funded the last two fiscal years, has taken an extraordinarily long time for the Commission to get off the ground. So can you, Madam Chair, describe your progress? I mean, there is \$2 million that is potentially going to expire in September, and I don't want to see that happen.

Ms. TENENBAUM. Well, first of all, we fully support the Virginia Graham Baker Act and appreciate your advocacy in getting this bill passed.

We have been working hard with the Centers for Disease Control and Prevention to establish the State grant program that the act calls for. We finalized the details of the plan just this week. The CDC in conjunction with the Commission will be releasing a funding opportunity announcement the beginning of April. And my understanding is the grant applications will be due in June, and the grant qualifying to States will be made in August.

#### POOL AND SPA GRANT QUALIFICATIONS

Now, it is important, however, that the states currently meet the statutory requirements. In fact, the states must pass legislation in order to qualify for this act. We have looked—

Ms. WASSERMAN SCHULTZ. We are in the middle of the legislative session season right now.

Ms. TENENBAUM. And we are following some States, Florida, Texas, to see if they will pass this legislation. We will be showing states what model legislation looks like and we have relayed the model legislation. In the event that it does not pass, it [the funding] stays at the Commission. What we want to assure you, that in the event states do not pass this legislation, we can take that money, and we would use it in the spirit of the Virginia Graham Baker Act to do more contracting with people to do education advocacy, if we are allowed to.

Now, the other thing is we have also asked Congress to consider whether it should be states or a municipality. For example, the city of Miami, could they apply for the grant? Could they pass an ordinance? It might be that the pool safety is closer to local government than state government. Should Fort Lauderdale, or—Jacksonville, any of your large cities pass an ordinance—

Ms. WASSERMAN SCHULTZ. Phoenix has a very strong one.

Ms. TENENBAUM [continuing]. That complied with this, they could then get the grant. And we were asking you to make amendments to the CPSIA so that we could—

Ms. WASSERMAN SCHULTZ. I would be glad to work with you on that, because whether we do it state by state or major city by major city, the idea is to make it more likely that we have tighter restrictions around pools.

Mrs. EMERSON. Can I add something? Those state grants really would be helpful, because I have small community pools that truly cannot afford the 10- or \$15,000 that it is going to cost them to comply with the law. And I hate for the kids in these towns where there is no other place to have recreation to not have that ability to seek assistance here.

Ms. TENENBAUM. Well, in Columbia, South Carolina, the headlines in last summer's paper was the main community pool could not open because it had not met the requirements. So they scrambled around and got the equipment and met the requirements. But you are right, if we could provide some flexibility.

#### POOL AND SPA EDUCATION

If you wanted to know about the education outreach program, we have that information, too. We have given our grant to Widmeyer Communications and Omni Digital Studio to create the largest public education campaign the agency has ever done: \$3.6 million will go to Widmeyer for a Website, for all kinds of educational materials for us to use in pool and spa safety; \$200,000 for Omni Digital Studios; and then we have \$4 million in which we will contract with third-party organizations to train and target education this week. So that would be something that a community organization or regional and State organizations could apply for those awards, and we would give them those awards to do education advocacy of pool and spa safety.

So we are working very hard. The initial launch in April for the rollout of the program will be at the National Drowning Prevention Association's conference in Pittsburgh, I think you have spoken to that conference several times. We will have a broader launch on Memorial Day, and I hope this is a press conference we can do it in Florida together. I know that you joined Commissioner Nord, Senator Klobuchar and the Taylor family for last year's kickoff. So we want to work with you again on that.

Ms. WASSERMAN SCHULTZ. Absolutely. I look forward to it.

Mr. Chairman, are you planning on having us come back?

Mr. SERRANO. We are in the process of having three votes, but as you can see from the yeas, it is going to be a while before it gets to a significant number there. So we will keep going here.

#### IMPORT SAFETY

On the issue of product recalls, we know that 80 percent of recent U.S. product recalls were imported items. The CPSC budget request would devote approximately 57 staff to the import safety initiative comprised of personnel stationed at ports, field support and other support staff. However, as GAO pointed out last August, the import staff of the Commission are significantly smaller than that of other agencies like the FDA, which has 700 people.

Does CPSC have a long-term plan for ensuring adequate oversight of imported products?

Secondly, has the Commission improved its information sharing with customs to ensure that the Commission has access to ship manifest data before products arrive at U.S. ports?

Ms. TENENBAUM. Well, thank you. Just to give a comparison, in 2009, we had 12 people in the Import Surveillance Division, 10 people actually at the ports, and for this year we had 18 in the whole division and 14 at the ports. We are trying to increase that to 23 in the division and 19 at the ports. But we also, if you add to that the field staff which we have in many of our states, also hazard identification and reduction, and also support from our attorneys and general counsel, the whole number is now 43 total for import surveillance program, and next year will be 57. However it is still woefully under what other agencies have in port surveillance.

We are trying to do is work through technology in cooperation with Customs and Border Protection so that we get this information from the manifest. We are asking for just \$250,000 to implement the analysis and planning phases to develop an automated interface with ITDS operated by Customs and Border Protection. This will allow our system to talk to their systems and do data mining. This is only the planning stages.

We also had additional contract funds left over. We are looking at using \$2 million to do a risk management system so that we can have the technology to look in those manifest systems and determine what is there that really we should be paying attention to.

So technology will help considerably, but once we phase it in this year, it is not inconceivable that next year if we do the risk assessment, we will come back to you and let you know where our gaps are.

We also have a contract with Booz Allen Hamilton. It has been since 2003 that we had a strategic plan, and we need a new operating plan as well. We need to look at all the requirements under CPSIA, what kind of information we are going to get on the public database in terms of the referrals and consumers letting us know about deaths and injuries and how we are going to respond to that. It will be more information than we have really handled before. So we, through that planning and strategic process with Booz Allen, will look at the service gaps and be able to tell you when we come back next year what the big needs are for this agency to function appropriately and have stronger surveillance in the ports.

Now, we consider ports not just to be ports on the coast, but ports of entry. So we have 300 ports of entries, and we have as you—19 people stationed at the ports. However, we do use the State field staff. So if we know that there are fireworks that were put on a train on a California coast, and they go to an inland city, and that is where they are unloaded, we can send field staff there to check on what the status of those—whether they are in compliance in terms of fireworks. We will be able to give you a better idea of need.

#### LEAD IN BOOKS

Mrs. EMERSON. Can I just ask you for a clarification real quick? This is quick. We started to talk about lead, and I want to talk

about the whole functional issue when we get back. You said books are lead-free. Are not the books that were pre-1985, don't those contain lead in the ink?

Ms. TENENBAUM. They do. Pre-1985 had lead in the ink. If you use the four-color process and modern printing now, the books that are printed in today don't have lead.

Mrs. EMERSON. But what happens to libraries and that sort of thing who—

Ms. TENENBAUM. That is why we needed some relief so that the libraries don't have to test. They are not selling books, but they are lending in the stream of commerce. But it is the pre-1985 books, that if we could just warn parents—maybe a warning would be adequate. If you look inside some of these 1985 books, it is the illustrations in the older books that have lead in the illustrations. So we want to advise parents not to let children mouth the books. And the books for little children aren't lasting since 1985. But if you go into schools, particularly in rural areas, and you go into libraries, you are going to see pre-1985 books.

Mrs. EMERSON. I still have all my Golden Books when I was a kid that I gave to my kids, who hopefully will give them to their kids.

Ms. TENENBAUM. Well, if you want to bring them to Washington, we will test them for you.

#### LEAD IN DOLLS AND COMPONENT TESTING

Mrs. EMERSON. I might do that.

And also then just very quickly, you said something about lead-free buttons on dolls. But do you not have to test every single part of dolls, including the rouge on the checks? You do not have to test every part of the doll?

Ms. TENENBAUM. We have implemented an enforcement policy on component part testing. In fact, I was just at the toy fair. We went in to see Legos. They thanked us for having the component part testing where they can buy the lead-free paint, and they don't have to take the whole Lego apart and chip off the paint.

Mrs. EMERSON. We are talking about dolls here.

Ms. TENENBAUM. Dolls. If you manufacture new dolls, and you use lead-free products, then you keep that certification, and you have a reasonably check up, just to make sure it is lead-free, then you wouldn't have to test the doll. You would not have to destroy a doll to find the lead. You would say, I bought lead-free paint, I bought lead-free buttons, here is my certificate. It is like Commissioner Nord said, the component part testing market has not developed, but it is a huge market for someone who wants to develop a hobby store with all lead-free component parts. It is a huge market for people.

Mr. SERRANO. Yes. We have three votes, so we will ask you for your help here in waiting for us.

Before I leave, one thing. So you mean those spiral notebooks that our great friends in the media use could be hurting them?

Ms. TENENBAUM. It is not a children's product for them.

Ms. NORD. It would explain a lot, wouldn't it?

[Recess.]

Mr. SERRANO. Okay. We will do the best we can. She is reading something there, which means something will come up soon.

#### CHANGING CPSC FOCUS

Some of the agencies under our subcommittee's jurisdiction, such as the Federal Communications Commission and the Securities and Exchange Commission, have had to change their regulatory approach in response to changing products in the marketplace. Chairman Tenenbaum, what are some ways you plan on changing the focus of the CPSC going forward in response to changes in the marketplace for consumer products?

Ms. TENENBAUM. Thank you, Mr. Chairman.

As incoming Chairman, my first obligation was to finish the rulemaking required under the CPSIA. That has been a top priority for me so that we would have the rules developed, and industry would know how to comply. We could go beyond just rulemaking and start enforcing the requirements of the CPSIA.

But even broader than that, we are not just a lead and phthalate agency. We also need to look at fires, carbon monoxide and other issues that cause injury and death. The database that Congress required us to develop will give us more information than ever before. Now we collect data from emergency rooms, death certificates and newspaper articles, as well as from our hotline and as many other sources as we can get, but sometimes we don't get the information until years after it has happened. The public database will allow consumers to give us information, and then we will have to respond as quickly as possible. If we know of a death, we can't let a death just stay in the database for months and not investigate. So we are going through this management and operations planning with Booz Allen Hamilton, the company we have hired to help us with our strategic planning, and we will look at the service gaps and gaps within our organization that would prohibit us from responding quickly.

But we are always looking at developing trends; nanotechnology, for example. We have asked for \$2 million so that we can participate in the whole nanotechnology research project that is under way with all of the other Federal agencies. With this \$2 million, we will be able to contract with them to ask them to review our products that we oversee to determine what problems they see in terms of nanotechnology that we need to be aware of.

So I think you always have to be looking at the marketplace, getting the best data possible, having relationships with the research agencies of the Federal Government, working with your state officials. Some states do research. The attorneys general also; we are working with them closely so that they turn over products that they find. We need to be open to getting information from all sorts of avenues.

#### COLLECTING DATA

Mr. SERRANO. And in the past, you say it was difficult to get this information, or you got it late. Any resistance to getting it now?

Ms. TENENBAUM. Well, we have ways of collecting data. One is the NEISS system, and through that system we pay emergency rooms to fill out forms on injury and deaths related to products,

and they give us that on a regular basis. We also get death certificates from states, and we look at that. We have five different silos of information at the Department, and we haven't had the ability to data mine. With the money that Congress has given us for IT modernization, we can now have a technology that allows CPSC to go through all of these systems and mine data so that we will have death and injury information on products quicker than ever before.

So with IT modernization, the public database, this risk management program that we want to do with Customs and Border Patrol, we will be able to get more data sooner and respond to it more effectively.

#### COMMUNICATING SAFETY INFORMATION

Mr. SERRANO. Now, in both of your testimonies, you spoke about communicating important safety information in minority communities. What has the Commission done, and what is it currently doing, to ensure that important product safety information, including information on recalls, is being disseminated in these communities, including communities where languages other than English is spoken, and particularly for families who do not have a computer at home?

Ms. TENENBAUM. We are well aware, and I come from a state where we have so many rural areas where there is a great digital divide where people don't have computers. So what we try to do is when we announce a recall is work with the media. For example, on crib recalls we had almost 200 million people get information. We go on all the national morning news programs. We use social media such as Twitter, and we will be using Facebook. We use as much of the free media as possible to get our word out.

But we also provide hard copies of the product recall. We can mail those to States, and we provide hard copies to child care providers and consumers who don't have access. We work with the Neighborhood Safety Network, which has 5,600 members, and through that Neighborhood Safety Network, which is very much in touch with minority communities, we get those safety messages out.

But we do have a dedicated Spanish-speaking spokeswoman, Arlene Fletcha, whom you met at the 2008 press event that you had with Nancy Nord at the Bronx library. And Arlene translates dozens of announcements for the Hispanic community and conducts interviews with Telemundo and Univision that reach millions of viewers.

We still plan to launch our special minority outreach campaign that will increase the use of the Neighborhood Safety Network, which is 5,600 community leaders. We are going to five cities this year for minority community outreach.

Mr. SERRANO. Which city; do you know?

Ms. TENENBAUM. I don't have that, but Scott Wolfson might know. We will get back to you. We are in the planning stages, working on that. But it will be the Hispanic, African American, Asian American populations.

We also translate our information on the Web in Chinese, too. We are very aware that we can't just have English only on our Web site.

Mr. SERRANO. What a phrase.

Mrs. EMERSON.

Mrs. EMERSON. Sorry. You caught me chitchatting. I apologize.

#### FUNCTIONAL PURPOSE

Let us talk about functional purpose, which is kind of arcane to talk about. You have suggested, Madam Chair, that a way to fix the unintended consequences of the CPSIA is to add an exclusion for function purpose, which basically—I understand that would allow the Commission to exclude components with higher levels of lead if the lead was found to be essential for the function of whatever the item is. So can you elaborate for me how such an exclusion might work at the Commission, please?

Ms. TENENBAUM. Well, the term came from the Federal Hazardous Substance Act, and that term was a part of that act. So if someone came to you and said, we have chemistry sets, and we need this banned hazardous substance to be part of the chemistry set to teach chemistry, we were allowed to give a pass on substances that were ordinarily banned because the petitioner would say, we need it for a functional purpose. So it was a legal term that we have always used under the Federal Hazardous Substance Act for products that you had to have the ingredients because it was a functional purpose of the product.

Now, I want to clarify that I support the bright line, the lead limits under the CPSIA. I thought that was a step forward because you have 300 parts per million for the lead content and 90 parts per million for lead paint. I support that, and several other Commissions do as well. We are not talking about reducing those, but what we are talking about is for a person who has a product that cannot meet those levels to be able to say we need it for the functional purpose of this product. The amendment is being discussed in the Commerce Committee and it depends on what the components of that are. I don't really have the components at this time because it is under discussion.

So we support the bright-line test, and that was in the report to Congress. But when we wrote to Congress, we didn't recommend functional purpose or *de minimis*. Commissioner Northup and Commissioner Nord have said—Commissioner Northup has been very strong, and I think she put in her statement that she wanted a *de minimis* standard. But it would put the agency back in having to test every product for what is *de minimis* for product. Lead can bind, depending on the alloy it is attached to, we would have to go through and look at every product and to see how it would increase the blood lead level. And that is where we were before you passed the CPSIA. To give exclusions will require agency resources and staff; however, it depends on how the exclusion is written by the Commerce Committee on how extensive those resources will be.

Mrs. EMERSON. Commissioner Nord, how do you feel about the concept of functional purpose?

Ms. NORD. I have got concerns about it, as does my colleague, Commissioner Northup. Our concern is that it could be very, very subjective.

Mrs. EMERSON. Who makes the decision?

Ms. NORD. The agency would make the decision.

Mrs. EMERSON. So you would ask your scientists as opposed to you as Commissioners?

Ms. NORD. Does the lead in this particular product meet a functional purpose with respect to this product. And that is—at least in the legislative constructs we have seen today—is defined as highly impracticable to remove that lead. That term “highly impracticable” is well litigated. It has a meaning in the law which takes a bit of the functionality away from the functional purpose provision.

And we are also very concerned it is going to be very, very resource-intensive for the agency, and it is going to turn the agency into a product-approval-type agency.

With respect to the bright-line aspect of the law, I mean, because the law is a bright-line law, you end up with these anomalies that we have been talking about. Instead, what I would like to see is an amendment so that the law recognizes the expertise of the agency to define the risk and then regulate based on the child’s interaction with the product. If it results in any kind of measurable increase in the blood lead level, whether it is a functional purpose or not, then I think we need to regulate it and take that product out of the marketplace.

Mrs. EMERSON. So taking it back to the book analogy, if you will, then if, in fact, the lead in the ink of the pre-1985 books doesn’t have a functional purpose, but—so we still know that that poses no real threat to the kids. So how then, if that is the case, and you all have determined that the book industry is exempt, then does that mean you have to use that same—you would have to use the same criteria for any other perfectly safe products, too? Correct or not?

Ms. NORD. Right now under the functional purpose test as we understand it, the book industry would not be exempt. They would not be able to meet that. That is why we have had to ask for a separate exclusion for them. And the book example makes the point. It does not meet the functional purpose. However, we are not aware of any risk of lead poisoning to children using a 1985 book. It just doesn’t happen. So that would be an example of where a negligible risk-type concept would accommodate all of these things.

#### IMPACT ON CPSC BUDGET

Mrs. EMERSON. I have to believe that going through, looking at all of the exclusions, that has got to have a huge impact on your budget.

Ms. TENENBAUM. So will the *de minimis* test. If we do away with the bright-line test, and everyone comes forward and says, you know, we are not going to raise the blood lead level, we will be back in the same position we were before the law was passed. We will have to test every product. And that is why we all agreed that we would tell Congress we needed flexibility, and you would listen and make the best determination.

#### FUNCTIONAL PURPOSE

But on functional purpose, the idea is to have 300 parts per million or 100 if technologically feasible and 90 parts for paint, because all the research in terms of scientific research has dem-

onstrated that there is no safe level of lead. And it is to incent people to take lead out.

For example, Commissioner Nord was talking about the little toy, the John Deere tractor, that had the lead in the tire. The company has already taken the lead out. They are manufacturing that without a lead ring. A lot of the button manufacturers have visited us and said, we are taking the lead out. They are going all the way up the supply chain, and using the raw materials that do not have lead. YKK visited us to report that they are making lead-free zippers. It provides incentives. It is 2 years out since the passage of the CPSIA, and manufacturers have complied. One company came to see me and said, "We read the law, and we didn't stop at 300 parts per million, we stopped at 100 parts per million." This major toy manufacturer has already gone to 100 parts per million because it could do that, and it didn't stop at 300.

So I see a lot of positive changes. I see also people struggling to enact this law. But we have tried to take a common sense approach and give guidance with component part testing, and determinations that whole lines of products don't even have to be tested in textiles. We are working through this. So we want flexibility, but we are trying to do it without making lead prevalent in the marketplace as it was before in children's products.

Mrs. EMERSON. Commissioner Nord, do you have anything to add?

Ms. NORD. Well, again, our objective is the same. We want to have a safe marketplace for children's products.

#### IMPACT ON CPSC BUDGET

With respect to agency resource issues, I am very concerned that the functional purpose test, if it is put into place, is indeed going to be very resource-intensive as opposed to some sort of negligible risk kind of standard, because we will have to be looking at each product and the functional purpose of the lead in that product. We won't be able to look across product lines at commodities, for example. We wouldn't be able to look at brass, for example, as it is used in all children's products under the functional purpose test, and that is of concern to me.

With respect to trying to work to get the lead out, again, we all agree that that is what the agency should be doing. But you do end up with the strange results where you have got a product that meets the standard in the legislation that could expose a child to more lead than a product that exceeds the lead levels. And it is those kinds of anomalies that are bothersome to us and we would like the flexibility to be able to address. That is what we are asking for.

Mrs. EMERSON. I just hope that, depending which way you all determine to go, or whether our legislation—our refinement legislation, that you will have the resources to do what you need to do, which if you go to—I mean, this sounds rather complicated, this whole functional purpose—and complex, I should say, that requires a lot of people touching it.

Okay. I better stop there. Thanks, Chairman.

Mr. SERRANO. I am just thinking. I really hope you both walk away from here today understanding that we understand that this

is not easy what has to be done, and we respect both of your views. My only problem is that I keep remembering back to where the SEC sat in front of me and told me, no, we are fine, we don't need any more money, and we are doing what we are supposed to do, and then we saw what happened. And so we had all of that happen because in the past the Commission was allowed to look at what it needed to look at and not what it was told to look at every so often. So we had major recourse.

But anyway, the gentlewoman from Florida.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman.

In fact, the CPSIA was in response to a significant problem.

Mr. SERRANO. Right. And it ended up passing—the behavior was always, let us do our thing, don't overburden us.

Ms. WASSERMAN SCHULTZ. And look where it got us.

#### CHINESE DRYWALL

I want to just change the subject for a moment and focus on Chinese drywall. I know that the CPSC, Madam Chair, HUD and CDC have been tasked with coordinating the investigation. I appreciate your meetings with the task force on the drywall, Chinese drywall crisis. My understanding is that the CPSC received the first reports of the problem over a year and a half ago, and since that point we have some homeowners that have lost their homes, many homeowners that have moved out or abandoned their homes.

My district is dotted with Chinese drywall. They are not able to live in their homes. Their homes are making them sick, and they are faced with not only not being able to live in them, but they can't sell them. Their insurance isn't covering them, so they have an asset that is only a burden to them, and how are they supposed to go pay for other housing? It is just really a huge, huge problem, particularly problematic in that insurance companies are denying coverage to homeowners, and that the foreign manufacturers are refusing to accept responsibility.

#### CHINESE DRYWALL REMEDIATION PLAN

So I know you have conducted studies, and you are cooperating with other agencies. Has the CPSC begun formulating a remediation protocol that can be accepted by the homeowners with confidence that it will fix the problem, and when can we expect to see that remediation plan?

Ms. TENENBAUM. We have been working with HUD on the remediation plan, and it should be available to the public by the end of April. We have a new study, the Lawrence Berkeley National Laboratory study, that has data that showed some Chinese drywall samples had significantly higher emission rates for hydrogen sulfide and other reduced sulfur gases compared to domestic samples and other imported samples. This has been consistent with the chemical analysis that we did in October 2009. It is also consistent with the November 23, 2009, 51 homes study, which found a strong association with the problem of drywall and hydrogen sulfide.

So last week, February 25th and 26th, brought together all of the experts from our contractors and our Federal partners. We had a 2-day discussion on what we learned about Chinese drywall. The studies we have done have been used in the multidistrict litigation

in Louisiana. So they have used our studies in terms of the plaintiffs' cases down in Louisiana, which has parties from all of the states.

We have spent \$3.5 million on the investigation. It is the largest investigation we have ever done in the history of the CPSC.

I visited personally drywall homes in Florida and in Virginia. I feel deeply for the homeowners. They have had to move out. It really is tragic because so many of the young families with whom we have spoken and visited in their homes, this is all their equity. Everything is tied up in this home. They have moved in with relatives. We carry a heavy burden at the Department to get this finished in terms of our studies, and to get the remediation guidelines announced with HUD in April.

We also work with HUD, and we did a joint announcement with them that states could use the community block grant money, if it was not already designated, to help families remediate their homes. We also wrote a letter to the IRS regarding drywall asking them to do a casualty loss reduction. So we are looking at creative ways that we could allow the homeowner to have a write-off or deduction to help them financially.

Ms. WASSERMAN SCHULTZ. Now, they are getting a property tax break?

Ms. TENENBAUM. Right. They are getting a property tax break. But in Florida we have 1,723 reports. Overall, we have received 2,941. Florida has the highest with 1,723. But when we talked to the mayors and the Governors in all the other states, we think it could go as high as 5,000. We have investigated every death that we have read in newspapers where there were people that said there were deaths. We have investigated every one of those and have not determined that drywall was the cause of it.

#### CHINESE DRYWALL ILLNESS

Mrs. EMERSON. I actually have a constituent who is a drywall installer who is, we think, permanently disabled now because of just getting sick from all of the exposure.

Ms. TENENBAUM. Hydrogen sulfide. In Florida you have a home builder, Lennar. Lennar is going into the homes it built and stripping it down to the studs and taking out the drywall and then rewiring. There is another major homebuilder in Virginia that is also doing the same thing. And this remediation program will spell out what we think needs to happen for full relief.

#### CHINESE DRYWALL FINANCIAL IMPACT

Ms. WASSERMAN SCHULTZ. Do you know what the financial impact is?

Ms. TENENBAUM. Well, it just depends on the size of the house and the amount of drywall.

Ms. WASSERMAN SCHULTZ. I mean, the total financial cost for the remediation.

Ms. TENENBAUM. No. I had heard numbers of \$75,000 per home to take out all the drywall, but that just depends—I think Lennar told me, or Dragus up in Virginia told me that. But it is the size of the home and the amount of drywall. In some cases the drywall

was upstairs, from China, but it wasn't downstairs, so you didn't have to take it all out.

#### CHINESE DRYWALL HEALTH EFFECTS

Ms. WASSERMAN SCHULTZ. Do you have a timetable for a report on the health side effects of the impact of the drywall?

Ms. TENENBAUM. Well, we had looked at the health effects, and we think this latest study from Lawrence Berkeley Laboratories will address that. But the original studies we did, the 51 home studies, was reviewed also by the CDC, and they found that the amount of hydrogen sulfide that was emitted did not contribute to a chronic or acute health problem.

But we have thought that all of the synergistics—if you get into a home that is tightly built, and in Florida you build a home and you often don't open the windows because you have the air conditioner on all year, we have found that all of that together can be an irritant.

#### CHINESE DRYWALL MANUFACTURER COOPERATION

Ms. WASSERMAN SCHULTZ. Are we getting any cooperation from the Chinese drywall manufacturers?

Ms. TENENBAUM. Well, we have not to date. In the multidistrict litigation, there is one Chinese manufacturer who has defaulted on the complaint. They are having a hearing, and they are going to assess damages in absentia for this drywall. Knauf is a German company that has manufacturing in China, and it has been working with the court. It has also been sued in the multidistrict litigation, and it has cooperated.

#### CRIB SAFETY

Ms. WASSERMAN SCHULTZ. And lastly, Mr. Chairman, I wanted to commend your leadership, Madam Chair, on the issue of crib safety. I passed legislation in Florida that actually was ultimately vetoed by Governor Jeb Bush despite overwhelming support for it, including from the industries it impacted, that would have made sure that cribs sold in Florida were safer and didn't have a lot of the problems that you have found that they still have. But they are still in hotels and places where cribs are repeatedly used over a long period of time. And we don't really know where they have been or where they—and they are beyond the reach of recall notices. So can you talk a little bit about your efforts in this area?

Ms. TENENBAUM. Well, thank you. And this is something that Commissioner Nord has supported with me, and really the whole Commission has stood up to the crib issue.

First of all, we will have a new crib rule in 2010, and that rule will outlaw or ban drop-side cribs. Once we write that rule, it can be applied retroactively to cribs in public places like child care facilities and hotels.

We still have concerns with cribs in homes, and so I have asked my colleagues and staff at the CPSC to continue monitoring the effectiveness of recalls and how many people are actually getting these repair kits, because the repair kits make the side immobile

so that the drop-side is not going up and down. You don't have that pull-out where the children fall into the crack and suffocate.

But we also work with the ASTM. We brought the Committee in and said this has gone on long enough, and we want you to work with us. They worked with us for 2 days, coming up with a new standard in which the ASTM, through their voluntary standards, banned the drop-side crib. It is now out for vote. In March we will have the results of the ASTM vote. We realize that this has really started something within the crib industry that all of them need to come out with a repair kit, if they have drop-side cribs, to make the side immobile.

The registration cards, which are part of the CPSIA, are for required people to fill out the information when they purchase a new crib. When you have a recall, all the people who have sent the registration card in will be able to be contacted. On crib recalls we go on all the national morning shows. We do as much media as possible. We also get coverage on national nightly news.

Ms. WASSERMAN SCHULTZ. Are these mandatory or voluntary standards?

Ms. TENENBAUM. These will be mandatory new crib standards.

#### MANDATORY CRIB STANDARD

Ms. WASSERMAN SCHULTZ. Because right now the crib standards are voluntary, aren't they?

Ms. TENENBAUM. Well, they are, and the CPSIA outlined a list of 12 durable nursery products that had to have mandatory standards. And cribs were scheduled for 2012 at the Commission, and I moved it up to 2010 so we would have a mandatory standard.

We also started this Safe Sleep initiative in January where we have a team of attorneys, compliance officers, engineers, public affairs specialists, who meet regularly weekly on all of the information we have on cribs and expedite the recalls of cribs that have been in the pipeline for several years.

So we are trying to do everything we can to get the old cribs off the market, or either to get repair kits, and to have a brand new standard which is state-of-the-art.

#### FOREIGN MANUFACTURE OF CRIBS

Mrs. EMERSON. Is foreign manufacturing any part of the problem?

Ms. TENENBAUM. A large number are from China. A large number are from China and from other countries. But probably the major manufacturers are from outside the country.

Mr. SERRANO. We are going to try to have one more round and then try to wrap it up because we have yet another series of votes coming.

#### CHINA OFFICE

You know, again going back to my other subject, this is why it is such a delicate balance, because we have the drywall issue that I am sure if we had started on voluntarily testing on Chinese drywall, you would have had a lot of people saying, why are you doing that, leave that alone, do something that is important, and

yet now we have a problem. So there is a balance. I don't envy the work you have to do, and I don't envy what we have to do in the future to assist your doing it.

I have one last question, and then I am going to submit the other questions for the record. You are setting up an office in China, and China is a big issue. So tell us what kind of cooperation you are getting in China to set up this office.

I would be remiss if I did not put in the usual Emerson-Serrano comment on—isn't it amazing that we can have an office of our government in China, but we can't even be allowed to visit Cuba? But anyway, that is another issue for another day.

I am all for it, but think of it. I am just wondering out loud. I think it is great. But if you had told—well, no. I was going to say Richard Nixon. He is the reason why we have relations with China. If you would have told somebody else that we were sending an office of our government to China, they would say, what are you talking about?

Ms. WASSERMAN SCHULTZ. Mr. Chairman, the track record of China really rings strongly towards expanding our outreach to Cuba. The results have been so incredibly good, haven't they?

Mr. SERRANO. It is good for the CPSC.

Mrs. EMERSON. They have got more staff.

Mr. SERRANO. They have got more staff.

So tell us what that office is like very quickly and what issues you have had. And what kind of support are you getting from the Chinese Government? And lastly and most importantly, what are we beginning to see in terms of cooperation for better products, safer products?

Ms. TENENBAUM. Well, thank you.

Because China is the largest single source of imported consumer products, it will and has been the focal point of CPSC's external efforts. First of all, we are seeing great cooperation from the American Embassy in China. Ambassador Jon Huntsman has been very helpful. In fact, our office will be in the American Embassy in China, and we have hired one person, Jenny Wang, who is at the CPSC for the next month receiving training. She is Chinese. She is a delightful person and will be helping Chinese manufacturers as well as U.S. manufacturers ensure that product safety is paramount with the manufacturers.

We also will be hiring an American employee, and we are working with the Chinese Government to try to get approval for that diplomatic post. Ambassador Huntsman is working closely with us to try to get that approved as well, and we expect we will have the American employee in place in the next few months.

Mr. SERRANO. One employee?

Ms. TENENBAUM. We will have two, a Chinese and an American, for right now to see how it works and see how it is utilized by the Chinese. They will be doing training.

Mr. SERRANO. Where is this office physically?

Ms. TENENBAUM. It is in Beijing in the American Embassy. So that is very good. We didn't have to go out and get our own space. They gave us space because the embassy is very helpful to us in all efforts in China. But training and outreach to China is a priority.

## WORKING WITH CHINA

This year we had our biennial summit in China where we took our employees and also stakeholders, American businessmen and women, with us to China, and we focused on writing a new—not a memorandum of agreement, but a working document going forward. We are asking the Chinese government to emphasize best practices in manufacturing. Also, we have stressed that they had the responsibility to ensure that their manufacturers are meeting our standards.

We have had a successful Webinar in January with Chinese manufacturers, that was very highly attended. We also did training at the Hong Kong toy show in January. We had 120 manufacturers view a Webinar that we did over the Internet in December.

We will continue to work with the Chinese in a very agreeable fashion. It is not perfect. But they also assure us that they understand it is their responsibility to make sure manufacturers meet best practices and comply with the standards.

Now, this fall, we will go back to Shanghai, China and have a meeting with China, the European Union and the United States on safety standards. We have our Office of International Programs who regularly translates requirements and regulations on the Internet in Chinese so that the Chinese have access to this.

So we feel that our relationships with China are strong and very amicable, and we keep pushing forward to make sure they understand what are the best practices in manufacturing.

Do you want to add to that?

Ms. NORD. One of the themes ever since 2007 has been to push safety back to the source, and that means going to China. And I think the agency has been consistent over the last 3 or 4 years that that is very important.

One of the first things I did after the passage of CPSIA was to go to China to explain to the Chinese Government and to the Chinese manufacturers the changes that were in store for them. And what was interesting, Mr. Chairman, was that right then is when the melamine in the milk crisis in China hit, and that was killing Chinese children. And I have to tell you that the change in attitude was striking.

So I think the Chinese are starting to get that product safety is important. It is not only important for their export markets, it is important for their population.

Mr. SERRANO. Because they sell it to themselves, too, right?

Ms. NORD. Exactly. And that was such an instructional experience to be on the ground and see that happen. That trip was our first venture over to China with our counterpart from the European Union, and I have to say it was a very, very powerful message for the world's two biggest markets to be standing there and saying to the Chinese that product safety is a core value, and we expect it from those who export to America.

Ms. TENENBAUM. I might say that one of the things we continue to see in China, though, is counterfeiting and that looks like the real product. So it is very important that third-party testing be required for importers bringing children's products into the United

States from China, because that is allowing us to stop at the port those goods that are not meeting the requirements of the CPSIA.

#### INTELLECTUAL PROPERTY THEFT

Mr. SERRANO. Which I had a question. Just your presence there in China. We know what your mission is, but does it have a side effect on the issue of intellectual property theft and so on? I mean, I know that is not your mission, but your presence there is important and historic in so many ways. What about that other conversation?

Ms. TENENBAUM. Well, we have not entered into that conversation. We have entered in trade conversations. When we were at the summit, one of the members of the delegation from China made some claims that the requirements, the safety requirements in the CPSIA were hurting trade. We were able to show them the trajectory, that the number of imported products from China continues to go up and be increased every year, and that the safety requirements was not inhibiting trade or dampening trade.

But the intellectual property needs to be addressed in China because they counterfeit products. The manufacturer is going out of its way to buy lead-free zippers and lead-free components to put on their products, so when they counterfeit, they are buying from another source that has not tested the product, and it is a serious safety problem.

Mr. SERRANO. Well, Ms. Wasserman Schultz left before Mrs. Emerson and I had told her if we ever do establish relations with Cuba, you won't be asked to test rum, cigars, music or baseball players, because they are known to be of world-class quality. Thank you so much.

Mrs. EMERSON. I love it. I love it.

#### CHECKING CHINESE MANUFACTURERS

Do you all actually get into the—get into the lab? Do you actually expect to do spot checking of manufacturing facilities in China? I mean, how are you going to determine with two people whether or not things are either copies or they are original, or is that going to be the third—go ahead.

Ms. TENENBAUM. When you have third-party testing, the children's products have to go to a private laboratory or either a laboratory that is operated by the company and firewalled to assure that they meet the lead limits. That is how we ensure that they have a certificate of third-party testing, and that they meet the lead and the phthalate limits required under the CPSIA.

Mrs. EMERSON. Have you found any fake certificates?

Ms. TENENBAUM. Well, we are certainly aware that that counterfeiting of certificates and this is something that we have to watch for constantly.

Mrs. EMERSON. Yeah, because actually even with a whole different issue—I have a company in my district who is in competition with a Chinese company, and technically—and there is some anti dumping—there is an anti dumping situation going on. But nonetheless, there is all sorts of fake certificates of things that get routed through South Korea, for example. So I was just curious if you were—

Ms. TENENBAUM. But we are aware that is an issue on which we have to have surveillance. And we have also told the Chinese that this is their responsibility from their ports to make sure that the certificates aren't counterfeit.

Mrs. EMERSON. And you feel good that they get it?

Ms. TENENBAUM. Well, anytime you are in a regulatory position and you are a regulator, you have to have a program whereby you provide oversight to make sure the quality is there and call them out if you find one. We certainly can't turn our back on any company. We have to continue to insist that they take responsibility for products coming out of their country, and that they have a certificate. The Chinese government requires companies to certify that it meets the requirements.

Mrs. EMERSON. Do you have anything to add?

Ms. NORD. I think you have identified a key problem that we are going to see more and more going forward, and that is fake certificates. I think it is probably going to be a growth market that we will probably have to watch closely.

Mrs. EMERSON. We probably shouldn't discuss this here today.

#### TESTING LABORATORY

Let me ask you about your testing laboratory, and then I am going to submit the rest of my questions, Mr. Chairman, because there—I have several more.

Your budget justification for 11 mentions that you carried over \$6 million in previously appropriated funds for modernization of—I have the worst time saying modernization for some reason. Now, does this signify—

Mr. SERRANO. Try it as English as a second language.

Mrs. EMERSON. How do you say it in Spanish?

Mr. SERRANO. I cannot say it in Spanish.

Mrs. EMERSON. Does this signify a delay in your move to the new laboratory? Or maybe you should fill us in on the current schedule.

Ms. TENENBAUM. We will move into the laboratory by the end of the year. That is our goal. Now, the cost of the facility is 16.1 million in Federal funds, plus 3 million that the landlord is putting in, for a total of 19.1 million. So the funds are carried over to renovate the lab, to provide the kinds of testing spaces that we need.

But we are very excited, and I will give Nancy Nord credit for really starting this process under her leadership. The new laboratory will be in Rockville. The space was built as a laboratory, so it was not a building that we had to go in and put in all of the cabinets and all of the labs. So it will not only be a state-of-the-art lab, it will also be office space, as well as storage space.

And there are a number of new features that it will allow in that it will have a dedicated testing area for children's electrical, combustion, and sports and recreational products that we don't have now. It will enhance the fire-testing spaces with modern safety and environmental features, and the provisions for more accurate observation of fire developments in products. We think that it will reduce facility operations because now we have a series of little buildings, and this will be under one roof.

Mrs. EMERSON. So it will obviously be more efficient?

Ms. TENENBAUM. It is a total cost of \$16.1 million, and we have an annual recurring rent of \$2.2 million. The rent is really \$2.8 million, but we will use the \$600,000 that we pay rent on now. It will be a state-of-the-art facility that we have needed for a very long time. And you might want to say something, since it was under your leadership that you kicked this off.

Ms. NORD. Well, we have been working towards this goal for sometime. It became very apparent when I became Acting Chairman that we needed this, and we went out and did what we needed to do to get it, again with funds that you all provided and which we are so thankful for.

#### TESTING CHOICES

Mrs. EMERSON. So describe what current testing is conducted at the—at your testing laboratory now. And I am just curious, how do you determine what is going to go out to a third-party lab, for example? I am just curious.

Ms. TENENBAUM. Well, third-party labs are used by importers and domestic manufacturers to test their products, the children's products, to ascertain the level of lead and phthalates. So that is where you use the third party.

Our lab will be where we do our own testing. For example, with cadmium, we had "The Princess and the Frog" jewelry. It had the Disney logo, and we went out and bought that jewelry. We were successful in getting Walmart to do a recall, because we tested the jewelry and found that it was well over what the Federal Hazardous Substance Act allowed.

So we do those kinds of tests. We do a number of tests, engineering, toys, cigarette lighters, mattresses, flammability in children's products. But if you allow me to give you a full description of what we do for the record, I would appreciate it.

Mrs. EMERSON. That would be great.

[Summary of CPSC Lab Testing follows:]

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Current Testing Capabilities  
March 2010

U.S. CONSUMER PRODUCT SAFETY COMMISSION  
DIRECTORATE FOR LABORATORY SCIENCES  
10901 DARNESTOWN ROAD  
GAITHERSBURG, MD 20878

## BACKGROUND

### Mission

The laboratories support the overall CPSC mission to reduce unreasonable risk of injury associated with consumer products. This function requires selecting, procuring, calibrating, operating, and maintaining sophisticated laboratory equipment by knowledgeable and skillful personnel. Work results must be competent to successfully withstand the scrutiny of litigation.

The CPSC Laboratory tests and evaluates products for hazards under Sections 7, 8, 12, or 15 of the Consumer Product Safety Act.

### Testing Capabilities

The flammability laboratory contains facilities for testing of regulated products such as children's sleepwear, general wearing apparel, mattresses and futons, carpeting, etc. The facilities include a 2-hour fire-rated burn room for large- and bench-scale ignition test, various hoods and test chambers for small-scale ignition tests, and a chemistry laboratory and chemical hood for fiber analysis and specialized (plastic film, chemicals and solids) flammability testing.

The electrical and mechanical test laboratories are used for testing various consumer products, such as ATVs, small electrical household appliances, cribs, baby walkers, and toys.

Class C pyrotechnic devices are tested for compliance with federal regulations in our fireworks laboratory.

CPSC's combustion products and appliances laboratory contains three specialized and highly sophisticated chambers and instrumentation for testing a range of residential appliances including furnaces, stoves, ovens, gas-fueled fireplace sets, unvented space heaters, and camp stoves and heaters. A temperature- and humidity-controlled carbon monoxide gas chamber used to test CO alarms is also situated in that space. Adjacent to these chambers is installed the apparatus of the mechanical test laboratory: a large fatigue cycle test frame, a 14-foot tall monorail head-form drop tester for helmet and playground surface testing, two tensile/compression strength testers for evaluating mechanical support structures (such as bicycle frames), and a hydraulic pressure test facility for evaluating fire suppression sprinklers. The laboratory contains a burn room which is comprised of a combustion chamber and an observation and instrument room. The burn room has been used to measure the fume spread of spilled gasoline, to evaluate small flame ignition of full-sized upholstered chairs, and, most recently, to test detector and controller performance for preventing stovetop cooking fires.

The chemistry laboratory houses all the analytical instrumentation used by the chemists to evaluate children's and consumer products and household chemicals. This laboratory contains four separate laboratory testing cells used for sample preparation where solvents and acids are used, the analysis of total acids and bases, testing for flash point and

viscosity analysis and extractions such as those used in the phthalate plasticizer project. The Instrumentation Laboratories house the inductively coupled plasma spectrometer, which is used for analysis of metals, two Gas Chromatograph Mass Spectrometers, a Fourier Transform Infra-red Spectrophotometer, and two small indoor air quality exposure chambers.

Ms. TENENBAUM. Because that is where we could give you a full picture of how hard our people work in such limited conditions.

Mrs. EMERSON. I think that would be a fun field trip for us to make, Chairman.

Ms. TENENBAUM. We would love for you to come to the new lab.

Mr. SERRANO. We can test the lack of bipartisanship in the House.

Mrs. EMERSON. They can test how much lead.

Mr. SERRANO. These four people here should be an example, right?

Ms. TENENBAUM. We would like for you to come out. You can either visit now or toward the end of the year. Our goal is to get into it by the end of the year, and we would like to take you out and visit there. That would be excellent. If anytime you ever want to go to a port, too, we have now a full-time staff member at CTAC, which is looking at all of the information that is coming in to Customs. But we can take you to a port and show you how the containers come through and how we test and look at the certificates and seize products.

Mrs. EMERSON. That would be interesting. And I appreciate you allowing that. Maybe if we plan a date to go see the lab that way, you will be forced to get it finished on time.

Ms. TENENBAUM. That is right. And I would invite you to Charleston, South Carolina, where you could visit that port. That would be a nice trip. That is a wonderful port.

Mrs. EMERSON. Thank you.

Thanks, Mr. Chairman. I am done for now.

Mr. SERRANO. Okay. Thank you so much for your testimony, both of you. Thank you for the work you do. We will continue to try to be helpful in making your job easier, making your challenge less challenging. And don't ever lose sight of the fact you may not be the most famous agency in the government, but you certainly have the safety of people, especially children, in your hands. So it is something to be proud of, and we are proud of the work you do. Thank you so much.

**SUBCOMMITTEE ON FINANCIAL  
SERVICES AND GENERAL  
GOVERNMENT**

**HEARING**

**ON**

**THE FY 2011 BUDGET REQUEST OF THE  
CONSUMER PROTECTION SAFETY  
COMMISSION**

Questions for the Record

for

The Consumer Protection Safety Commission

March 4, 2010

**“The FY 2011 Budget Request of the U.S. Consumer Product Safety Commission”  
House Committee on Appropriations  
Subcommittee on Financial Services and General Government  
March 4, 2010**

**Responses of Chairman Inez M. Tenenbaum to Questions for the Record**

**Questions for the Record Submitted by Chairman Serrano**

1) With regard to the Consumer Product Safety Improvement Act, since the Commission has delayed until 2011 its enforcement of testing and certification requirements for many children’s products, how can consumers be assured that the law is being followed, and that children’s products are safe? Overall, how is implementation of the Consumer Product Safety Improvement Act progressing, and how are you working to educate manufacturers and retailers about their new responsibilities under this law?

Response:

On December 18, 2009, the CPSC voted to extend the stay of enforcement on testing and certification of many regulated children’s products.<sup>1</sup> The stay of enforcement will remain in effect for certain categories of children’s products while the CPSC continues to promulgate requirements for third-party testing of specific products. As these requirements are implemented, additional products will become subject to the testing and certification requirements. For example, on February 10, 2010, the stay on third-party testing and certification was lifted for bicycle helmets, bunk beds, infant rattles, and dive sticks.

In addition, it is important to note that third-party testing and certification was never stayed for the requirements applicable to lead-in-paint, small parts, the lead content of children’s jewelry, full and nonfull-size cribs, or pacifiers. Furthermore, while the enforcement of certain testing and certification requirements have been stayed, all children’s products still must comply with all applicable rules and bans, including the lead content limits.

In order to ensure the safety of children, the Commission has greatly increased the number of products it is screening and testing for compliance with safety requirements. We collected a record number of samples at the ports last year (almost 1,600) and expect to break that record again this year. This is due to several factors. First, the recent increases in appropriated funds have permitted us to increase staff at the ports of entry, in the field, and at our laboratory. Second, we are looking for ways to use new technology to increase our reach. For example, we are employing X-Ray Fluorescence (XRF)

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<sup>1</sup> This document can be found on the CPSC’s Web site at <http://www.cpsc.gov/cpsc/pub/prere1/prhtml10/10083.html>.

technology to screen children's products for lead. Using this technology, in just a few minutes we can screen out products that do not have high levels of lead and save the much greater time and expense of testing them at our laboratory, not to mention the time and cost needed to package them safely and ship them to the lab.

The overall implementation of the CPSIA is progressing rapidly. Since my arrival at the CPSC last summer, the Commission has published over 45 *Federal Register* documents to help implement the CPSIA, including:

- July 2009: a policy statement providing guidance on section 103 tracking labels.
- August 2009: a final rule providing guidance on whether parts of a product may be considered inaccessible and exempt from the lead limits of section 101.
- August 2009: a final lead determinations rule that exempts many common materials from the testing and certification requirements for lead content because they do not contain lead above the 100 parts per million lead content limits.
- December 2009: a two-day work shop on testing and certification, and issuance of a policy permitting component part testing for lead content and lead in paint.
- January 2010: adopted a final rule establishing alternative lead limits for electronics parts of children's products.
- March 2010: approved a proposed rule interpreting the term "children's product."
- April 2010: approved a proposed rule outlining how the new public database will function.
- Currently: considering a proposed rule on continuing testing and component part testing under section 102(d) and will soon consider proposed rules on the definition of "children's toy" and "child care article."

Despite the extraordinary pace of our efforts, the Commission still has more work to do to fully implement the CPSIA. We are hard at work on several different standards relating to durable nursery products. We expect to issue at least five of these in 2010, with more than a dozen additional standards planned for the next few years. The agency is keenly focused on issuing these durable infant nursery standards and other CPSIA activities, including the Chronic Hazard Assessment Panel (CHAP) on phthalates, the upgrade of the mandatory toy standard, and enforcement of the many new CPSIA requirements.

Against this backdrop of rapid change, the Commission has stepped up its efforts to keep manufacturers (including importers) abreast of their responsibilities under the law. We have conducted numerous workshops and webinars for manufacturers both here and abroad, with special attention to the problems of small manufacturers and resellers. We have also developed guides that small manufacturers, in particular, can use to determine which requirements apply to their specific products.

**2) The CPSC's new product testing laboratory is slated to open later this year. Compared to the CPSC's current laboratory, how will the new one enhance the CPSC's work, and how will consumers ultimately benefit?**

Response:

The new product testing laboratory will enhance CPSC's work in several ways. The new laboratory is larger, providing room for additional equipment and personnel. For example, the new laboratory will permit CPSC to approximately double the chemical laboratory space. This additional space will allow CPSC to add an Inductively Coupled Plasma – Mass Spectrometer (ICP-MS), that will improve our lead testing throughput and extend our testing capabilities to more complex samples and lower detection limits for many elements.

CPSC is also adding a calorimetry burn room in the new laboratory. This new burn room will significantly enhance our fire and flammability work, providing the in-house capability to perform conformance testing in accordance with existing regulations and support test efforts required to develop new or revise existing regulations. Having our own capability enhances sample security, eliminates scheduling issues when using other facilities, and, dramatically reduces the costs of sample transport and storage, facilities reimbursement/rental, staff travel costs, and lost time to staff travel.

The various testing areas in the new lab allocated to mechanical and children's product testing will allow CPSC to test more items than we can today. The new lab will have an Outdoor Power Sports Equipment test lab with an integral tilt table that will be used to characterize many tip-over characteristics of ATVs, ROVs, and other related equipment in a controlled environment. The tilt table will permit the indoor testing of ATVs to all the ANSI/SVIA standards, including the parking brake holding test. An exhaust system will permit safe indoor engine operation and allow the functional testing of engine controls per the performance standards. The lab will also house new crib testing equipment.

The new lab will house a pool and spa test facility capable of testing a much broader range of safety vacuum release systems (SVRS), pool drains, and drain covers year around in accordance with the provision of the Virginia Graham Baker Pool and Spa Safety Act. The test facility at the current lab is located outdoors and must be shut down during the winter months. The new lab will also house two new environmental test chambers designed to test a broader range of products known to generate hazardous quantities of carbon monoxide, including portable generators.

The new equipment and additional personnel allows CPSC to expand testing to a broader range of consumer products and to test a larger volume of products, in support of CPSC's expanded compliance activity, thus ultimately benefiting the American consumer.

- 3) As you know, the Consumer Product Safety Improvement Act also prohibits the export to other countries of toys containing substances banned in the U.S. What resources has the Commission dedicated to enforcing this provision? Are you aware of any instances of toys containing banned substances being exported to another country since the new law was signed in August 2008?**

Response:

The Consumer Product Safety Improvement Act (CPSIA) strengthened CPSC's control of exports in several important ways, but it did not prohibit *all* exports of toys containing substances banned in the United States. The CPSIA added a new paragraph (15) to Section 19(a) of the Consumer Product Safety Act. This provision now makes it unlawful to export *for purpose of sale* a toy that is or contains a banned hazardous substance, unless the Secretary of Treasury permits the export pursuant to section 17(c).

This provision does not reach all toys containing substances banned in the United States; rather, the toy must be or contain a "banned hazardous substance within the meaning of section 2(q)(1) of the Federal Hazardous Substances Act." Toys that contain lead above the limits prescribed by the CPSIA meet this description as a consequence of section 101(g) of the CPSIA. Section 108, by contrast, did not characterize all toys containing banned phthalates as banned hazardous substances. In addition, the CPSIA left undisturbed section 18(a) of the Consumer Product Safety Act that makes the whole Act, including the new prohibition in section 19(a)(15), inapplicable to any consumer product that is *manufactured for export*, with certain exceptions.

As section 19(a)(15) itself makes clear, even if a toy is a banned hazardous substance, its export is not always unlawful; rather, it is still possible to export such a toy for purposes other than sale. Also, the Secretary of Treasury has authority to allow the export a toy that is stopped at import, even if the purpose is for sale.

A party that wishes to export a toy (other than a toy that is manufactured solely for export and never distributed in the United States) must notify CPSC at least thirty days in advance of a proposed export. Under the CPSIA, unless the destination country affirmatively agrees to the export, the Commission has authority to prohibit the shipment. The resources dedicated to export control are primarily involved with this process rather than with attempting to find unauthorized exports more generally.

The Office of Compliance staff has not identified any instance of toys containing banned substances being exported to another country since the CPSIA took effect.

**Questions for the Record Submitted by Ranking Member Emerson****Regarding the Consumer Product Safety Improvement Act of 2008:**

1) **Has there been sufficient analysis to identify all the industries that may be impacted, and has their comment been solicited?**

Response:

Many of the rules promulgated by the Commission pursuant to the CPSIA have undergone a Regulatory Flexibility analysis. The purpose of this analysis is to identify the industries that are likely to be affected and evaluate the impact of those rules on small businesses. Throughout this process, the Commission has been very sensitive to the concerns of small business and, in some cases, has explicitly solicited their opinions. One example of this is the December 2009 workshop the Commission conducted on the continuing testing rule and component part testing. Another example is a series of webinars that senior CPSC staff conducted on March 25-26, 2010, with members of the Etsy community and Handmade Toy Alliance to discuss how the CPSIA is being implemented and enforced.

2) **Has sufficient analysis been given to the consideration of industries that should be exempted?**

Response:

Under the statutory framework of the CPSIA, the Commission does not have the authority or discretion to exempt entire industries or subclasses of industries. However, the Commission has given extensive consideration to the issues faced by all industries in crafting regulations.

One example of this is the lead determinations rule, which stated that certain products – such as paper, cotton and untreated wood – will never exceed the lead limits under section 101 of the CPSIA and, therefore, do not need to be tested and certified under section 102 of the CPSIA. Another example is our efforts in the context of the third-party testing to allow component testing and certification by component suppliers in many cases rather than to require all third-party testing by the final product manufacturer.

3) **Has the regulation received adequate review in an effort to avoid the unintended inclusion of industries that were not originally within the scope of regulation?**

Response:

The CPSIA sets, by statute, the industries and products covered by its jurisdiction. However, in an attempt to give clear guidance to industry on which products are subject to regulation, the Commission has promulgated a proposed interpretative rule defining

what constitutes a children's product and will soon issue proposed interpretative rules on what constitutes a children's toy and child care article. These interpretative rules will help to give industry certainty and predictability in determining whether their products are subject to regulation.

**4) Do the industries affected have the expertise to be reasonably expected to have the ability to comply with the regulations without creating an undue burden?**

Response:

As noted above, the Commission has undertaken substantial efforts to educate all industries – and especially small businesses – on the steps necessary to achieve compliance with the requirements of the CPSIA. Some industries, however, will incur additional costs (such as outside technical expertise and third-party testing) to comply with the Act.

**5) Has there been adequate and appropriate consideration regarding the financial impact of the industries affected?**

Response:

As noted above, the Commission has conducted a Regulatory Flexibility analysis on many of the new regulations required by the Act, and conducted significant outreach to affected industries. However, the Commission does not have the resources to conduct a "global" analysis of any economic impact resulting from the CPSIA. The Congressional Budget Office (CBO) or the Government Accountability Office (GAO) would be more appropriately situated to conduct that sort of economic analysis.

**6) Is there sufficient clarity of definition and are the material resources readily available to those who are held accountable for compliance?**

Response:

As stated in the response to question 1, the Commission has made every effort to reach out to small businesses and other industries impacted by CPSIA to make sure that the requirements of the Act, and regulations promulgated pursuant to the Act, are fair and clear to all stakeholders. It is likely, however, that some affected businesses may require outside technical resources to comply with the Act.

**Questions for the Record Submitted by Congresswoman Lee**

**Question on Testing of Imported Products**

**1) What percentage of imported products are currently tested and can we expect that someday soon every product sold on store shelves in America has been tested for safety?**

Response:

Before enactment of the Consumer Product Safety Improvement Act (CPSIA), most consumer products imported into the United States were not required to be tested unless they were subject to one of about a dozen mandatory standards. The CPSIA strengthened testing requirements in a number of ways. First, it required testing for a much broader array of mandatory standards. Second, it required CPSC to adopt many additional standards for which testing will also be required. These include standards for many different types of durable infant and toddler products, as well as standards for toys and all-terrain vehicles (ATVs). Third, for children's products, the CPSIA required testing to be conducted by third-party test laboratories whose credentials have been recognized by the CPSC.

CPSC has also increased the number of imported products it is screening and testing for compliance with mandatory standards. Last year, we set the all-time record for import samples collected. As we begin to take advantage of our new laboratory in the near future, we expect to be able to expand our testing even further.

However, despite these factors expanding the number of products undergoing testing before being imported, there are still many consumer products that are not required to be tested.

**Questions on Fire Safety**

**Of course I support the work of the CPSC in reducing the tragic impact of injury and death due to fires in America, but I am concerned about some of the chemical fire retardants currently in use.**

**1) Are we replacing one danger, of fire, with another, of exposure to toxic chemicals, such as brominated flame retardants and other persistent organo-halogenated compounds and their descriptors, in our homes?**

Response:

No. One of CPSC's objectives in the area of fire safety is to provide reductions in product-related fire risks without imposing potential health risks associated with flame retardant chemicals. This objective, along with other factors, guided the CPSC staff's

development of the recent flammability performance rules for mattress and (proposed) for upholstered furniture.

CPSC's flammability performance rules neither require nor prohibit any fire safety technologies, including flame retardant chemical treatments. Halogenated flame retardants are not currently used in the U.S. to meet any existing or proposed CPSC flammability performance rules.

**2) Has the CPSC tested fire retardants for safety and the impact of long term exposure to retardant materials in furniture and clothing on children and adults?**

Response:

CPSC has studied flame retardant chemical (FRs) safety extensively. Recently, in developing rules on mattresses and upholstered furniture, CPSC staff reviewed many toxicity data reports, conducted laboratory experiments to assess potential exposure, and developed estimates of human health risks associated with FRs that could be used to comply with various alternative regulatory approaches. While developing the Commission's 2006 mattress open-flame rule<sup>2</sup>, CPSC staff conducted an exposure and risk assessment of possible fire retardant treated barriers that could be used to meet the Standard. The assessment included conservative assumptions for the calculations used to estimate the risk of health effects to consumers, and was subjected to external peer review. The staff concluded that there were fire retardant treated barriers that could be used in mattresses that would not pose an unreasonable risk of health effects to consumers.

In the case of upholstered furniture, the staff's evaluation of flame retardant fabric treatments (and a National Academy of Sciences report<sup>3</sup> on the subject) concluded that the most likely treatments would not pose significant health risks, but that data were lacking for other candidate treatments; the staff's evaluation of flame retardant polyurethane foam treatments concluded that one currently used candidate was unlikely to pose significant risks, but that complete data were lacking, and another currently used candidate could pose a significant risk. In view of these conclusions and other guiding factors, the Commission's 2008 proposed rule<sup>4</sup> is crafted such that neither fabric nor foam flame retardant treatments would likely be used as a method of compliance. The chosen approach would not result in consumer exposure to flame retardant chemicals.

The flammability performance requirements for children's sleepwear<sup>5</sup> do not mandate or prohibit any type of fabric or flame-retardant treatments. Due to fiber characteristics,

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<sup>2</sup> 16 Code of Federal Regulations Part 1633. Standard for the Flammability (Open-Flame) of Mattresses.

<sup>3</sup> Toxicological Risks of Selected Flame-Retardant Chemicals. National Research Council. National Academy Press, Washington, DC. 2000.

<sup>4</sup> U.S. Consumer Product Safety Commission. Standard for the Flammability of Residential Upholstered Furniture: Proposed Rule. 73 *Federal Register* 11701; March 4, 2008.

<sup>5</sup> 16 Code of Federal Regulations Parts 1615 and 1616.

however, some synthetic fabrics pass the test, but untreated cotton fabrics generally do not.

While not prohibited from doing so, apparel manufacturers have been reluctant to treat sleepwear fabrics with flame-retardant chemicals since the late 1970s. Sleepwear treated with flame-retardant chemicals, including the flame-retardant chemical tris (2,3 – dibromopropyl) phosphate, commonly known as Tris, was available in the 1970s. However, after it was determined that Tris caused cancer in test animals, almost all children's sleepwear garments treated with any type of flame-retardant chemical disappeared from the market.<sup>6</sup>

In 1996 CPSC amended the children's sleepwear flammability standards to exempt sleepwear sized for infants aged 9 months and younger and tight-fitting sleepwear for older children.<sup>7</sup> This allows parents to choose cotton sleepwear for their children, as long as it meets the tight-fitting requirements.

CPSC continues to monitor ongoing studies, including CPSC-requested chronic toxicity studies by the National Toxicology Program of the Department of Health and Human Services, which will contribute to the overall level of knowledge about FR chemicals among scientists and regulators.

**3) Does the CPSC have plans to consider including the costs of chemical exposure in their calculation of the impact of product hazards?**

Response:

CPSC does plan to consider potential costs associated with potential health effects, related to chemical exposures or otherwise, in the context of specific rulemaking activities. In the ongoing proceeding on upholstered furniture flammability, for example, CPSC staff plans to consider potential health costs in its regulatory analyses, to the extent that FR chemical additives could be used to comply with a rule or other alternatives. In keeping with the agency's objective to provide reductions in product-related fire risks without imposing potential health risks, this rule would not likely result in chemical exposures or attendant potential costs to consumers. In 2006 (the most current data), there were an estimated 2,280 deaths, 12,820 injuries and \$6.3 billion in property loss associated with unintentional residential structural fires.<sup>8</sup> The estimated societal cost of these fire losses was approximately \$20 billion.

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<sup>6</sup> The CPSC banned brominated Tris under the Federal Hazardous Substances Act and it disappeared from the market; the ban was later overturned. Subsequently, EPA issued and Significant New Use Rule (SNUR) for brominated Tris.

<sup>7</sup> U.S. Consumer Product Safety Commission. Standard for the flammability of children's sleepwear: sizes 0 through 6x; standard for the flammability of children's sleepwear: sizes 7 through 14. *Federal Register* 1996; 61 (175):47634-47649.

<sup>8</sup> Miller, D., Chowdhury, R. and Greene, M. 2004-2006 Residential Fire Loss Estimates. U.S. National Estimates of Fires, Deaths, Injuries and Property Losses from Unintentional Fires. U.S. Consumer Product Safety Commission. October 2009.

- 4) **When considering the safety of materials like lead, phthalates, cadmium, and toxic chemical in products, what consideration is given to the impact on consumer safety when those products reach the waste stream and possibly cause unsafe exposure through the air or water?**

Response:

While waste management and “end of life” product recycling is not within the Commission’s jurisdiction, the CPSC does consider chemical risks from children’s products in the context of overall chemical exposure by a child. For example, section 108 of the CPSIA requires that we look at a wide pattern of possible exposures in assessing the toxicity of children’s products containing phthalates. We also coordinate with other agencies with relevant jurisdiction over waste, and specifically turn to the U.S. Environmental Protection Agency (EPA) for disposal guidance for products that contain toxic substances.

**Questions on Minority Hiring and Contracting**

- 1) **Does the CPSC have a written diversity outreach, hiring and contracting plan in place?**

Response: Yes, the CPSC outreach and hiring plan is detailed in our annual MD-715 report to the Equal Employment Opportunity Commission. A copy of the plan is enclosed. CPSC also has a diversity outreach management goal to address under representation written into its strategic plan. The Office of EEO and Minority Enterprise serves as the small and disadvantage business agency liaison. This office responds in writing to requests for information, networks, and conducts outreach activities with small and disadvantaged business communities through conferences and workshops.

- 2) **Will you provide the Subcommittee with information regarding the diversity of the professional full time employees at the CPSC broken down by job title or GS level?**

Response: Yes, a copy of career, professional full-time employees by job title and GS grade level is attached at Appendix A.

- 3) **What measures or procedures are in place at the CPSC to ensure that it is recruiting and hiring a diverse staff including from different race and ethnicities, for instance does CPSC recruit or have a internship programs at Historically Black Colleges and Universities and other Minority Serving Institutions?**

Response: CPSC has a diversity outreach management goal to address underrepresentation written into its strategic plan and conducts outreach activities with many organizations, including Historically Black Colleges and Universities (HBCUs) and

other Minority Serving Institutions as well as vocational rehabilitation offices and veterans groups for agency vacancies. CPSC has recently sent recruitment memoranda and brochures to all HBCUs, Hispanic Serving Institutions, and Tribal Colleges promoting the agency as the employer of choice.

When funding is available, CPSC works with the Hispanic Association of Colleges and Universities (HACU) to bring aboard a student engineering intern. CPSC has partnered with Howard University Law School to bring law interns into the agency. In addition, CPSC participates in job fairs including minority job fairs such as the recent Society of Hispanic Professional Engineer, Blacks in Government job fair, and will participate in the Office of Personnel Management Hiring Fair for Schedule A appointees.

We also take advantage of marketing our agency as an employer of choice through networking at conferences sponsored by Federally Employed Women, the Federal Asian Pacific Islander Council, the Urban League, the National Association for the Advancement of Colored People (NAACP), the National Council of La Raza, League of United Latin American Citizens (LULAC), and National IMAGE, Inc. CPSC also leverages its partnerships with other federal agencies, including using the National Council of Hispanic Employment Program Managers, to disseminate our vacancies in an effort to achieve a diverse applicant pool. Finally, we attend local elementary and secondary school career days and sponsor a career day and internships for a local high school.

**4) On the procurement and contracting side, can you also provide us with information regarding the amount and percent of contracts that the CPSC makes with small and disadvantaged business enterprises, particularly women and minority owned firms?**

**Response:** CPSC awarded a total of 886 contracts for \$26,447,912.31 in FY 2009. CPSC awards for small businesses are shown in the table below. This data was compiled through the GSA Federal Procurement Data System - Next Generation (FPDS-NG) (info website: [https://www.fpds.gov/fpdsng\\_cms/](https://www.fpds.gov/fpdsng_cms/)).

Type of Business	CPSC Small Business Awards		
	Actions	Dollars	Percent (total contracts)*
Small Business	381	\$11,402,341.69	43.1%
Small Disadvantaged	43	\$7,532,679.89	28.5%
8(a) Procedure	27	\$7,368,054.68	27.9%
Veteran Owned Small Business	14	\$2,459,937.72	9.3%
Service Disabled Veteran Owned Small Business	7	\$2,270,630.22	8.6%
Women Owned Small Business	140	\$4,059,857.76	15.4%
Certified HUBzone Small Business	14	\$2,666,862.65	10.1%

\*Percents do not add to 100% due to overlap among the categories.

**5) What proactive steps is the CPSC taking to ensure a diversity of companies can compete for any contracts that you offer?**

Response:

CPSC's written directives on procurement encourage the use of set-asides, such as 8(a) set-asides and identification of 8(a) and other small business sources. These goals are further clarified during face to face acquisition planning for specific procurements. Anticipated open market procurements exceeding \$25,000 are synopsisized in FedBizOpps and are available for all business enterprises to review.

In addition, the agency sets aside all procurements for small businesses when two or more responsible small business sources have been identified. When possible, these are further set-asides for 8(a) small and disadvantaged business firms. We have had continued success in soliciting the participation of, and awarding contracts to, small businesses and small disadvantaged businesses, and veteran owned, service disabled veteran owned, women owned, and HUBzone businesses.

Also, CPSC staff from the Office of EEO and Minority Enterprise has participated in small and disadvantaged business fairs, which included veterans, women, and minority owned businesses and has conducted presentations about contracting opportunities for these groups. Additionally, this individual is exploring the establishment of a website link to a small business page that would describe and define opportunities for businesses.

## Appendix A

CPSC PROFESSIONAL\* WORKFORCE as of March 31, 2010

\* Includes OPM Position Categories of Administrative and Professional

JOB TITLE	GRADE	TWO OR MORE RACES	ASIAN	BLACK	HISPANIC	AMER IND ALASKAN NAT	WHITE
		#	#	#	#	#	#
ACCOUNTANT	12			2.			1.
ACCOUNTING OFFICER	14						1.
ADMIN SERVICES ANALYST	12			1.			
ADMIN SERVICES OFFICER	14			1.			
ADMINISTRATIVE OFFICER	11		1.				1.
ADMINISTRATIVE SERVICES SPECIALIST	09			1.			
ADMINISTRATIVE SERVICES SPECIALIST	12			1.			
ADMINISTRATIVE SERVICES SPECIALIST	13						1.
AED FOR COMPLIANCE & ADMIN LIT	00						1.
AED FOR ECONOMIC ANALYSIS	00						1.
AED FOR EPIDEMIOLOGY	00						1.
AED FOR INFO & TECH SVCS	00						1.
ASSOC EXEC DIR FOR HS	00						1.
ASSOC EXEC DIR FOR LS	00						1.
ASST EX DIR HAZ ID & RED	00						1.
AUDIOVISUAL PROD SPEC	11						1.
AUDITOR	13		1.	1			1.
AUDITOR	14						1.
BUDGET ANALYST	07			1			1.
BUDGET ANALYST	12			1.			
CHEMICAL ENGINEER	14						1.
CHEMIST	09						2.
CHEMIST	11						1.
CHEMIST	12						2.
CHEMIST	13	1.	1.				1.
CHEMIST	14		1.				
CHEMIST	15						1.
CHIEF FINANCIAL OFFICER	00						1.
COMPLIANCE INVESTIGATOR	12						4.
COMPLIANCE INVESTIGATOR	13				1		9.
COMPLIANCE OFFICER	07						3.
COMPLIANCE OFFICER	09	1		4	2.		1.
COMPLIANCE OFFICER	11		1.	1			
COMPLIANCE OFFICER	12			1			1.
COMPLIANCE OFFICER	13		3.	3.			9.
CONTRACT SPECIALIST	12			2			3.
CONTRACT SPECIALIST	13			1			
DEP DIR, OFFICE OF COMPLIANCE	00						1.
DEPUTY AED, HAZ ID & RED	00						1.
DEPUTY DIRECTOR	14			1.			
DEPUTY EXECUTIVE DIR	00						1.
DIRECTOR OF HUMAN RESOURCES	15						1.
DIRECTOR, INTL. PROG & INTERGOV AFRS	15						1.
DIRECTOR, PROCUREMENT SERVICES	15						1.
DOCKET & HEARING COORD. SPEC	12			1.			
ECONOMIST	09		1.				
ECONOMIST	12						1.
ECONOMIST	13						2.
ECONOMIST	14						5.
ELECTRICAL ENGINEER	13		1.	1.			4.

CPSC PROFESSIONAL* WORKFORCE							
		TWO OR MORE RACES	ASIAN	BLACK	HISPANIC	AMER IND ALASKAN NAT	WHITE
JOB TITLE	GRADE	#	#	#	#	#	#
ELECTRICAL ENGINEER	14		1.				
ELECTRONICS ENGINEER	13		1.				
ENGINEER PSYCHOLOGIST	13						1.
ENGINEERING PSYCHOLOGIST	13						1.
ENGINEERING PSYCHOLOGIST	13			1			1.
ENGINEERING PSYCHOLOGIST	14						3.
EQUAL EMPLOYMENT MGR	15						1.
EQUAL EMPLOYMENT SPECIALIST	13			1.			
EXECUTIVE DIRECTOR	00						1.
FIN & MGMT INFO SYS OFFR	15			1.			
FINANCIAL MGMT SPEC	09			1.			1.
FIRE PROTECTION ENGINEER	13						1.
GENERAL ATTORNEY	12						1.
GENERAL ATTORNEY	13			1			1.
GENERAL ATTORNEY	14				1		1.
GENERAL ATTORNEY	15		1.				10.
GENERAL COUNSEL	00						1.
GENERAL ENGINEER	13		1.				
GENERAL ENGINEER	14						3.
HR SPECIALIST (HR DEVELOPMENT)	13						1.
HUMAN RESOURCES SPEC (HUMAN CAPITAL)	14			1			
HUMAN RESOURCES SPECIALIST	13			2			2.
INFO TECH SPEC (APPL SOFTWARE)	12						1.
INFO TECH SPEC (SYS ADMINIST)	12		1.				
INFORMATION MANAGEMENT	09			1.			
INFORMATION MGMT SPECIALIST	09			1.			
INTERNATIONAL TRADE SPECIALIST	13						1.
IT PROJECT MANAGER	14						1.
IT SPECIALIST	13	1					
IT SPECIALIST (APPSW)	13		3.				
IT SPECIALIST (CUSTSPT)	13		2.	1.			2.
IT SPECIALIST (DATAMGMT)	13		1.				
IT SPECIALIST (DATAMGT)	14		1.				
IT SPECIALIST (INFOSEC)	13						1.
IT SPECIALIST (INFOSEC)	14			1.			
IT SPECIALIST (INTERNET)	13						1.
IT SPECIALIST (NETWORK)	13				1.		3.
IT SPECIALIST (POLICY & PLANNING)	13			1.			
IT SPECIALIST (POLICY AND PLANNING)	15						1.
LEAD COMPLIANCE OFFICER	14			3.	1.		4.
LEAD ENGINEERING PSYCHOLOGIST	14						1.
LEAD GENERAL ENGINEER	14		1.				3.
LEAD MATHEMATICAL STATISTICIAN	14		1.				
LEAD TECHNICAL INFO SPECIALIST	12						1.
LEAD TOXICOLOGIST	14			1.			
LEAD TRIAL ATTORNEY (GENERAL)	15						2.
MANAGEMENT ANALYST	11						1.
MANAGEMENT ANALYST	13						1.
MANAGEMENT ANALYST	14						1.
MATHEMATICAL STATISTICIAN	09		1.				
MATHEMATICAL STATISTICIAN	11						1.
MATHEMATICAL STATISTICIAN	13						5.
MATHEMATICAL STATISTICIAN	15						1.

CSPC PROFESSIONAL* WORKFORCE							
		TWO OR MORE RACES	ASIAN	BLACK	HISPANIC	AMER IND ALASKAN NAT	WHITE
JOB TITLE	GRADE	#	#	#	#	#	#
MECHANICAL ENGINEER	07						1.
MECHANICAL ENGINEER	09						1.
MECHANICAL ENGINEER	12						1.
MECHANICAL ENGINEER	13		2.	3.			8.
MGMT & PROGRAM ANALYST	14	1					
MGMT & PROGRAM ANALYSIS OFFR	15						1.
MGMT AND PROGRAM ANALYST	13			1			
OPERATIONS RESEARCH ANALYST	09		1.				1.
OPERATIONS RESEARCH ANALYST	13						1.
PARALEGAL SPECIALIST	09			1			1.
PARALEGAL SPECIALIST	11			1.			
PHARMACOLOGIST	13						2.
PHARMACOLOGIST	14						2.
PHYSIOLOGIST	13						2.
PHYSIOLOGIST	14						1.
PROCUREMENT ANALYST	15						1.
PROD. SAFETY INVESTIGATOR	11						1.
PROD. SAFETY INVESTIGATOR	09	2					2.
PROD. SAFETY INVESTIGATOR	11		1.	1	1		3.
PROD. SAFETY INVESTIGATOR	12		3.	7.	4.	1.	44.
PROD. SAFETY INVESTIGATOR	13						7.
PRODUCT SAFETY INVESTIGATOR	11						2.
PRODUCT SAFETY INVESTIGATOR	13						1.
PROGRAM ANALYST	11			2			2.
PROGRAM ANALYST	12		1.	1.	2.		2.
PROGRAM ANALYST	13	1	3.	1.			3.
PROGRAM ANALYST	14						1.
PROGRAM MANAGER	14			1.			2.
PROGRAM MANAGER	15				1.		3.
PUBLIC AFFAIRS SPECIALIST	11			1			
PUBLIC AFFAIRS SPECIALIST	12						1.
PUBLIC AFFAIRS SPECIALIST	13			2.	1.		2.
SENIOR ATTORNEY ADVISOR	14	1					
SERVICES MGMT OFFICER	14						1.
SPECIAL ASSISTANT	15						1.
STATISTICIAN (HEALTH)	13		1.	1.			2.
SUPERVISORY ECONOMIST	15						1.
SUPERVISORY GENERAL ATTORNEY	15		1.	1.			
SUPERVISORY GENERAL ATTORNEY (CR)	15						1.
SUPERVISORY PARALEGAL SPECIALIST	14			1.			
SUPERVISORY STATISTICIAN	14						1.
SUPERVISORY STATISTICIAN	15						1.
SUPERVISORY TOXICOLOGIST	15						1.
SUPV ADMIN OFFICER	15						1.
SUPV CHEMIST	15						1.
SUPV COMPLIANCE INVESTIGATOR	14						2.
SUPV COMPLIANCE OFFICER	15						1.
SUPV ELECTRICAL ENGINEER	15						1.
SUPV ENG PSYCHOLOGIST	15						1.
SUPV GENERAL ATTORNEY (IG)	15						1.
SUPV GENERAL ENGINEER	15						1.
SUPV HUMAN RESOURCES SPECIALIST	14			1.			1.
SUPV IT SPECIALIST	15						1.

CPSC PROFESSIONAL* WORKFORCE							
		TWO OR MORE RACES	ASIAN	BLACK	HISPANIC	AMER IND ALASKAN NAT	WHITE
JOB TITLE	GRADE	#	#	#	#	#	#
SUPV IT SPECIALIST (NETWORK)	14						1.
SUPV IT SPECIALIST (APPSW)	14		1.				
SUPV IT SPECIALIST (CUSTSPT)	14						1.
SUPV MANAGEMENT ANALYST	15						1.
SUPV MECHANICAL ENGINEER	15		1.				1.
SUPV PHARMACOLOGIST	15						1.
SUPV PROD SAFETY INVEST	13						8.
SUPV PROGRAM ANALYST	14						1.
SUPV PUBLIC AFFAIRS SPECIALIST	14						1.
SUPV STATISTICIAN (HEALTH)	15						1.
SUPV TRIAL ATTORNEY (GENERAL)	15						1.
SUPVY PROGRAM ANALYST	13						1.
SUPVY GENERAL ENGINEER	15						1.
SUPVY PRODUCT SAFETY INVESTIGATOR	13						1.
SUPVY PROGRAM ANALYST	13			1.		1.	
SUPVY PROGRAM ANALYST	14						1.
SYSTEMS ACCOUNTANT	13		1.				
TECH INFO SPEC	09		1.				
TECH INFO SPEC	11			1.			
TEXTILE TECHNOLOGIST	12						1.
TEXTILE TECHNOLOGIST	13		2.				2.
TEXTILE TECHNOLOGIST	14						1.
TOXICOLOGIST	12			1.			
TOXICOLOGIST	13						2.
TOXICOLOGIST	14						1.
TRIAL ATTORNEY	12						1.
TRIAL ATTORNEY (GENERAL)	12						3.
TRIAL ATTORNEY (GENERAL)	14			1.			3.
TRIAL ATTORNEY (GENERAL)	15						1.
VOLUNTARY STANDARDS COORD	15						1.
<b>TOTALS = 432</b>		<b>8</b>	<b>44</b>	<b>73</b>	<b>15</b>	<b>2</b>	<b>290</b>
		<b>1.9%</b>	<b>10.2%</b>	<b>16.9%</b>	<b>3.5%</b>	<b>0.5%</b>	<b>67.1%</b>

EEOC FORM 715-01 PART A - D		U.S. Equal Employment Opportunity Commission FEDERAL AGENCY ANNUAL EEO PROGRAM STATUS REPORT			
For period covering <u>October 1, 2008</u> , to <u>September 30, 2009</u> .					
<b>PART A</b> Department or Agency Identifying Information	<b>1. Agency</b>		1. US Consumer Product Safety Commission		
	1.a. 2 <sup>nd</sup> level reporting component		N/A		
	1.b. 3 <sup>rd</sup> level reporting component		N/A		
	1.c. 4 <sup>th</sup> level reporting component		N/A		
	<b>2. Address</b>		2. 4330 East West Highway		
	<b>3. City, State, Zip Code</b>		3. Bethesda, MD 20814		
	<b>4. CPDF Code</b>	<b>5. FIPS code(s)</b>	<b>4. SK00</b>	<b>5. 24031</b>	
<b>PART B</b> Total Employment	1. Enter total number of permanent full-time and part-time employees				1. 439
	2. Enter total number of temporary employees				2. 22
	3. Enter total number employees paid from non-appropriated funds				3. 0
	<b>4. TOTAL EMPLOYMENT [add lines B 1 through 3]</b>				<b>4. 461</b>
<b>PART C</b> Agency Official(s) Responsible For Oversight of EEO Program(s)	1. Head of Agency Official Title		1. Inez Tenenbaum, Chairman		
	2. Agency Head Designee		2. N/A		
	3. Principal EEO Director/Official Official Title/series/grade		3. Kathleen Buttrey, Director, EEO and Minority Enterprise, GS-260-15		
	4. Title VII Affirmative EEO Program Official		4. Kathleen Buttrey, Director, EEO and Minority Enterprise		
	5. Section 501 Affirmative Action Program Official		5. Kathleen Buttrey, Director, EEO and Minority Enterprise		
	6. Complaint Processing Program Manager		6. Debbie Waterman, EEO Specialist		
	7. Other Responsible EEO Staff				

EEOC FORM 715-01 PART A - D	U.S. Equal Employment Opportunity Commission FEDERAL AGENCY ANNUAL EEO PROGRAM STATUS REPORT		
<b>PART D</b> List of Subordinate Components Covered in This Report	Subordinate Component and Location (City/State)	CPDF and FIPS codes	
	None		
EEOC FORMS and Documents Included With This Report			
*Executive Summary [FORM 715-01 PART E], that includes:	X	*Optional Annual Self-Assessment Checklist Against Essential Elements [FORM 715-01PART G]	NA
Brief paragraph describing the Agency's mission and mission-related functions	X	*EEO Plan To Attain the Essential Elements of a Model EEO Program [FORM 715-01PART H] for each programmatic essential element requiring improvement	NA
Summary of results of Agency's annual self-assessment against MD-715 "Essential Elements"	X	*EEO Plan To Eliminate Identified Barrier [FORM 715-01 PART I] for each identified barrier	NA
Summary of Analysis of Work Force Profiles including net change analysis and comparison to RCLF	X	*Special Program Plan for the Recruitment, Hiring, and Advancement of Individuals With Targeted Disabilities for agencies with 1,000 or more employees [FORM 715-01 PART J]	NA
Summary of EEO Plan objectives planned to eliminate identified barriers or correct program deficiencies	X	*Copy of Workforce Data Tables as necessary to support Executive Summary and/or EEO Plans	X
Summary of EEO Plan Action items implemented or accomplished	X	*Copy of data from 462 Report as necessary to support action items related to Complaint Processing Program deficiencies, ADR effectiveness, or other compliance issues	NA
*Statement of Establishment of Continuing Equal Employment Opportunity Programs [FORM 715-01 PART F]	X	*Copy of Facility Accessibility Survey results as necessary to support EEO Action Plan for building renovation projects	NA
*Copies of relevant EEO Policy Statement(s) and/or excerpts from revisions made to EEO Policy Statements	X	*Organizational Chart	X

The U.S. Consumer Product Safety Commission (CPSC) is an independent health and safety regulatory Agency, responsible for protecting the American public from unreasonable risks of injury and death from thousands of consumer products.

CPSC's mission is to address unreasonable risks of injury and death from consumer products and to assist consumers in evaluating the comparative safety of consumer products. The CPSC has two major programs: Reducing product hazards to consumers and identifying product hazards. CPSC uses a variety of tools to reduce the risks of hazardous consumer products including (1) developing and strengthening voluntary and mandatory safety standards; (2) initiating recalls and corrective actions of hazardous products and enforcing existing regulations; and (3) alerting the public to safety hazards and safe practices.

Under its work on strategic management of human capital under the President's Management Agenda, CPSC established recruitment and training goals to strengthen the Agency's Equal Employment Opportunity (EEO) program.

#### Summary of Agency's Annual Self-Assessment

The Agency's annual self-assessment against the essential elements of a model EEO program reveals the following strengths, weaknesses and plans to overcome identified weaknesses (bolded):

- **Element A – Demonstrated Commitment from Agency Leadership.**

The Chairman's policy letters on Non-Discrimination in Employment and the Prevention of Harassment were issued to the entire workforce via email on July 21, 2009. **The Chairman will re-issue the EEO policy statement annually.**

New employees are provided a copy of the policy letters, along with other EEO related material, upon in-processing. EEO materials, including the Directive on Reasonable Accommodation, are posted on the EEO intranet site. The Directive on Reasonable Accommodation is also posted on our public website. EEO has dedicated bulletin boards in the Headquarters building where materials and information, including the counselor poster, policy letters and No Fear Act information, are displayed. EEO related materials are available in the personnel office.

We conduct management training regarding their responsibilities under the procedures for reasonable accommodation as well as EEO policies and principles. We inform the workforce of what behaviors are inappropriate and the penalties for unacceptable behavior through training, email, and one on one counseling.

Through our Directive on EEO and procedures for filing complaints of discrimination we reinforce managers and supervisors responsibilities to address concerns, resolve conflicts, and take appropriate corrective action.

Managers and supervisors are evaluated on their support of EEO goals.

- **Element B – Integration of EEO into the Agency's Strategic Mission.**

The Director of EEO reports directly to the Chairman with clearly defined duties and the knowledge, skills and abilities to carry out the duties and responsibilities of the position. The Director has access as needed to the Chairman, Chief of Staff, and other senior management officials to inform them of the status of the Agency's EEO program on a regular basis.

The Chairman, Chief of Staff, Commissioners, managers and supervisors were provided the opportunity to identify barriers, develop action items, and report on the accomplishments listed in this plan prior to its submission. Senior leaders were asked to review Agency recruitment, retention, and advancement within their organizations and identify any new barriers to equal opportunity and commit to an action item to overcome any current or new barriers. Additionally, each senior official received a copy of this report prior to its submission for information and review as part of the State of the Agency briefing report.

The EEO office works with selecting officials in developing outreach initiatives to ensure the widest possible applicant pool. EEO provides advice and assistance to managers and supervisors on employment related issues and concerns.

The Agency has appointed a Disability Program Manager and in FY04 revised the Agency directive on the reasonable accommodation process. The directive is posted on the Agency directives and EEO intranet sites, and on the public web site. EEO staff work collectively and individually on a case-by-case basis with supervisors and employees on procedures for reasonable accommodation. EEO works closely with the Office of Human Resources Management (EXRM), Office of General Counsel (OGC), the supervisor and the employee providing assistance with accommodation issues. A central Agency fund exists for providing ergonomic assessments and equipment. The Agency has a memorandum of agreement with the Defense Computer and Electronic Equipment Program to provide other electronic and computer accommodations. In FY09, our bi-annual No FEAR Act training provided all employees training in reasonable accommodations.

The Agency has appointed Federal Women's Program, Black Employment Program and Hispanic Employment Program managers. The Agency has three EEO Counselors.

The EEO office is responsible for coordinating compliance with the Federal Equal Opportunity Recruitment Program (FEORP), Veterans Employment Programs and other special emphasis programs.

EEO training and education programs are made available to all supervisors and employees through a variety of methods. Headquarters training and programs are broadcast live and videotaped and posted on the EEO intranet site available to supervisors and employees teleworking full-time and for those Headquarters staff that may have missed the opportunity to participate. The EEO Director provides training at Field Managers meetings and regional employee meetings. Funding is adequate to support EEO program goals including funding for EEO materials, training, and the EEO complaints process.

This year, several EEO related training opportunities were conducted for employees, managers and supervisors including the ADA act of 2008, Ebbing the Tide of Reprisal Complaints, How to Stay Out of Legal Hot Water, Demystifying EEO (for employees), Workplace Harassment, and Conflict Resolution (Field Staff). A power-point refresher training on Mediation was provided to 100% of the workforce.

This past year, we have been able to fund training opportunities for collateral duty EEO counselors (EEO refresher training) and special emphasis program managers including the Blacks in Government (BIG) and Federally Employed Women (FEW) conferences. Training was funded for EEO full-time staff, including the Perspectives in Disability conference and the EEOC EXCEL conference.

EEO officials are provided a copy of weekly staffing reports to identify anticipated vacancies for outreach activities. EEO officials participate in Agency selections for executive level training. Additionally, EEO is included in the review of Agency documents, policies, and directives that may affect EEO.

- **Element C – Ensuring Management and Program Accountability.**

The EEO staff provides regular reports to the Chairman and senior staff on the status of the EEO program. The EEO Director regularly sends out EEO-related information to senior Agency staff. This information includes case law updates, reports on best practices, Government Accountability Office (GAO), Office of Personnel Management (OPM), Merit Systems Protection Board (MSPB) and other reports on EEO and diversity. This information is posted on the EEO Outlook bulletin board and on employee exchange.

EEO meets weekly with the Executive Director, Deputy, Human Resource Director and Office of General Counsel to discuss employee relations and EEO issues of concern.

The Agency developed a training directive for supervisors, managers and executives, which include both substantive and procedural EEO training components. The Agency also developed a directive establishing a Federal Career Intern Program. **In 2005, the Agency reviewed and updated its merit promotion policy and procedures. The EEO office provided input into this review. The Agency is purchasing a Talent Management System that will assist managers in developing competencies for job series and subsequent training plans to close any employee skill gaps. This system will help senior managers identify leadership competencies to identify training plans to grow leaders at all levels.**

No findings of discrimination or breach of settlement agreements have occurred in the Agency in the past year.

There have been no instances of Agency noncompliance with Equal Employment Opportunity Commission (EEOC), MSPB, Federal Labor Relations Authority (FLRA), arbitrators, and District Court orders.

- **Essential Element D – Proactive Prevention.**

EEO staff and senior managers collaborated on the barrier assessment, analysis, objectives and accomplishments forming the framework of this plan. This assessment included trend analyses of workforce profiles, major occupations, grade level distribution, compensation and reward systems, and a general review of the effectiveness of management/personnel policies, procedures and practices by race, national origin, sex, and disability.

Input is sought regarding the workforce environment through several means. These include assessment of exit interviews, employee surveys, and the annual OPM Human Capital Survey.

The Agency includes annual EEO performance goals as part of its performance and budget plan under the President's Management Agenda in the areas of targeted recruitment, EEO training, and diversity initiatives. EEO staff works with managers at all levels in successfully implementing these goals. The goals include conducting recruitment outreach initiatives and developing plans to increase representation of Hispanics and individuals with disabilities in the Agency workforce. The latter have included mentoring programs, awareness training, shadowing assignments, targeted outreach and partnering with a local high school. In FY09, we exceeded all these goals.

The Agency has an effective Alternative Dispute Resolution (ADR) program with employees encouraged to consider participating in the process. When an employee requests ADR and it is deemed appropriate to offer ADR, supervisors and managers are required to participate.

The Agency has revised its ADR directive to ensure incorporations of the suggestions made by EEOC in its August 4, 2005 letter to the Agency. That directive was signed by the Chairman in FY06 and distributed again to all employees via email notification. In FY09, the Agency conducted refresher training in Mediation for 100% of personnel via an intranet training presentation.

**Since 2007, CPSC has captured and reviewed applicant flow data through the Quick Hire system. This data captures all race/national origin (RNO) groups including Native Hawaiian/Pacific Islanders and individuals with disabilities. Since August 2005, CPSC has captured RNO data for Native Hawaiian or Other Pacific Islander new employees using the revised SF181. In FY04 we developed a tool that included Native Hawaiian or Other Pacific Islander as well as other RNO groupings and resurveyed our entire workforce.**

- **Essential Element E – Efficiency.**

EEO staff has the necessary training and experience to conduct the MD-715 analysis.

The Agency gets its personnel data base support from Department of Interior (DOI).

The EEO Office conducts periodic assessments of data contained in the Human Resource database against standard forms received and manual reports compiled as a quality control measure for Race, National Origin (RNO) and disability data.

FY09 afforded the Agency the use of Quick Hire for recruitment purposes. Quick Hire has an effective means of capturing or gathering applicant flow data including RNO and disability data on applicants for employment; recruitment trends, and targeted recruitment effort, **which is used by the Agency. FY09 data indications is addressed in the workforce analysis portion of this report.**

The Agency uses a complaint tracking and monitoring system that allows identification of the location, status, length of processing time at each stage, issues, bases, complainant, and involved management officials.

The Agency also monitors trends via the annual EEOC 462 report including the new complaint trend analysis. We also monitor the training of contract investigators and collateral duty counselors via this report. **In FY08, 60% of individuals filing pre-complaints were offered consideration for ADR (3 of 5 individuals). Two of the 5 pre-complaints were deemed not suitable for ADR due to the nature of the complaint issues. Of the three pre-complaints considered for ADR, the Agency rejected one as the complaint was outside the purview of the Agency to resolve. In FY09, of the 8 pre-complaints completed, 7 or 88% were offered consideration for ADR. Four of the seven individuals offered ADR consideration rejected ADR and elected traditional counseling. Out of the 3 ADR attempts, 67% were resolved.**

Our complaint tracking system provides the benchmarks for comparison of the Agency's processing of discrimination complaints with 29 C.F. R. Part 1614.

Given its size and personnel constraints, the Agency does everything within its power to ensure no conflicts exist with regard to legal sufficiency reviews, Agency representation in EEO complaints, and the neutral adjudication of EEO complaints. The Office of General Counsel and Office of EEO and Minority Enterprise have established a working relationship that provides for fair and timely review and consultation.

- **Essential Element F – Responsiveness and Legal Compliance.**

The EEO Director's performance plan contains elements ensuring the timely, accurate, complete and consistent reporting of EEO complaint data to the EEOC. In FY06, EEO began developing new management controls which will include reporting of data and compliance with corrective actions and settlements as required. This process is on-going.

In this reporting period, 100% of EEO counseling's were completed within the applicable timeframes. The average days for investigation were 148 (well below the EEOC required number of days of 180 days). The Agency issued no merit decisions in FY09.

### Summary of Analysis of Work Force Profiles

At the end of this reporting period, CPSC's workforce consisted of 439 full-time permanent employees (95% of the total workforce) located at the Headquarters in Bethesda, Maryland, the CPSC laboratory in Gaithersburg, Maryland and those assigned to Field and Import positions.

Of these, 425 were in the General Schedule (GS) and 14\*\* in the Senior Executive Service (SES). The CPSC has no employees in the Wage Grades (WG). The FY08 permanent workforce was 415.

\*\*One of the 14 reflected as a permanent SES is a political appointee and should be reflected under temporary employees. This issue has been reported to the Human Resource Management Office.

Hiring efforts resulted in gains across the workforce with a net change of 5.78% (24 employees) relative to our FY08 level in its permanent workforce. With the exception of African-American males (no change) and American Indian/Alaskan Native males (-66.8% or 2 separations) all other categories had positive net changes in FY09.

We experienced 28 permanent workforce losses.

	White Males	White Females	Black Males	Black Females	His Males	His Females	AA/PI Males	AA/PI Females	AI/AN Males	AI/AN Females
Voluntary Retirement	4 40%	3 30%		2 20%	1 10%					
Disability Retirement		1 100%								
Transfer to New Job	2 17%	2 17%		4 33%	1 8%		2 17%		1 8%	
Resignation	1 33%	1 33%		1 33%						
Death	1 50%	1 50%								
CPSC09 CLF	35.1	30.0	4.8	15.5	2.1	1.8	5.7	3.6	.2	.2

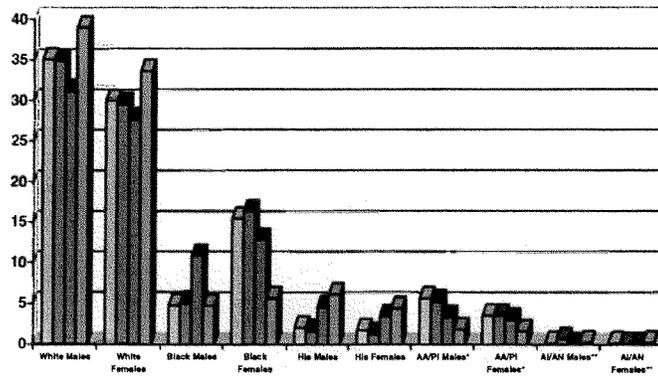
Minority losses due to transfer or resignation were 60% compared to their workforce representation of 35%. Fifty three percent of women were loss due to transfer or resignation compared to their workforce representation of 51%. One voluntary retirement and one death were also individuals with a disability. **A review of exit survey results indicate that 56% of the employees taking the survey would recommend CPSC to a friend as a good place to work. When asked what could be done to prevent the employee from leaving, of those that responded, opportunities for growth (training), promotion, and respect for abilities were the most frequent responses. When asked what CPSC could do better, those that responded said communication, decisiveness, meeting time, empowerment, and telecommuting.**

Permanent employees who have identified themselves as individuals with a disability experienced a net change of 2.8% (1 employee) representing 8.4% of the permanent workforce. Individuals with targeted disabilities remained the same at 7 employees, 1.6% of the permanent workforce which is still below the government high of 2.95%.

The Federal Information Processing Standards (FIPS) code identified in this report is that of Montgomery County, Maryland, as that is where the headquarters is located.

However, many employees and applicants reside in the greater Washington, DC-MD-VA-WV Primary Metropolitan Statistical Area (PMSA). Additionally, approximately 30% of our workforce resides across the US and our applicant pool potentially draws from across the US. Therefore, both the Greater Washington DC-MD-VA-WV PMSA and National Civilian Labor Force (CLF) are used for comparison purposes.

**FY08 Percentage of Permanent Workforce Distribution**



CPSC FY09	35.1	30.0	4.8	15.5	2.1	1.8	5.7	3.6	.2	.2
CPSC FY08	35.0	29.6	5.1	16.4	1.7	1.7	5.3	3.6	.7	.1
DC-MD-VA CLF	31.2	27.7	10.9	12.9	4.6	3.5	3.4	3.1	.1	.1
NCLF	39.0	33.7	4.8	5.7	6.2	4.5	1.9	1.7	.3	.3

\* AA/PI = Asian American/Pacific Islander  
 \*\* AI/AN = American Indian/Alaskan Native

Native Hawaiian or Other Pacific Islander Males represent .2% of the workforce (increase of 1 employee over FY08 total of 0) and Two or more races males represent .5% of the workforce (increase of one employee over FY08 total of one employee) with females representing .5% as well (staying constant at 2 employees).

In FY09 minorities represented 31% of permanent new hires, a decrease of 11% over permanent new hires in FY08. Black females and Asian males represented the majority of minority new hires at 13% for Black females (7 employees) and 9.1% for Asian males (5 employees). Asian females and Hispanic males represented 3.6% with 2 employees in each category. Women represented 47% of all permanent new hires, a decrease of 2% over FY08. Three FY09 new hires identified him or herself as an individual with a disability. No new individuals with target disabilities were identified. We will continue to try and meet our goal of one new hire of an individual with a targeted disability in FY10.

Of the permanent workforce in FY09, 245 employees or 56% are in the Officials and Managers occupation category compared to 238 employees or 57% in FY08. Of these 245 employees, 173 or 71% are non-supervisory. In FY09, 160 employees or 36% are in the Professional category compared to 142 or 34% in FY08. In FY09, 5 employees or 1.2% are in the Technicians category the same as in FY08. In FY09, 22 employees or 5% are in the Administrative Support Workers category compared to 25 or 6% Administrative Support Workers in FY08. Finally, in FY09, 6 employees or 1.4% are Service Workers compared to 5 employees or 1.2% in FY08. CPSC has no employees in the Sales Workers, Craft Workers, Operatives, or Laborers and Helpers occupational categories.

The percentage representation of employee groups in the **Officials and Managers** occupational category (our largest employment category with 245 employees) reflects the following information. CPSC occupational series in this category include GS-0301, 0340, 0343, 0501, 1102, and 1801.

**Officials and Managers Data**

	White Males	White Females	Black Males	Black Females	His Males	His Females	AA/PI Males	AA/PI Females	AI/AN Males	AI/AN Females
CPSC FY09	37.1	32.0	4.9	13.5	2.9	2.5	3.6	1.6	.4	.4
CPSC CLF 09	35.1	30.0	4.8	15.5	2.1	1.8	5.7	3.6	.2	.2
CPSC FY08	37.0	32.4	5.0	13.9	2.5	2.1	3.4	1.7	.8	.4
CPSC CLF08	35.0	30.0	5.0	16.4	1.7	1.7	5.3	3.6	.2	.2
DC Metro CLF	42.4	29.5	7.0	9.8	2.3	1.9	2.9	1.9	.1	.2
NCLF	52.1	30.6	2.8	3.5	3.3	2.4	2.1	1.3	.2	.2

Highlighted percentages indicate underrepresentation in that RNO category. In this category, Native Hawaiian or Other Pacific Islander males are .4% and two or more race females are .8%. Also, in this category, individuals with disabilities represented 9.8% of the permanent employees in FY09 compared to 9.7% of the permanent employees in FY08. Individuals with targeted disabilities represented .8% FY09, the same as in FY08. **Note that our Project Safety Investigator positions, which make up a good portion of our mid-level officials and managers group, have bona fide occupational physical requirements that may cause fewer individuals with disabilities to apply.**

The percentage representation of employee groups in the **Professionals** occupational category (our next largest employment category with 154 employees) reflects the following. CPSC occupational series in this category include GS-0110, 0180, 0201, 0405, 0415, 0510, 0801, 0830, 0850, 0905, 1035, 1320, 1629, 1529, 1530, and 2210.

**Professionals Data**

	White Males	White Females	Black Males	Black Females	His Males	His Females	AA/PI Males	AA/PI Females	AI/AN Males	AI/AN Females
CPSC FY09	36.9	28.8	5.0	9.4	1.3	.6	9.4	7.5	0	0
CPSC CLF09	35.1	30.0	4.8	15.5	2.1	1.8	5.7	3.6	.2	.2
CPSC FY08	38.0	26.8	5.6	10.7	.7	.7	9.2	7.8	0	0
CPSC CLF08	35.0	30.0	5.0	16.4	1.7	1.7	5.3	3.6	.2	.2
DC Metro CLF	35.8	32.9	6.7	10.4	1.8	1.9	4.8	3.5	.1	.1
NCLF	37.1	42.3	2.7	4.9	2.3	2.8	3.2	2.6	.2	.3

Highlighted percentages indicate underrepresentation in that RNO category. In this category, there are no Native Hawaiian or Other Pacific Island employees and 2 (1.3%) employees identified as two or more races (male). Also, in this category, individuals with disabilities represented 5.63% in FY09, the same as FY08 permanent employees. Individuals with targeted disabilities represented 1.25% in FY09, a slight decrease over the FY08 percentage of 1.41.

The majority of the permanent workforce is concentrated in the GS-12 and above grade levels.

Fiscal Year (FY)	GS-12	GS-13	GS-14	GS-15	SES
FY09	102	131	64	54	14
FY08	102	127	51	47	14

Participation rates of Women, Hispanic males and females, Black males and females, American Indian males and females and two or more races male and female in senior grade levels (GS13 – SES) fell below their rates in the CPSC permanent workforce.

	All Women	White Males	White Females	Black Males	Black Females	His Males	His Females	AA/PI Males	AA/PI Females	AI/AN Males	AI/AN Females	2+ races Males	2+ races Females
GS13-SES	44.9	41.4	29.7	3.8	8.8	1.5	.4	7.2	5.3	0	0	0	0
CPSC CLF	51.48	35.0	30.0	4.8	15.5	2.1	1.8	5.7	3.6	.2	.2	.5	.5

Highlighted percentages indicate underrepresentation in that RNO category. There was little improvement in FY09 over FY08 in the representation of individuals in the senior grade levels. Women represented 45.2% in FY08 despite a workforce participation rate of 52.1%, Black females – 8.4% despite a workforce participation rate of 16.4%.

However, in the 1801 series (Officials and Managers), our largest feeder groups to the GS13 and above grade level, 40 individuals are in career ladder positions at grades 7-12 with the target grade of GS13. Of those, 22% are women, 52% minority, and 2% individuals with disabilities. This includes 20% Black females, 10% Black males, 7% Hispanic females, and 5% 2+ race males and females.

CPSC major occupational categories are: GS-343, Management and Program Analyst (30 employees), GS-0905, Attorney (28 employees), GS-1801, General Inspection, Investigation, and Compliance (137 employees) and GS-2210, Information Technology Management (28 employees).

In the GS-0343 series, Hispanic females, White males, Asian males, and American Indian females are underrepresented in comparison to the relevant civilian labor force. No change from FY08. **FY09 applicant pool data shows that women and minorities were well represented and qualified but individuals with disabilities were lacking on referral lists.**

In the GS-0905 series, Hispanic females, White males, Black males, Asian/PI Males, and American Indian males and females are underrepresented compared to the relevant civilian labor force. **Due to a FY09 hire, Hispanic males are no longer underrepresented. FY09 applicant pool data shows the women and minorities are well represented and well qualified, however there were no individuals that identified themselves with a disability on any referral list.**

In the GS-1801 series, Hispanic males, White males, American Indian/Alaskan Native males are underrepresented compared to the relevant civilian labor force. **FY09 applicant data shows well qualified women, minorities and individuals with disabilities in the merit promotion and DEU Investigator hiring pools. In the Compliance Officer applicant pools, women and minorities are well represented and well qualified, however there is a lack of candidates with disabilities.**

In the GS-2210 series, Hispanic females, White males and females, and American Indian females are underrepresented compared to the relevant civilian labor force. **FY09 applicant data shows that women, minorities and individuals with disabilities are well qualified and well represented in the applicant pools.**

Individuals with two or more races are underrepresented across the major occupations.

Individuals with disabilities are not represented in GS-0905 labor force. The 2210 series now includes an individual with a disability.

**Generally, a review of FY09 applicant pool data indicates that well qualified women and minorities are well represented in hiring pools across series. However, a review of internal processes in selection of applicants may be warranted in some areas where minorities have not been traditionally brought into the workforce. The data does indicate a greater need to focus on outreach to individuals with disabilities across series.**

In FY09, 23 competitive promotion actions were finalized. Minority candidates received 34.8% of competitive promotions (1 Black male, 4 Black females, and 1 Asian female). Female candidates received 30.4% of competitive promotions.

In addition to the promotions indicated above, CPSC hired at least 23 employees into permanent positions with career-ladder promotion potential as high as the GS-13 (30% minorities, 60% females). In FY 08, CPSC hired 27 employees into positions with career-ladder promotion potential as high as the GS-13 (59% minorities, 56% females).

CPSC reviewed statistical data that reflected accessions, separations, promotions, major occupations, awards, grade and occupational distribution, and changes in the workforce for this report. We also reviewed Agency employee exit interviews, EEO complaint activity, applicant flow hire data, and the OPM Human Capital Survey.

#### **Summary of EEO Plan Objectives to Eliminate Barriers or Correct Program Deficiencies**

The Agency conducted a barrier analysis and assessment. Barriers and objectives to overcome identified barriers are identified below:

- **Recruitment** – Present recruitment sources may not yield the expected rate of qualified applicants of all racial and national origin groups, both sexes, and individuals with disabilities who meet organizational needs. Fiscal constraints have limited CPSC's ability to pay recruitment/retention bonuses, relocation expenses, interview travel expenses, cost of participation in job fairs or scientific meetings, and costs for job postings in scientific publications, job banks, or professional societies.

Several initiatives have been generated to increase CPSC visibility and target outreach activities to underrepresented populations. These included the direct-mailing to Hispanic-serving institutions of higher education of a recruitment brochure and materials with an introduction to the Agency and the nature of positions. **(Completed)** CPSC will compile statistical and contact information of the number of underrepresented groups graduating from colleges and universities with degrees in math, statistics, the sciences, engineering, and law so that recruitment efforts can be targeted. **(Continuing)**

CPSC will also generate a list of contacts with professional, trade and alumni associations serving underrepresented groups for targeted recruitment efforts. **(Completed)** CPSC will pursue opportunities to expand the worker-trainee placement program by increasing the use of Hispanic Association of Colleges and Universities (HACU) interns and the workforce recruitment program for college students with disabilities. **(Continuing)**

#### **Report of Accomplishments and Modification to Objective**

CPSC hosted no HACU interns at our Laboratory facility in FY09. **Funding exists to fund at least one intern in 2010.** CPSC was able to use the Schedule A student appointments to bring on students in offices throughout the Headquarters.

The Agency engaged in several other efforts to expand its applicant pool and introduce the Agency as an employer of choice:

- Pursued participation in Operation Warfighter. Provided resumes to managers as potential intern candidates. **In FY10, we hope to place at least one disabled veteran at CPSC for training. We will also participate in an Operation Warfighter briefing at Bethesda Naval Hospital and Walter Reed Army Medical Center, and job fair.**
- Participated in job fairs with Department of Agriculture and the Hispanic Association of Colleges and Universities (HACU), the University of Maryland, University College, Partnership for Public Service, and John Hopkins University.
- Participated in career fairs at the Blacks in Government (BIG) and La Raza Conference. Sent a Public Affairs employee to the Urban League conference.

- Worked closely with the National Council of Hispanic Employment Program Managers and the National Association of Hispanic Federal Executives to advertise job vacancies to constituency groups.
- Continued to utilize the Department of Labor EARN program to post job vacancies in the hopes of attracting individuals with disabilities.
- Forwarded Workforce Recruitment Program (WRP) resumes to Laboratory, Engineering, and Compliance.
- Conducted training for managers and supervisors on their EEO responsibilities.
- Utilized the Partnership for Public Service Hot Jobs.
- Joined Call to Serve as a Partner Agency.
- Utilized Craig's List and other non-traditional sources for job postings.
- Provided recruitment brochures at the BIG and FEW conferences.
- Continued our partnership with Bethesda-Chevy Chase (BCC) High School providing tutoring, mentoring and providing students, who receive course credit, working internships in CPSC positions. We participated in the BCC Career Day.
- Participated in the Sligo Creek Elementary School Career Day.
- Partnered with Howard University Law School and recruited student legal interns.
- Direct-mailed all Historical Black Colleges and Universities a recruitment brochure and materials with an introduction to the Agency and the nature of positions.
- Met with Society of Hispanic Professional Engineers regarding FY10 conference participation.
- Provided recruitment incentive bonuses and superior qualification determinations to new hires including women and minorities for hard to fill positions.
- Presented conference workshops, participated in conferences, and set on subject matter expert panels for a number of science, engineering and statistical groups.

Additionally, CPSC exceeded its three Quality and Management goals under the President's Management Agenda. These are: Target recruitment efforts to organizations serving under-represented populations; Conduct training sessions for employees in EEO/AEP responsibilities; and Promote representation of underrepresented groups. We accomplished the following:

- Conducted targeted outreach recruitment efforts focusing on underrepresented groups for Property Management, Product Safety Investigator, Physiologist, Toxicologist, Deputy Hazard Reduction, Mechanical Engineer, Electrical Engineer, Engineering Psychologist, Assistant IG, Chemist, Fire Protection Engineer, Math Stat and Program Analyst vacancies.
- Conducted training in the Conflict Resolution for Field Operation employees.
- Conducted ADA Act of 2008, Ebbing the Tide of Reprisal Complaints, How to Stay Out of Legal Hot water training Supervisors.
- Provided Demystifying EEO training for employees.
- Supported the participation of Agency employees in the Federally Employed Women, Blacks in Government, Urban League, Perspectives, EXCEL, and La Raza conferences.
- Participated in career days and fairs.
- Conducted a CPSC wide Diversity Day.

- **Employee Development and Training** – Training and other developmental opportunities, including management and executive training, are limited. Lack of formalized succession planning inhibits career development planning (including the opportunity to experience executive level decision-making) and mentoring of high potential employees. Fiscal constraints have inhibited available training funds. While CPSC advertises many job positions as career-ladder positions, internal applicants do not always meet the specialized experience to qualify and advance.

As appropriate, CPSC will create opportunities that will allow employees to receive the experience and training necessary to qualify for higher graded positions within the Agency by modifying selected positions for recruitment at the lowest possible grade level, thus ensuring internal applicants meet minimal qualifications and can be considered. CPSC will also establish internal training plans for these positions that will provide the experiences and on-the-job training necessary for successful advancement to the next and subsequent grade levels. CPSC will develop "bridge" positions in selective technical occupations affording administrative or clerical staff the ability to apply and qualify for in-house positions. CPSC will form mentoring circles to assist employees at all grade and experience levels in learning the organization hierarchy and provide opportunities for growth and development. CPSC will also use developmental details and shadowing assignments to provide career enhancing experiences at all levels of the organization. **(Continuing) One management official expressed concerns regarding the process of providing job details to employees and suggested a review of this process in FY10.**

#### **Report of Accomplishments and Modification to Objective**

CPSC was successful in developing career ladder professional positions and upward mobility positions for staff. **Over 23 vacancies were announced as career ladder positions. We will continue to seek targets of opportunity to do the same in FY10.**

CPSC continues to recruit both product safety investigators (target Grade GS-12) and compliance officers (target Grade GS-13) at the GS5/7 level in an effort to reach the broadest applicant pool possible and provide the opportunity for career growth and development. Investigator positions have comprehensive training plans for each grade level to ensure the employee achieves the necessary competencies to perform at the next higher grade level.

In FY09, CPSC was able to provide the following developmental and training opportunities to staff either on site or through our partnership with the Small Agency Council:

- Senior level management development training opportunities were made available to individuals in the GS14 and above grade levels and all nominees were selected for attendance at the training of their choice. This group of 10 individuals included 3 women and 2 minorities.
- Leadership Essentials
- Project Management
- Introduction to Financial Management
- Powerpoint 2007
- Intro to Excel 2007
- Word Intro 2007
- Positive Approaches to Difficult People

- Retirement Plans for FERS
- Intermediate Excel
- Introduction to Federal Budgeting
- Coaching Skills for Today's Leaders
- Managing and Measuring Performance
- Intro to Access
- Advanced Word, Excel, Powerpoint
- Fundamentals of Writing
- Leading Change
- Report Writing
- Effective Briefing Techniques
- Interpersonal Effectiveness for Managers
- Managing a Virtual Workforce
- Pre Retirement and Early Retirement for FERS and CSRS
- Behavioral Interview

Every Agency employee has desktop access to the Go LEARN training. This package includes over 100 on-line course offerings in personnel management, EEO, leadership and supervision, information technology, administrative management, the NO FEAR Act and other topics of interest to help employees develop new and career enhancing skills.

#### **Conclusion**

In FY10, CPSC will continue to focus on the two key barriers initially identified in the FY04 plan and affirmed through this report process. **This will include continued expansion of our outreach efforts to reach individuals with disabilities for mid-level positions, review of Agency job details, and a flash mentoring program.**

<b>EEOC FORM 715-01 PART F</b>	<i>U.S. Equal Employment Opportunity Commission</i> <b>FEDERAL AGENCY ANNUAL EEO PROGRAM STATUS REPORT</b>
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**CERTIFICATION of ESTABLISHMENT of CONTINUING  
EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS**

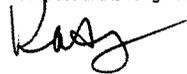
I, **Kathleen V. Buttrey, Director, EEO and Minority Enterprise, GS-260-15** am the  
 (Insert name above) (Insert official title/series/grade above)  
 Principal EEO Director/Official for **The US Consumer Product Safety Commission**  
 (Insert Agency/Component Name above)

The Agency has conducted an annual self-assessment of Section 717 and Section 501 programs against the essential elements as prescribed by EEO MD-715. If an essential element was not fully compliant with the standards of EEO MD-715, a further evaluation was conducted and, as appropriate, EEO Plans for Attaining the Essential Elements of a Model EEO Program, are included with this Federal Agency Annual EEO Program Status Report.

The Agency has also analyzed its work force profiles and conducted barrier analyses aimed at detecting whether any management or personnel policy, procedure or practice is operating to disadvantage any group based on race, national origin, gender or disability. EEO Plans to Eliminate Identified Barriers, as appropriate, are included with this Federal Agency Annual EEO Program Status Report.

I certify that proper documentation of this assessment is in place and is being maintained for EEOC review upon request.

Kathleen V. Buttrey



1/26/10  
Date

Signature of Principal EEO Director/Official  
 Certifies that this Federal Agency Annual EEO Program Status Report is in compliance with EEO MD-715.

Inez Tenenbaum, Chairman



1/26/10  
Date

Signature of Agency Head or Agency Head Designee



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, DC 20207

**Memorandum**

Office of the Chairman

Date: JUL 21 2008

TO : All CPSC Employees

FROM : Inez Tenenbaum  
Chairman  
*Inez Tenenbaum*

SUBJECT : CPSC Policy on Non-Discrimination in Employment

The Consumer Product Safety Commission (CPSC) is fully committed to ensuring equal employment opportunities for all employees and applicants. No one will be denied opportunities because of race, color, religion, sex, age, national origin, mental or physical disability, or reprisal or retaliation for opposing discriminatory practices and/or participating in the discrimination complaints process.

Unlawful employment practices, including those prohibited personnel practices based on sexual orientation, status as a parent, marital status, or political affiliation, are detrimental to the accomplishment of CPSC's mission and to the morale of our workforce and will not be tolerated.

As CPSC seeks to position itself to continue to attract, develop, and retain a highly skilled workforce that delivers results, I am committed to ensuring a qualified agency workforce reflective of our nation's diversity and one that includes opportunities for women, minorities, people with disabilities, and disabled veterans. This involves providing a workplace free of discrimination with the necessary tools, training, and support systems that employees need to develop to their fullest potential.

Employees at all levels are free to bring concerns they feel are relevant to the EEO Director or EEO office at any time. No other employee shall attempt to dissuade an employee from making such contacts or take any action against them for having done so. Such actions can have a chilling effect on the EEO process and are prohibited by law. Any employee found to have done so shall be subject to disciplinary action.

We must all work together to demonstrate fairness, cooperation, and respect toward our colleagues and customers. Each of us is responsible for creating an environment in which every employee is treated with respect, dignity and professionalism. This includes a collaborative effort to develop positive approaches in resolving employment problems at the lowest level possible.

Questions and additional information on this policy may be directed to Kathy Buttrey, Director, EEO and Minority Enterprise, (301) 504-7771.



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, DC 20207

Memorandum

Office of the Chairman

Date: JUL 21 2009

TO : All CPSC Employees  
FROM : Inez Tenenbaum  
Chairman  
*Inez Tenenbaum*  
SUBJECT : CPSC Policy on the Prevention of Harassment (Sexual and otherwise)

As part of my commitment to the CPSC workforce, I want to emphasize my pledge to providing a work environment for our employees and guests that is free from discrimination, including all forms of harassing behavior.

Harassment in the workplace violates federal law and will not be tolerated whether the discriminatory treatment is based on sex (whether or not of a sexual nature), race, color, religion, national origin, age of 40 or older, disability, or protected activity under the anti-discrimination statutes.

Harassment is defined as unwelcome verbal or physical conduct based on any characteristic protected by law which the conduct has the purpose or effect of (1) unreasonably interfering with work performance and/or (2) creating an intimidating, hostile or offensive work environment. Sexual harassment is more specifically defined by statute and regulation as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature which is made a term or condition of a person's job, is used as a basis for employment decisions affecting a person, creates a hostile or abusive environment, or interferes with the performance of a member of CPSC's workforce. Harassing conduct may include, but is not limited to, racial slurs, demeaning or sexual jokes, negative stereotyping, offensive written material or electronic media, or inappropriate unwanted touching.

Offensive conduct constitutes harassment if it alters the conditions of the victim's employment either by culminating in a tangible employment action or by being sufficiently severe or pervasive as to create a hostile work environment. Supervisors have a special responsibility to exercise reasonable care to prevent and promptly correct any harassment in the workplace. All employees have a responsibility to avoid the potential harm of harassment by promptly reporting such behavior to their supervisory chain and the EEO Office.

Each of you is responsible for ensuring that CPSC maintains a professional work environment free of all forms of harassment. Managers and supervisors will take the lead in setting the example of treating all people with mutual respect and dignity, fostering a positive climate, and taking appropriate action when conduct is disruptive, provoking, discriminatory, or otherwise unprofessional.

Incidents of harassment should be reported to the appropriate supervisor and the Equal Employment Opportunity Office promptly. Allegations of harassment will be dealt with swiftly, fairly, and confidentially. If harassment is found to occur, corrective action, including appropriate disciplinary measures, will be taken. In addition, no person shall be subject to reprisal for opposing any practice made unlawful by the antidiscrimination laws, or for filing or taking part in presenting or processing discrimination complaints.

Questions and additional information on this policy may be directed to Kathy Buttrey, Director, EEO and Minority Enterprise, (301) 504-7771.

Table A1: TOTAL WORKFORCE - Distribution by Race/Ethnicity and Sex

Employment Tenure	TOTAL WORKFORCE		RACE/ETHNICITY																		
			Hispanic or Latino							Non-Hispanic or Latino							Two or more races				
			male	female	%	male	female	%	male	female	%	male	female	%	male	female			male	female	
<b>TOTAL WORKFORCE - Permanent and Temporary</b>	#	437	211	226	7	7	152	131	29.98	5.26	23	70	24	15	0	0	4	1	1	1	2
Prior FY	%	100%	48.28%	51.72%	1.6	1.6	34.78	29.98	16.02	3.43	0	0	5.49	3.43	0	0	0.92	0.23	0.23	0.23	0.46
Current FY	#	461	223	238	8	8	162	139	23	72	25	16	1	16	1	0	1	1	1	2	2
Net 2k CLF	%	100%	48.37%	51.63%	1.95	1.74	35.14	30.15	4.99	4.84%	4.84%	15.62	5.42	3.47	0.22	0	0.22	0.22	0.43	0.43	0.43
Ratio Change	#	24	12	12	2	1	10	8	33.74%	4.84%	33.74%	5.66%	1.92%	1.71%	0.06%	0.05%	0.34%	0.32%	0.88%	0.88%	0.76%
Net Change	%	0.00%	0.09%	-0.09%	0.35%	0.13%	0.36%	0.17%	-0.27%	0.00%	-0.27%	-0.40%	-0.07%	0.04%	0.22%	0.00%	-0.70%	-0.01%	0.21%	-0.02%	-0.02%
<b>PERMANENT WORKFORCE</b>	#	415	199	216	7	7	145	123	21	68	22	15	0	15	0	0	3	1	1	1	2
Prior FY	%	100%	47.95%	52.05%	1.69%	1.69%	34.94%	29.64%	5.06%	16.39%	5.30%	3.61%	0.00%	3.61%	0.00%	0.72%	0.24%	0.24%	0.24%	0.48%	0.48%
Current FY	#	439	213	226	8	8	154	131	21	68	25	16	1	16	1	0	1	1	2	2	2
Ratio Change	%	0%	0.57%	-0.57%	0.36%	0.14%	0.14%	0.20%	-0.28%	0.00%	-0.90%	-0.39%	0.39%	0.03%	0.23%	0.00%	-0.50%	-0.01%	0.21%	-0.03%	-0.03%
Net Change	%	5.78%	7.04%	4.63%	28.57%	14.29%	6.21%	6.50%	0.00%	0.00%	13.64%	6.67%	0%	6.67%	0%	-66.67%	0.00%	100.00%	0.00%	0.00%	0.00%
<b>TEMPORARY WORKFORCE</b>	#	22	12	10	0	0	7	8	2	2	2	2	2	0	0	0	1	0	0	0	0
Prior FY	%	100%	54.55%	45.45%	0	0	31.82	36.36	9.09	9.09	9.09	9.09	9.09	0	0	0	4.55	0	0	0	0
Current FY	#	22	10	12	0	0	8	8	2	4	0	0	0	0	0	0	0	0	0	0	0
Ratio Change	%	0%	-9.09%	9.09%	0.00%	0.00%	4.55%	0.00%	0.00%	0.00%	0.00%	0.00%	-9.09%	0.00%	0.00%	0.00%	-4.55%	0.00%	0.00%	0.00%	0.00%
Net Change	%	0.00%	-16.67%	20.00%	0%	0%	14.29%	0.00%	0.00%	0.00%	100.00%	-100.00%	0%	0%	0%	0%	-100.00%	0%	0%	0%	0%

Please note one female SE5 employee was miscoded as permanent rather than temporary in both 08 and 09.

**CPSC CONSUMER PRODUCT SAFETY COMMISSION - 9-30-09**

**Table A2 - Permanent Workforce By Component - Distribution by Race/Ethnicity and Sex**

Organizational Component	RACE/ETHNICITY																	
	TOTAL EMPLOYEES		Hispanic or Latino		White		Black or African American		Asian		Native Hawaiian or Other Pacific Islander		American Indian or Alaska Native		Two or more races			
	All	%	male	female	male	female	male	female	male	female	male	female	male	female	male	female		
National CLP	439	100%	213	48.52%	154	35.08%	131	29.84%	68	15.49%	25	5.69%	16	3.64%	1	0.23%	2	0.46%
CONSUMER PRODUCT SAFETY COMMISSION (D)	439	100%	213	48.52%	154	35.08%	131	29.84%	68	15.49%	25	5.69%	16	3.64%	1	0.23%	2	0.46%
Total	439	100%	213	48.52%	154	35.08%	131	29.84%	68	15.49%	25	5.69%	16	3.64%	1	0.23%	2	0.46%





CPS CONSUMER PRODUCT SAFETY COMMISSION - 09-30-09

Table A4-1: Participation Rates for General Schedule Grades - Distribution by Race/Ethnicity and Ser. - Permanent Workforce

GS/GM, SES AND RELATED GRADES	RACE/ETHNICITY																	
	TOTAL EMPLOYEES						Non-Hispanic or Latino											
	All		Hispanic or Latino		White		Black or African American		Asian		Native Hawaiian or Other Pacific Islander		American Indian or Alaska Native		Two or more races			
#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
GS-01	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-02	2	0.00%	0	0.00%	0	0.00%	0	0.00%	1	50.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
GS-03	1	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
GS-04	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-05	1	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
GS-06	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-07	8	37.50%	5	12.50%	0	0.00%	1	12.50%	5	62.50%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
GS-08	6	100%	6	100%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-09	30	30.00%	21	33.3%	3	10.00%	6	20.00%	11	36.67%	2	6.67%	1	3.33%	0	0.00%	0	0.00%
GS-10	1	100%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-11	25	48.00%	13	24.00%	0	0%	7	13.00%	4	7.33%	0	0%	0	0%	0	0%	0	0%
GS-12	102	41.18%	60	23.44%	2	0.76%	38	14.81%	17	6.67%	4	1.56%	1	0.38%	0	0%	1	0.38%
GS-13	131	56.49%	57	23.66%	1	0.4%	32	13.15%	7	2.83%	12	4.96%	11	4.58%	0	0%	2	0.8%
GS-14	64	48.44%	33	24.44%	0	0%	21	15.56%	3	2.22%	4	2.96%	2	1.48%	0	0%	0	0%
GS-15	54	55.56%	24	24.24%	1	1.0%	21	21.21%	0	0%	2	2.0%	1	1.0%	0	0%	0	0%
All other (unspecified)	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Senior Executive Service	14	100%	4	28.57%	0	0%	10	71.43%	0	0%	0	0%	0	0%	0	0%	0	0%

Please note - one female SES employee was miscoded as permanent rather than temporary in both 08 and 09.

CSPC CONSUMER PRODUCT SAFETY COMMISSION - 09-30-09

Table A4-2: Participation Rates for General Schedule Grades - Distribution by Race/Ethnicity and Sex - Permanent Workforce

GS/GM, SES AND RELATED GRADES	RACE/ETHNICITY																	
	Non-Hispanic or Latino																	
	TOTAL EMPLOYEES		Hispanic or Latino		White		Black or African American		Asian		Native Hawaiian or Other Pacific Islander		American Indian or Alaska Native		Two or more races			
#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
GS-01	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
GS-02	2	0.46%	0	0.00%	0	0.00%	1	0.76%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
GS-03	1	0.23%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
GS-04	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
GS-05	1	0.23%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
GS-06	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
GS-07	6	1.82%	1	1.11%	1	0.89%	1	0.76%	1	0.76%	1	0.76%	1	0.76%	1	0.76%	1	0.76%
GS-08	30	8.83%	5	5.56%	5	5.56%	6	6.67%	11	11.11%	11	11.11%	11	11.11%	11	11.11%	11	11.11%
GS-09	1	0.23%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
GS-10	25	7.29%	13	13.11%	13	13.11%	13	13.11%	13	13.11%	13	13.11%	13	13.11%	13	13.11%	13	13.11%
GS-11	102	29.43%	60	58.82%	60	58.82%	60	58.82%	60	58.82%	60	58.82%	60	58.82%	60	58.82%	60	58.82%
GS-12	131	37.77%	74	56.49%	74	56.49%	74	56.49%	74	56.49%	74	56.49%	74	56.49%	74	56.49%	74	56.49%
GS-13	64	18.53%	31	48.44%	31	48.44%	31	48.44%	31	48.44%	31	48.44%	31	48.44%	31	48.44%	31	48.44%
GS-14	54	15.56%	26	48.15%	26	48.15%	26	48.15%	26	48.15%	26	48.15%	26	48.15%	26	48.15%	26	48.15%
GS-15	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
All other (unspecified)	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Senior Executive Service	14	4.06%	4	28.57%	4	28.57%	4	28.57%	4	28.57%	4	28.57%	4	28.57%	4	28.57%	4	28.57%
TOTAL	439	100%	213	48.3%	213	48.3%	213	48.3%	213	48.3%	213	48.3%	213	48.3%	213	48.3%	213	48.3%

Please note - one female SES employee was miscoded as permanent rather than temporary in both 06 and 09.

CPS CONSUMER PRODUCT SAFETY COMMISSION - 09-30-09

Table A4.1: Participation Rates for General Schedule Grades - Distribution by Race/Ethnicity and Sex - Temporary Workforce

GS/GM, SES AND RELATED GRADES	RACE/ETHNICITY																	
	TOTAL EMPLOYEES						Hispanic or Latino						Non-Hispanic or Latino					
	All	male	female	male	female	%	male	female	male	female	%	White	Black or African American	Asian	Native Hawaiian or Other Pacific Islander	American Indian or Alaska Native	Two or more races	
GS-01	#	0	0	0	0	0%	0	0	0	0%	0%	0	0	0	0	0	0	0
	%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
GS-02	#	0	0	0	0	0%	0	0	0	0%	0%	0	0	0	0	0	0	0
	%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
GS-03	#	0	0	0	0	0%	0	0	0	0%	0%	0	0	0	0	0	0	0
	%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
GS-04	#	1	0	1	0	0%	0	0	0	0%	0%	1	0	0	0	0	0	0
	%	100%	0.00%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
GS-05	#	1	1	0	0	0%	0	0	0	0%	0%	0	0	0	0	0	0	0
	%	100%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
GS-06	#	1	0	1	0	0%	0	0	0	0%	0%	0	0	0	0	0	0	0
	%	100%	0.00%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
GS-07	#	0	0	0	0	0%	0	0	0	0%	0%	0	0	0	0	0	0	0
	%	0%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
GS-08	#	0	0	0	0	0%	0	0	0	0%	0%	0	0	0	0	0	0	0
	%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
GS-09	#	1	0	1	0	0%	0	0	0	0%	0%	0	0	0	0	0	0	0
	%	100%	0.00%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
GS-10	#	0	0	0	0	0%	0	0	0	0%	0%	0	0	0	0	0	0	0
	%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
GS-11	#	0	0	0	0	0%	0	0	0	0%	0%	0	0	0	0	0	0	0
	%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
GS-12	#	1	0	1	0	0%	0	0	0	0%	0%	0	0	0	0	0	0	0
	%	100%	0.00%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
GS-13	#	2	1	1	0	0%	0	0	0	0%	0%	0	0	0	0	0	0	0
	%	100%	50.00%	50.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	50.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
GS-14	#	0	0	0	0	0%	0	0	0	0%	0%	0	0	0	0	0	0	0
	%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
GS-15	#	9	6	3	0	0%	0	0	0	0%	0%	5	3	1	0	0	0	0
	%	100%	66.67%	33.33%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	55.56%	33.33%	11.11%	0.00%	0.00%	0.00%	0.00%	0.00%
All other (unspecified)	#	0	0	0	0	0%	0	0	0	0%	0%	0	0	0	0	0	0	0
Senior Executive Service	#	5	2	3	0	0%	0	0	0	0%	0%	1	3	1	0	0	0	0
	%	100%	40.00%	60.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	20.00%	60.00%	20.00%	0.00%	0.00%	0.00%	0.00%	0.00%

Please note - one female SES employee was miscode'd as permanent rather than temporary in both 08 and 09.

CPSC CONSUMER PRODUCT SAFETY COMMISSION - 09-30-09

Table A4-2: Participation Rates for General Schedule Grades - Distribution by Race/Ethnicity and Sex - Temporary Workforce

GS/GM, SES AND RELATED GRADES	RACE/ETHNICITY																																			
	TOTAL EMPLOYEES						Non-Hispanic or Latino			Hispanic or Latino			White			Black or African American			Asian			Native Hawaiian or Other Pacific Islander			American Indian or Alaska Native			Two or more races								
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
GS-01	0	0.00%	0	0.00%	0	0.00%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-02	0	0.00%	0	0.00%	0	0.00%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-03	0	0.00%	0	0.00%	0	0.00%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-04	1	4.55%	0	0.00%	1	8.33%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	1	25.00%	0	0%	0	0.00%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-05	1	4.55%	10	10.00%	0	0.00%	0	0%	1	12.50%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-06	1	4.55%	0	0.00%	1	8.33%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	1	25.00%	0	0%	0	0.00%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-07	1	4.55%	0	0.00%	1	8.33%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	1	25.00%	0	0%	0	0.00%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-08	0	0.00%	0	0.00%	0	0.00%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-09	1	4.55%	0	0.00%	1	8.33%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	1	25.00%	0	0%	0	0.00%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-10	0	0.00%	0	0.00%	0	0.00%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-11	0	0.00%	0	0.00%	0	0.00%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-12	1	4.55%	0	0.00%	1	8.33%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	1	25.00%	0	0%	0	0.00%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-13	2	9.09%	10	10.00%	0	0.00%	0	0%	1	12.50%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-14	0	0.00%	0	0.00%	0	0.00%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
GS-15	9	40.91%	60	60.00%	25	25.00%	0	0%	5	37.50%	3	30.00%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
All other (unspecified)	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Senior	5	22.73%	2	2.22%	3	3.33%	0	0%	1	7.69%	3	30.00%	0	0%	0	0.00%	0	0%	0	0%	0	0.00%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Executive Service	100%	40.00%	60.00%	60.00%	60.00%	60.00%	0.00%	0.00%	20.00%	20.00%	60.00%	60.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%						
TOTAL	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%							

Please note - one female SES employee was miscoded as permanent rather than temporary in both PB and PG









CPSC CONSUMER PRODUCT SAFETY COMMISSION - 09/30/09

Table ASS-1 - Participation Rates for Supervisory Wage Grades - Distribution by Race/Ethnicity and Sex - Permanent Workforce

WS & XS	RACE/ETHNICITY																	
	Non-Hispanic or Latino																	
	TOTAL EMPLOYEES		Hispanic or Latino		White		Black or African American		Asian		Native Hawaiian or Other Pacific Islander		American Indian or Alaska Native		Two or more races			
#	%	male	female	male	female	male	female	male	female	male	female	male	female	male	female	male	female	
Grade-01	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	
Grade-02	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	
Grade-03	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	
Grade-04	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	
Grade-05	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	
Grade-06	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	
Grade-07	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	
Grade-08	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	
Grade-09	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	
Grade-10	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	
Grade-11	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	
Grade-12	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	
Grade-13	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	
Grade-14	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	
Grade-15	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	
All Other Supervisory Wage Grades	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	0	0	0%	0%	



Table B1 - Total Workforce - Distribution by Disability

Employment Tenure	Total by Disability Status		Detail for Targeted Disabilities									
	Total Disability No. (04-05)	Not Identified (06-94)	Targeted Disability (16,17)	(23,25) Deafness	(28,32,38) Missing Limbs	(64-66) Partial Paralysis	(71-78) Total Paralysis	-82 Convulsive Disorder	-90 Mental Retardation	-91 Mental Illness	-92 Distortion Limb/Spine	
<b>TOTAL WORKFORCE - Permanent and Temporary</b>	# 437	13	39	7	2	0	0	0	1	3	0	
Prior FY	% 100%	2.97%	8.92%	1.60%	0.46%	0.00%	0.00%	0.23%	0.00%	0.69%	0.00%	
Current FY	# 461	16	38	7	2	0	0	0	1	3	0	
Federal High (FY08)	% 100%	3.47%	8.24%	1.52%	0.43%	0.00%	0.00%	0.22%	0.00%	0.65%	0.00%	
Difference	# 24	3	-1	0	0	0	0	0	0	0	0	
Ratio Change	% 0.00%	0.50%	-0.68%	-0.01%	-0.02%	0.00%	0.00%	-0.01%	0.00%	-0.04%	0.00%	
Net Change	% 5.49%	23.08%	-2.56%	0.00%	0.00%	0%	0%	0%	0%	0%	0%	
<b>PERMANENT WORKFORCE</b>	# 415	13	36	7	2	0	0	0	1	3	0	
Prior FY	% 100%	3.13%	8.67%	1.69%	0.48%	0.00%	0.00%	0.24%	0.00%	0.72%	0.00%	
Current FY	# 439	16	37	7	2	0	0	0	1	3	0	
Difference	% 100%	3.64%	8.43%	1.59%	0.46%	0.00%	0.00%	0.23%	0.00%	0.68%	0.00%	
Ratio Change	% 0.00%	0.27%	-0.25%	-0.09%	-0.03%	0.00%	0.00%	-0.01%	0.00%	-0.04%	0.00%	
Net Change	% 5.78%	23.08%	2.78%	0.00%	0.00%	0%	0%	0%	0%	0%	0%	
<b>TEMPORARY WORKFORCE</b>	# 22	0	3	0	0	0	0	0	0	0	0	
Prior FY	% 100%	0.00%	13.64%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
Current FY	# 22	0	1	0	0	0	0	0	0	0	0	
Difference	% 100%	0.00%	4.55%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
Ratio Change	% 0.00%	0.00%	-9.09%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
Net Change	% 0.00%	10.53%	-66.67%	0%	0%	0%	0%	0%	0%	0%	0%	

Please note - one female SES employee was miscoded as permanent rather than temporary in both 08 and 09.







CPSG CONSUMER PRODUCT SAFETY COMMISSION - 09-30-09

Table B4-1: Participation Rates for General Schedule Grades - Distribution by Disability - Permanent Workforce

Occupational Category	Total by Disability Status		Detail for Targeted Disabilities												
	No	%	(04-05)	-1 (06-94)	Targeted Disability	(16,17) Deafness	(23,25) Blindness	(28,32-38) Missing Limbs	(64-68) Partial Paralysis	(71-78) Total Paralysis	-82 Convulsive Disorder	-90 Mental Retardation	-91 Mental Illness	-92 Distortion Limb/Spine	
GS-01	0	0%	0	0	0	0	0	0	0	0	0	0	0	0	
GS-02	2	100%	2	2	100.00%	0.00%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
GS-03	1	100%	1	1	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
GS-04	0	0%	0	0	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
GS-05	1	100%	1	1	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
GS-06	0	0%	0	0	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
GS-07	8	100%	8	8	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
GS-08	6	100%	6	6	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
GS-09	30	100%	28	2	93.33%	0.00%	6.67%	3.33%	0.00%	0.00%	0.00%	0.00%	3.33%	0.00%	
GS-10	1	100%	1	1	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
GS-11	25	100%	21	4	84.00%	0.00%	16.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
GS-12	102	100%	89	13	87.25%	4.90%	7.84%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
GS-13	131	100%	116	15	88.55%	4.58%	6.87%	1.53%	0.76%	0.00%	0.00%	0.00%	0.00%	0.00%	
GS-14	64	100%	58	6	90.63%	3.13%	6.25%	1.56%	0.00%	0.00%	0.00%	0.00%	1.56%	0.00%	
GS-15	54	100%	48	6	88.89%	1.85%	9.26%	1.85%	0.00%	0.00%	0.00%	0.00%	1.85%	0.00%	
All other (unspecified)	0	0%	0	0	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
Senior Executive Service	14	100%	10	4	71.43%	14.29%	14.29%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	

Please note - one female SES employee was miscoded as permanent rather than temporary in both 08 and 09.

CPCS CONSUMER PRODUCT SAFETY COMMISSION - 09-30-09

Table B4.2: Participation Rates for General Schedule Grades - Distribution by Disability - Permanent Workforce

Occupational Category	Total		Total by Disability Status		Detail for Targeted Disabilities										
	#	%	(04/05) No Disability	(04/05) Not Identified	(10/05-09/04) Disability	Targeted Disability	(16,17) Deafness	(23,25) Blindness	(28,32-38) Missing Limbs	(64-68) Partial Paralysis	(71-78) Total Paralysis	(82) Convulsive Disorder	(90) Mental Retardation	(91) Mental Illness	(92) Distortion Limb/Spine
GS-01	0	0.00%	0	0	0	0	0	0	0	0	0	0	0	0	0
GS-02	2	0.00%	0	0	2	2	0	0	0	0	0	0	0	0	0
GS-03	1	0.46%	0	0	1	28.57%	100.00%	0	0	0	0	0	0	0	0
GS-04	1	0.23%	0	0	1	0.00%	0.00%	0.00%	0	0	0	0	0	0	0
GS-05	1	0.00%	0	0	1	0.00%	0.00%	0.00%	0	0	0	0	0	0	0
GS-06	1	0.23%	0	0	1	0.00%	0.00%	0.00%	0	0	0	0	0	0	0
GS-07	8	1.82%	0	0	8	0.00%	0.00%	0.00%	0	0	0	0	0	0	0
GS-08	6	1.37%	0	0	6	0.00%	0.00%	0.00%	0	0	0	0	0	0	0
GS-09	30	6.83%	28	0	2	14.29%	0.00%	0.00%	0	0	0	0	0	0	0
GS-10	1	0.23%	0	0	1	0.00%	0.00%	0.00%	0	0	0	0	0	0	0
GS-11	25	5.69%	21	0	4	0.00%	0.00%	0.00%	0	0	0	0	0	0	0
GS-12	102	23.23%	89	5	8	21.62%	0.00%	0.00%	0	0	0	0	0	0	0
GS-13	131	30.05%	116	6	9	28.57%	100.00%	0.00%	0	0	0	0	0	0	0
GS-14	64	14.58%	58	2	4	14.29%	0.00%	0.00%	0	0	0	0	0	0	0
GS-15	54	12.44%	48	1	5	13.51%	0.00%	0.00%	0	0	0	0	0	0	0
All other (unspecified)	0	0.00%	0	0	0	0.00%	0.00%	0.00%	0	0	0	0	0	0	0
Senior	14	3.19%	10	2	2	0.00%	0.00%	0.00%	0	0	0	0	0	0	0
Executive Service	319	72.59%	286	16	37	11.60%	0.00%	0.00%	0	0	0	0	0	0	0
TOTAL	1000	100.00%	886	114	114	11.40%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Please note - one female SES employee was miscoded as permanent rather than temporary in both 08 and 09.

CPSC CONSUMER PRODUCT SAFETY COMMISSION - 09-30-09

Table B4-1: Participation Rates for General Schedule Grades - Distribution by Disability - Temporary Workforce

Occupational Category	Total by Disability Status		Detail for Targeted Disabilities											
	(04.05) No Disability	(06-94) Not Identified	(16.17) Targeted Disability	(23.25) Blindness	(28.32-38) Missing Limbs	(64-68) Partial Paralysis	(71.78) Total Paralysis	-82 Convulsive Disorder	-90 Mental Retardation	-91 Mental Illness	-92 Distortion Limb/Spine			
GS-01	# 0	0	0	0	0	0	0	0	0	0	0	0		
	% 0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%		
GS-02	# 0	0	0	0	0	0	0	0	0	0	0	0		
	% 0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%		
GS-03	# 0	0	0	0	0	0	0	0	0	0	0	0		
	% 0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%		
GS-04	# 1	1	0	0	0	0	0	0	0	0	0	0		
	% 100%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		
GS-05	# 1	1	0	0	0	0	0	0	0	0	0	0		
	% 100%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		
GS-06	# 1	1	0	0	0	0	0	0	0	0	0	0		
	% 100%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		
GS-07	# 1	1	0	0	0	0	0	0	0	0	0	0		
	% 100%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		
GS-08	# 0	0	0	0	0	0	0	0	0	0	0	0		
	% 0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%		
GS-09	# 1	1	0	0	0	0	0	0	0	0	0	0		
	% 100%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		
GS-10	# 0	0	0	0	0	0	0	0	0	0	0	0		
	% 0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%		
GS-11	# 0	0	0	0	0	0	0	0	0	0	0	0		
	% 0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%		
GS-12	# 1	1	0	0	0	0	0	0	0	0	0	0		
	% 100%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		
GS-13	# 2	2	0	0	0	0	0	0	0	0	0	0		
	% 100%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		
GS-14	# 0	0	0	0	0	0	0	0	0	0	0	0		
	% 0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%		
GS-15	# 9	9	0	0	0	0	0	0	0	0	0	0		
	% 100%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		
All other (unspecified)	# 0	0	0	0	0	0	0	0	0	0	0	0		
	% 0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%		
Senior Executive Service	# 5	4	0	0	0	0	0	0	0	0	0	0		
	% 100.00%	80.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		

Please note: one female SES employee was miscoded as permanent rather than temporary in both 08 and 09.





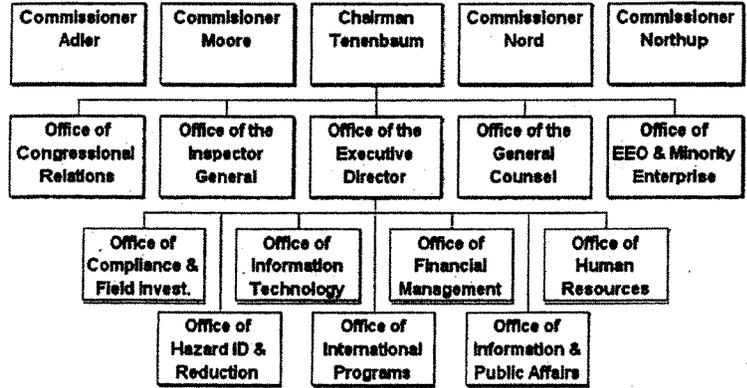












**Questions for the Record Submitted by Congressman Crenshaw**

**Regarding X-Ray Fluorescence (XRF)**

- 1) **During a recent conference, the CPSC’s head of compliance called handheld XRF the “secret to our success.” Can you please describe for the committee how exactly the commission is using XRF?**

**Response:**

CPSC lab and field staff uses XRF in a number of ways. In our Product Testing Laboratory, chemists employ portable XRF as well as a research-grade XRF machine to analyze samples for elemental composition, including lead, cadmium, and many other elements. We screen products for lead, cadmium, and other elements to see if additional testing may be necessary, such as extractions for cadmium or total digestions for lead content.

We are also conducting research together with the National Institute of Standards and Technology (NIST) to determine if XRF can be used, according to the CPSIA, for lead in paint testing. CPSC Field and Import Surveillance staff use portable XRF to screen for lead, cadmium, and other hazards potentially in products entering the country at our ports, or in retail stores or warehouses. This screening allows our staff to cast a wider net and collect the samples most likely to present a hazard to consumers.

- 2) **Manufacturers, retailers & importers remain unclear about how exactly *they* can use XRF. Can you please describe in detail how companies are currently legally allowed to use XRF in testing their products?**

**Response:**

XRF can be part of a “reasonable testing program” for General Certificates of Conformity for products that may have lead in the substrate. XRF can be used as part of in-house screening procedures for incoming materials and for spot-checking of products in-process. However, XRF cannot be used by any entity as a basis for official tests of the lead-in-paint limits or lead content in children’s jewelry.

- 3) **Please detail how third party labs are allowed to use XRF to test products in a non-destructive way?**

**Response:**

Test Method CPSC-CH-E1002-08 was published by CPSC staff in 2008 and provides guidance on the potential use of XRF to test for lead in polymers. Currently, there is no requirement for third-party testing for such products, but where such testing is done, this provides guidance on the proper way to do such testing. There are many laboratories

whose accreditation has already been accepted by CPSC for testing of lead in nonmetal products by CPSC-CH-E1002-08.

**4) Finally, what future regulatory steps do you envision taking to permit broader use of XRF technologies?**

Response:

If the Commission determines that x-ray fluorescence technology or other alternative methods for measuring lead in paint are as effective, precise, and reliable as the methodology used by the Commission for compliance determinations prior to the date of enactment of the CPSIA, the Commission may promulgate regulations governing the use of such methods in determining the compliance of products with part 1303 of Title 16, Code of Federal Regulations, as modified pursuant to this subsection. CPSC is continuing to work with NIST to evaluate XRF and other non-destructive technologies that may lead to more efficient and enhanced methods. Furthermore, the Commission will be issuing regulations for third party testing of lead in products other than paint and children's metal jewelry. Such regulations may include provisions for the use of XRF for determining lead in plastic, such as described in Test Method CPSC-CH-E1002-08.

TUESDAY, APRIL 27, 2010.

**FISCAL YEAR 2011 BUDGET REQUEST FOR THE  
ELECTION ASSISTANCE COMMISSION**

**WITNESS**

**HON. DONETTA DAVIDSON, CHAIR, U.S. ELECTION ASSISTANCE COMMISSION**

Mr. SERRANO. The subcommittee will come to order.

Mrs. EMERSON will be joining us in a second, but she has given us the okay to proceed since that side is in great hands.

Mr. CULBERSON. We are in good hands, yes.

Mr. SERRANO. Today, we will hear from the Election Assistance Commission on its budget request of fiscal year 2011. We welcome back Election Assistance Chair Donetta Davidson, who is making her third appearance before the subcommittee. I think that is a record.

As it is an election year, it is of particular interest for the subcommittee to hear how the EAC has prepared for the upcoming midterm elections, lessons learned from past elections, the main challenges the EAC must address in the lead-up to November, and what additional resources the Commission will need to successfully perform its mission.

As I have said many times, the EAC is a small agency with a significant responsibility. The Commission plays a critical role in giving guidance and information to election officials, providing regulatory authority over the National Voter Registration Act, and directing Federal resources to support the conduct of open, fair, and accessible elections.

More than \$3 billion in Federal money has been appropriated over the past 7 years, including \$93 million in fiscal year 2010, to help improve election administration and voting systems. Even with this commitment of resources, election officials continue to have critical unmet needs relating to the smooth conduct of elections.

For fiscal year 2011, the President's budget proposes \$16.8 million for operating expenses, a decrease of \$1.2 million from fiscal year 2010. The President's request does not provide any funding for State election reform agendas, representing a \$75 million decrease from fiscal year 2010. I am particularly interested to hear about how this cut in requirement payments will impact States.

The 2008 election had the highest voter turnout in recent years. More than 132 million Americans voted. While perhaps not everything went perfectly, we did not see the same level of controversy that plagued other recent elections, such as the 2000 Presidential election. We hope that this is a sign that the EAC, together with

State and local officials, are learning from experience and are moving in the right direction.

Finally, I strongly believe that the often intense debate over election issues is due to the passion we share when it comes to protecting our democratic process in guaranteeing the right of every individual to cast a ballot in a fair, open, and honest election. Our goals should be to ensure that we count every vote and make every vote count. I hope this hearing will help us to understand better what the EAC needs to help the Nation meet that goal.

Testifying before us today is the chair of the Election Assistance Commission, Donetta Davidson. Ms. Davidson has served as the commissioner at the EAC since 2005 and is now chair of the Commission for the second time. Prior to her service at the EAC, she was Colorado's Secretary of State; and she also has significant experience administering elections in two Colorado counties.

We are pleased to have her here again today, and the timing is so wonderfully well set in place because—and here is Mrs. Emerson.

Mrs. EMERSON. Thank you. I am so sorry.

Mr. SERRANO. No, no. It is okay. And I just finished my statement.

Mrs. EMERSON. Thank you very much for being here today. We are very grateful and look forward to your testimony.

Ms. DAVIDSON. Thank you.

Mrs. EMERSON. May I say something else?

Mr. SERRANO. It is your statement.

Mrs. EMERSON. I want to apologize to you for not being available to meet with you when you were in the office. I had something unexpected come up that I had to deal with. So my apologies.

Ms. DAVIDSON. Not a problem. Not a problem.

Mr. SERRANO. You know how it goes.

We ask you to limit your statement to 5 minutes. The rest of your statement will go in the record, and that will give us hours upon hours to grill you, although Mr. Culberson has agreed to stay within the 5-minute time limit, which is a major accomplishment for this committee. Please proceed.

Ms. DAVIDSON. I will try. Good morning, Chair Serrano and Ranking Member Emerson and committee members and the appropriation committee for inviting me today. I want to thank you for your support.

My name is Donetta Davidson, and I am a lifelong election official. I became chair of the Election Assistance Commission, or the EAC from now on in my testimony, in January this year. I serve alongside my commissioners, Gracia Hillman and Gineen Bresso Beach, who I thank for their hard work and dedication to the success of the EAC.

The EAC is a small Federal agency with a big mission to improve administration of Federal elections. Today, I will discuss our fiscal year 2011 budget and how it will be executed to achieve our mission. The EAC's budget request is 16.8, which will include 3.25 million to the National Institute of Standards and Technology.

As EAC chair, I will focus on the following initiatives: improved service for military and overseas voters, the National Voter Registration Act, and collecting and ensuring creative solutions in elec-

tions like contingency planning in the States and counties and polling place work recruitment.

Let me describe a few budget items that are of great interest to the committee and the public, beginning with our grants and our requirements payments section. Our fiscal year 2011 budget request includes 750,000 of college poll worker grants. Last year, 71 organizations requested 5 times more funding than was available. This program has been very popular because we continue to have a shortage of poll workers throughout the Nation.

Regarding how States are spending their requirement payments, since 2003, I cheated and I brought some charts with me today. The chart on my right is showing section 251 expenditures by year. As you can see, we saw a big spike in the spending in 2006. Then, on my left, the chart shows a comparison of when the funds were received by States versus when the funds were used. The majority of the funds were received in 2004 and 2005, as the orange and yellow show.

Again, we see most of the funds were spent, as you can see by the blue indication, in 2006. A small amount of the funds were spent in 2004, 2005, primarily due to the provisional voting implementation and polling place information for voters. A few States had already purchased new equipment and were eligible for reimbursement of HAVA funds.

With these charts, it shows that it takes about 18 months of time before a State when the appropriation is passed and that the State receives them and spends the money. It takes about 18 months. There is two reasons for this. It is the State's ability to appropriate the 5 percent match and the State procurement process.

In 2007 through 2009, HAVA distribution and expenditure rates slowed down. Most likely, these rates will continue to follow the typical 18-month cycle that we saw in previous years as we know that some States were unable to appropriate the 5 percent match in 2008 and 2009 due to budget constraints.

So let us review some of the basic facts regarding the payments. Appropriated has been 2 billion six; through March of 2010, over 2.4 billion has been distributed. States have reported spending about 80 percent of the funds through September 30, 2009. Twenty-one of our States have certified that they have met the compliance of Title III.

Of course, managing and distributing HAVA funds is not the only main responsibility we have at EAC. We have certified four voting systems, and we are in the last stage of our next iteration of voluntary voting system guidelines. And, as a part of our responsibility under the MOVE Act, we just delivered yesterday a roadmap to Congress which included a draft remote electronic voting system pilot program that we devised.

I also want to make sure that you are aware that EAC has translated the national voter registration form and also other material into five Asian languages, along with the Spanish that is available.

There is not enough time to tell you about all of the work EAC is doing on behalf of the voters and the election officials, but it is always available at [www.eac.gov](http://www.eac.gov), including the translation of voters registration forms and other material in the six languages.

Before I conclude, I want to thank the EAC staff for their hard work. They are creative, industrious, and dedicated. I also want to thank you for your leadership to the EAC and to the American voters.

I will be happy to answer any of your questions.



UNITED STATES ELECTION  
ASSISTANCE COMMISSION

TESTIMONY

OF

HONORABLE DONETTA DAVIDSON, CHAIR,  
U.S. ELECTION ASSISTANCE COMMISSION

BEFORE THE

HOUSE COMMITTEE ON APPROPRIATIONS,  
Subcommittee on Financial Services and General  
Government

TUESDAY, APRIL 27, 2010

*U.S. Election Assistance Commission  
1201 New York Ave., NW – Suite 300  
Washington, DC 20005  
[www.eac.gov](http://www.eac.gov)*



**U.S. Election Assistance Commission**  
**Testimony before the U.S. House Committee on Appropriations**  
**Subcommittee on Financial Services and General Government**  
**April 27, 2010**

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Good morning Chairman Serrano, Ranking Member Emerson, and Members of the Subcommittee. I am pleased to be here on behalf of the U.S. Election Assistance Commission (EAC) to discuss our Fiscal Year 2011 budget request and the Commission's goals and activities.

## INTRODUCTION

EAC is a bipartisan, independent Commission consisting of four members: Chair Donetta Davidson and Commissioners Gracia Hillman and Gincen Bresso Beach. There is one vacancy on the Commission.

EAC is a small federal agency with a big mission – to improve the federal administration of elections. To achieve its mission, EAC assumes a dual role of providing resources to help states make improvements and assisting election officials throughout the nation empower voters through access, collaboration and engagement. The commission has embraced the concept of collaborative governance and is working to break down communication barriers between the federal government and America's voters.

To ensure success, the Commission has established a solid internal foundation for managing personnel and resources, as well as a structure to ensure accountability. In Fiscal Year 2009, EAC hired a chief financial officer and an accounting director, who achieved immediate results by aggressively finalizing financial management policies and procedures. Consequently, EAC received an "unqualified," or clean, opinion on its financial statements and Annual Financial Report. An "unqualified" or clean opinion indicates that the Commission followed all accounting rules appropriately and that the financial reports are an accurate representation of the Commission's financial condition.

To build upon EAC's actions to effectively manage resources, the Commission is working to foster a culture of accountability among staff by improving staff satisfaction ratings and achieve management excellence through improved internal controls and human resource initiatives.

In addition to establishing a foundation of accountability, EAC has also instilled a spirit of creativity and innovation among staff to meet our mission and maximize the use of available resources. Initiatives include applying technological solutions, establishing strategic partnerships and collaborating among program areas to eliminate duplication of effort, maximizing skill sets and strategically leverage talents and abilities throughout the Commission. For example, the EAC Design Team, consisting of administrative and program area employees, provide management with recommendations and input and to make sure the lines of communication remain open at every level of EAC. The Design Team will ensure that all EAC employees have a voice and a platform to offer solutions and suggestions, but also incorporate strategies to create a healthy working environment and a solid foundation for the future.



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EAC believes its efforts to strengthen financial operations, promote synergy among staff and use technology to reach more stakeholders will enable the Commission to better manage and allocate its FY 2011 budget and ultimately serve more voters and develop more tools and resources to improve federal elections.

Below we discuss EAC's FY 2011 budget request and how the Commission plans to allocate resources to achieve its mission.

## **BACKGROUND, MISSION AND ORGANIZATIONAL STRUCTURE**

In October 2002, Congress passed the Help America Vote Act (HAVA). The law recognized the need for states to invest in their election infrastructure and set out a comprehensive program of funding, guidance, and ongoing research. To foster those programs and to promote and enhance voting for United States citizens, HAVA established the EAC.

EAC is an independent, bipartisan agency. Four full-time Commissioners, appointed by the President and confirmed by the U.S. Senate, and three federal advisory committees-- the Standards Board, Board of Advisors, and the Technical Guidance Development Committee-- guide the EAC. Its mission is to assist in the effective administration of federal elections. EAC is statutorily required to:

- Create a clearinghouse of information for election officials and the public.
- Distribute HAVA funds to states for election administration improvements.
- Issue, and periodically review and modify, as necessary, Voluntary Voting System Guidelines (VVSG).
- Accredit voting system test labs and certify voting equipment.
- Conduct periodic studies of election administration issues.
- Establish best practices and guidelines on election administration for state and local election officials.
- Maintain the national voter registration form developed in accordance with the National Voter Registration Act (NVRA) of 1993.
- Provide Congress with a bi-annual report to assess the impact of the NVRA.

The Standards Board and the Board of Advisors provide advice and guidance to EAC on Voluntary Voting System Guidelines and other election administration issues. In addition, the Technical Guidelines Development Committee (TGDC) assists EAC in the preparation of the VVSG. The VVSG sets the standards against which voting systems are tested. The Director of the National Institute of Standards and Technology (NIST) serves as the Chair of the TGDC and provides technical support to the Committee.



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Additionally, HAVA specifies that NIST provide recommendations to EAC regarding voting system test laboratories. Since Fiscal Year 2004, EAC's annual appropriations have included funds for NIST support.

The Senate confirmed four Commissioners in December 2003 and EAC began operations in January 2004, within ten months of the date mandated by HAVA. Its Fiscal Year 2004 operating budget was \$1.7 million. At the close of the fiscal year, EAC had a staff of 18.

EAC's focus in 2004 was to assemble staff, obtain office space, arrange for administrative support from the General Services Administration (GSA), establish a website, start clearinghouse operations, and distribute federal financial assistance to states. In regard to federal financial assistance, Congress appropriated nearly \$3 billion in Fiscal Years 2003 and 2004 for payments to states under Titles I and II of HAVA. States received the funds to upgrade their voting systems, establish a statewide voter registration database, train election officials, and educate voters. As EAC did not begin operations until 2004, GSA initially distributed HAVA funds to the fifty states, Guam, Puerto Rico, the U.S. Virgin Islands, American Samoa and the District of Columbia on EAC's behalf in Fiscal Year 2003.

In FY 2004, EAC appointed a statutorily-required General Counsel. During Fiscal Year 2005, EAC appointed its other statutorily-required position, the Executive Director, and an interim Inspector General. EAC focus in subsequent years was on upgrading the VVSG, completing required research to promote effective federal elections and to present key data on election practices and voting, instituting a voting system testing and certification program, auditing state use of HAVA funds, and providing information on improving elections to its stakeholders.

In FY 2007, the full-time equivalent staffing ceiling of 24 was lifted. As of the end of FY 2009, EAC had a full-time staff of 43 employees, including three Commissioners. Since its inception, EAC has received \$2.5 billion in requirements payments for the states based on a formula of the number of eligible voters, \$14.7 million in discretionary grant funds for Poll Workers, Mock Elections and Election Data Collection, and transferred \$17.7 million to NIST. EAC is located in Washington, D.C.

### **FISCAL YEAR 2011 HIGH PRIORITY GOALS**

Voters need easy access to up-to-date information on where, when and how to vote. Leading up to an election year, election officials face an increase in activities to inform voters and recruit and train Election Day poll workers.

Federal elections are locally administered with a wide variety of practices and policies. Election officials work hard to conduct fair, accessible, accurate and secure elections by



informing the electorate and properly training poll workers. EAC assists states and local jurisdictions by providing tools and best practices to improve election administration practices, including pre-election testing and contingency planning materials, which promote a proactive approach to election management.

As states look to new technology and practices in voting (including remote access voting for Uniformed and Overseas Citizens Absentee Voting Act [UOCAVA] voters, vote by phone and accessible technology for disabled voters) and private sector manufacturers expand the number and type of voting systems available, EAC must be in a position to test the new systems against rigorous federal standards in a timely, efficient and high-quality manner.

As part of the process to prioritize tasks, maximize existing resources and focus on mission-specific goals, EAC defined a limited number of high-performance priority goals consistent with the Commission's Fiscal Years 2009-2014 Strategic Plan. The high-performance priority goals will help EAC measure its ability to provide assistance to the public and voters as well as meet the mandates of HAVA. Our focus in FY 2011 will be on the following high-performance priority goals:

1. Serve as a clearinghouse and provide election officials and voters with information regarding the process for casting a vote in the 2012 federal elections, including technical assistance and information, poll worker recruitment and training, and basic information for voters such as links to states' polling place locators and voter guides about how, when and where to vote for the 2012 federal elections.
2. Distribute materials designed to allow citizens who are not proficient in the English language to participate fully in federal elections to any jurisdictions covered by the Voting Rights Act Section 5 languages.
3. Provide voluntary best practices for computerized statewide voter registration list requirements and registration by mail guidance to the states.
4. Ensure that voting systems and modifications of already-certified systems submitted to EAC program are thoroughly and efficiently tested to federal standards.

#### **Implementation of the high-performance priority goals in FY 2011**

##### **Goals 1a and 1b**

*1(a) Serve as a clearinghouse and provide election officials and voters with necessary information regarding the process for casting a vote in the 2012 federal elections.*

*1(b) Provide election officials with funding, technical assistance and information, as appropriate to support poll worker training, educate the*



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*public, and help provide voters with access to information such as when and where to vote for the 2012 federal elections.*

The first of the high-performance priority goals is aimed at assisting voters so that they have the necessary knowledge to cast and have their ballots counted on Election Day. Three EAC program areas will be involved in implementation of the goals—the Research, Policy and Program, Communications, and Grants divisions—in partnership with state and local election officials, voter advocacy groups, voters and all other stakeholders.

EAC will employ the following strategies to implement the goal:

- Increase the use and availability of EAC research products and teaching materials through the EAC clearinghouse and other electronic tools.
- Use the results of the 2010 evaluation of EAC products to revise publications such as the poll worker training manual, poll worker recruitment guide, and voter education materials for 2010 and beyond.
- Implement an annual research plan
- Disseminate voluntary guidance on provisional voting pursuant to Section 311 of HAVA.

## **Goal 2**

*Support jurisdictions covered by the Voting Rights Act Section 5 languages so that all jurisdictions have access to and use materials designed to allow citizens who are not proficient in the English language to participate fully in federal elections.*

The aim of the goal is to ensure that all voters assigned to jurisdictions covered under Section 5 receive materials and support from EAC. These voters include persons who are Native American, Asian American, Alaskan Natives or of Spanish heritage. It also will help in ensuring that limited and non-English proficiency voters are able to register and vote. The lead EAC offices responsible for implementing the goal are the Language Accessibility Program of Research, Policy and Program Division, and the Grants Division. Partners in the effort include state and local election officials, voter advocacy groups and all other stakeholders.

EAC's strategy to achieve the goal is to update and expand the resources available through the Language Accessibility Program. Recent deliverables include the translation of the National Voter Registration Form into Chinese, Japanese, Korean, Tagalog, Vietnamese and Spanish. The EAC *Voters' Guide to Federal Elections* is also available in these seven languages, but the information needs to be updated. Based upon the 2010



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Census results, EAC will provide other materials to jurisdictions determined to be covered under minority language provisions of the Voting Rights Act and any other jurisdiction that may have a need based on their population. Resources needed to achieve the goal include funds for translations, publications and the expenses related to working group and roundtable discussions with experts in these languages. These resources are included in the 2011 Budget request for EAC Salaries and Expenses.

### Goal 3

*Provide states with best practices for computerized statewide voter registration list requirements and registration by mail based on voluntary guidance provided by EAC pursuant to Section 311 of HAVA.*

The aim of Goal 3 is to work with the 50 states, Puerto Rico, the U.S. Virgin Islands, the District of Columbia, Guam and American Samoa to adopt best practices that encourage increased voter participation and more accurate voter registration lists. The lead EAC division for the effort is Research, Policy and Program, in partnership with state and local election officials, and voter advocacy groups, the public and all other stakeholders.

HAVA requires states to “implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list...” Congress mandated that EAC issue voluntary guidance to assist the states in implementing the provisions of HAVA relating to statewide voter registration list requirements. EAC issued its first set of voluntary guidance in July 2005.

In accordance with EAC’s Fiscal Years 2009-2014 Strategic Plan, EAC contracted with The National Academy of Sciences (NAS) to conduct further research to expand upon the 2005 voluntary guidance. Issued in 2009, the *Improving State Voter Registration Databases* report, included data gathered from the states about their databases and short-term and long-term recommendations for improving and implementing them. EAC will use the NAS report as a basis to update its 2005 voluntary guidance for statewide voter registration databases.

EAC’s updated voluntary guidance on statewide voter registration databases may include but is not limited to: matching protocols, maintenance of accurate voter registration lists, data collection and storage, online functionality, identification requirements for first-time voters, and interoperability and intraoperability of databases; and help states promote intergovernmental cooperation between their various agencies and departments.

### Goal 4

*Ensure that modifications of certified systems submitted to EAC’s program are successfully and efficiently tested to federal standards.*



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The goal is to ensure that modifications of certified systems submitted to EAC's Voting System Testing and Certification Program are thoroughly and efficiently tested to federal standards in a transparent manner.

The lead office for implementation of the goal is the Voting System Testing and Certification with input from partners including the National Institute of Standards and Technology and the TGDC.

EAC has aligned its five Strategic Plan goals—Communicate; Fund and Oversee; Study, Guide, and Assist, Test and Certify; and Manage—with the offices responsible for implementing them.

### **BUDGETS & PERFORMANCE MEASURES BY STRATEGIC PLAN GOAL**

EAC's Fiscal Years 2009-2014 Strategic Plan provides the public with the framework for the Commission's short and long-term goals in accordance with HAVA. The plan lays out an approach to create a receptive and productive Commission fully capable of the unique leadership role it has been given as a national clearinghouse for election information, a manager of federal financial assistance, certifier of voting systems and a resource and hub of credible information for election officials throughout the nation.

The plan provides the structure for EAC's performance-based budget approach. A budget allocation history as well as the FY 2011 request accompanies each of the five strategic plan goals.

EAC's offices have been realigned to address the goals in the Strategic Plan:

- Goal 1: Communicate is administered by the Office of Communications and Clearinghouse.
- Goal 2: Funds and Oversee is administered by the Grants and Inspector General Offices.
- Goal 3: Study, Guide and Assist is aligned with the Research, Program and Policy unit.
- Goal 4: Test and Certify is administered by the Voting Systems and Certifications unit.
- Goal 5: Manage is aligned with the Boards, Commissioners, Executive Director, Chief Operating Officer, Chief Financial Officer and General Counsel.

A cost allocation model distributing administrative costs to the goals was developed and submitted to the financial statement auditors for review. Budgets tie to information in the financial statements.



**Strategic Plan Goal 1: Communicate timely and accurate information on the effective administration of elections for federal office and on the operations and services offered by EAC.**

Outcome: The Congress, federal agencies, state and local election officials and the public receive reliable, accurate, and non-partisan information about administering, conducting and participating in federal elections and how, where, and when Americans vote.

FY 2009 Enacted	FY 2010 Enacted	FY 2011 President's Budget
\$985,017	\$848,752	\$840,167

The Communications division is responsible for administration of the agency's website, [www.eac.gov](http://www.eac.gov) which contains over 1,000 documents with information about voting system test plans, agency correspondence, and testimony from EAC monthly Public Meetings and hearings; and external and internal communications such as press releases, news articles and speeches, informational videotapes on the programs, a monthly newsletter about EAC activities and events to approximately 1,200 subscribers, and a weekly email on internal operations. The unit coordinates with EAC staff to communicate policies guidance, research, and other agency initiatives to the Public.

The Communications division is instrumental in ensuring all stakeholders receive information about the testing and certification program. EAC's Testing and Certification Voting System Reports Clearinghouse is where Communications staff post and disseminate voting system reports and studies that have been conducted or commissioned by a state or local government.

Using an interagency agreement with the U.S. Department of Agriculture, the division produced poll worker and election official training videos, available on the [eac.gov](http://eac.gov) website and on YouTube. As we prepare for the 2010 federal election year, EAC plans on producing four new training videos at approximately \$8,000.

In 2009, in order to accelerate establishment of a Clearinghouse of information on federal elections and to ensure a cost-effective contract, EAC recompeted its contract which includes the Clearinghouse and a restructure of the website. With the new contract, EAC will continue to achieve our goal of serving as the trusted source for information about elections and election administration. In 2010, EAC intends to connect its stakeholders to a new, separately identifiable Clearinghouse on the EAC website. The fixed price for the website contract in FY 2011 is \$130,000 with optional time and materials task orders.



Goal 1 is administered by a staff of three. The unit spends approximately \$26,000 to produce the mandated EAC Annual Report.

**Strategic Plan Goal 2: Deliver and manage federal funds effectively.**

**Outcome:** States and other recipients promptly and accurately receive federal funds administered by EAC and use the funds appropriately to improve the administration of elections for federal office.

	FY 2009 Enacted	FY 2010 Enacted	FY 2011 President's Budget
Grants Management	\$1,965,889	\$1,914,069	\$1,406,639
OIG	1,757,730	1,770,259	1,837,836
<b>Total</b>	<b>\$3,723,619</b>	<b>\$3,684,328</b>	<b>\$3,244,475</b>

Goal 2 is administered by the Grants Management unit and the Office of the Inspector General (OIG).

In FY 2009, EAC reorganized, creating a Grants Management division. The division is responsible for distributing, monitoring, providing technical assistance to states and grantees on use of funds, and reporting on requirements payments and discretionary grants that improve administration of elections for federal office. The office negotiates indirect cost rates with grantees and resolves audit findings on use of HAVA funds.

With EAC's reorganization of the financial management functions, a new senior level grants director was hired in FY 2009. The director is emphasizing technical assistance to the states and grantees, offering workshops and training sessions using distance learning tools and services of a grant support contract. EAC will continue to work with the states and grantees to clarify their responsibilities they have in managing the funds they receive or are awarded.

A system to track audits and state completion of corrective actions will be established. Another goal is to achieve the performance targets for timeliness in the Strategic Plan, such as resolving 100 percent of audit findings, awarding grants in established timeframes, and submitting state plans to the Federal Register within 30 days of receipt.

Providing assistance to states about HAVA Section 251 funds, or requirements payments, is the division's highest priority. A total of \$2.604 billion in requirements payments has been appropriated to the states. These funds may be used to implement provisional voting; provide information to voters; procure voting systems; implement a statewide voter registration database, implement identification requirements for first-time voters who register to vote by mail; and other activities to improve the administration of elections for federal office.

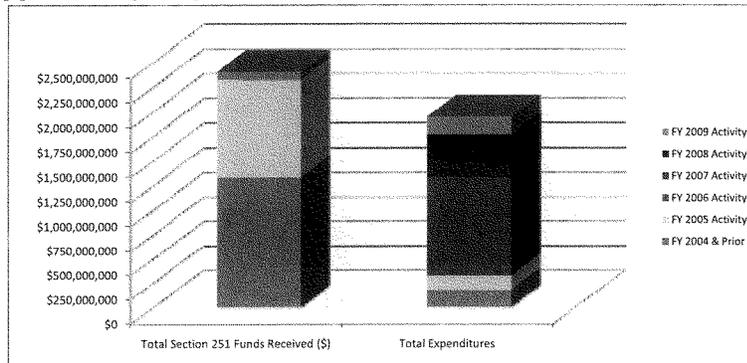


**Requirements Payments Appropriations & Disbursements**

	<b>Requirements Payment Appropriated</b>	<b>Amounts Disbursed</b>	<b>Percentage</b>
Section 251 (2003 & 2004)	2,319,360,617	2,319,360,617	100%
Section 251 (2008)	115,000,000	80,450,626	70%
Section 251 (2009)	100,000,000	51,969,214	52%
Section 251 (2010)	70,000,000	6,608,177	9.4%
<b>Total Appropriations</b>	<b>2,604,360,617</b>	<b>2,458,388,634</b>	<b>94.4%</b>

Based on aggregate financial reports from states reporting through September 30, 2009, with 80% of states reporting, and using projections for remaining states based on last year's spending rates, we can make several observations:

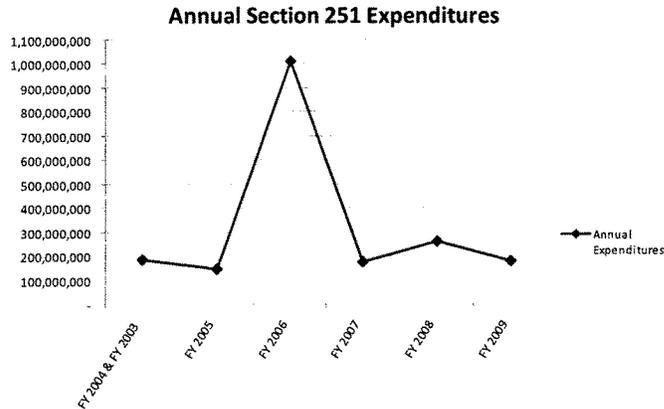
1. It takes about 18 months after a major disbursement of funds for states to begin spending funds. The time lag is due to state appropriations processes needed to secure matching funds and procurement processes needed to spend funds.
2. The implications for not disbursing funds in 2011 may be mitigated by the fact states will have received funds for three years in succession prior to 2011, so there are funds in pipeline to keep state processes moving forward.



3. The aggregate HAVA spending (Section 101 and Section 251) increased approximately \$90 million from 2007 to 2008. After 2006, states are spending less in non-election years, but they are spending funds at a 2:1 ratio to how much is annually being appropriated. At this expenditure rate, Section 251 funds should be completely expended in 3-5 years. As of September 2009, 23 states have spent 90% or more of their 251 federal funds.



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4. Twenty-one out of 55 states (and Territories) have certified as being compliant with Title III of HAVA, which includes meeting HAVA voting system standards (Section 301), provisional voting and information requirements and adopting computerized statewide voter registration systems. Of the 34 states that are not yet certified compliant 19 of those states have expended 90% or more of their federal 251 HAVA funds.

EAC's goal for 2010 is to better understand how much it will cost for each of these 34 states to become Title III compliant and how much it will annually cost to maintain that compliance. This information will be helpful for the 2012 budget process as we examine the continuing budget needs associated with helping states maintain compliance with HAVA.

Our work in this area will include analysis of how much it will cost states to become compliant with the MOVE Act, which is relying on Section requirements payments. MOVE Act costs were not contemplated during the time the 2011 budget was being developed.

The Grants Office is currently staffed by the director and a grants specialist with contractor and temporary staff support. An estimated \$303,000 will be needed to print State Plans and grants notices in the Federal Register. In FY 2010, EAC plans on hiring one full-time staff in lieu of FY 2009 contractor support.



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For FY 2011, the Office of the Inspector General initial request is \$1,893,494. The President's Budget request is \$1,837,836. The Inspector General has determined that these amounts will support operations for FY 2011. Of the total requested in the President's Budget, \$25,000 is for staff training to meet the continuing education requirements applicable under Generally Accepted Government Auditing Standards, and \$4,534 is for support for the Council of Inspectors General on Integrity and Efficiency.

OIG plans on increasing the number of HAVA funds audits from five per year to eight, and the number of reviews and investigations that are conducted. OIG plans on conducting two internal audits/evaluations of EAC programs and operations and an evaluation of its own operations in 2011.

As reported in the *OIG Semi-Annual Report to Congress, April 1, 2009 to September 30, 2009*:

"Since the inception of the audit program, the OIG has completed audits of 22 states – with audits of additional five states under way – and through the completed audits reported findings related to states' expenditures of nearly \$25.5 million. In the first several fiscal years, the OIG questioned a greater percentage of HAVA funds based upon their use. However, over the past fiscal year, the OIG has seen a reduction in the monetary findings associated with its HAVA funds audits. This is directly attributable the states' efforts to effectively monitor and document their use of federal funds. In fact, one state audited in the current reporting period received no monetary findings and one state audited during a prior period received a clean audit."

An increase of one junior auditor was requested for FY 2010, in addition to the existing positions of the Inspector General, legal counsel, and senior auditor. OIG requests 3.5 additional staff – a director of audits, a journeyman auditor, an investigator, and a part-time administrative assistant – for 2011 to build two audit teams. The additional staff would be hired in lieu of a portion of the more than \$900,000 in audit contracts awarded annually to increase flexibility to react to and further investigate questionable situations and potential audit findings. The staff would help manage contract audits to more efficiently review state and local government use of HAVA funds, expand grant audits to include the discretionary grant programs, and evaluate EAC operations.

**Strategic Plan Goal 3: Identify and develop information on areas of pressing concern regarding the administration of elections for federal office and issue guidance, translations, best practices and recommended improvements as required by HAVA, and carry out responsibilities under the National Voter Registration Act.**

Outcome: As a result of this goal: 1) the election community and other key stakeholders improve the administration of elections for federal office on the bases of pertinent, impartial, timely, and high-quality



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information, recommendations, guides and other tools on election and voting issues and 2) eligible citizens use the mail voter registration application to register to vote, register with a political party, or report a change of name, address, or other information.

<b>FY 2009 Enacted</b>	<b>FY 2010 Enacted</b>	<b>FY 2011 President's Budget</b>
\$1,191,890	\$1,544,817	\$1,523,184

The Research, Policy and Programs division administers:

- 1) The Election Management Guidelines Program to provide information on topics such as Ballot Design, Contingency Planning, Managing Change in an Election Office, Media and Public Relations, and Developing an Audit Trail for the verification of votes, to help election officials promote secure, accurate, and accessible elections.
- 2) The Language Accessibility Program to provide informational materials on the federal election process and election terminology in languages other than English, translate the national voter registration form, and gather information from working groups to address the election needs of voters with limited or no English proficiency.
- 3) Provides materials to voters to facilitate successful participation in federal elections such as registering to vote.
- 4) Conducts election research on mandated topics.

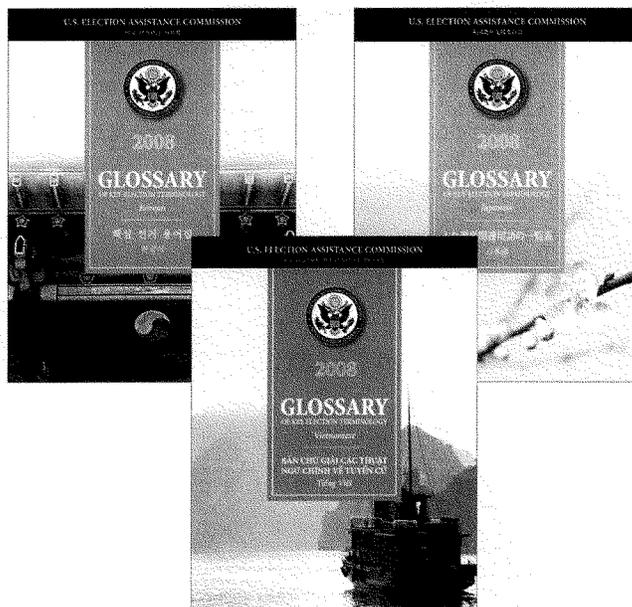
HAVA mandates that EAC issue studies on the impact of free absentee ballot return postage on voter participation, electronic voting and Uniformed and Overseas Citizens Absentee Voting Act voters, the feasibility of alternative voting methods, the voting experiences of first-time voters who register to vote by mail, and the feasibility and advisability of identifying voters by Social Security Numbers.

Each year, staff presents potential Election Management Guideline (EMG) chapters and Quick Start Management Guide ideas to the Commissioners for their review and consideration. Ideas for new chapters and guides are gathered by program staff from a variety of sources in the elections field. Once reviewed by the Commissioners, staff from the Research, Policy and Programs Department complete preliminary research for each new agreed-upon chapter.

EMG chapters are vetted with the topical working group and made available for comment to the EAC's Board of Advisors and Standards Board through the Virtual Meeting Room.



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The final version of each EMG chapter is formally adopted by the Commission. Once this has occurred the chapter is disseminated by mail and the Internet to all local and state election officials.

In 2011, EAC will release a report on data collected in the 2010 elections and a report to Congress assessing the impact of the National Voter Registration Act (NVRA) on the administration of elections for federal office. On August 28, 2009, the NVRA regulations were transferred from the Federal Election Commission to EAC. The project will involve review of the current regulations, any proposed changes to the regulations, and consideration of public comments. The EAC will conduct hearings to ensure broad participation in the rulemaking process. Final regulations must be adopted by a vote of the Commission following the public rulemaking process and published in the Federal Register before taking effect. In addition, EAC will update the Federal Election Commission's implementation manual to reflect any changes in the regulations and the additional requirements added by the passage of HAVA.

EAC's Board of Advisors and Standards Board assist in prioritizing research topics that are important and helpful to election officials. When new research projects are identified as priorities to undertake, a working group is organized. The members of the working



group provide feedback to Research staff about possible topics of study and are subject to final approval by Commissioners as part of the annual research plan.

**Strategic Plan Goal 4: Build public confidence in elections by testing and certifying voting systems to improve system security, operation and accessibility.**

Outcome: Voting equipment operates more reliably and securely and is more accessible to the disabled. States use EAC testing and certification program to ensure voting systems meet standards.

FY 2009 Enacted	FY 2010 Enacted	FY 2011 President's Budget
\$1,672,406	\$1,861,008	\$1,825,642

Under HAVA, EAC is responsible for assisting states with improvements to voting systems through the distribution of federal funds and by providing a voluntary federal certification program. The federal government's first voluntary Voting System Testing and Certification Program for the states also provides the public the opportunity to review every aspect of certifying voting equipment, such as voting equipment system information, test plans and reports, and reports on irregularities. Comprehensive procedures for the program are detailed in EAC's Voting System Testing and Certification program.

The division works on EAC's full accreditation and certification program. Staff works with the National Institute of Standards and Technology (NIST) to evaluate and accredit voting system test laboratories and the management of the voting system certification process. The program assists states with voluntary certification of their systems, supports local elections officials in the areas of acceptance testing and pre-election system verification, increases quality control in voting system manufacturing, and provides clear procedures to manufacturers for the testing and certification of voting systems to specified federal standards consistent with the requirements of HAVA Section 231(a)(1).

In FY 2009, EAC increased the Testing and Certification staff to expedite the voting system certification process. An EAC certification means that a voting system has met the requirements of the federal standards by passing a series of comprehensive tests conducted by an EAC-accredited test laboratory. Procedural requirements for the Voting System Test Laboratory Program are detailed in EAC's Voting System Test Laboratory Manual. Currently, six voting systems are participating in EAC's Testing and Certification Program.

The additional staff hired in 2009 has improved the process by answering technical questions of the election officials and vendors, helping test lab vendors understand how



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to test specialized systems, reviewing test plans, tracking complaints, visiting the testing labs, and keeping the technical review and approval process moving forward. The staff has made a commitment to match the testing time schedules provided by the voting system test laboratories and manufacturers. Staff holds weekly teleconferences with the labs and manufacturers of all testing engagements underway. Staff holds kick-off meetings with the labs and manufacturers to give the technical reviewers an opportunity to meet with the labs and manufacturers and ask them about everything they need to know about the systems for their reviews.

In addition to staffing and staff efforts to streamline the voting system certification process, EAC along with its Standards Board, Board of Advisors, and Technical Guidelines Development Committee (TGDC) (chaired by the director of NIST and comprised of 14 other members) work together to review voluntary testing standards. Efforts are underway to revise the 2005 Voluntary Voting System Guidelines. The revisions are aimed at aiding the creation of test suites that promote uniform, consistent and faster testing by eliminating bottlenecks in the testing process. Revisions will also provide clarification in key areas that may cause confusion and slow the process.

In 2011, EAC plans on transferring \$3,250,000 to NIST via interagency agreement for activities required under Sections 221 *Technical Guidelines Development Committee* (TGDC), 231 *Certification and Testing of Voting Systems*, and 245 *Study and Report on Electronic Voting and the Electoral Process* of HAVA.

EAC and NIST seek to produce final reports by the second quarter of 2010 related to UOCAVA initiatives on Best Practices for Transmission of Election Material and Security Considerations for Remote Voting. NIST's interim report, "A Threat Analysis on UOCAVA Voting Systems," discusses the need to balance security and privacy in electronic transmission of voting materials with ensuring UOCAVA voters get to vote in a timely manner.

The Testing and Certification unit consists of six full-time staff, four part-time technical reviewers, and two contractual staff. Total cost of staff, reviewers, and contractors for FY 2011 is \$1,254,941. Travel is budgeted at \$280,500; printing at \$105,200; other services at \$180,000; and \$5,000 for supplies. Current plans are to begin phasing out one of the contractual staff as new full-time staff are trained and can take over the function.



### How does a Voting System Get Certified by the EAC?

**Step one:** Voting system manufacturers must register with the EAC.

**Step two:** Manufacturers must submit an application and select a federally accredited test laboratory to begin the testing process.

**Step three:** Test laboratory submits draft test plan to EAC for approval.

**Step four:** EAC approves test plan.

**Step five:** Voting system is tested to the applicable standards.

**Step six:** Testing concluded; draft test report submitted to EAC for approval.

**Step seven:** EAC approves test report and issues initial decision on certification.

**Step eight:** Test laboratory rebuilds voting system in a trusted environment, otherwise known as a “trusted build.”

**Step nine:** Manufacturer provides software identification tools to EAC, which enables election officials to confirm use of EAC-certified systems.

**Step ten:** Manufacturer provides voting system software to EAC repository, allowing EAC to capture an official record of the voting system it has tested and certified.

**Step eleven:** Manufacturer agrees in writing to all EAC certification conditions and program requirements.

**Step twelve:** EAC certifies voting system.

### Strategic Plan Goal 5: Achieve organizational and management excellence.

Outcome: EAC Commissioners and staff proficiently carry out EAC’s strategic objectives.

Goal 5 consists of one clear-cut objective; to implement a high performance organization. Goal 5 is administered by the Commissioners, the Standards Board, the Board of Advisors, the Technical Guidelines Development Committee, Executive Director, Chief



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Operating Officer and Chief Financial Officer with support from the Offices of the General Counsel and Administration.

In FY 2009, in response to the agency's first financial statement audit, EAC reorganized the agency structure and created a financial division. The division consists of a senior level grants director who administers HAVA funds, an accounting director who is a Certified Public Accountant, and a Chief Financial Officer who ensures that EAC is compliant with federal requirements and resources are used efficiently.

The CFO department will continue to focus on resolution of issues identified in audits, setting up sound systems and policies and procedures, working with managers on the relationship between budget and performance, maximizing use of staff and financial resources, and training EAC staff on financial management processes and their responsibilities.

Management is working to foster a culture of accountability among staff. The agency is seeking to improve staff satisfaction ratings and achieve management excellence through improved internal controls and human resource initiatives.

## **INFORMATION TECHNOLOGY**

The Commission's information security program encompasses those measures necessary to protect the Commission's information resources. These measures include providing for each project: the appropriate technical, personnel, physical, administrative, environmental and telecommunications safeguards; and continuity of operations through contingency or disaster recovery plans. The Commission's protective measures cover the following information resources: data, applications, software, hardware, physical facilities and telecommunications. The Commission's information security program assures that each automated information system has a level of security that is commensurate with the risk and magnitude of the harm that could result from the loss, misuse, unauthorized disclosure or improper modification of the information contained in the system.

Currently, EAC depends on GSA for email, internet and information technology (IT) security services, and on a contractor for maintenance of the website, [www.eac.gov](http://www.eac.gov). Current EAC IT staff maintains personal computers and smartphones, provide software requested by EAC staff, and perform vulnerability scans. The agency has a shared drive but does not have an intranet where policies and procedures can be posted. EAC is GSA's last IT client agency. EAC's vision is to be responsible for our own infrastructure led by a qualified Chief Information Officer (CIO). EAC expects to replace the acting CIO with a CIO in the second quarter of FY 2010. The CIO will work on integration of EAC systems, upgrade the agency's email to MS Outlook from Lotus Notes, assist the directors with systems to capture performance metric data, and guide



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EAC in implementation of an automated Time and Attendance system and an e-Travel system. Currently, EAC submits hard copy exception-based time sheets to GSA, where the Electronic Time and Attendance Management System is used. EAC submits hard copy Travel Authorizations and Vouchers to GSA.

Salaries and Expenses (Dollars in thousands)		FY 2009 Enacted	FY 2010 Enacted	FY 2011 President's Budget
<b>IT Resource Category</b>	<b>Budget Activity</b>			
Total, IT Investments		1,037.1	961.4	974.6

## CREATIVE SOLUTIONS & APPROACHES

Thanks to an innovative and creative staff, EAC has implemented several initiatives to use contractors more efficiently, save money, leverage partnerships and increase productivity throughout the Commission.

### Procurement Innovations

Beginning in FY 2008, EAC started the process of hiring staff in lieu of contractors for its research and evaluation work. By FY 2009, EAC had phased out 12 contracts awarded by the Department of Interior on EAC's behalf and instead used staff to produce publications and reports.

In accordance with the President's Memorandum on Government Contracting, issued on March 4, 2009, we reviewed EAC's existing contracts and current acquisition practices to target achievable cost savings. The acquisition budget for FY 2010 is budgeted at \$4.3 million and FY 2011 is approximately \$3.3 million. The following items are proposed to save 3.5 percent of EAC's baseline contract spending in FY 2010 and a further 3.5 percent in FY 2011.

#### Acquisition Savings Plans Steps to be Taken for FY2010/2011

- 1) Perform an analysis of organizations within EAC to consider the continued need and cost-effectiveness of out-sourcing expertise that could be staffed in-house.
- 2) Cost savings are projected by converting current out-sourced resources to current or future in-house staff for ongoing work tied to growth projections of EAC.
- 3) Re-compete two current contracts to obtain cost reductions:
  - EAC Website Maintenance & Hosting Contract. Savings in 2011: \$235,000
  - EAC Election Day Survey Analysis Contract: \$130,000 in 2010



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### **Partnerships and Collaboration**

The federal government consists of a wealth of valuable resources, including experts in the areas of policy, budget and technology. In recent years, federal agencies have experienced an increase in cross-agency collaboration, which has facilitated the sharing of resources and knowledge. For a small agency like EAC, these federal resource hubs are invaluable. EAC employees have joined federal organizations like the Small Agency Council, which offers ways for agencies to share training costs and ideas. Through the Council, the participants pooled resources to fund training classes through the Graduate School (formerly the United States Department of Agriculture [USDA] Graduate School). Participants even share physical training space. Due to the cost savings and the small agency perspective provided by the trainings, EAC intends to continue being an active participant in FY 2011.

EAC also participates in events sponsored by the Web Managers' Council, an interagency group of senior federal government web managers who collaborate to improve the online delivery of U.S. Government information and services. The Council offers training courses at reduced prices and hosts a list-serve in which federal employees exchange ideas, ask questions and share solutions. EAC recently participated in training sponsored by the General Services Administration for [www.data.gov](http://www.data.gov). Communications Division employees will continue to draw upon the expertise of the group of federal employees managing this new site, which is the designated location for high-value federal data sets.

As part of EAC's effort to develop and share best practices in election administration, EAC contracted with USDA, Office of Communications, Broadcast Media and Technology Center to produce training videos. The collaboration resulted in four very well received videos about polling place set-up, accessibility at the polling place, contingency planning and an overview about how the EAC tests and certifies voting systems. Videos are available at [www.eac.gov](http://www.eac.gov) as well as on EAC's YouTube page, Help America Vote. EAC will again partner with USDA to produce another series of videos, including one featuring a Mock Election Grant recipient's approach to forming a partnership with a local election office.

An invaluable resource for EAC has been the Target Center at USDA. The Target Center's mission is to make sure that USDA employees have "safe and equal access to electronic and information technology by assessing, educating, and advocating for the integration of assistive technology and worksite accommodations." EAC reached out to the Target Center for assistance with making documents accessible. Consequently, the Center hosted a training session for the entire EAC staff and continues to be available to us if we need assistance.



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## **EMPLOYEE SATISFACTION & SUPPORT**

Program and financial integrity depends on well-structured human resource policies and practices. Along with the Chief Operating Officer and Chief Financial Officer, EAC's Human Resource (HR) Director in the Office of the Chief Operating Officer is charged with improving program operations and tracking accomplishment of goals. In 2009, HR began the process of implementing policies and procedures to improve staff performance and to establish a human resource accountability system. The system will ensure effective Human Resource management in support of the agency's Strategic Plan and in adherence to the federal merit systems principles, and other federal HR laws and regulations.

EAC is committed to building a diverse, well-trained, high-performing workforce. Managers and supervisors are accountable for efficient and effective human resources management in support of the agency's mission and in accordance with merit system principles. Supervisors will undergo a human resources management training program with the aim of enhancing managers' and supervisors' ability to accurately evaluate performance, recognize good performance, and take corrective action as needed to address identified performance deficiencies. They will be trained on effective performance management: the importance of providing feedback to employees frequently throughout the year, and of conducting regular formal performance appraisals with appropriate detailed feedback to help staff grow and succeed. The supervisory training program also includes modules on EEOC and sexual harassment, No Fear Act, teambuilding, ergonomics, and work/life balance.

EAC has expanded the services provided under the Employee Assistance Program via a Memorandum of Understanding with Federal Occupational Health to include clinic services such as first aid and blood pressure checks and the WorkLife4You Program. The Work/Life Program includes consultations for staff on such topics as child and elder care, adoption, career development, retirement planning, and services for adults with disabilities and illnesses

Staff and supervisors will also be responsible for annual Performance Plans and Individual Development Plans (IDPs) to help employees identify strengths and weaknesses, reach their potential and attain their career goals. The Performance Plans will address not only accomplishment of strategic plan goals and how each employee contributes to achievement of the agency's mission and goals, but will also address core competencies and performance elements for each position. Development activities in the IDPs include in addition to formal training, mentoring, coaching, computer-assisted training, brown bag lunch-time learning groups, and formal feedback.

In September 2007, EAC produced a Succession Management Framework to mitigate the impact of employee attrition. The plan outlines recruitment, selection criteria,



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identification of agency-wide core competencies required, development of staff, and retention of staff by providing challenges and rewards. The acquisition budget for FY 2010 is planned at \$4.3 million and FY 2011 is approximately \$3.3 million.

### **INVESTING IN EMPLOYEE SATISFACTION & WELLNESS**

EAC plans on using employee survey findings to improve recruitment, retention and future ratings. We are developing an action plan to address the specific areas that employees have identified as needing improvement. One area identified as needing improvement is leadership and supervisory skills. As mentioned in the Internal Control section of this document, a Supervisory Development Program will be offered with courses in project cost management; EEO, sexual harassment and diversity; financial management, human resources management, and performance appraisal. Further, the agency arranges team building exercises to improve internal communication over and above the activities described in Goal 1 Communicate.

The acquisition budget for FY 2010 is planned at \$4.3 million and FY 2011 is approximately \$3.3 million. In an effort to promote health and wellness initiatives, EAC provides staff with an Employee Assistance Program via a Memorandum of Understanding with Federal Occupational Health. EAC has expanded the services provided under the MOU to include clinic services such as first aid and blood pressure checks and the WorkLife4You Program. The Work/Life Program includes consultations for staff on such topics as child and elder care, adoption, career development, retirement planning, and services for adults with disabilities and illnesses. In addition, EAC does not have to expend funds on offering a fitness facility as one is provided to staff in the building to use free of charge. EAC participates in the Flexible Spending Account program, and provides flexible work schedules, telecommuting, and transit benefits. In FY 2009, EAC purchased automated external defibrillators for each of its three locations and provided cardio-pulmonary resuscitation training to approximately 12 staff on use of the machines through the Red Cross.

### **LOOKING FORWARD**

FY 2011 will be a busy year for EAC as we prepare for a presidential election year. We anticipate that the technology investments and Web site enhancements will help us deliver and provide information to a larger audience, enabling more voters to have a successful experience casting their ballot. We will expand the online resources provided to election officials, including an effort to collect best practices about contingency planning, poll worker training, pre-election testing and audits.



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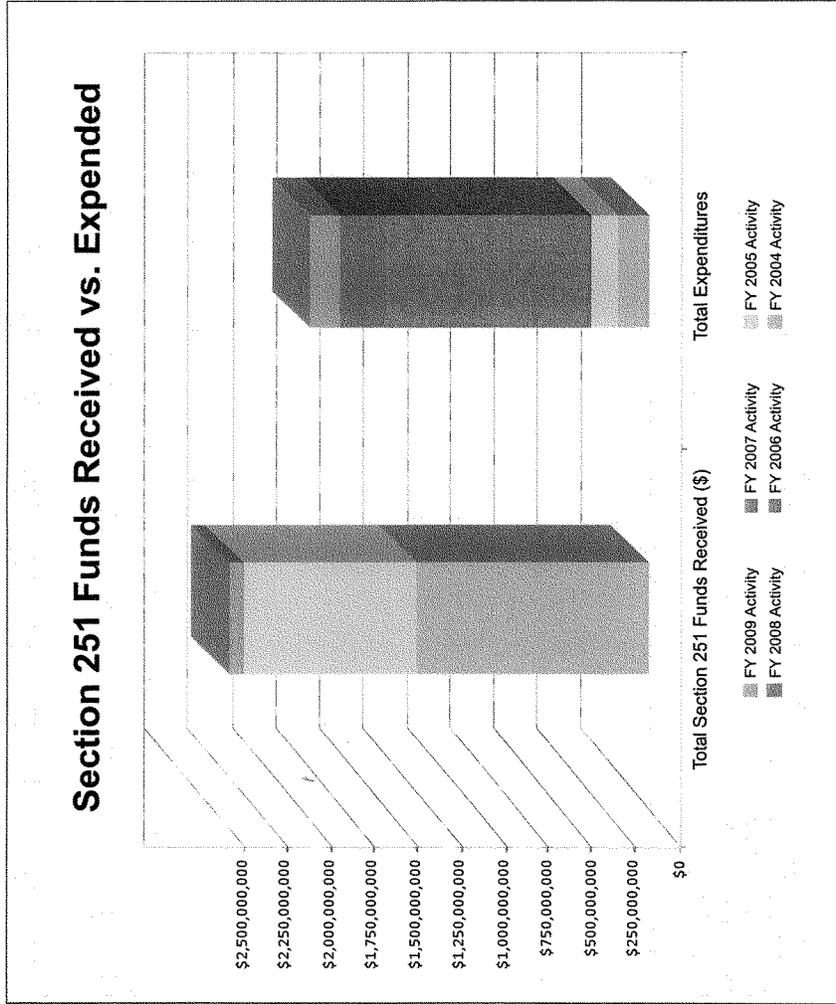
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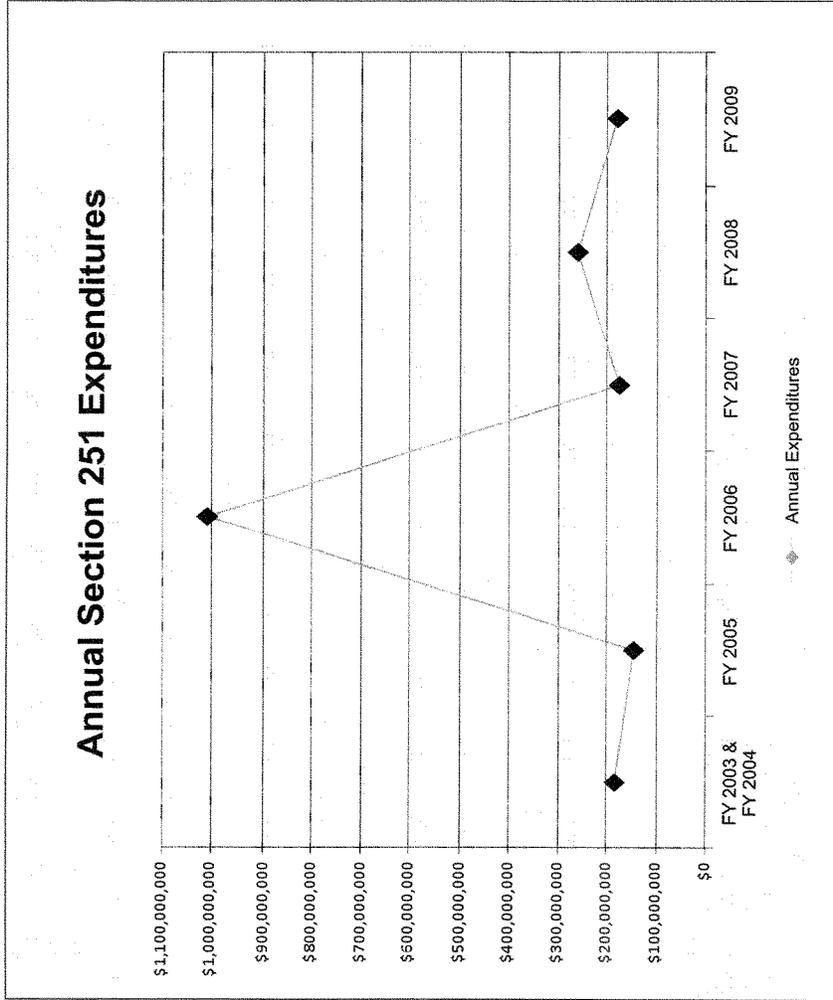
EAC's Voting System Testing and Certification Division will be working towards the final adoption of the next iteration of the VVSG, as well as manage the responsibilities that will come from the EAC-certified voting systems operating in the field, many of them for the first time. Manufacturers are obligated under the terms of the program to report problems that occur in the field, and we must make sure we have the resources to thoroughly follow up. Efforts to work with the Federal Voting Assistance Program and NIST to develop a remote electronic voting system for overseas citizens and the military will continue.

Staff will collect information from the 2010 election for EAC's Election Administration and Voting Survey, including data about the rate of participation for overseas citizens and military voters. Almost simultaneously, they will begin developing the survey instrument for the 2012 election.

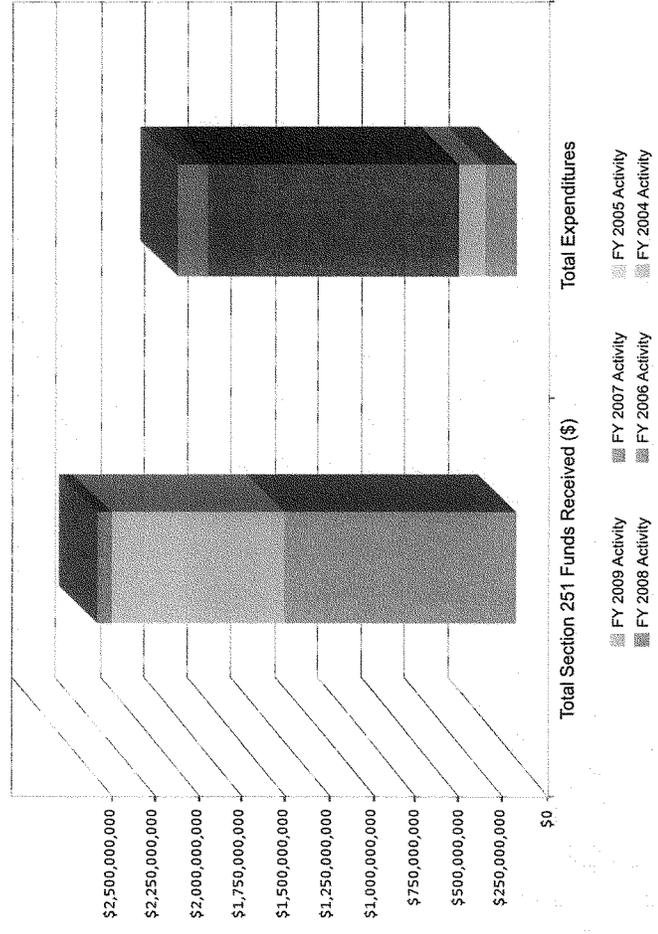
To support staff as they embark upon the many responsibilities ahead, EAC will continue to provide training, support services and make sure that the work environment is healthy and will promote productivity. Therefore, EAC will continue to focus inward to improve internal operations. The Design Team will continue to serve as a liaison between staff and management, making sure the lines of communication stay open.

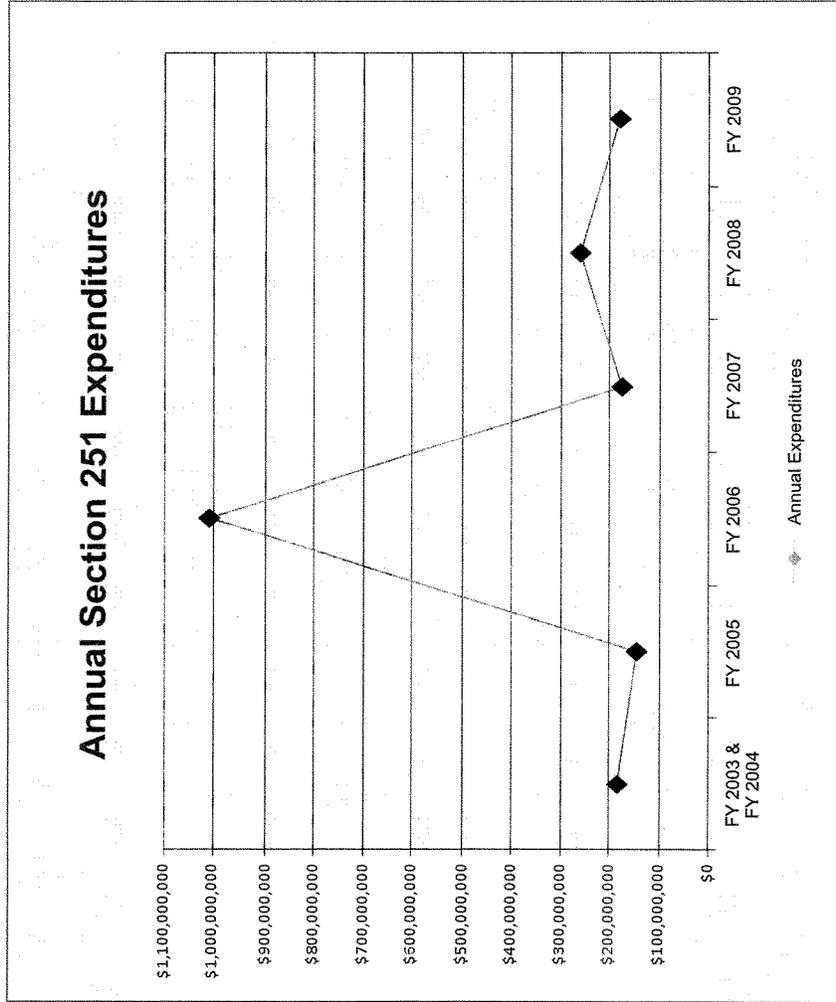
EAC will continue to form strategic partnerships within the federal government, employ the use of technology to broaden our reach and deliver information to more people, and be responsible stewards of federal resources.





### Section 251 Funds Received vs. Expended





Mr. SERRANO. Thank you so much. Thank you for your testimony.

Two quick things come to mind that I didn't have prepared to ask. Refresh my memory. The five languages, the six languages, is that by law or is that—that is by law, right?

Ms. DAVIDSON. That is correct. The National Voter Registration Act requires that the languages be available in certain areas within the United States underneath Title—I want to say Title V requirements, but I am not sure that is right, and then there is that section of the National Voter Registration Act.

Mr. SERRANO. Okay. And, secondly, just on a personal level, when we say you were a local election official, you did it all at the local level, right?

Ms. DAVIDSON. I was a local election official in a very small county, very rural county. And then also I was the election official—elected county clerk in both of them—in a very large county. So I had the rural and the metro experience, and they are very different.

Mr. SERRANO. I just think that every so often we should mention people in this society who don't get much credit. Having been in elected office for 36 years now, some of the folks that work at the local level never get any credit; and I am not talking just about the officials but the folks that get up at 4:30 in the morning, for instance, in New York to be at the poll site by 5:00 to have those machines ready by 6:00, and then they are there until 9:00, and then they have to count. And years like last year, the count went on, just the lines of people outside and the whole thing; and they do it for very little money and with no fanfare. And so every so often in public we should give them a special thanks because, without them, it doesn't happen.

Ms. DAVIDSON. Absolutely. You are absolutely correct. They are really the vital source of our Election Day process. Without them, we couldn't conduct the elections.

Mr. SERRANO. Right. Congress provided \$115 million in fiscal year 2008 and \$100 million in 2009 and \$75 million for fiscal year 2011 for grants to States for the purpose of helping them meet the requirements of the Help America Vote Act. What percentage of this funding has been distributed to States? What are the reasons for funding not yet being disbursed or used by the States? And, lastly, how fast are States spending HAVA funds relative to the rate at which this subcommittee has provided funds to them?

Ms. DAVIDSON. The States in some areas—it is State by State. Every State is different. I need to make that statement, first of all.

But we have appropriated all the funds except about \$200 million of the funds, and that has been the later funds that have been given for us to appropriate to the county and—to the States, I should say, to the States—And the reason why they haven't been able to meet that 5 percent. We have been trying to work with the States to give them the flexibility. If they can meet part of that, we will give them the money that they—a portion of that 5 percent that they have met to give them that capability at drawing down some of their funds. But we do have some States that are really under dire stress.

Mr. SERRANO. And this stress is caused by what, their own inability to absorb the funds, their inaction, resistance? Is there any resistance?

Ms. DAVIDSON. Mr. Chairman, there is no resistance. If the States had the 5 percent match, they have to go through their own legislative process to get the 5 percent and their budget or their budget process, and it usually is legislative. Some States, as you notice, it took them 2 years to be able to get their money. Some of our States only—their legislators only meet every 2 years. So that is one of the things that holds up them getting them money.

And then the other thing is we have found that there is just as much problem out there with the States currently—the ability of meeting the financial needs, they just haven't been able to get the 5 percent. States have asked us for special ability—like Florida asked us if they could use their interest money to meet that 5 percent. We don't have that authority, obviously. So right now, no, we can't do that.

Mr. SERRANO. This was the interest money on—

Ms. DAVIDSON. That they had made on HAVA and haven't spent today.

Mr. SERRANO. I see.

Now, on a personal note, I know that my State of New York had some problems catching up to date, I would say. From your point of view, are we ready to go in New York? I know what they tell me, but are they ready to go?

Ms. DAVIDSON. New York, we are aware, has been spending money and buying equipment this last year. I think New York City was one of the last counties that actually purchased—or the city and county that actually purchased the equipment. So it is probably being manufactured and delivered as we are speaking, and it should be utilized in this next election.

Mr. SERRANO. Okay. That makes me a little nervous with September primaries and November elections. Not that I have a special interest, but—

Ms. DAVIDSON. Well, I can tell you, Mr. Chair, that we found—as you stated in your opening statement, it takes time for election officials to write new manuals when they get new voting systems, train their poll workers, train, obviously, their office staff and even training the voters to vote on new systems. So we had more problems. When we put all of the systems in at one time nearly throughout the United States, there were more problems. And, as you have said, the problems seem to have ceased this last election, be a lot less. We are always going to be training new election officials, but definitely we hope—and I know that they are working very hard at training everybody to make sure it is a smooth election for everyone.

Mr. SERRANO. Thank you.

Now, as you know, there are proposed budget cuts, a decrease of \$75 million. We also know there are States that have the leftover dollars. So will all States be eventually impacted by the proposed budget cut in the elections reform program in 2011? How will States continue to be compliant in the future? In other words, what do States need in the mid to long term to keep up with the HAVA requirements?

Ms. DAVIDSON. You know, as I said in my opening portion, every State is different. I really think that you need to talk to the individual States. Some States have spent all of their money. Others have spent a percentage of it. But, really, it is up to the State, every State. How they have run their elections and how they run them, because of their State laws, is much different throughout the Nation. So it is by an individual State-to-State need.

Mr. SERRANO. Thank you. I can't believe that the chairman stuck to the 5-minute rule.

Mrs. EMERSON.

Mrs. EMERSON. Wow, I guess I better be—don't start the clock yet. How did the Yanks do last night?

Mr. SERRANO. The Yankees were at the White House yesterday.

Mrs. EMERSON. Did you have fun?

Mr. SERRANO. It was fabulous. I yelled out, 28, Joe. Not meaning his number, but 28th World Series, the next one. Arrogant on my part.

Mrs. EMERSON. Did you have your picture made with everybody?

Mr. SERRANO. No, they wouldn't let us near them. It was terrible.

Mrs. EMERSON. When the Cardinals came from having won the World Series we got our pictures.

Mr. SERRANO. And I am a Cardinal, right?

The greatest time was when the President complained that the White Sox would probably never win a World Series again; and Joe Girardi, the manager, says, Mr. President, hold onto the Yankee trophy. He said, you better hold onto it because it will be the last time you touch a World Series trophy.

Mrs. EMERSON. Sorry. We have this little baseball competition going here. My Cardinals won last night, too.

Okay. Ms. Davidson, you said that the States are not allowed to use the interest money that they earn on the monies that they have received for purposes of their 5 percent match, correct? So what do they do with this interest money? What can they use it on?

Ms. DAVIDSON. That is correct. If a State has not met the requirements of Title III, they can purchase more voting equipment. They can use it on a voting registration system or improving it. A lot of States are having to improve their voter registration because of the MOVE Act. They can also use it on the procedures on doing the—let me stop and think. There are four reasons: provisional ballots, and then educating voters, and putting the information up in the polling place, also.

Mrs. EMERSON. Well, it seems to me, though, just looking at these numbers—for example, Missouri, which is my home State, received \$44,914,650. They have spent 88.9 percent of their funds, which is—excuse me, no, that is plus interest—95.7 percent of their funds. So that is good. They are still sitting on \$3,878,000 plus. And it seems to me that it is somewhat advantageous for the States to just be sitting on this money and not spending it because they are earning all this interest. So it multiples and they have got more money to spend, correct?

Ms. DAVIDSON. Of course, they make a lot less on the interest now than what they used to.

Mrs. EMERSON. But New York is sitting on \$22 million interest. Missouri is on almost \$3.9 million. They make less on interest, but it is still sitting there, and it is growing a little bit.

Ms. DAVIDSON. You are correct. That report is as of September 30, 2009, So there could be more expenditures made since that time.

Mrs. EMERSON. Since that time. Okay.

Now, given the fact that for every other government program known to mankind, practically, the State or the local match is 25 percent, 30 percent, even up to 40 percent, so 5 percent just doesn't seem a lot to me, given—and I am very sympathetic and understanding of the financial positions States find themselves in, but I am still looking at this list of how much money all the States are sitting on and I am wondering why we are sending the States—they are sitting on nearly a billion dollars worth of unspent HAVA grant money; and, given that our deficit is projected to be \$1.6 trillion this year, why would we be giving these States more money? Please tell me why.

Ms. DAVIDSON. Well, what I can tell you is every State is different. Some of States have spent all of their money, including their interest money. There have been a few of those that have spent 110 percent. So that includes their interest money. Other States have spent an average of probably 80 percent. Some States are still holding on to probably about 50 percent of their money, and I imagine New York is in that category is shown there because they have just started spending the money this last year. So with the report being due in September of 2009, there is quite a bit of money to spend in that area since that time. But every State is so different. So it is hard for me to tell you why.

I can tell you from history that States know this money is not going to continue, and they are afraid they are not going to be able to continue meeting the needs of the contracting, supporting their voting systems. They know that voting systems only last about 8 to 10 years, and they know they are going to be up for a new allocation of money that has to be spent, and they are afraid where they are going to get that because they know the Federal money has not been appropriated for anything like that.

Mrs. EMERSON. We keep giving them money, though, so it seems to me—I don't know. Do you think it would be better for us to take back the money that we have got and wait for them to apply for grants and you all just hold it in D.C., as opposed to leaving it there for them since they are not applying for the grants in the first place?

Ms. DAVIDSON. I really don't have an opinion on that. The States being able to have it in their funds and spend it at the time—I do know that when we have money that has been allocated to give to the States it takes them a great deal of time to first meet the HAVA requirements, have a State plan, how they are going to spend it and have that put in the Federal register and then also do any type of expenditures they have to go through their appropriation that is required by State law. So it does take them about 18 months to be able to, from the time it has been appropriated, to be able to receive it and spend it is what we are finding.

Mrs. EMERSON. Could you provide us with some updated figures? Do you have any beyond September 30, 2009?

Ms. DAVIDSON. I don't—the laws require them to report on that time. Now—

Mrs. EMERSON. Do you mean like quarterly?

Ms. DAVIDSON. The reports are due September. So that is—

Mrs. EMERSON. Each year?

Ms. DAVIDSON. Each year. So I am trying to think if I could ask them to give us an additional report right away without going through the Paperwork Reduction Act. We do have to do that; and, as you know, that takes 3 to 4 months to get it through.

Mrs. EMERSON. Could you just send them an e-mail maybe?

Ms. DAVIDSON. I am sorry to say if I ask more than nine people, I fall underneath that. Even with an e-mail. But I will see if we have anything. I will report back to you.

Mrs. EMERSON. That would be awesome. Thank you so much.

Ms. DAVIDSON. I definitely will do that.

Mrs. EMERSON. Thank you.

Mr. SERRANO. Just as an aside, I am told that part of what is happening in the States is that the States are unsure what commitment the Federal Government will make to them as they move along. For instance, all the ones who are already on board now in 10 years will have to replace the machines. In the meantime, machines break down and so on.

Then there is the other point, I am told, where funds sitting there may have already been obligated in some way. So it is not that they are not spent.

Mrs. EMERSON. That is why I asked if we could get a midterm report by e-mail so we could keep the paper at a low level.

Mr. SERRANO. I am for paper, but—yes.

Ms. DAVIDSON. There is one thing that comes to light that has happened this last year, the MOVE Act. The MOVE Act has required several elements for the States to meet that will be additional funding that they will be spending of their HAVA dollars. And one of those is to make their system where they can send out electronically to the overseas and the military any blank ballots and election material. They also have to be able to track that ballot, the absentee ballot when it goes out and when it comes in and put that up on a Web site to make it available to the individuals.

So their systems will need work; and every time that we even ask for a change of our report, that costs the States money. So I can tell you that much. When laws are changed, obviously, that costs money for them; and they can utilize the HAVA dollars in meeting those needs.

Mr. SERRANO. Since I am lobbying my Republican colleagues for a bill that is on the floor on Thursday—

Mrs. EMERSON. He is being nice to us.

Mr. SERRANO. Mrs. Emerson is one of the greatest ranking members in history; and now I yield to one of the greatest members in the history of the world, Mr. Culberson, under the 5-minute rule.

Mr. CULBERSON. Thank you very much, Mr. Chairman.

We really do appreciate your service, Ms. Davidson. Thank you very much.

When a State election voting system is certified as accredited, you are looking not only at the actual machinery and mechanism the State uses for people to vote but their entire voting system, correct? You are looking at the way they conduct the election, the way that the State ensures it that people with disabilities or other language barriers have access to vote, that sort of thing. You are looking at the whole comprehensive system or just the machine?

Ms. DAVIDSON. I am sorry to tell you that I cannot meet your dream. It is just the equipment that we look at. We test it by the standards that have been set by the TGDC, NIST, and the EAC. So it is tested just to those standards.

Mr. CULBERSON. As I recall—and I know all of us were here after the—I think this law was initially passed in 2003, 2002—2002—in response to the problem with the Florida election and hanging chads and the punch card system. We are trying to find a way in Federal elections to make sure the votes are counted accurately and honestly, and I know that the money that the States are given as a part of the funding is to help them replace their old punch card system, correct? And we ideally want States to be able to move to an electronic system that has been certified as accurate by the Election Assistance Commission, correct?

Ms. DAVIDSON. That is correct.

Mr. CULBERSON. You also, I notice in your report, have as a part of your responsibility, in addition to making—there is a national voter registration form, some standards that if it is a Federal election—obviously, if it is a State election that is there, we, as the Federal Government, can't necessarily dictate to the States what sort of standards they are going to set in a State election. But if it is a Federal election, this national voter registration form, just a standard that was adopted apparently in 1993, that is also a part of your charge, is to make sure that States are registering and allowing people to vote that are qualified, correct?

Ms. DAVIDSON. That form is utilized by anybody throughout the Nation, along with the State form. They are not required to only accept that form. I mean, they have to accept that form, but they also can utilize their own State form. They also utilize the Federal form that FVAP hands out. That is the overseas and military form. So they utilize all those forms, but it is not mandated that is the only form they can use.

Mr. CULBERSON. What I am driving at is—and, also, I noticed you also help States with this funding they can also use to help keep their voter registration lists purged from people who pass away or are disqualified because of a felony conviction, et cetera; is that correct?

Ms. DAVIDSON. That is correct.

Mr. CULBERSON. What I am driving at is, how do we help ensure that States are registering people who are qualified, that are able to vote, and that we are not voting people that are either felons or otherwise disqualified because they are not a citizen, for example?

Ms. DAVIDSON. Everything that the Election Assistance Commission does is voluntary except provide the form and the rules that we have to go through to develop that form.

Mr. CULBERSON. But the States, by accepting the money, they are locked in to comply with the requirements of the Act.

Ms. DAVIDSON. Remember, we are an assistance commission. We can give them all kinds of assistance. They are not required to accept that. Even our testing that we do on equipment, that is a voluntary process. The States can utilize equipment that has been tested and certified by the EAC or they can go out and buy equipment on their own and it does not meet our qualifications.

Mr. CULBERSON. But once the State accepts the funding, they are not required to comply with any of the—

Ms. DAVIDSON. It is still an assistance commission.

Mr. CULBERSON. Have any of the States rejected the funding?

Ms. DAVIDSON. No, no States have rejected the funding. There was a couple of States that rejected the initial up-front funding to replace the—I believe that is the 102 money. The 102 money, they rejected that; and I think it was only one or two States that rejected it, wanted to keep their same system that they had.

Mr. CULBERSON. Who was that? What States?

Ms. DAVIDSON. Through the 102 money was to buy one piece of equipment for every precinct that met the needs of the disability community to be able to vote openly and fairly and confidentially. That it had to meet those standards, also.

Mr. CULBERSON. What, if anything, does the Commission do to ensure that the voter registration rolls are purged of people that have passed away, become convicted of a felony, or that the voter registration rolls do not contain the names of people who are not eligible to vote because they are not citizens?

Ms. DAVIDSON. We do not have any authority. We are not a regulatory agency at all in that area. The only ones that really review that is the Justice Department.

Mr. CULBERSON. Or the Secretary of the individual States—

Ms. DAVIDSON. The Secretaries of States and also the Attorneys General within their own States, obviously. Yes. But I meant at the Federal level.

Mr. CULBERSON. Thank you.

Thank you very much, Mr. Chairman.

Mr. SERRANO. Just an editorial comment. If there is something I know about undocumented folks is that they really don't want to be found out. The idea of going to a register to vote is like in your face, here I am, and it is just the opposite.

Ms. Lee, before you came in, I made a comment that I was being extra nice to all colleagues because I need your votes on Thursday. But you have been with me for a few years on that. I am still going to introduce you as the greatest Member of Congress in the history of the world.

Ms. LEE. Thank you very much, Mr. Chairman. And that vote on Thursday, I think it is extremely important in terms of democracy building.

Let me thank you for being here. I apologize for being late. I hope my questions are not redundant.

Let me just say, Ms. Davidson, I, of course, come—my congressional district is in Oakland, California, northern California. But I was born in El Paso, Texas. So I come from a State where there was a poll tax and I went through the civil rights struggles and finally got the right to vote, my family and friends. And so the protection of the rights of voters in the election process is very, very

dear to not only myself but members of the Congressional Black Caucus, to all of us.

After the Bush versus Gore decision, I once again became very concerned about the protection of the rights of our voters and the election process, from ballot issues in Florida to voting machine dysfunctions. There were real issues that needed to be resolved.

And since the right to vote is really at the core of our Constitution and at heart of the civil rights movement, I guess I am very concerned about how the Help America Vote Act of 2002 is being implemented, especially as it relates to, one, the commissioners.

Now, you can correct me if I am wrong. It is my understanding right now there are three commissioners and there is one Democrat on the Commission and the vacancy. I want to know how that affects the deliberations and the operations of the Commission in terms of the real imbalance in terms of political party affiliation and the important work that needs to be done. So that is my first question.

Secondly, of course, you know, the lack of diversity among the 37-member Board of Advisors and the 110-member Standards Board and the hundreds of election officers around the country, do you have a breakdown on the demographics of the Board of Advisors and the Standards Board?

Of course, we have 50 percent women in our country, 65 percent white, 15 percent Hispanic or Latino, 12 percent African American, 4.5 percent Asian American, 1 percent American Indian, point 2 percent native Hawaiian and other Pacific islanders, and 1.7 percent persons who claim two or more races. So I think it is very important to get it right because of the history of what we have been through in our country to make sure that diversity is there in a very clear way. So I would like to find out if you have that information. If not, could you submit to the committee?

Ms. DAVIDSON. The first question on the three members of the EAC commissioners, we are a nonpartisan board. We act as a nonpartisan board. There have been times when it has been one Republican and two Democrats with vacancy, is how it seems to work. But I have not seen that be a problem in any way, shape, or form.

The other question, the Standards Board is two members from each State; and one is appointed by the Secretary of State for the State and then the local individual is appointed by the locality. I do not have a breakdown of that board at all, and I am not sure I would be accurate in trying to guess the diversity of the nationality of individuals.

And, second, the Advisory Board is appointed by other people than the EAC, so we have never, ever had a breakdown there, either. I can tell you that the Standards Board is half and half Democrat and Republican. That is the only thing that the law made sure, that there wasn't a lopsidedness on that Board.

Ms. LEE. Well, I guess, Mr. Chairman, I don't know if we could ask the Commission for the breakdown in terms of gender and race on these boards. Because, again, it may be fine. It may reflect the diversity of our Nation, and it may not. And I think it is important that we know the background and the race, ethnicity, and gender of people on the 37-member Board and the 110-member Standard Board. Because if they didn't take diversity into consideration, then

we may not have a Board that is diverse. Or if they did, we are fine.

Ms. DAVIDSON. I will be more than happy to try to collect that information, but, again, I will have to go through the Paperwork Reduction Act to be able to collect that information for you.

Ms. LEE. That is fine. Whatever it takes.

Ms. DAVIDSON. It may take a while. But I would be happy to put that issue into action and be able to work on it.

Ms. LEE. I really appreciate it and just let us know what you think in terms of time frame, however long it takes. But we need to know sort of the time frame it would take to get this.

Ms. DAVIDSON. I will try my best in as short of time as possible.

Ms. LEE. Thank you.

Ms. LEE. Finally, let me ask you about the needs of Americans with disabilities and access to voting machines, written ballot, and other ways to verify that the vote that they believe they are casting is actually the one cast. How are we moving in terms of Americans with disabilities? My sister has a disability, and I am very in tune with the needs of the disabled in terms of the voting machine issues and all the barriers that have been there for the disabled community.

Ms. DAVIDSON. You are absolutely right. And with the Help America Vote, that was one of the main issues that was in that main legislation.

We have done several things. The equipment that is out there, we have pushed very hard to make sure that we are meeting more and more disabilities. You have got to remember somebody could have more than one disability as they go to the polling place, and it is very important by law they be able to vote independently and privately. And so we are working very hard on that.

We also received an \$8 million grant to move forward on a study for the disability community on equipment, and that grant is getting ready to go out. Part of that grant we are doing with the injured military voters, that we have about a \$500,000 grant that will go for a tally vote either later today or tomorrow, for the commissioners to vote on. And that is to study what the needs are of our individuals returning back from the military with some type of—being injured and meeting that need. So that is part of that \$8 million grant.

The rest of it will go out very shortly for study of disability issues and needs that we can improve upon in the future. So we are hoping that that grant is very popular and we get a lot of information.

Ms. LEE. Great. That is very important. But it is hard to believe that we are just going to begin to study it. Don't we have the data already that show what the needs of the disabled are and how to effectively ensure that they vote—have access to voting?

Ms. DAVIDSON. We did a roundtable in the last of 2009 with the community that was really all the community from the diverse community of disability. And what we found was that education was one of the things that we need to be doing more on as well as the equipment. The equipment that we have, the DREs, met more the needs of the disability, but that was the equipment that came up where the public felt—or some of the public felt that it was not as secure as it should be.

Ms. LEE. What happened to Diebold, parenthetically?

Ms. DAVIDSON. Diebold has been purchased by ES&S, and that is being reviewed by the Department of Justice, whether they can purchase that. It is an issue that is being—it is clearly not a complete decision that has been made on that, whether that purchase may go forward.

Ms. LEE. Good. I am glad of that.

Ms. DAVIDSON. But the direct record machines, there are still several States and localities that have that. They have in a lot of areas put paper with it to make it where the public feels it is more secure.

Ms. LEE. Thank you.

Mr. SERRANO. Thank you.

Chair Davidson, what are the top priorities that need to be accomplished before the 2010 midterm elections to ensure that the election is fair, open, and accurate? I said in my statement that you are not seen as a big agency, but you have a major responsibility. And these elections don't get boring in this country. They get more exciting all the time. And I expect these midterm elections are going to be heated, and you are going to see reports on TV saying that people are registered who shouldn't have registered and machines are not ready and States are not ready. So what needs to be in place, in your opinion, to make sure that the right election is conducted in terms of having every vote counted properly and what steps are the States taking to prepare for the midterm elections? What role are you playing with the States?

Ms. DAVIDSON. First of all, the role we play is to try to provide as much as we can throughout the Nation of educating our election officials. When you stop to think about it, three-fourths of our election community, whether they are county or municipalities that are running the elections, are small. They are small to medium size. We only have a few large. So being able to get the information out to them, even if it is on the Web site, we find not always do our municipalities and counties get this information and utilize it.

Being able to share our information that we have developed is one of the biggest things I think that we need to try to improve upon. We send it out, but it seems like it doesn't get into the hands of the people that really need it.

It is on the Web site. We go to conferences. We will go to any State conference and talk about the information that is out there.

I will say that I think that is being spread far more than what it had been in the past. I was just at an election conference that was held in Seattle, and part of the presentations were even on our work that we do at the EAC, the type of information that we have to go out to those localities. And even in the audience they were talking about other portions of our program that we have done, whether it is laying out your ballot properly to make sure that it is not confusing to the voters, as well as information at the polling locations, hiring poll workers, recruiting, maintaining the poll workers.

We have got to distribute about 22 different documents that have been placed upon our Website quick starts that will be really easy for the counties and localities to read and to be able to improve upon their elections. Security, testing equipment before an election

and also doing audits after elections, information there, how valuable that is for them to know the process and to do it right. So getting the information out is very important to the Election Assistance Commission because that is information that would help every locality.

The other thing is States are very dedicated, as you said, in your opening remarks. States and localities, they are very proud of their election officials and maintaining and running that election fair; and making sure that all of their citizens are able to register and to vote and to have their vote counted is very important to all of our election officials. And they are learning more and more about pre-testing, L&A testing, and testing after the election to make sure the election was run accurately and without any problems.

Mr. SERRANO. So, with that in mind, how reliable would you say were the voting systems that were used in the 2008 election?

And, also, I understand that the Election Commission always conducts a survey after an election, but since 2004 this survey has not collected information on voting system performance or malfunctions. So in the absence of a formal survey in 2008, did you receive reports of voting machines not working or possibly recording a vote inaccurately and what, if anything, how extensive was this and what role have you played? How do you feel about the equipment that will be used this November? And, secondly, what kind of reports have you been getting about the past?

Ms. DAVIDSON. First of all, I feel good about the equipment that is out there. 2008, the equipment ran very well.

I will tell you we do have one open-ended question on our survey, because we thought they would fill that out and we would get more information on any type of anomalies they found within their election during the process. We never received any answers whether we had questions on there before or not. But we are finding States are reporting to us when they do any type of testing themselves, reports that they have conducted within their States. Those are up on our Web site. They have presented those, and they are up on the Web site.

Now that we have certified equipment, it is also part of our procedures and our manual; and a manufacturer has to do this just to keep his manufacturing capability, is he has to report if he has been certified by EAC any anomaly that takes place in the election process to the EAC immediately. So, in the future, that is how we will get it; and it will be more accurate and up to date than if we wait until a report after the election. We will get that immediately so we can notify our localities of any issue that they need to be aware of before Election Day, possibly, rather than after the election and not notifying them.

Mr. SERRANO. Did you get many reports in 2008 or were things much smoother than—I was going to say in 2000, but that is unfair. Everything is smoother than in 2000. Well, it was—

Mrs. EMERSON. That is true.

Mr. SERRANO. I think we all agree, right? They are still counting votes in some places.

Mrs. EMERSON. They counted them twice in my place.

Ms. DAVIDSON. We did not get any anomaly reports from the States.

Mr. SERRANO. You what?

Ms. DAVIDSON. We did not get any reports from the States that there were problems in the 2008—

Mr. SERRANO. Okay. One of the areas that I am very excited about—and it is a small area—is mock elections. I really believe that education and civic engagement begins in a person's youth. The Mock Election Program is a grant program under the EAC that allows students to participate in simulated elections with actual voting equipment, ballots, and poll workers. And I tell you, I wish there was one in every community in the Nation, because I think it is a great idea.

Can you give us an example of one or two programs that have been implemented under the Mock Election Program and what kind of impact are you seeing, how are the grant recipients engaging the students?

Ms. DAVIDSON. I can. In 2008 and in 2009, we gave out each year \$300,000 worth of grants. That was each year. Excuse me. Two of those that were so successful, one was in Miami which they are even this year having two schools a day teaching the students about election process and even allowing them to vote on voting equipment, and this will last for 3 months. So this should include educating students on election—

Mr. SERRANO. Is that the whole city of Miami, the school district, or what?

Ms. DAVIDSON. Miami-Dade County I believe is what it is called, a county.

Mr. SERRANO. It is two schools a day?

Ms. DAVIDSON. For 3 months. So that will contact many students. I cannot tell you exactly how many it will. They have to report that after they get through with that grant, so we will have a report on that when it is finished.

Mr. SERRANO. We would like to see that.

Do you know offhand what the actual work with the students consists of? I mean, I remember about 25 years ago I set up a program in my district where I had the local—I found out that the local middle school, one of the many local middle schools in my district—at that time, my State assembly district was having a student election. I said, why don't I provide a couple of voting machines and you will have inspectors and have a table and you will have to register ahead of time and register with a party and then you can vote for any candidate. And we took them through the whole thing.

And we found out a few years later, according to the principal, that that graduating class eventually in high school had a very high participation rate in the local election because we had used those machines.

So do you know what it entails, what it actually entails?

Ms. DAVIDSON. I do. I do have that in front of me.

The election department will run a Mock Election Program to introduce to the high school students a new optical scan voting system. The mock election will be conducted as if the school were an actual precinct. The school students will serve as poll workers and as judges. And that is what they do on each one of them.

We think this will be utilized by over a thousand students, and we are also going to do a video of this so that we can put this up on the Web site to educate other people that come into our EAC Web site to learn from that.

Mr. SERRANO. I commend you for that, and I would hope that continues to grow. I think that is very, very, very key. And at these mock elections, Mr. Culberson, maybe you allow everyone to vote, just in case they become citizens later.

Mr. CULBERSON. Don't ask, don't tell.

Mr. SERRANO. Mrs. Emerson.

Mrs. EMERSON. At least we have fun, right? That is a good thing. And I thank you.

I actually chaired my college mock election probably back in—I didn't run for anything. I didn't want to run for anything. I am an accidental Member of Congress. It was a wonderful experience, particularly for those of my fellow students who were not at all politically involved; and they learned a lot. And one of my daughters did the same thing when she was in college, too. So I commend you all for that. I think it is great.

Let me ask you a little bit about staffing, if I might, please. You all are authorized for 50 full-time employees, and your budget is \$17 million. How many staff people do you have on board right now?

Ms. DAVIDSON. I would say it is possibly 40, is what I am guessing. Forty-two is what I was just told.

Mrs. EMERSON. Can you give me a sense or give all of us a sense of what percentage of your staff are involved directly in such activities such as grant management, election studies, writing guidance, and what percentage play a strictly administrative role?

Ms. DAVIDSON. The administrative role is 21 out of the 42.

Mrs. EMERSON. So then the other 21 are involved in the other sections. I am curious, because you are a small agency; and I know you have a big mission. But with 50 full-time employees, or the ability to have 50, and a \$17 million budget, I think I am confused as to why you have an executive director, a chief operating officer, a chief financial officer, and an acting director. I mean, do you really need all of those people at the top end of the administrative, as opposed to actually working in a liaison function with the State, et cetera? That is a tiny agency to be so top-heavy in management.

Ms. DAVIDSON. You know, when I came to the agency, I believed the same way you did. But we went through our first audit over a year ago and failed it miserably.

Mrs. EMERSON. That was because?

Ms. DAVIDSON. That was because we were even told in our audit that we needed to hire these positions, get people that had expertise in there to be able to handle the job. We hired not only the CIO, but we hired the auditor. We came out this last year with a clean audit. In one year, we changed the way we were working. We had relied on other agencies,

In our audit, also, it showed that we had not met anywhere near the needs of the requirement of developing procedures and guidelines to meet the Federal requirements. We walked in there and started doing what HAVA told us to do; and, being a new agency, we didn't think about that we had to meet all of the requirements

and all of the rules and regulations that the Federal Government had set out. There wasn't a handbook on how to form an agency, and we weren't doing a very good job of it.

Mrs. EMERSON. Who all gave you an audit, the GAO or who it was?

Ms. DAVIDSON. No. We had to be audited because of the amount of money that we get in. We had to be audited by our Inspector General, and he had to go out to a special—it was a special audit because of the amount of money. So it was a higher audit.

Mrs. EMERSON. Was it an outside contracted audit?

Ms. DAVIDSON. Yes, it was an outside contract that our IG went through to audit our agency. And the first one we did fail. But the second one we worked very hard at meeting all of the requirements of the Federal Government, and we passed that audit this last time, and we were very proud that we passed it.

What we found and what I have found to be personally—you know, to open up really with you, is, yes, we are a small agency, but we have to meet every requirement that the Federal Government sets out, no matter what size the agency is. There is no different requirements for us than there are for others.

Mrs. EMERSON. I understand. No, I understand that. It just seems to me, when there are only 50 people, to be top heavy that way, I mean, you wouldn't run a business that way. But you know that as well as I do, if you, in fact asked the same question.

Now that you have gotten a clean audit and everything is squared away—I know that, over a year ago, the Commission interviewed and made an offer to an individual to backfill the general counsel position and then subsequently withdrew the offer; and I know that that person then took the issue to the Office of Special Counsel and claimed he was denied the position due to his political leanings. The Office of Special Counsel ruled in favor of this individual's claims that you all had wrongly denied him the position, and I am told that you all have now reposted the position. So have you identified anyone to backfill the general counsel's position and what will you do to make sure that the next candidate is handled in a fair and unbiased manner?

Ms. DAVIDSON. EAC takes this situation very seriously, and we are working now to make changes to improve our hiring process, and we are committed to a fair and rigorous process in doing so.

Currently, the applications process has been closed. They are being reviewed to make sure that every candidate meets the minimum requirements.

Mrs. EMERSON. So do you know when you might be hiring this person?

Ms. DAVIDSON. Hopefully very shortly. We are all excited, and we are ready to hire. We have been without a counsel too long.

Mrs. EMERSON. So then you are going to have an executive director, a CFO, a COO, an acting director, and a general counsel. You couldn't combine those position, huh? I am having issues with this many for a 50-person—and I understand, but I am not satisfied with the answer: That is the way the government tells me to do it. It is not personal towards you. It is just stupid, in my opinion. But I appreciate your commitment to trying to make this Commission work properly.

Ms. DAVIDSON. And if I haven't answered it properly and the staff didn't feel like I have, we will make sure that you get additional information.

Mrs. EMERSON. Thanks. Thank you.

Mr. SERRANO. My dear, dear friend, Mr. Culberson.

Mrs. EMERSON. You didn't say my dear, dear friend, Mrs. Emerson.

Mr. SERRANO. I said the greatest ranking member—

Mrs. EMERSON. You then called her the greatest. You called Barbara the greatest.

Mr. SERRANO. She has been with me on that bill for 6 years now.

Mrs. EMERSON. I see. If we go with you on the bill, that means we rise up in your esteem?

Mr. SERRANO. You would be like the greatest of all time.

Mr. CULBERSON. Thank you. Thank you, Mr. Chairman.

It does look like the Attorney General—I was going back through the statute trying to refresh my memory, and the uniform and nondiscriminatory election requirements in the Act, do you enforce those at all or is that entirely up to the Attorney General?

Ms. DAVIDSON. Would you repeat your question?

Mr. CULBERSON. This is your enabling Act, Title 42 of the U.S. Code, looks like it is section 15.401 in the following sections. Title III looks like the requirements for uniform and nondiscriminatory election technology, that the States have to have an accurate voting list, et cetera. The question I was asking you earlier, a State does have to certify it looks like to the Commission that they are in compliance with the requirements of the Help America Vote Act and they file that certification with you, correct?

Ms. DAVIDSON. That is correct. And we have 21 States that have filed that and met those requirements. And it is not only that they have to meet it. They have to continue to meet that yearly. That is even their precinct, whether they are accessible to the disability. It falls down to that level, as well as equipment and the voter registration. But it is a self-certification.

Mr. CULBERSON. Right. You don't confirm the accuracy of the certification?

Ms. DAVIDSON. No, we don't. That is for the Department of Justice. We have no authority underneath the law to do so.

Mr. CULBERSON. You have no authority to confirm the accuracy of the certification given to you by the States?

Ms. DAVIDSON. What really happens is—

Mr. CULBERSON. That is implicit. I would think.

Ms. DAVIDSON. If there is any indication that something is not right, we can ask our Inspector General to go out and audit the State and to see, and then his audit—he will review that audit to see if they are meeting what he feels. That is the only thing we can do, is really turn it over when we feel that somebody hasn't quite met it or we ask for more information when they send in their certification. It is a pretty simple process for them to say they have certified, that they are compliant.

Mr. CULBERSON. I notice there is also a section in the enabling act that allows State election officials in Texas, the Secretary of State, to enter into an agreement with the Social Security Administration to cross-check the voter registration rolls, for example, in

Texas against the Social Security list and to try to ensure the accuracy of the voting list. Do you have that information about which States have entered into an agreement with the Social Security Administration to cross-check their voter accuracy, the voter registration list? Could you provide that to me?

Ms. DAVIDSON. I don't think I have that.

Mr. CULBERSON. That has to be a part of your jurisdiction. It is in your enabling act.

Ms. DAVIDSON. Well, one of the things that they do is some States have an agreement with the Motor Vehicle Department because they collect it, and they check it every time with them. So they get it through the Motor Vehicle—they don't get it just directly through the Social Security. We have got—

Mr. CULBERSON. From the Federal Government, who makes sure that those—other than if you get a complaint, for example, and you perform an audit and in this case with the Social Security Administration cross-checking the accuracy, a list with the States, wouldn't that be within your jurisdiction, if there is such an agreement, that it is being carried out in a way that is accurate and fair and keeps the Social Security records confidential?

Ms. DAVIDSON. I will double-check. But we don't have any authority, I don't believe, at all in that area. But I will double-check and get back with you. Because if I am wrong, I don't want to give the wrong information.

Mr. CULBERSON. I would like to know which States have that agreement and particularly in Texas. Do we have it in Texas?

The problem is, in some jurisdictions, there has been a recurring problem with people who are deceased or felons or not eligible voting. Now the computer technology has gotten so good it is possible to cross-check those lists, and the statute does authorize the State to enter into an agreement with the Social Security Administration to cross-check those lists. That is a really important way to confirm the accuracy of the voter registration rolls, and I would be grateful if you could tell me which States are doing so.

Mr. CULBERSON. All of Title III then, what authority do you have to ensure that States are in compliance with the requirements of the Title III, the uniform and nondiscriminatory election administration requirements?

Ms. DAVIDSON. We don't have any authority.

Mr. CULBERSON. Any authority at all?

Ms. DAVIDSON. No. We are just an assistance commission, and we don't have any authority. It is only the Department of Justice that has the authority to go out. If we see clips, we turn those clips over sometimes to our IG to go out—

Mr. CULBERSON. Clips?

Ms. DAVIDSON. Newspaper clips that there is a problem in some States how they are spending their money that possibly we don't think meets the requirements of HAVA. So we turn that over to our Inspector General.

Mr. CULBERSON. Do they take it to the Department of Justice?

Ms. DAVIDSON. And then if there is something in our report that we feel that States are not giving us, our full report goes to the Department of Justice, and they review it.

Mr. CULBERSON. Do you do anything or could you provide me with information on what enforcement actions the Department of Justice is taking?

I notice at the end of Title III it does say that the Attorney General—excuse me—in Title IV, Section 401 of the Act, the Attorney General may bring a civil action against any State or jurisdiction for declaratory or injunctive relief, a restraining order or a permanent injunction to enforce the provisions of the Act. Is that something you monitor or work with them? And could you provide us with a list of what civil action the Attorney General has taken, where and when?

I am still trying to figure out—I have to tell you, I tend to agree with Mrs. Emerson's comments about overloaded bureaucracy. You all have a lot of noble purposes, but it really just seems to me from first blush you generate a lot of paperwork, a lot of reports, a lot of paperwork and a lot of busywork. And it just doesn't seem like there is a whole lot of beef here, a whole lot of substance to what you do because you say you don't have any enforcement authority.

What can you tell me about what the Attorney General has done under Title IV? Could you provide me with information on what civil actions the Attorney General has taken to enforce the Act?

Ms. DAVIDSON. I can ask the Attorney General to give us a report.

Mr. CULBERSON. You don't monitor that?

Ms. DAVIDSON. They do not give us information. They don't keep us up to date when they are going out to even look into a State or a county. They don't keep us in their—we have asked to be acknowledged and know more information.

Mr. CULBERSON. The chairman has been very generous with his time. And you all have a noble purpose. Mr. Chairman, there is clearly a need for Federal funds for some States to update the voting machines to go from the punch cards. I don't know what purpose this agency has got. This might be a good place to look to save some money.

Thank you very much. I appreciate it.

Mr. SERRANO. It is interesting that you are bringing up the issue of possible voter fraud. I recall we had an issue here a few years ago where the agency had hired a contractor to look at the issue of voter fraud and some very serious newspapers reported that indeed the issue was not that there was voter—that voter fraud was not a problem, but voter intimidation was, and that some folks allegedly at the Justice Department got involved in what the final report should look like, and the final report said voter fraud was the problem when the initial draft report said voter intimidation was the problem, not voter fraud.

Mr. CULBERSON. If I may recall, also, the Black Panther suit that was dropped by this Justice Department was a real concern because there was videos of these big thugs running people off from the polls. And the previous Justice Department pursued those guys, and then this Justice Department dropped them. That is a problem on both sides.

And if I may share with you a story. It illustrates the problem with elections. My grandfather was actually a Federal election poll watcher in South Texas in Duval County, the famous Box 13 in

Lyndon Johnson's election. This in the 1940s. And my grandfather noticed that a lot of the migrant voters were coming in that had a piece of string with knots in it. And they would come in to—this is why I am so interested in this. My grandfather—I grew up with this, the problem in South Texas and particularly—

You will love this story, Mr. Chairman. It is relevant to the Commission.

But my grandfather noticed that these people would come in to vote, and they had a string with knots tied in it. And they would lay the string down next to the ballot; and wherever there was a knot, they would check off the ballot. And then they would take the string, and they would hand it to the next guy, and he would come in and lay it down.

My grandfather as the Federal election watcher studied that for a minute, and he finally instructed the poll workers to hand them the ballot upside down. And because these poor folks were illiterate and they were using the string, they would lay it down there and it screwed up their whole system. This is Duval County, Box 13.

Mr. SERRANO. And you thought this was bad? From strings—that is before it became a palm card. Now you have got a palm card outside the polling site telling you put a check next to Serrano, put a check next to Serrano, put a check next to—and don't vote—yeah, but—

Mr. CULBERSON. These guys can't enforce it. That is what worries us. We want you to be able to—

Mr. SERRANO. I am just telling you that that might have been just the way to tell people how to vote. That happens all the time. They are called ads, too.

But, anyway, I am not making light of it. I understand what you are saying.

Let us move on for a second to Military and Overseas Voting Empowerment, MOVE. What is the status of States implementing MOVE and can States use HAVA dollars currently distributed to address the new requirements of the MOVE Act?

Ms. DAVIDSON. The States have been asked by our department to send us a letter if they are not able to get a plan in to how they are going to spend it under the MOVE Act. And we are supposed to be receiving those by May of this year.

I would tell you probably we will receive every different way that you can think of meeting the MOVE Act because our States are all different. Can they use HAVA money? If they are Title III compliant, they can spend HAVA money as much as they need to. If they are not Title III compliant, it depends on how they are going to spend the money. If it is a voter registration system, improving that, they probably could spend it under Title III and not be compliant. But there is about \$350,000 that each State can spend on it without being compliant. So they can spend some, but they may not be able to meet all their needs.

Mr. SERRANO. I am just concerned that as we get closer to these elections and then to the 2012 elections, or any other, actually, for that matter, that we are not where we need to be with the military and the overseas voters. And that is key. I mean, we spend a lot of time in this country making great comments, as we should, about our troops. And then not to give them all the help they need

in making sure that they get to vote is just a shame. So I would hope that we continue to stay on top of that and make it possible.

Ms. DAVIDSON. We also have a pilot program that the EAC has been working on for several months. Even before MOVE, we started working with NIST and the Federal Voting Assistance Program to develop a pilot program that would be put into an area outside of the country that voters could vote on. It would be a kiosk-type system and would have a backup of a paper. But it allows people to vote right there at their locality.

Plus, the MOVE Act has added more time to the ballots to be out. Hopefully, that will help our overseas voters.

We are continually trying to get information and putting information out to the States on how they can help their overseas and military voters. Many of the States have moved forward, putting a lot of the information up on their Web site and providing blank ballots to voters so they can vote early and get those ballots back in time. It cuts away that time of mailing a ballot out and getting it back in so they can get the ballot to the voter.

Mr. SERRANO. Well, I hope we really stay on top of that. That is of interest to all of us. I know Mrs. Emerson and I share the same thoughts on this.

The impact of the census and redistricting. As a result of the census, 2012 elections will be the first year the States will face redistricting since the passage of HAVA. How will the 2010 census impact State spending of HAVA funds?

Ms. DAVIDSON. For the States, the census could affect them in several ways. If there is a locality that has growth in the community, they will have to have more precincts, more equipment. If they are bilingual, they will have to create their ballots and their voting information in the languages that are required. We have a lot of that information that we have already done, but if there is also more languages added, obviously we will have to start working on that and getting it provided for them. There are also more judges that could be utilized and things like that. So it depends on how the census creates or breaks up a county or a municipality in their voting. It could make more precincts. Definitely, the census is something that the States are considering and knowing that they have got to work through.

Mr. SERRANO. Now, I suspect that the census will show that we have become yet even more a diverse Nation, which will require special needs. Will States be able to use HAVA funds to address an increase in alternative language communities for ballots, polling, and place signage?

Ms. DAVIDSON. Yes, Mr. Chair, they will. They will be able to use HAVA funds to make sure that the signages are in all languages and the ballots and everything like that so they can use HAVA funds.

Mr. SERRANO. Thank you.

Mrs. EMERSON, my dear, dear, dear friend, Mrs. EMERSON.

Mrs. EMERSON. Thank you, Mr. Chairman.

Ms. DAVIDSON, you may remember that Congressman Lungren and I recently raised concerns about some of the Commission's contracting practices; and we specifically raised questions concerning EAC's practice of awarding contracts noncompetitively or in in-

stances where you all only received one bid. We additionally asked to what degree you contract out positions at EAC that include inherently governmental roles. So I have a few little questions about that.

First of all, can you explain what you all are doing to make sure that this practice of awarding contracts on a noncompetitive basis remains limited?

Ms. DAVIDSON. When EAC was formed, there was a lot more contracts. Because we didn't have the employees to do the jobs, a lot of contractors were hired. Since that time, the contracts have come down. We are bringing the contracts down constantly in our agency, and that is one of the reasons why people were hired to do some of the work.

Mrs. EMERSON. So how many contracts do you all have outstanding right now?

Ms. DAVIDSON. I am sorry. I don't have that right in front of me, but I will get it for you. I remember the letter that I sent and listed all the contracts, but they went back for 3 years. So I cannot tell you—

Mrs. EMERSON. If you can just get that information to me some time—you probably have it readily available. Someone in the staff does.

Ms. DAVIDSON. I think that we do. So I can get that to you right away.

Mrs. EMERSON. Right. Normally, I am not a big fan of contracting out inherently governmental functions. However, in some cases, if there is something temporary to be done, it makes less sense to hire someone permanently than it does to make the contract. So it is concerning. And if you could get that information from obviously how many contracts you all started, where you are today and whether or not some of these are inherently governmental roles and some are not.

Let me ask you a little bit about grants. Your budget request shows an amount of \$740,000 for grant funding in 2011. This is a reduction of \$300,000 from 2010. What is the amount requested for each grant program for 2011 and what changes were made for each program from 2010?

Ms. DAVIDSON. What we have in that section is just the poll worker grant, over \$700,000. The mock election, because we made those a 3-year grant in 2008 and a 2-year grant in 2009 knowing that money was tight, those are ongoing grants right now. We didn't ask for the \$300,000 until the mock election.

Mrs. EMERSON. I see. Can you tell me how much of your grant money went to ACORN or any of its affiliates?

Ms. DAVIDSON. We had two contracts underneath, that we had Project Vote that got money—I think it was 2007, maybe 2008. I am unsure of that. But there were two grants in 2006, it looks like. So it amounted to around \$16,000 each. There were two of them, and they were given to Project Vote. We have asked our Inspector General to investigate that and to get a full report on if it was allocated to ACORN and how it was spent. So we have asked for an investigation.

Mrs. EMERSON. Do you have measures in place now to assure that no grant moneys will go to ACORN or any of its affiliates? I

realize that a lot of ACORN has closed down, but they have also renamed themselves. So—

Ms. DAVIDSON. If we know the affiliates and we know—that would be something we would look at when grants come in.

Mrs. EMERSON. But you don't have any specific measures in place right now with regard to that; is that correct?

Ms. DAVIDSON. Well, we ask for affiliates; and so that will help us in that way. But I don't know what kind of measures you are talking about.

Mrs. EMERSON. Just a policy that says no money is going to go. We put it in law, but—

Ms. DAVIDSON. We are following the law. So that is where we are at.

Mrs. EMERSON. Just because knowing or doing the research necessary to be able to recognize some of the new names of this organization, I mean, that hopefully is ongoing among your staff.

Let me ask you—

Mr. SERRANO. Excuse me a second. I am just confused, and I am not trying to be difficult. Didn't the court just rule that we couldn't have done that to ACORN?

Mrs. EMERSON. I don't know the answer.

Mr. CULBERSON. A district court did. It is on appeal. The statute still stands until—

Mr. SERRANO. Okay. All right.

Mrs. EMERSON. Let me ask you, have you all ever considered conducting a study to determine the unique requirements of meeting the needs of voters in both urban and rural settings? I have a very, very, very rural, very rural district with 28 counties. I just want to make sure that all of my voters have the ability to vote, and I just am curious if you all have ever considered doing something. And then there are equal challenges in urban settings. One of my big issues would be transportation to get to a poll, if you will. And you might not have that in the city where there is public transportation, but we don't have that. I am just curious if you all have ever thought about it.

Ms. DAVIDSON. We are doing a study currently. We are just getting ready to start it. We are selecting people from localities that would be willing to serve on that. So if you have somebody in mind that is from your district, we would be more than happy to put them on that.

You are absolutely right. It is very different for an urban county. And with money being tight, they close precincts. So it means further for them to drive. That also means, then, there needs to be consideration for those voters, how can they vote. Maybe early voting where they could go to the poll when they go shop for groceries before the Election Day. Or absentee ballots given to individuals that live so far away from a polling place. It is a real problem.

I understand where you are coming from and we do at the agency. The cities have their issues and how they are meeting them. They can meet it in some ways with technology, but that doesn't work for a small county. So we are very aware that there are some real needs for a study there, and that is beginning to start. So I welcome if you would like to have somebody put on that committee.

Mrs. EMERSON. That would be wonderful. I appreciate that offer, and we will definitely get back to you sooner rather than later. I am thrilled you are doing that study because—I mean, people who live in cities can't imagine the issues that folks out in the rural area have and vice versa. So I am grateful that you all are doing that. Thank you.

Ms. DAVIDSON. Not a problem. I understand that well, because I have served different sizes of counties, and my job was completely different.

Mrs. EMERSON. Thanks.

Mr. CULBERSON. Thank you, Mr. Chairman.

Mr. SERRANO. I am going to introduce to everyone the immigrant's greatest friend, Mr. John Culberson.

Mr. CULBERSON. The legal immigrant's greatest friend.

Mr. SERRANO. Try to ask a set of questions without immigrants in it.

Mr. CULBERSON. Actually, this is about military personnel and following up on—

Mr. SERRANO. You don't have to be a citizen to serve in war in the military, right?

Mr. CULBERSON. In fact, it entitles you to go to the front of the line to become a citizen, God bless them, if they serve in the military, which is really a wonderful provision of the law.

I wanted to ask about military people, service members voting. I know in Texas, for example, if you mail in a ballot to vote, as long as the postmark is on or before Election Day, the clerk will count it. That is pretty standard, I think, nationwide, right?

Ms. DAVIDSON. That is—

Mr. CULBERSON. In your experience in Colorado as well, if you received a ballot from someone voting by mail, if the postmark was on or before Election Day, you counted it?

Ms. DAVIDSON. And the laws are changing throughout the Nation. A lot of the States have said that if the ballot was received up to 10 days after the election, it would be counted, if that was postmarked on Election Day.

Mr. CULBERSON. Sure. A reasonable period after the election, right. But as long as the postmark is on or before Election Day.

Ms. DAVIDSON. That is correct.

Mr. CULBERSON. What surprises me actually in here, Mr. Chairman, this is something we really ought to look at because this I think will disenfranchise a lot of military people. I didn't realize this was in the Act. But in Title VII of the statute in voting assistance programs for overseas voting materials, the Secretary of Defense has to ensure that the measures implemented, da, da, da, do not result in the delivery of absentee ballots by service members to the financial destination after the date on which the election for Federal office is held.

So that Federal law is inconsistent with, really, the standard rule across the country. I am sure it is true in New York and Missouri, that if you vote by mail and again the postmark is on or before the date of the election, it is counted if it is received within 10 days.

We probably ought to fix that, because I bet that results in disenfranchising a lot of military people that are serving overseas. I didn't realize that was in there. Would you agree?

Ms. DAVIDSON. I didn't realize it was in there, either. I would agree. Because I will tell you right now that—

Mr. CULBERSON. It says, if the ballot is not received—the Secretary of Defense has to ensure that the ballots are received by the clerk—for example, you were a clerk in a county in Colorado, in Bent County, that the Bent County election clerk has to receive the ballots on or before Election Day or they are not counted.

Mr. SERRANO. Right. Well, that is true for everybody else.

Mr. CULBERSON. No, no. Actually, the rule for everybody else is, if the ballot is received up to 10 days after the election, as long as the postmark is marked before—but he can't—even if he is delivering ballots postmarked on or before the Election Day, they are no good.

VOICE. Delivered to the soldier to cast the ballot by election.

Mr. CULBERSON. No. The statute says, the Secretary shall ensure that the measures implemented—his measures implemented under the statute result in the delivery of absentee ballots to the final destination of such ballots. The final destination is the clerk.

So we have really got to fix that, Mr. Chairman and Mrs. Emerson, because we are disenfranchising a lot of military people.

Now, the 10-day rule is reasonable. Obviously, if the guy's ballot comes in 6 months later, you don't want to count that. But 10 days, don't you think we probably ought to fix that? Because I guarantee that is probably disenfranchising—

Mr. SERRANO. If that is the way it reads, I would agree with that. If that is the way they are implementing.

Mr. CULBERSON. Yeah. The way the statute reads on its face and as the commissioner says, the chairman says, it is—and it is your opinion as well as an election clerk, that would disenfranchise members of the military whose ballots were received 10 days or less after the election as long as the mail-in ballot were postmarked on before the election date, correct? That is an accurate statement?

Ms. DAVIDSON. Yeah. Congressman, you are absolutely right. If that is the way the law reads—I mean, I think that everybody has been reading it to say that a ballot that is unvoted should not be sent to a voter after the election.

Mr. CULBERSON. Sure. But that says the final destination, And the final destination has to be the county clerk.

Ms. DAVIDSON. If that is the way it is, that definitely needs to be fixed, because we don't want to disenfranchise any more of our military members.

Mr. CULBERSON. Right. That is a bad problem.

You also, I understand from reading the statute, have the authority, as Mrs. Emerson said, to issue grants to nonprofit entities that are engaged in helping to organize voters or register voters, correct? Do you only issue grants to government entities or can you also issue grants to nonprofits or nongovernment entities?

Ms. DAVIDSON. We can issue to nongovernment entities, but we cannot issue a grant on voter registration.

Mr. CULBERSON. I understand. Therefore, the question—

Ms. DAVIDSON. It was through the mock election that this happened, so that you are aware, a college poll worker.

Mr. CULBERSON. If I could just follow up with some precision to get a really clear answer on Mrs. Emerson's question about ACORN. Because we did pass in an appropriations bill last year I think, after all this monkey business came out about ACORN, flat prohibition against any Federal money going to ACORN or to any of their affiliates. It is the law. It has not been overturned by a final judgment of an appellate court. So, therefore, it is the law of the land. What are you doing to ensure the enforcement of that law?

Ms. DAVIDSON. We are making sure—

Mr. CULBERSON. That you are not issuing grants to ACORN. It is prohibited.

Ms. DAVIDSON. To ACORN or anybody that affiliates with ACORN.

Mr. CULBERSON. It is prohibited?

Ms. DAVIDSON. Yes.

Mr. CULBERSON. Have you issued any grants to ACORN or any of their affiliates?

Ms. DAVIDSON. Not since the law was passed. That was in 2006 that we did that.

Mr. CULBERSON. You are sure of that? Because your answer to Mrs. Emerson was a little foggy.

Ms. DAVIDSON. I am sure of it.

Mr. CULBERSON. Okay. And we really do appreciate your service, and I thank you for your answer to our questions, and I appreciate the chairman's indulgence for the time. Thank you.

Mr. SERRANO. We have your papers over here. We are looking at it. We are as concerned as you are, and we will look at it and make recommendations.

I have one last question, and then we will let you go. How is that?

I have heard that the job of—well, I know the job of an elected official is often challenging, ensuring that elections are fair, accurate, and carried out officially with small staffs and limited resources. So in a tough budget year, I can imagine the job of an election official is particularly challenging.

I understand that you have personal experience, as we said, working as an election official when you were county clerk and later as Colorado's Secretary of State. Can you relate some of your experiences to the challenges that election officials will face this coming year throughout the Nation? Every State has less money than they had before. How will this affect the running of these elections? And how can we assure that local and State election officials have the resources they need to successfully oversee the elections?

Think back to those days when you were sitting there wondering if you would ever get to testify in front of Mr. Culberson.

Ms. DAVIDSON. I think probably my knees would have been shaking a little bit more than today.

Mr. SERRANO. My knees are shaking right now.

Ms. DAVIDSON. Oh, good. I am in good company then.

Elections are difficult. They are not the same throughout the United States, as I have said before. Every State has their own

issues. Every county has their issues. Polling place workers are a tremendous—a scarceness. And our college poll worker program has been a big success because it brings in individuals with the experience of technology, the energy to be able to carry those 8 hours—not 8 hours but almost 18 hours sometimes of Election Day, but making sure that they have the resources that they need.

I would tell you in a county budget, as I was a county clerk, I found that I was the last one on the list of receiving money. It was always the potholes that needed to be filled, the police department that needed the money. We weren't thought about.

But I will say since HAVA came on the forefront and the heightened public interest in elections, it has been good because it has brought a lot of good ideas and a lot of things forward. And with the passage of HAVA and the Federal funds, it has helped the States to become more up to date, the voter registration lists and being able to have that throughout the States, to be able to control people being registered more than once. It is also hooked up with the deceased files and the motor vehicle files. It has improved the election process. So the money that has been spent definitely has improved that process of Election Day.

Also, the disability people being able to vote for the first time independently and privately has been an asset to all of those people. It is very hard to answer your question, how can we make sure that they have everything that they need, because we hear from the States when we go to their meetings that there are issues that they have that we haven't even begun to think about. So it seems like it is constant that there is always a new issue that they need to be considering.

Our contingency planning is one of my pet ones, because when we think about what can go wrong on Election Day—somebody said, why is the election so hard? It is not rocket science. You know what? It is worse. Because we can't say 3 minutes or 2 seconds before it is supposed to go up in the air that the rocket—that we are going to stop the process. We have to have Election Day.

So training our election officials to be ready for that pre-certification and everything that goes on is very important. Every State has their own issues and their own needs.

So for me to answer that, I am really not able to answer I know to what you really want. And I am sorry about that. Because it changes it seems daily even within the States and the counties. So I am not doing a good job for you, and I apologize.

Mr. SERRANO. That is okay. I know it can become difficult at times. Always feel free after this hearing to supply us with any further information on any of the questions that were asked.

Mrs. Emerson and I have some questions for the record.

I want to thank you for your testimony today. We want to thank you for your service. We want to remind you again that, regardless of differences you may see within the two parties on many issues, there is one issue where we don't disagree on and that is having fair and accurate elections. There will be different interpretations as to what that means to some people in some areas, but certainly we understand on this subcommittee the importance to our democracy and to our system to have fair elections with full or as close to full participation as possible.

I am always amazed at how much you hear people say how much they love this country and how much they love our system and to the point—and this is only my comment—where sometimes we try to force our system down other country's throats, where they should be like us. And yet when it comes to election, we are not outraged when only half of the people vote or we are not outraged in the past when we elected the President from both sides with 43 percent of the people voting.

So anything we can do to make elections better, to have more people participate, and to make sure that when that person voted for a certain candidate that that is pretty much—or should be actually the actual result of that vote with no hanging anything in the future. So that is what we ask you to continue to look at; and, in the meantime, you will continue to have our support.

I am sure if people were to do an analysis of this subcommittee they would find out that Mrs. Emerson and I treat everybody who comes here with respect. That is because we understand that everybody who sits before us has a major role to carry out, and we want you to be successful. Our patience is running thin on the Security Exchange Commission. Other than that, we want to be supportive.

Other people say his subcommittee meetings are like a love fest. Well, because we want to be supportive, especially you. You have a major, major role to play; and your agency has a major task to accomplish. So thank you for your work. Thank you for what will be your work, and keep us informed on anything that is going on that we should know.

Ms. DAVIDSON. I would be more than happy to. Thank you.

Mrs. EMERSON. Thank you.

Mr. SERRANO. The meeting is adjourned.

SUBCOMMITTEE ON FINANCIAL  
SERVICES AND GENERAL  
GOVERNMENT

HEARING

ON

THE FY 2011 BUDGET REQUEST OF  
THE ELECTION ASSISTANCE  
COMMISSION

Questions for the Record

for

The Election Assistance Commission

April 27, 2010

**Questions for the Record  
Submitted by Chairman Serrano**

**HAVA Requirements Payments**

In the past three years, Congress has provided \$290 million for grants to states for the purpose of helping them meet the requirements of the Help America Vote Act. In regards to the requirements payments, please indicate:

- What percentage of this funding has been distributed to states? What the reasons are for funding not yet being disbursed or used by states?

Requirements Payment	Appropriated	Amounts Disbursed	Percentage
Section 251 (2003 & 2004)	2,319,360,617	2,319,360,617	100%
Section 251 (2008)	115,000,000	81,206,590	72%
Section 251 (2009)	100,000,000	52,626,574	53%
Section 251 (2010)	70,000,000	9,274,223	13%
<b>Totals</b>	<b>2,604,360,617</b>	<b>2,462,468,004</b>	<b>95 %</b>

*Between May and November of 2009, EAC distributed over \$85 million in Requirements Payments. We anticipate a similar amount of disbursements for 2010 as states receive the 5% match from their legislatures and complete the HAVA Section 253(b) certification needed to receive funding. The 33 states (as of June, 2010) that have not certified to EAC that they are Title III compliant may be limited in the ways they can spend HAVA Section 251 funds; as such, they may not have any use for additional funds until they can complete their Title III certification.*

*Challenges with becoming Title III compliant are often not tied directly to availability of funds, but have to do with challenges in meeting all the requirements outlined in HAVA (for example, implementation of the state-wide voter registration system that meets HAVA specifications). Once these challenges have been met, states should be able to spend Requirements Payments to improve administration of federal elections at a faster rate.*

*Two additional factors that affect whether states request remaining funds are: 1) state appropriation cycle and ability to appropriate the 5% match; and 2) the*

*complex and lengthy state planning process required by HAVA for revising the HAVA-mandated state plan, which can take up to two years to complete.*

- How fast states are spending HAVA funds relative to the rate at which this subcommittee has provided funds to them?

*Beginning in FY 2007 through FY 2009, states are spending on average \$203m per year in Requirements Payments funds. The average appropriation over fiscal years 2008-2010 has been \$95m, which means states are spending funds on average over two times faster than funds are being appropriated.*

- Will all states be evenly impacted by the proposed budget cut to the election reform programs in FY 2011?

*States will not be evenly affected by the proposed cut. The 23 states listed below have spent over 85 percent of their Requirement Payments funds and accrued interest. These states could experience a negative impact in the very near future by reduction of Requirements Payments.*

STATE	Funds & Interest Expended
NEBRASKA SECRETARY OF STATE	100%
RHODE ISLAND SECRETARY OF STATE	100%
NEW MEXICO SECRETARY OF STATE	99%
NC STATE BOARD OF ELECTIONS	99%
INDIANA SECRETARY OF STATE	98%
IDAHO SECRETARY OF STATE OFFICE	98%
OHIO SECRETARY OF STATE	95%
WYOMING SECRETARY OF STATE	92%
IOWA SECRETARY OF STATE OFFICE	92%
UTAH STATE ELECTIONS OFFICE	92%
LOUISIANA DEPARTMENT OF STATE	92%
GEORGIA SECRETARY OF STATE	91%
TEXAS SECRETARY OF STATE	90%
SOUTH CAROLINA SECRETARY OF STATE	90%
WEST VIRGINIA SECRETARY OF STATE	89%
MONTANA SECRETARY OF STATE	88%
CONNECTICUT SECRETARY OF STATE	88%

MISSOURI SECRETARY OF STATE	88%
MISSISSIPPI SECRETARY OF STATE	88%
PENNSYLVANIA DEPT OF STATE	88%
COLORADO SECRETARY OF STATE	86%
MINNESOTA SECRETARY OF STATE	86%
KANSAS SECRETARY OF STATE	85%

- How will states continue to be compliant in the future?

*Presently, states have several strategies for maintaining compliance with Title III as it relates to spending. The first is to carefully manage existing HAVA funds; ensuring that they will last well into the future.*

*A second strategy is to rely on future HAVA support up to the level of funding authorized in HAVA. States in this category may have operational challenges in 2012 if 2011 Requirements Payments are not provided or alternative sources of funds are not identified.*

*Two states have taken a third approach by setting-up revolving funds so that counties can borrow funds to purchase new equipment, paying back the state's HAVA election funds over time.*

*Despite differences in short term strategies for maintaining Title III compliance, all states will eventually need to confront how to purchase the next generation of voting equipment they will need when current equipment becomes obsolete or needs to be replaced.*

- What do states need in the mid to long-term to keep up with HAVA requirements?

*The level of funding states will require to maintain the reforms instituted under HAVA is an open question. Currently, states are spending on average \$203.m per year in Requirements Payments to support the election infrastructure including statewide voter registration databases, voting systems and education and training associated with being compliant with Title III of HAVA.*

I understand that in order to receive the Section 251 requirements payments states are required to provide a 5% match in funds. As you know, some states are facing severe budget shortfalls for FY 2011.

- Have you heard from any states whether they are having difficulty in providing the 5% match?

*EAC has heard informally from several states that match for 2010 and 2011 will be a challenge to identify. While the percentage of funds required by the match is low (5%), states describe a budget climate where every other state department is seeing large cuts to their budget, making it difficult to request additional funds for election purposes.*

- What will the consequence be for these states if they are unable to make the 5% match?

*EAC will continue to hold funds until states can identify and deposit the 5% match into their state election account. If match cannot be identified, states will not have access to Requirements Payments to support implementation of their state HAVA plan in that year. EAC is not in a position to predict whether or not lack of funds would actually disrupt elections.*

#### **The Help America Vote College Program**

The EAC administers a grant program to recruit and train college students to become poll workers.

- What have the results of this program been?

*Through FY 2010 EAC has awarded 89 grants totaling \$3.1 million to recruit, train and place college poll workers since the program was established in 2004. The program has received appropriated funds in 2004, 2006, and 2008-2010.*

*According to EAC's Election Administration and Voting Survey, 46% of our nation's voting jurisdictions reported having difficulty recruiting poll workers during the 2008 election cycle.*

*Approximately 8,000 college poll workers have been recruited, trained and served as election workers through this grants program. Student poll workers conduct a variety of crucial election administration tasks, such as setting up polling places, checking off names on the registry (the most common activity), checking voters' identification, staffing information*

*booths, demonstrating how to use the machines, answering voters' questions, serving as election observers, acting as translators, assisting voters with disabilities, securing the machines at the end of the day, counting votes, and transmitting unofficial results.*

*All grantees use the EAC College Poll Worker Handbook, which has won praise from election officials for being comprehensive and easy to use.*

*In addition to successfully placing college poll workers, the grants have facilitated:*

- 1) Institutionalization of the program on college campuses, including incorporation of poll worker service into college courses, which generates college poll workers after EAC grant support has stopped;*
- 2) Enduring partnerships between local election offices and colleges and universities which have created pipelines for new election workers and led to the creation of innovative, university-sponsored training material and pedagogies for training all poll workers in a given jurisdiction;*
- 3) Development of specialized curriculum to better equip poll workers for supporting voters that have disabilities and to recruit and train election workers that have disabilities; and*
- 4) Outreach to traditionally underrepresented groups through grants to historically black colleges and universities, Native American groups and an emphasis on serving both urban and rural populations.*

*EAC is also working to make the program more cost effective by encouraging development and use of:*

- Web sites to inform students about the program and allow students to submit their contact information;*
- Social-networking Web sites to create supportive communities for promoting the program;*
- Automated, web-based training using avatars and virtual reality software to create contextualized, online training environments;*
- Videos to document training and post the awarding of certificates to attract future student poll workers;*

- *Use of email and text messaging to recruit students and campus organizations to take part in the program; and*
- *Local television and radio advertisements to allow program directors and students to reach a broader audience.*

### **Accessible Voting Technology & Pre-Election Logic & Accuracy Testing Initiatives**

The FY 2010 bill included \$3 million for grants authorized by HAVA to carry out research on voting technology improvements directed at improving accessibility for voters with disabilities. The bill also included \$2 million for a pilot grant program for States and local governments for pre-election logic and accuracy testing, and post-election verification, of voting systems.

- What is the status of the implementation of these programs?

*The FY 2009 funds for the Accessible Voting Technology research were combined with the \$5 million appropriated in FY 2010 for the same purpose. EAC has conducted extensive outreach, including hosting a day long roundtable with top researchers and policy specialists in the area of technology research and disability policy, to support development of this important initiative.*

*The first grant competition with these funds, the Voting Technology and Accessibility Research—Military Heroes Initiative will be awarded by the end of 2010. This \$500,000 initiative will support research to better understand the needs of injured military personnel related to election processes, including: 1) documentation of current practices associated with voting activities at these faculties; 2) identification of barriers that may prevent this population from voting privately and independently; and 3) reviews and assessments of new and innovative technologies for assisting military personnel's ability to participate in the electoral process.*

*The grant solicitation for the remaining funds is under development and will be submitted to EAC Commissioners for an initial review in July 2010. After an additional round of EAC Commissioner and public input on the draft funding solicitation, EAC will publish the notice by September 30, 2010.*

*The FY 2009 funds for pre-election logic and accuracy testing, and post-election verification grants were combined with the FY 2010 funds*

*appropriated for the same purpose. The draft grant solicitation is currently posted for public input. EAC anticipates publishing the notice this summer with the goal of having grants in place prior to the 2010 general election.*

### **Military and Overseas Voter Empowerment (MOVE) Act**

The Military and Overseas Voter Empowerment (MOVE) Act was signed into law last October as part of the FY 2010 National Defense Authorization Act. MOVE allows for electronic and mail transmission of voting materials and requires that states send out absentee ballots at least 45 days before an election, in addition to other improvements to make voting more accessible for Americans stationed and living abroad.

- What challenges will the states face in implementing MOVE?

*One of the most difficult challenges states face when trying to implement MOVE or improve services in general for UOCAVA voters are related to security concerns. EAC and its partners, FVAP and NIST, have made significant progress toward assisting election officials with providing services to UOCAVA voters, but these security concerns have delayed the implementation of general purpose personal computers for transmitting electronic ballots via the Internet. Therefore, solutions will require input and support from a wide variety of stakeholders as well as frequent public updates. The following stakeholders must work together on behalf of UOCAVA voters: state and local election officials, computer science researchers, experts in fields such as usability and accessibility, industry representatives, and other federal agencies charged with improving the remote UOCAVA voting process.*

- What role is the EAC playing in assisting states in the implementation of MOVE?

*EAC is developing intermediate testable guidelines that leverage the successes achieved to date by jurisdictions with electronic absentee voting systems. These guidelines will be used to pilot remote electronic absentee voting systems implemented as a manned kiosk with printable paper ballots for audit capability. Election jurisdictions and FVAP will be able to use these guidelines to run pilot programs for UOCAVA voters should they choose to do so. The information gained from the pilot projects will be used to help inform the final guidelines development process by providing valuable information regarding the security and logistical challenges of a remote electronic voting system.*

*EAC is working to facilitate an inclusive approach and will continue to solicit input from its statutory boards and the public, and will work with NIST and FVAP to ensure that the remote electronic absentee voting guidelines will provide the structure to successfully develop and test systems for UOCAVA voters.*

*States will also be able to use EAC's electronic absentee voting guidelines when evaluating electronic voting systems that facilitate the return of marked, or voted ballots.*

*For more information about EAC's work to lead the effort to help states comply with the MOVE Act and improve services for UOCAVA voters, please see the attached Report to Congress on EAC's Efforts to Establish Guidelines for Remote Electronic Absentee Voting Systems.*

**Questions for the Record  
Submitted by Ranking Member Emerson**

**Paper vs. Electronic Voting Systems**

Some individuals in Congress and elsewhere continue to claim that electronic voting machines can readily be manipulated and insist that States Nation should create a paper trail of recorded votes. But I'd have to question whether a paper trail would be more secure than an electronic record. In fact, a 2004 study by Carnegie Mellon University concluded that paper records do not address those risks. While a paper trail may be able to show voters that their choices were properly recorded, it offers no guarantee that their ballot was counted or that it will be when a recount or audit is conducted

- Are you aware of any documented cases of voter fraud related to the use of electronic voting machines? Has there ever been a documented case of electronic voting equipment being hacked into during an election and votes being changed?

*EAC is not aware of any documented cases of fraud related to the use of electronic voting machines and we are not aware of a documented case of electronic voting equipment being hacked into during an election and votes being changed. There have been hacking experiments on voting systems in*

*controlled environments such as laboratories, but we are not aware of a successful hacking attempt during an actual election.*

*However, regardless of the voting system – electronic, paper, or hybrid – every system is vulnerable if the appropriate procedures are not in place. That is why EAC developed the Election Management Guidelines program, a collection of best practices on everything from logic and accuracy testing to chain of custody procedures to ballot design. These materials were created with input from election officials to ensure they would be applicable in the real world of elections, regardless of what kind of voting system the state or local entity has in place. EAC continues to receive positive feedback from election officials about the Election Management Guidelines materials.*

*Focusing on only one kind of voting system risk ignores large, known vulnerabilities in our election process. To successfully compromise a voting system – any voting system -- during an election, you must have two things –*

- o knowledge OF, and*
- o access TO a system.*

- Are paper trails for electronic voting machines necessary? Can't paper ballots readily be manipulated, thrown away or forged?

*It is important to remember that whether we are discussing a ballot box, an optical scan machine or a touch screen – people (poll workers, election officials and voters) control whether an election is fair and accurate. The bottom line is that real security for any voting system comes from systematic preparation:*

- o Prepare systems to PREVENT tampering;*
  - o Prepare people to DETECT tampering;*
  - o Prepare poll workers and law enforcement officers to REACT to tampering; and*
  - o Prepare election officials to RECOVER by auditing and investigating.*
- And more importantly, shouldn't we let the States decide which form of voting systems they would prefer to use as opposed to dictating that from Washington, D.C.?

*EAC recognizes that one-size-fits-all does not apply to elections. For example, some rural areas prefer to use mail and other regions prefer optical scan systems. Electronic voting machines bring advantages to large*

*cities with diverse populations because they can make it easier and cheaper to meet language and accessibility requirements. States already choose voting systems that best meet the needs of their voters.*

### **Appropriate Role of the Federal Government in Election Administration**

The administration of elections is largely a State and local function. There have been calls over the last few years for Congress to legislate new election requirements and standards and to provide additional Federal funding to subsidize the cost of elections.

- Can you discuss the role that Congress should play in assisting States?

*EAC has observed that in recent years, the interest Congress has shown in election administration through not only legislation but also hearings has provided the public with valuable information about how elections are administered. Issues such as pre-election testing, audits and voting system certification have been the subject of many Congressional hearings and have resulted in election administration improvements among election officials and voters. The dialogue facilitated by Congress has brought awareness to the need to professionalize the election administration field.*

- Should Congress be legislating how the States administer elections?

*The Commission does not have an opinion regarding the role Congress should or should not assume in state elections.*

- Should Federal tax dollars be used to fund the cost of elections that have traditionally been funded at the State and local level?

*Appropriations available through the Help America Vote Act of 2002 were the first funds ever provided by the federal government to the states for election administration. As the entity responsible for administering these funds, EAC can report that states have used these resources to replace outdated voting equipment, implement statewide voter registration databases, provide accessible voting systems for people with disabilities and make other key improvements to improve the election administration process on behalf of voters. EAC tracks and reports annually how states are using*

*HAVA funds, and while the Commission does not have an opinion regarding the role Congress should play in election administration, EAC provides this information to assist Congress as it considers future election administration funding and other election administration-related legislation.*

### **Contracting**

Please provide the number of contracts and contractors that EAC funded in its first year and the current levels for each. How many of the current contractor positions fall into the inherently government category?

*During FY04, the EAC had a few small dollar purchase orders and GSA delivery orders primarily for Commission start-up support such as office equipment and miscellaneous supplies. There was one GSA Schedule Delivery Order service contract to Glynn Interactive, Inc for \$54,559 (EAC Web site). This contract was completed in FY05. Additionally, there was one GSA Schedule Delivery Order supply contract to Kimball Office Furniture, Inc for \$28,781 (EAC Office Furniture). This contract was completed in FY04.*

A report the EAC provided on contracts shows a contract for nearly 250 thousand dollars with a company called Practical Strategies. That is a large contract for an agency with your budget, and I have a few questions about it.

- What exactly is Practical Strategies doing for the EAC?

*Practical Strategy is providing technical support to EAC grantees, grant policy support services, and developing core competencies for HAVA funds management. This includes state audit and resolution reviews, contact and assessment of needs with audit targets, review of IG audit plan for 2010; review EAC and federal grant requirements, draft new grant policies, provide grant handbook reviews, and draft recommendations; attend EAC meetings and two (2) national grantee meetings and workshops; develop self-assessment tools, templates, and processes; and codify competencies and tools.*

- Looking at the company's web site, the only place I see the word "elections" is where they list the EAC as a client. What qualifications does Practical Strategies have for its work for you?

*Practical Strategy is a small woman-owned business and a GSA Schedule Contract holder who has a GSA Mission Oriented Business Integrated Services*

*(MOBIS) contract (GS-10F-0111V). Under this GSA Schedule Contract Practical Strategy provides specialized services to include Federal Grants Management and Consulting. (www.practicalstrategy.org)*

### **Employee Issues**

A recent report from the EAC Inspector General suggested some serious concerns about the EAC's performance evaluations of its employees. For example, the report said management claimed three employees had performance issues but there was no evidence management attempted to take corrective action. The report also cited an individual's performance evaluation being reduced based on failure to return two phone calls, another whose work was praised but who was denied travel after being told three individuals felt the person "did not know their place."

- What, specifically, is the EAC doing to improve its employee performance management systems?

*EAC recognizes the importance of appropriately managing performance and discipline issues. As such, staff has been provided with ongoing training opportunities. Training has been provided to senior management, supervisors, mid-level and junior-level staff. Further, management supervisory training has been provided to EAC managers. Most recently EAC provided mandatory staff training addressing Equal Employment Opportunity (EEO) requirements.*

*With respect to the specifics of EAC's performance management system, the system was approved in 2006 by the Office of Personnel Management (OPM). The system was implemented with the hiring of a Human Resource Director in 2007. OPM evaluated the results of the system after it was implemented using the Performance Appraisal Assessment Tool (PAAT). Based on the results of the PAAT, EAC revised the performance management system in 2009. Each Division was briefed on the revisions, trained on how to develop critical elements and standards, and provided resource materials. The approved personnel management system is currently in place and the performance period is January through December.*

A report the EAC provided on contracts shows significant expenditures for temporary staff – \$329K in 2008, \$459K in 2009, and \$359K in 2010.

- What tasks have these temporary staff performed? Are they included in the total staff figures you provided?

*The chart below provides a detailed description of the tasks temporary staff performed and the associated costs.*

FY 2010 - \$359,000

% of Expenditure	EAC Division	Scope of Work
91%	Voting Systems Testing & Certification	Retired annuitant brought through temporary employment services because of prior work with EAC as a NIST employee. Performs technical reviewer services for testing and certification unit.
9%	Research	Retired annuitant (DOD) brought through temporary employment services because of elections experience with military and overseas voters. Continued data entry of contract information and the training of newly hired program staffer to take over task.

FY 2009 - \$459,000

<b>% of Expenditure</b>	<b>EAC Division</b>	<b>Scope of Work</b>
<b>34%</b>	Election Administration & Support	Retired annuitant (former DOI IG detailed to EAC in 2007) brought through temporary employment services because of expertise with HAVA funding and government auditing standards.
<b>25%</b>	Voting Systems Testing & Certification	Retired annuitant brought through temporary employment services because of prior work with EAC as a NIST employee. Performs technical review services for testing and certification unit.
<b>16%</b>	Administration and Grants Division	Administration: to fill absences for Receptionists and Administrative Assistant. From 12/08 – 5/09, Financial Management Specialist position was temporarily filled during recruitment process.
<b>16%</b>	Voting Systems Testing & Certification	Grants Division: Data entry operator to assist with grants award process. Retired annuitant (DOD) brought through temporary employment services because of elections experience with military and overseas voters.
<b>9%</b>	Research	Data entry and status reporting on contracts.

FY 2008 - \$329,000

<b>% of Expenditure</b>	<b>EAC Division</b>	<b>Scope of Work</b>
<b>43%</b>	Administration, Office of General Counsel & Communications	Administration: temporary fill for 2 vacant positions during recruitment. Office of General Counsel: Information request for Congresswoman Lofgren (generated 40,000 pgs)
<b>37%</b>	Election Administration & Support	Communications: FOIA requests Retired annuitant (former DOI IG detailed to EAC in 2007) brought through temporary employment services because of expertise with HAVA funding and government auditing standards.
<b>17%</b>	Voting Systems Testing & Certification	Retired annuitant (DOD) brought through temporary employment services because of elections experience with military and overseas voters.
<b>3%</b>	Research	Development of Contract Tracking System

WEDNESDAY, JUNE 9, 2010.

**FEDERAL COMMUNICATIONS COMMISSION FY 2011  
BUDGET REQUEST****WITNESSES****JULIUS GENACHOWSKI, CHAIRMAN, FEDERAL COMMUNICATIONS  
COMMISSION**

Mr. SERRANO. The subcommittee will come to order. Before we begin are there any numbers from the FCC as to the ratings last night for the Nationals game?

Mr. GENACHOWSKI. I did some firsthand research, Mr. Chairman, and took my son to the game, and I can give a full report at a later time.

Mr. SERRANO. Great. That is wonderful. The ratings must have gone through the roof.

We are pleased to have Chairman Genachowski before us today to discuss the FCC's proposed budget for next year—and the Nationals game from last night—on the Commission's Broadband Plan also.

Rapid changes in communications technologies are giving consumers more options, even as it gives some providers more leverage for high prices. The FCC must run faster and faster to keep pace with these changes. We count on the FCC to regulate communications so as to protect consumers without stifling innovation.

Last March, the FCC issued its Broadband Plan that lays out the current Commission's perspectives on the future of communications. As the Broadband Plan made clear, Americans increasingly rely on broadband Internet connections for delivery of fast, rich and reliable transmission of voice, text, Internet browsing, medical images, entertainment or almost any other form of communication.

Now, as you know, this hearing is on-line live as we speak, and I sent out a Twitter message, I put it on two Facebook pages and an e-mail. So we should get at least 10 people to watch.

Mrs. EMERSON. Do you have your BlackBerry out so you can answer or Twitter as we are going along.

Mr. SERRANO. Yes. And we are being recorded.

Mrs. EMERSON. Good.

Mr. SERRANO. Just to make the point that we are up to date on some of the technology, although it is all very confusing to us still.

As the Broadband Plan explains, wireless spectrum is becoming increasingly in demand as more communications go wireless and require more bandwidth. We face a crisis if we do not act soon to free up more spectrum for broadband. I applaud the FCC's efforts to identify under-used spectrum for possible conversion to broadband applications.

I am also pleased that the Plan recognizes the benefit to our society when almost everyone has access to broadband. More and more, access to broadband opens opportunities in education, job hunting, becoming an informed voter, and so forth, and lack of access to broadband closes opportunities. We must work to close the digital divide in access to broadband.

Not long after the ink dried on the FCC's Broadband Plan, a ruling by the Court of Appeals for the District of Columbia Circuit

raised questions about the FCC's authority to regulate Internet service providers. As a recent New York Times editorial pointed out, it is essential for the FCC to have authority over the Internet, the dominant 21st century mode of communications. We are looking forward to better understanding your decision to launch proceedings to bring ISPs under Title II.

This subcommittee has also been concerned that almost 9 years after 9/11 and 6 years after the 9/11 Commission report our first responders still lack the robust interoperable communication system needed in the case of major emergencies. Your plan recommends one approach that has been endorsed by both co-chairs and two members of the 9/11 Commission, but that approach has been opposed by some organizations representing first responders. We look forward to learning how you propose to resolve this situation so that we can move ahead.

PEG channels that provide public, educational, and governmental information to cable TV viewers make a vital contribution to our civic society. As technology has evolved some of those PEG channels have become more difficult to access. Despite many petitions and comments for the record, the FCC has failed to fix this problem. I was disappointed that your 360-page Broadband Plan made no mention of the future of PEG, much less proposed a solution.

Finally, as you know, I have been concerned that Americans living in the Territories often lack communication services comparable to those available in the States. Your report on communication services available in the Territories shows dismal rates of Internet use in the Territories. I was pleased to see that your Commission recently gave the go-ahead for XM-Sirius to make the investments necessary to operate effectively in Puerto Rico. I remain concerned about the availability of universal service funds there.

I want you to be assured, Mr. Chairman, that it is in the best interest of this committee and this Congress for you folks to succeed, but to succeed on behalf of the consumer, to succeed on behalf of strong technology for our future, to succeed on behalf of bringing us to where we should be as a nation, but never at the expense of leaving behind any community, including those folks who live in the Territories.

And with that I turn to my colleague, my sister and the ranking member, Mrs. Emerson.

Mrs. EMERSON. Thank you, Mr. Chairman. Chairman Genachowski, welcome and thanks so much for being here today.

The FCC has an important regulatory role in the country's communications, television, radio, Internet and cable industries, and we all know these services touch nearly every American citizen and business daily. Ultimately you all have to find a balance between enabling technological progress and providing enough regulation and oversight to ensure that the American people have available communication services. It is a very challenging job, with many business technology and consumer groups watching your every move.

I want to congratulate you on the development of the national Broadband Plan. Developing a strategic plan to provide every American with affordable access to broadband services is a worthy

goal. And I am very pleased because it has the potential to assist those Americans without Internet access to improve health care, education, public safety, access to government and the economy. I am still a little confused why we used—we were going to deploy rural Internet opportunities, or at least broadband opportunities, after which you were then going to do a new map, if you will. So perhaps the cart got before the horse, in spite of the fact that I do think that that is a good use of stimulus funds is the deployment of broadband, particularly since I have a hugely rural district. So it will end up helping my constituents a good deal.

I will say, though, that I, like many others, have some concerns with your plan. As the chairman said, many in the first responder community are concerned with your strategy to implement a nationwide wireless first responder network, or at least the means by which you want to do it. And I am also concerned with your announced plan to reclassify broadband as a phone service instead of as an information service. Many have questioned whether this reclassification will stand the scrutiny of the courts.

In addition, my constituents, my very small providers, really believe this action will reduce private sector investment and broadband expansion, which will obviously then hinder your goal of expanding affordable broadband access.

Thanks for being here. I look forward to your testimony, and we will have lots of questions, I presume. Thanks, Mr. Chairman.

Mr. SERRANO. Thank you. You know the drill, Mr. Chairman. You give us 5 minutes, we will put your whole statement in the record, and then we will drill you to the point of exhaustion on our part, I am sure.

Please proceed.

Mr. GENACHOWSKI. Thank you. Good morning, Chairman Serrano, Ranking Member Emerson, Congressman Crenshaw. Thank you for being here. I am pleased to be making my first appearance, so I am learning the drill. But I welcome this subcommittee's oversight and input and look forward to working with you to ensure that the Commission is able to perform its mission and that we get good input into all of the issues in front of us.

I also want to take a minute to thank your staff, Lee Price and John Martens, who have taken considerable time and effort, a very healthy working relationship at the staff level, and I appreciate their work.

The FCC's mission is to promote opportunity and prosperity for all Americans through communications, technologies, and networks. To advance this mission we are focused on these goals: Promoting universal broadband that is robust and affordable for all Americans regardless of where they live; pursuing policies that promote job creation, investment, competition, and innovation; protecting and empowering consumers and families; helping deliver interoperable public safety communications networks with the best technology to serve our firefighters, police officers, and other first responders, and ultimately to save lives; advancing a vibrant media landscape that serves the public interest in the 21st century; and seizing the opportunity for the United States to lead the world in mobile.

The budget we have submitted will considerably enhance the FCC's ability to achieve these goals. It will help ensure that we have the staff we need with the technical skills we need to support our work to promote investment, competition, job creation, public safety, our global competitiveness in this complex communications landscape.

The budget request also includes investments in technology that will enhance agency operations, particularly in the area of public safety. My written statement contains more details on this. I ask that it be included in the record.

Let me briefly touch upon some key items before the Commission, and I am sure we will have an opportunity for a good exchange on these.

First, as I am glad both of you mentioned, Congress directed the FCC to produce a national Broadband Plan, and we have now done so and submitted it to Congress and the President. It includes key recommendations to transform the Universal Service Fund from supporting yesterday's technologies to tomorrow's, recovering and unleashing licensed and unlicensed spectrum so that we can lead the world in mobile. It proposes ways to promote investment by cutting red tape, lowering the cost of deployment and accelerating broad deployment everywhere of wired and wireless networks. It proposes initiatives to foster vibrant competition and empower consumers who are often confused about this landscape. It includes a roadmap to tackle vital inclusion challenges so that everyone everywhere, individuals and small businesses, can enjoy the benefits and opportunities of broadband, and it proposes concrete ways in which broadband can be deployed to help solve many of our Nation's major challenges, including education, health care, energy, and public safety.

In April, the Commission released a detailed, extensive timetable for taking action on the Plan's recommendations. The Commission has since unanimously approved eight action items already, including a notice kicking off broad-based universal reform. In May we continued driving on this agenda by approving three more items from the Plan's recommendations, a notice to cut red tape in the E-Rate program and increase flexibility for schools to better serve their communities with the funds and the technology, and order a notice to foster competition in broadband deployment by improving access to pole attachments, part of the blood and guts of this area where if we get it right we can seek faster deployment of infrastructure, and an order enabling the use of 25 megahertz more spectrum for mobile broadband.

Although many of the action items from the national Broadband Plan can be further reviewed and acted upon by the Commission, a few major recommendations require review and action by both Congress and the Commission, one of the most urgent being the creation of a nationwide interoperable public safety broadband wireless network. For far too long, as you said, Mr. Chairman, our Nation's first responders have lacked such a network. As part of the national Broadband Plan I tasked our FCC team, led by a brilliant retired admiral with great experience in this area, with starting anew and developing a comprehensive plan for an interoperable broadband public safety network. The Commission staff has pro-

posed a multi-part plan that will support the greatest benefits for public safety's day-to-day needs and provide essential redundancy and resiliency during the worst emergencies. The Plan confirms that the current 24 megahertz of spectrum identified by Congress and allocated to public safety is sufficient for public safety needs for the foreseeable future, and that if necessary in dire emergencies public safety will be able to access and roam on adjacent commercial networks in the 700-megahertz band, including the D-block, which Congress has required the FCC to auction.

It includes specific recommendations to get our mobile broadband public safety network built during a window that is closing of the rollout of commercial 4G networks. If we can get this done now, taking advantage of efficiencies that can happen by building out at the same time, we can both get it done and save a tremendous amount of money than if we wait.

Second, with respect to our goal of ensuring that the U.S. leads the world in mobile, there is little debate that our Nation's spectrum needs are rapidly increasing, with demand for spectrum very significantly exceeding the supply. If the U.S. is to lead the world in mobile services and technologies, we must address this looming spectrum crunch. I understand and share the concern that in pursuing this objective that we take full account of viewers of free over-the-air TV as we pursue what we strongly believe is a win-win-win plan to benefit free over-the-air viewers, the broadcast industry, our broadband future and American consumers.

I look forward to working closely with this committee and Congress on a mechanism for a win-win-win auction to address our mobile spectrum needs and make sure that we take full accounts of existing services like free over-the-air TV.

Finally, I remain focused on the importance of broadband to our Nation's economic growth, competitiveness, investment and innovation, huge opportunities here for the country. But as we heard, we face legal uncertainty now as a result of a recent court decision in the Comcast case.

Comcast, although we argued to sustain the framework that had existed, the court disagreed and that decision cast real doubt on whether the legal framework the Commission chose for broadband Internet services nearly a decade ago is adequate to achieve core broadband policies such as universal service, public safety, and promoting investment and innovation related to broadband and extending it to all Americans.

In addressing this issue, I reject both extremes, the extreme of overregulation and the extreme of doing nothing. I believe that a light touch approach continues to be the correct one, and look forward to ongoing dialogue with Congress as the Commission seeks public comment on how best to ensure that our broadband policies rest on a solid legal foundation and that we foster a climate for robust private investment in communications that benefits all Americans.

As you may know, the chairman of our authorizing full and subcommittees have announced they will start a process to develop proposals for updating the Communications Act. I welcome their process and the opportunity to serve as a resource to them and Congress in their work, and of course I look forward to working

with the members of this subcommittee on these issues and all issues the FCC faces.

Thank you again for this opportunity to discuss the FCC's 2011 budget request and our work under the Historic Recovery Act. I respectfully request that the subcommittee consider granting the FCC's fiscal 2011 funding request, and I would be happy to hear comments and of course take any questions.

Mr. SERRANO. Thank you so much. Thank you. Around here we always use the phrase "win-win." You say "win-win-win." Does that extra "win" mean you know something is going to happen?

Mrs. EMERSON. It means the Cardinals and the Yankees and the Nationals are all going to get a win.

Mr. SERRANO. It used to be a situation where everyone asked how long before Serrano brings in Cuba and Puerto Rico into any kind of a hearing and now it is how soon the Yankees and the Cardinals come into it. So we will see you in September.

The court decision, the D.C. Decision, now, first of all, when you come before this committee or any committee in Congress, and I am sure some of my colleagues are going to be upset with this, not in this committee, don't ever assume that Members of Congress know this issue through and through, because this is one of the more complicated issues that we deal with, and I am sure it is for you folks too. Now, the court decision kind of threw everybody for a loop. And the issue was, as we saw it, do you have the authority, existing authority, to move in the direction that many of us want you to move in. So what's your sense?

Now, just as a little aside, if one looks at your biography, you have done enough in the past to have dealt with many issues on many levels, from the Supreme Court to Congress to the administration to the FCC. So you certainly have an understanding of how these things move. Did that court decision cripple you? Does it allow leeway? Does it give you leeway to do what you need to do? Where are we at now? How can you explain that to us?

Mr. GENACHOWSKI. There is no question that the decision raised serious questions, created a problem that we have to solve. There had been a consensus that the FCC could adopt sensible rules around broadband for universal service, for public safety, for consumers, under a particular Title I approach. We defended that in court, we thought it was fine. We want to focus on what the American people want us to focus on, which is extending broadband to all Americans, leading the world in innovation, driving tremendous investment, having this be a platform for job creation, and extending the wonders of broadband and health care and education to all.

Unfortunately, we didn't win the case. And in its opinion the court raised real questions about the consensus framework that had been used. We now have to solve that problem. As I looked at it, we had two extremes in the debate. We had an extreme of oh, well, this is fine, the FCC doesn't need to do anything here at all, and we had what I believe is an extreme of oh, this is an opportunity for massive regulation of this infrastructure. And I reject both those extremes. And I directed our staff to identify a strategy that would restore the status quo, that would restore the light touch framework that would allow the Commission to do what is necessary to promote investment, to promote public safety, to ex-

tend broadband, not to do more than what is necessary. And the staff developed what we have called the third way approach that is modeled on the existing approach for how mobile voice is regulated and that we will continue to take public comment on and discussion on, with our central goal being the litigation. The court decision created a problem, let's solve it so that we can tackle our country's broadband needs.

Mr. SERRANO. And how do other members, I mean they are not here, but is there support on the Commission for that approach?

Mr. GENACHOWSKI. Well, I wouldn't want to speak for other members. I think we have healthy debate at the Commission, which is a good thing. I think each of the members of the Commission has expressed their initial views. This is an issue of sufficient importance that we should have public comment, public discussion, and encourage everyone involved to roll up their sleeves with the Commission with an approach of problem solving. I don't think anyone disputes that there is a problem. And I am going to do everything I can to work with all stakeholders, my colleagues at the Commission, the great staff at the Commission, to tackle this and solve it so that we can focus on the core goals that I think are widely shared of promoting broadband for our economy and for solving major national challenges.

Mr. SERRANO. And if I was to put you on the spot and say looking forward, at what point date wise can you say we have put this part aside and we are moving on now? I mean, I know you are moving on different fronts at the same time, but we have put this issue behind us, this has been resolved, what do you see?

Mr. GENACHOWSKI. Well, the first step is to start the proceeding, which we haven't done yet. It takes time to get it going. We will start the proceeding, we will encourage broad public comment and input, and we will do everything we can to solve this problem while we continue to move forward simultaneously on key elements of the Broadband Plan. We can't slow down, it is too important for extending opportunity to all Americans. And we have continued to move forward in the ways that I mentioned, we will keep on moving forward, and we need to tackle this issue for many reasons, including the fact that the rest of the world is not standing still.

Mr. SERRANO. Let me, I am going to be asking members after Mrs. Emerson speaks to stick to the 5-minute rule, so I will abuse it now and say the following. On your last comment, I don't know how briefly you can do this, but what happened to us, why did we fall behind, why are we in so many ways the greatest country on Earth and in this particular one we are trying to catch up, what happened to us?

Mr. GENACHOWSKI. It is obviously a very good question. A lot of people disagree on why we are where we are, but I think there is broad agreement that we are behind where we should be. Perhaps one of the drawbacks to having the infrastructure that we do is that we have to deal in this country with legacy infrastructure that in some cases slows us down. We have to reform the Universal Service Fund so that it applies to broadband, not just all telephone service. But I think what we focused on in the Broadband Plan was assessing what the current obstacles are and what we need to do to tackle them.

Mr. SERRANO. Mrs. Emerson.

Mrs. EMERSON. Thanks, Chairman. So Commissioners McDowell and Baker have stated that no evidence exists of systemic failure in the broadband market that would justify a new onerous regulatory regime. So perhaps you can tell us, because we are the Financial Services Subcommittee and generally we deal mostly with something dealing with financial services, and I will admit to not having a lot of expertise in this issue, but other than the Comcast case, which I actually kind of understand, what problem would be solved by increasing Internet regulation and is there evidence that Internet service providers are discriminating against certain customers?

Mr. GENACHOWSKI. A couple of points if I may. One is I don't support a new onerous regulatory regime. I oppose it. I support the restoration of the light touch regulatory regime that we have. There are a couple of different issues that get talked about together here. With respect to the basic authority issue, there is a broad list of problems we have to solve and they are detailed in the national Broadband Plan; broadband for all of America, tackling public safety, tackling privacy, promoting investment. All of these require the FCC to have basic authority with respect to broadband access.

Another issue that gets discussed in this is the issue of preserving a free and open Internet. I do believe that we have something very special in this country: An Internet built on an open architecture that allows free speech, that allows innovators to reach a broad audience. It has led to the development and growth of small businesses across the country, huge benefits in terms of investment. My view on this is that we need to preserve what we have and make sure that this platform remain open as we drive more and more investment in it so that the infrastructure can lead the world.

Mrs. EMERSON. Well, are you concerned that a majority of Members of Congress in both parties oppose your plan? I think there were 171 Republicans and 74 Democrats who wrote you a letter basically saying not to move forward with your plan, quite frankly because it is our responsibility to give you direction as opposed to you giving us direction. But you know we all are trying to work together to help the American people. But does that bother you that the majority of Members aren't, on the House side anyway, aren't in favor of your plan?

Mr. GENACHOWSKI. Well, the concerns that Congress have of course I take very seriously. And I share many, if not all, of the concerns that are in the letters. We need to find a way to make sure that we restore the status quo that exists, protect consumers, promote competition, promote investment, promote universal broadband to all Americans in a way that is a healthy framework that is consistent with the framework that we had. So I am looking forward to ongoing discussions with Members of Congress to developing broader understanding of the options, of the approach that I have suggested, and I believe that this is an area where I hope and I think we should be able to achieve better understanding and enable us to move forward in a way that allows us to have a solid legal foundation that promotes investment so that we have a basis for making sure we can take care of universal service, take care of

public safety, take care of small businesses and broadband, and I look forward to this process and I think our proceeding will help be a resource as we move forward.

Mrs. EMERSON. Well, since your Broadband Plan assumes significant contributions or investments by the private sector, and if, I mean you just mentioned investment, but if investors are fearful of government's involvement in regulating the Internet, and you may not call it regulation but others do so, it is all a question of semantics, so how is that going to impact the expansion of broadband to all Americans if in fact you have investors who say, well, wait a minute here, this is overreach-overreach. And I realize that you say it is not, but some others would think it is.

Have you studied the question and the impact that that might have on how we do achieve at least the large goals in your plan.

Mr. GENACHOWSKI. I am committed to making sure that we have a framework that promotes investment. As Congressman Serrano mentioned, I spent many years in the private sector, including work as an investor. This is essential. In this country private investment will fuel our broadband networks, and we have to make sure that we achieve that. We are just at the beginning of tackling this issue. I would note just one thing, which is that the third way approach replicates the framework for mobile, which has been very consistent with investment, it has been widely praised. And I look forward to discussing this with you and other members to make sure that we have a framework to achieve our common goals with respect to broadband.

Mrs. EMERSON. Are you having trouble with the authorizing committee? This is something that everybody believes will somehow solve a problem that exists out here, at least, you know, according to you. Have you not talked to the authorizing committees to determine whether or not a narrow bill could simply be written and that would preclude you from having to do it by regulation? People are very nervous about any regulatory body doing things by regulation in place of us legislating it because it is a little heavy, at least the perception is it is very heavy handed.

Mr. GENACHOWSKI. The chairmen of the authorizing committee on the House side and the Senate side have announced that they are looking at proposals to update the Communications Act and we will of course be a resource to that. So they are looking.

Mrs. EMERSON. So in other words, you would not hold back and perhaps let Congress do what it is supposed to do as opposed to you all doing it instead?

Mr. GENACHOWSKI. I am looking for a solution that allows us to work together to promote our common broadband goals. And I put on the table a solution that I believe rejects both extremes that is modeled on regulatory frameworks that work, but I am focused on a solution and if Congress were to provide a solution that would be welcome.

Mrs. EMERSON. Thanks.

Mr. SERRANO. Thank you. And now under the 5-minute rule, with a very nice gavel in my hand, I am honored to introduce the newest member of our committee attending his first hearing, the legendary gentleman from New York, a legend in his own time, Congressman Steve Israel.

Mr. ISRAEL. Thank you, Mr. Chairman. Mr. Chairman, thank you for your hospitality. I have heard references to the Yankees and the Cardinals, but nothing about my beloved New York Mets, by the way, and I hope that changes.

Mr. SERRANO. The chairman is a Yankee fan.

Mr. ISRAEL. Mr. Chairman, although I am new to the subcommittee, back in December I sent you several letters expressing concern for the deterioration of negotiations on retransmission agreements between broadcast companies and Comcast providers. Both parties have intended to do brinkmanship, but it is the American people who hang in the balance. In Chairman Serrano's community and my community about 3 million subscribers in New York, New Jersey, and Connecticut lost access to their ABC affiliate 15 minutes into the presentation of the Oscars when it went dark until the switches were turned on. And in the letter I asked you to consider ordering carriage on an interim basis when this happens, ordering arbitration, other alternative dispute resolutions so that the American people don't hang in the balance.

Two questions. One, what can the FCC do to ensure that there is not a repeat of this kind of brinkmanship and protect consumers? And second, I believe that this is just a tip of iceberg and as we move forward there are going to be more and more cases where the American people suddenly find themselves literally in the dark with respect to their access to programming. And so what are you planning to do in order to keep pace? The regulations that were promulgated in the early 1990s clearly are not keeping pace with the intensity of failed negotiations, and so what can we do moving forward to provide those consumer protections?

Mr. GENACHOWSKI. I share your concerns, particularly with respect to viewers, consumers who don't have a seat at the negotiating table and can wake up and find out that what is expected of them doesn't make any sense. You mentioned the February/March issue. I remember back to December/January when there was a possibility that viewers might find out on the Friday before a holiday weekend that they would lose their signal over the weekend for when there were high interest, in that case football programming on that they would want to watch. And at one level making sure if consumers have a real ability with sufficient time and notice to change providers that is debatable, that is something we can debate and think about. But the idea that a viewer would find out on a Friday that, oh, you can't watch some programming that is very important to you on a Monday unless you go to a store that is closed and order a product that you can't get in time, that doesn't make any sense at all. So we have announced that we are looking at the retransmission framework, and it is largely a statutory framework that has been the same framework in place for a very long time. And we are running a process to see whether it can and should be updated. I do think that the private parties in this should have the ability to negotiate their own deals, but I think something—the consumers and viewers who are not at the table, their interests have to be taken into account as we analyze the framework and make sure that it fully serves the whole ecosystem.

Mr. ISRAEL. And what is your timeframe for the review of the retransmission process?

Mr. GENACHOWSKI. It is ongoing now. I believe we are in the public comment process, and our staff is having discussions with the various players to see what recommendations we can come up with to improve and update the process.

Mr. ISRAEL. Thank you, Mr. Chairman.

Mr. SERRANO. Thank you. The distinguished Mr. Crenshaw.

Mr. CRENSHAW. Is that all you have to say, Mr. Chairman?

Mr. CULBERSON. That is all you get.

Mr. CRENSHAW. Is that all I get?

Mr. SERRANO. I spent the last year and 6 months praising you.

Mr. CRENSHAW. Thank you, Mr. Chairman. And thank you for being here, Mr. Chairman.

One of the things that when I talk to my folks back home what drives them crazy is every time there is a problem Washington says we will either spend more money, we will pass more laws, we will implement more rules, more regulations. And I guess I am trying to understand what the problem is that you are trying to solve, trying to understand why if Congress, if you have the chairmen of the authorizing committees saying they are trying to identify the problem, they want to solve the problem, that is kind of Congress' role. So when I look at the telecommunications industry it seems to be fairly innovative, it seems to be growing, there is a lot of private investment. And it would seem that I hear you saying you want to have a light touch, but it sounds like there is going to be more regulation and more regulation is going to bring more uncertainty. And I would like you to maybe just touch on a couple of things. One is kind of succinctly tell me what the biggest problem that you are going to solve, or maybe Congress is going to try to solve as well, tell me why it is important that you solve it through rules and regulations before Congress has a chance to solve it through input from their constituents, et cetera, more accountability. And then the third thing, maybe can you tell us, because this committee is interested in the money that we are going to spend, what kind of expenditures are going to be necessary if you put in place whatever rules and regulations you think you are going to put in place. It would seem to me you are going to need more people which would cost more money. So you know, and I guess you are also going to face a bunch of lawsuits and things like that. So can you highlight that as quickly as you can? I know that is probably not that easy to do quickly, but help me understand those three things.

Mr. GENACHOWSKI. Sure. First of all, I have been and the Commission has been very transparent over the last year on what policy objectives we believe need to be pursued to advance our broadband goals as a country, I think a greater level of transparency and openness about that than anyone remembers.

Mr. CRENSHAW. Now is that the problem, there is not enough transparency?

Mr. GENACHOWSKI. Transparency at the Commission? No, no, I don't think that is the problem at all. What the court decision did and our reaction to it doesn't change at all, not one bit, the policy goals that we have articulated in terms of getting broadband to rural America and all Americans, dealing with public safety issues, addressing basic consumer protections, nothing changes with re-

spect to our goals. What this uninvited, undesired court decision does is it forces us to look at the legal foundation underneath it, to go into the basement and say, all right, we need to do these things for the country, they really matter. Even though we liked the structure that existed, the court told us you got to go into the basement and fix the foundation so that what you are doing for all these other things stands up. That is what we are trying to do.

Mr. CRENSHAW. So that is the problem.

Mr. GENACHOWSKI. That is the issue.

Mr. CRENSHAW. Okay. And is that not being done now?

Mr. GENACHOWSKI. Well, that is the process. We believe we have an obligation at the Commission to say, look, this court decision came down, it raises questions, we need to have a public, open, transparent process to identify what to do going forward. A lot of other people are looking at it, and I encourage that. This is an area where it is in our national interest to have all stakeholders come together, roll up their sleeves, get into the basement, get their tools out and fix this.

Mr. CRENSHAW. What needs to get fixed? What is the big, big, big problem? You got goals, you got objectives and some of them I guess are being accomplished. But is there one big thing that is not, that you got to fix?

Mr. GENACHOWSKI. Well, in terms of the legal foundation the court said, hey, your foundation is broken, we need to go fix it. With respect to the broadband policies and objectives, transforming the Universal Service Fund so that we can extend broadband to all Americans, a vital thing we have to fix.

Mr. CRENSHAW. Is that not being done now?

Mr. GENACHOWSKI. It is something we are working on very, very hard. The court decision raises questions about the legal basis on which it can rest. None of us want to spend a long time working together to build consensus for universal service reform and then have the court say, oh, you weren't listening, we told you that you can't rest it on this part of the Communications Act.

Mr. CRENSHAW. That is the big problem. All right. Now so you are working on that. Why are you working on that and not Congress working on that?

Mr. GENACHOWSKI. Well, I think we have an obligation as the agency that administers the Universal Service Fund to work on it and improve it. We have obligations with respect to public safety, obligations with respect to basic consumer protections. And as I said, all of these policy goals have been very transparent and open. And nothing about the litigation or this process that we are dealing with now to deal with it affects our policy goals, affects our desire to have light touch regulation, to promote investment, to cut red tape, to focus on consumers' real needs, to focus on broadband and education.

Mr. CRENSHAW. Won't you end up with more regulation?

Mr. GENACHOWSKI. No.

Mr. CRENSHAW. So you might actually reduce regulation, your new rules might be less restrictive than the rules you have now?

Mr. GENACHOWSKI. Our goal is to go into the basement, fix the foundation so we can continue to work on exactly the same house that we have been working on and do that in a spirit of bipartisan-

ship and consensus and global competitiveness in the United States.

Mr. CRENSHAW. And what do you think the Congress' goal is?

Mr. GENACHOWSKI. I am not sure that I would—I am not sure—

Mr. CRENSHAW. Would they be working on—I assume that Congress is going to—I don't sit on the Energy and Commerce Committee, but I assume somebody there is. As you say, the authorizing committee chairmen are talking about fixing the telecommunications industry or rewriting laws or whatever. Is that a mutually shared goal they have with you?

Mr. GENACHOWSKI. Yes. And I wouldn't want to speak for other Members of Congress, but we work closely with our authorizing committees and have great respect for the chairmen of those committees.

Mr. CRENSHAW. So why don't you wait and let them do it? It is that urgent?

Mr. GENACHOWSKI. I think success in broadband is urgent for the country, I do believe that.

Mr. CRENSHAW. Thank you, Mr. Chairman.

Mr. SERRANO. Thank you. Ms. Wasserman Schultz, the gentlewoman from the great State of Florida.

Ms. WASSERMAN SCHULTZ. Thank you very much, Mr. Chairman. And a lifelong Yankee fan I might add, having been born in your home State.

I am going to be the fly in the ointment among the members here and tell you, and not be afraid to say out loud, that I don't really have a problem with your move towards light touch regulation and am very interested in seeing what benefits to the consumer we might have. I mean, we have been struggling with issues related to the Internet like net neutrality, like how to make sure that we decide how much a company should be able to restrict access to a piece of network or control a piece of the network and package that and sell it. I would like to hear from you, to the degree you haven't already touched on it, what consumer benefits you think would come from light touch regulation.

I also, though, would like you to touch on the whole issue of child pornography trafficking across the Internet. That is something that I have been very focused on since passing the Protect Our Children Act in 2008. I mean just to give you an example, last year a major ISP in the world tried to determine the magnitude of child pornography trafficking across their network in just one country, and it was a small country, fewer than 10 million people, something like the size of New Jersey, they used known child pornography identifiers, hash values from a registry provided for them by Interval. They determined that 120,000 transactions for receipt, distribution and possession of child pornography had occurred in one day in one country. If we were to extrapolate a similar demand on the United States it would mean that there could be as many as 3 million hits for child pornography in our own country.

I would like to know what the intended policy is toward anonymity on the Internet. Does the agency see a need to mandate that broadband providers keep and manage information like that? And I have a couple other questions related to that as well. But I know

the easiest thing in the world to do politically is to just stay away from the Internet, stay away from Internet taxation, stay away from Internet regulation. The Internet has been off limits to any suggestion of anything governmentally related in touching it since its explosion. And I think as far as the answer to the question why not leave this to Congress, I mean sometimes Congress leads and sometimes we are pushed. And to be honest with you, I am not sure, as much respect as I have for the chairmen working on the issue now, I am not sure that they would have taken the issue up quite as soon if the FCC had not begun exploring the avenues that you are exploring. So I would love to hear from you.

Mr. GENACHOWSKI. Thank you very much. Consumer benefits, the FCC has always promoted consumer benefits with respect to the main access to communications that goes into people's homes. And a lot of this issue is about preserving the ability to do, to take necessary steps for consumers. I will give you an example. We have been working recently on the issue of bill shock. There are consumers who get their bill in the mail for their mobile service and where they thought they were going to have a bill of \$70, \$80, \$90 they get one for \$2,000 because they exceeded their limits and they just didn't know. Our survey found that as many as 30 million Americans are affected by this at some level. And there are some basic things that we are exploring that might be able to fix this; making sure that consumers get text messages when they exceed their limits, for example, number one. Number two, I believe that information technologies actually provide a whole new range of opportunities to address consumer confusion, deal with basic consumer issues in a way that is lighter touch and more beneficial than in the past, because it is easier now to put in front of consumers of broadband access services information that will help them understand their speeds, their services. You know we found an international Broadband Plan that the speeds that consumers actually get for broadband are about half of what is advertised. Well, there are things that we ought to look at with respect to transparency rules that make it clearer to consumers. All of these issues are tied up in do we have basic authority to adopt sensible rules with respect to broadband access.

With respect to preserving a free and open Internet, I believe that is a huge consumer issue. The ability of consumers to have choice, to access services that they would like, I think about consumers too as small businesses who want to have the opportunity to put a business on line and know that they can reach an audience, I think it is a very, very big consumer issue.

To your child pornography point I would say that that focus is about lawful content and services. And I feel very strongly that we need to preserve the freedom and the openness of the Internet for lawful communications, lawful business relations, but unlawful content and services are in a different category. And in fact I think for the success of our Internet in the future we need to recognize both the need for openness and the need for safety, being very cognizant of the First Amendment and its vital importance.

Ms. WASSERMAN SCHULTZ. Can I just ask you, because you just described reasonable network management practices. Mr. Chair-

man, if I can just finish this sentence and get an answer that would be great. Thank you.

Does the FCC intend to allow ISPs to block, thwart and encourage identification of legal content? I mean, during this light touch regulatory process I would think that that is something that you could take up that would really protect children and address the explosion of illegal content that is being transmitted across the Internet.

Mr. GENACHOWSKI. Yes. Preserving a free and open Internet and making sure that reasonable steps can be taken to deal with unlawful content or unlawful activities, we need to get that balance right, and I think we can.

Ms. WASSERMAN SCHULTZ. Thank you very much.

Mr. SERRANO. Let me just say that that is, and that was a great line of questioning, that is my biggest concern, that you allow the freedom that we Americans always love to enjoy and at the same time not allow the Internet to be used to destroy people or to commit unlawful acts. And that is a challenge and a half, because it has to be done carefully. And we can't do it every time there is a crisis. Because when we respond to a crisis we tend to go too far to one side. And so it is a balance. I don't envy the job you have to do, but we do remind you on both sides that this is a huge challenge you have.

Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman. Following up on Ms. Wasserman Schultz's question, and she is absolutely right, all of us are deeply concerned about the proliferation of child pornography, exploitation of children on the Internet, but the District Court of Appeals for the D.C. Circuit, the Supreme Court in this most recent decision from the D.C. Circuit, you don't have ancillary jurisdiction to regulate in areas that are not specifically authorized by the statute. I saw you were the general counsel of the FCC from 1994 to 1997. And when you tell us blithely and broadly that you are going to go work on the foundation, you don't have the statutory authority to do what you are attempting to do. You have a unanimous decision from the D.C. Court of Appeals, you have 10 years of precedent from the FCC in decisions and from the U.S. Supreme Court that you do not have the authority or jurisdiction to do what you are attempting to do. And all that is necessary if you are, if you are passionate about this and concerned about it is to go to the authorizing committees and ask them to amend the Communications Act to give you authority to regulate information services. And I would suggest that what you need to ask for specifically is the authority to prohibit illegal content and in particular the abomination of child pornography. And anybody that traffics in it, promotes it, allows it to be transmitted ought to be boiled in oil. And you guys ought to be able to have authority to regulate that. And I am confident the authorizers would do so. But you do encounter strenuous opposition from all of us in any broader effort to regulate lawful content on the Internet. You don't have the authority to do what you are attempting to do, do you?

Mr. GENACHOWSKI. Well—

Mr. CULBERSON. Where in any court decision and where in the statute—you were the general counsel from 1994 to 1997—tell me

specifically in what court decision and where in the statute does it explicitly give you the jurisdiction to do what you are attempting to do? It is not there, is it?

Mr. GENACHOWSKI. Well—

Mr. CULBERSON. Where?

Mr. GENACHOWSKI. With respect, I believe that the proposals that have been laid out—actually, by the different stakeholders in this there are many who agree that there are different ways under the statute to pursue broadband, and a lot of the debate is which is the best way. So we would be happy to provide a fuller legal—go on, please.

Mr. CULBERSON. You can do it I am sure off the top of your head. You were the general counsel for the FCC, you are an attorney, I am an attorney. Tell me specifically, show me, just tell me where in the statute, what court decision is it that gives you the authority to attempt to regulate the Internet in the way that you are attempting to do? I don't see it, it is not there. Can you tell me as the former general counsel and the Chairman, where in the statute and what court case gives you that authority.

Mr. GENACHOWSKI. Just one correction, I wasn't the general counsel. I was chief counsel to the Chairman.

Mr. CULBERSON. Same thing.

Mr. GENACHOWSKI. Yes. But nevertheless, the third way proposal would go back to the definition that the FCC had of broadband access providers as telecommunication service providers, the people who provide the pipe into your home for broadband access.

Mr. CULBERSON. You would just issue a regulation that says they are telecommunication?

Mr. GENACHOWSKI. The Commission had that in place in the past and then it adjusted that, and I think lawyers would agree we have the discretion to adjust it back.

Mr. CULBERSON. Ancillary jurisdiction is what you are talking about and the D.C. Circuit said you don't have ancillary jurisdiction, and you would also be reversing 10 years of explicit decisions from the FCC classifying the Internet as information services, not telecommunication, right?

Mr. GENACHOWSKI. Well, if I could, there are people who believe we continue to have ancillary jurisdiction.

Mr. CULBERSON. Despite the court decision?

Mr. GENACHOWSKI. Yes. But by the way, those are some of the carriers who would urge us to continue moving under Title I. With respect to whether the classification of broadband access can be changed there are many, many lawyers, our general counsel currently at the agency believes that it is well within Supreme Court decisions and D.C. Circuit decisions to adjust that clarification.

Mr. CULBERSON. Forgive me. My chairman is correct on the 5-minute rule and I will have follow-up. Harry Truman used to say he always wanted to meet a one-armed economist so they couldn't say on the one hand and then on the other hand. There are always lawyers that can tell you that no matter despite this mountain of Supreme Court decisions, and this most recent explicit Court of Appeals decision, that you do not have ancillary jurisdiction, and despite all these decisions from the FCC over the last 10 years that

you don't have the jurisdiction or authority to regulate the Internet, we are just going to do it anyway is what you are telling me.

Mr. GENACHOWSKI. No, sir, that is not what I am telling you.

Mr. CULBERSON. Sure.

Mr. GENACHOWSKI. We are not going to regulate the Internet.

Mr. CULBERSON. Let me just ask you again. Where in the law, what statute specifically gives you this authority and what court case gives you this authority explicitly when you have got a unanimous opinion from the D.C. Circuit that says you do not have, quote, untrammelled freedom to regulate activities over which the statute fails to confer you that authority?

If you don't have the authority, all you need to do is go to the authorizing committee, go to Mr. Waxman. As Ms. Wasserman Schultz suggests, child pornography is vile. I mean you ought to go in and just ask for authority to regulate illegal activity. You would get it. Ask for the authority. You don't have it in statute, you don't have it under court cases, do you? Tell me the case.

Mr. GENACHOWSKI. With respect, I believe we have authority.

Mr. CULBERSON. Where?

Mr. GENACHOWSKI. Under Title II. Many believe authority under Title I.

Mr. CULBERSON. Where? I have got it right here. Where?

Mr. GENACHOWSKI. Section 201, Section 202.

Mr. CULBERSON. 201 and 202. Hold on. I will do my follow up. Where else?

Mr. GENACHOWSKI. In general Title II applies to telecommunications providers.

Mr. CULBERSON. But telecommunication is not information services, that is my point. The D.C. Circuit said the Internet is information services. You are given authority to regulate telecommunications, right? You are an attorney, come on.

Mr. GENACHOWSKI. Yes. I would be happy to continue this discussion.

Mr. CULBERSON. Don't dodge.

Mr. GENACHOWSKI. No, sir. I am trying to answer your questions directly. The question is whether the provision of broadband access to consumers is—

Mr. CULBERSON. Is information or telecommunications. The chairman has been very generous. But Ms. Wasserman Schultz is exactly right, we need to absolutely shut down child pornography. Go to the authorizers. You don't have the authority to do what you are attempting to do. Why don't you go to the authorizers, will you?

Mr. GENACHOWSKI. I understand your point. We are in discussion with our authorizers.

Mr. CULBERSON. Thank you, Mr. Chairman. You have been very gracious. Thanks for the indulgence.

Mr. SERRANO. Were you a prosecutor?

Mr. CULBERSON. I just feel as strongly as we all do. And my good friend Debbie Wasserman Schultz is right about this. I mean these people ought to be boiled in oil and it is inexcusable that this vile material is allowed to be broadcast. And we can find them and roast them. She is right, toast them up.

Mr. SERRANO. We all agree.

Mr. Fattah.

Mr. FATTAH. Mr. Chairman, just let it be for the record I would rather you go deal with the child pornographers and if someone wants to say you don't have the authority let them defend on the other side. But I want to pass this round to Congressman Ryan, and then I will catch him on the next round because he wants to do something to facilitate us continuing in this particular vein.

Mr. SERRANO. Well, in that case—

Mr. RYAN. Mr. Chairman, I feel like this is a basketball game because I am going to pass to Ms. Wasserman Schultz so that she can follow up on her line of questioning.

Mr. SERRANO. Right. Who is in charge here?

Mr. RYAN. I don't know. This is my first meeting.

Mr. SERRANO. I was going to welcome the newest member of our committee, Mr. Ryan, who already has broken three other rules.

Mr. FATTAH. I think the gentlelady from Florida is in charge.

Mr. SERRANO. Of the time now I guess. Okay. Ms. Wasserman Schultz.

Ms. WASSERMAN SCHULTZ. I will only take a couple of the very generous 5 minutes that my colleagues have tossed me. I actually agree with Congressman Fattah that to the degree that you have authority, whatever authority you possess today to restrict the transmission of child pornography and to be able to go after pornographers who are transmitting content on the Internet and to be able to expose them and deal with a telecommunications policy that prohibits them from being anonymous, then you should use all that authority and you should seek more. So if we can split the difference and say that you may not have all the authority you need, but whatever authority you have you should pursue that.

Mr. GENACHOWSKI. If I could say done, like many of us, I have three kids, including two young ones, and it is a huge, huge terrible issue that needs to be tackled very fully, and so I completely agree.

Ms. WASSERMAN SCHULTZ. Good. And then the other quick question I had is just about the life line service, because life line has not, has traditionally been for land line services. Obviously it is very important now given how many people use cell phones. In September, Congresswoman Matsui, our colleague, introduced legislation that would require the FCC to establish a broadband assistance program for low-income people by expanding the life line program. Have you had a chance to review that legislation and are you supportive of it?

Mr. GENACHOWSKI. Yes and yes. And our national Broadband Plan recommends that we move forward on it, and we have actually begun the process in May looking at doing exactly that.

Ms. WASSERMAN SCHULTZ. Does your fiscal year 2011 budget request reflect it?

Mr. GENACHOWSKI. It would be part of our overall Universal Service Fund reforms, it would be inside the Universal Service Fund.

Ms. WASSERMAN SCHULTZ. Which I guess if you had some light touch regulation you would be able to advance even further?

Mr. GENACHOWSKI. Yes.

Ms. WASSERMAN SCHULTZ. Thank you very much for my colleague's indulgence.

Mr. RYAN. Thank you. I just have—it is me, right? I just have one question. The national Broadband Plan recognizes that we have this huge gap in funding, \$24 billion. And we have similar issues with our transportation budget. We have a \$1.4 trillion transportation infrastructure gap. And we are trying to come up with some creative ways through transportation banks and leveraging private financing and those kind of things, creative ways to try to address this issue.

Are you exploring some creative ways that we can address this issue, because we have got a lot of work ahead of us? And I think economic development and a lot of communities, not just rural but urban centers as well, who are trying to regenerate and restore their local economies, for example, in the industrial Midwest where a lot of this stuff was steel, rubber, manufacturing that is now trying to move into some higher technology, biofuels, whatever the case may be, software, this is very important for us. And so the only question is, and if we can help you in any way figure out creative ways to finance this and then to maintain it over the long term.

Mr. GENACHOWSKI. And I agree with the premise of your question completely, and there is always the opportunity for new ideas, and I welcome that.

Transforming the Universal Service Fund, it is approximately an \$8 billion a year fund that needs to be focused in a smart way on new technologies to benefit people all over the country. There are opportunities in thinking creatively about spectrum options, and so the kinds of policies that we have proposed, some of which require legislation, to recover and auction off new spectrum, it has this win-win-win effect, because it can free up more spectrum, and spectrum is a form of infrastructure when it comes to wireless technologies for mobile broadband in urban and rural areas, which can make a big difference. It can generate substantial funds for the Treasury, which can help funding across the board, and there are ways to do it that work and are wins from the perspective of entities that hold spectrum licenses now.

And so there are some creative ideas there around two-sided auctions, incentive auctions that we would be happy to follow up with you on because it is an important area where we do need to work with Congress to make sure that we have the spectrum infrastructure that will allow us to lead the word.

And to your earlier question, Chairman, about what the U.S. hasn't done right in the past, this is an opportunity in the future for us to focus on our mobile infrastructure, on our wireless infrastructure to make sure we get it right for the next 10, 20 years.

Mr. RYAN. Thank you.

Mr. SERRANO. Thank you, Mr. Ryan.

Let me go into an area that is of great interest to me and I know to members on both sides, and that is the treatment of the PEG channels. In 2008, this subcommittee held a hearing on Public, Educational, and Governmental, or PEG, access television subscribers. At that time, several companies were denying PEG channels treatment equal to basic commercial channels. PEG supporters have filed petitions at the FCC to ensure fair treatment of PEG channels.

When I urged prompt resolution of those petitions at our FCC hearing last year, Acting Chairman Cox said, it is my hope—this is a quote—that the Commission will take whatever steps are necessary to ensure that PEG channels remain a vibrant and valuable service.

One year later, the FCC has apparently still not resolved the situation.

Now, some of us have been around long enough to remember that when this great bonus, cable television, went out, it was with an understanding that the local community would have access through these channels, and everything from the local Little League football team being able to present their awards live, or taped on a local channel, to the local church having a Sunday service to whatever cultural and ethnic groups wanted to go on the air; they could do it.

And what has happened is that more and more, the people are making them—making it hard for them to function. And in some cases, we hear stories out in the West Coast and other places where the channels now have moved from the first 15, 20, 30, 50 channels to channel 800, and it is a dropdown menu, and making it almost impossible for you to get.

Now, I think eventually, as we begin to trade off support, as we always do, where you have some issues that you want Congress to support you and Congress needs for you to do something, this little issue of PEG channels may become a very difficult issue, because on both sides, people support the fact that there is this public access, and it is important.

So, before I ask you what is happening, I am telling you that this has to be dealt with fairly and strongly; otherwise, we are going to have some very difficult times between this subcommittee and the FCC, because we will not sit by and allow the FCC to allow commercial carriers to just push these folks aside.

Mr. GENACHOWSKI. I appreciate the question. There has been some good news with respect to PEG, and there is also a lot more work that needs to be done. So one of the major disputes that existed was one involving Comcast, and that now has been, there has been a satisfactory solution there. We would be happy to review it with your staff and make sure it is satisfactory to you and your staff. But it is our understanding that the PEG community is satisfied with how that was resolved, and that obviously involves many communities across the country. There is at least one other major provider where there is an ongoing dispute that has not been resolved, and I can assure you that we will go back and make sure that it is on a track toward resolution.

Mr. SERRANO. Now, do you feel that there is a concentrated effort to move them off the bands, if you will? Is there indifference by the major carriers, or is there a plan here?

Mr. GENACHOWSKI. Well, I don't know that I would be comfortable characterizing their points of view. The issues tend to come up, as you know, in convergence to digital. And sometimes the conversions are done to digital transmission of video services in a way that leaves PEG behind. That is what creates the issue.

Mr. SERRANO. When you buy a house or get a car, you don't leave some of the members of the family behind. Right? You move them

all to the new place and you all celebrate. And I think that what has happened is that the FCC has not regulated these folks. And you do have the authority to do so on this particular issue, to say, this is part of the deal. And we remember the deal. I remember, in the Bronx, which took longer than most places, as you know, to get cable, that those were the agreements. Now, they have done pretty well there, but in some places, they are totally forgotten.

Mr. GENACHOWSKI. The issue remains, and we will work with you closely on this. My hope is that the successful resolution in one case can be a model for successfully resolving it in others. But there is no question that the rights of PEG channels to have access to systems and access to the audience have to be honored and enforced.

Mr. SERRANO. Okay. Now, taking Mr. Culberson's approach of being more direct. You do have the authority. Do you intend to use it to make sure that they are not left behind?

Mr. GENACHOWSKI. We intend to honor the statute here and take this very seriously and make sure that PEG channels are not left behind.

Mr. SERRANO. Okay. I understand your desire to honor it. I am going to take it a step further. I hope you get angry. Because I think as we deal with bigger issues, or what some people perceive as bigger issues, these will be left off the table again. And we can't do that.

Which brings me to my next question, which is another favorite subject of mine. And that is, why can't the FCC do what some of us would want to do with all Federal agencies, but since you have a broader understanding of a lot of issues, why do you find it so difficult to understand that we have 50 States and territories? Why do the territories always drag behind, lag behind in everything the FCC does? Why do we have American citizens who have the least access to the Internet in places like Puerto Rico and the Virgin Islands and Samoan and so on, why when we put forth a plan we always seem to say, for the States and the territories?

And understand, this is a mantra of mine with every Federal agency. But I don't have oversight over all Federal agencies, and we do over the FCC. So why is it that at every turn the territories are always left behind?

Mr. GENACHOWSKI. Well, we take this very seriously. And in fact, in the universal service proposal that we put out last month, there is a specific discussion of territories and looking at a proposal to modernize Lifeline and Link-Up to take into account the unique situations of Puerto Rico and other territories. So it is something that we take seriously, that we are looking at. And I do believe the FCC has made progress over the last few years in thinking about the Universal Service Fund applying to everywhere, including the territories.

Mr. SERRANO. But there are disparities, and you acknowledge that.

Mr. GENACHOWSKI. Yes.

Mr. SERRANO. Well, despite these disparities, you recently declined to set up an insular specific Universal Service Fund mechanism to provide wireline voice service in Puerto Rico, citing recent improvements in overall voice service.

In light of this, what can the FCC do to narrow this wide gap in Internet and especially broadband use in the territories versus the States, and make sure that a similar gap does not develop in the future?

Because what is happening is you have got this gap that exists already. Then every time you move into a new area, you leave them behind again. And so they are not only catching up to what we have now, but they are already in line to have to catch up to what we will have a year or 10 years from now or 5 years from now.

What is so difficult for the members of the Commission to understand that these folks are American citizens living under the American Flag?

Mr. GENACHOWSKI. I believe that we do understand that. And in fact, this is why specifically in our proposals to modernize the Universal Service Fund, we are focused on this issue. The biggest gap that we see and look forward to ongoing discussions with you on this is on the adoption gap. The adoption levels in Puerto Rico, for example, are well, well beneath national averages. There is no question that there is serious lagging behind, and of course, that affects people's ability to look for jobs, to get access to health care information, to be entrepreneurial and start businesses. And it is why this reform that we have proposed with respect to Lifeline and Link-Up to make significant progress on broadband adoption is so important.

On the deployment side, we are looking at both wireline deployment and wireless deployment, and we would like to see progress on both because they are both essential to participating in our economy, connecting with family and friends.

And so we hear you on this. It is very important. I think the Commission is paying very close attention to this.

Mr. SERRANO. In closing, before I turn to Mrs. Emerson, let me do a combination of Mr. Fattah and Mr. Culberson.

Assume you had the authority, if you think you don't have the authority, go and make believe we have 55 States and not 50, and let Congress get upset at you later for treating all Americans equally.

Mrs. Emerson.

Mrs. EMERSON. I am not going there.

Thank you, Mr. Chairman.

Let me ask you a question. Do other countries in the world have interoperable first-responder networks?

Mr. GENACHOWSKI. It varies from country to country. I would be happy to get you detail.

Our military has better interoperability than our first responders. And one of the things that we have been trying to do is increase the best practices, the information, the knowledge that go from our military being able to solve some of the interoperability issues to our first responders. And I think that is an area where we can make progress.

Mrs. EMERSON. But I am asking you, is there another country? Are you aware of any other country in the world that has an interoperable network for public safety folks?

Mr. GENACHOWSKI. Countries that are comparable to ours in the sense that they have so many different local authorities, it is hard to find that level of comparability. It may be that countries that have one single communications force don't have the issues that we have. So the locally-based system that we have is very important to our country. It does create interoperability issues that I think are somewhat unique to the United States.

Mrs. EMERSON. Well, that may be well true. And it is pretty embarrassing that it is this long after 9/11 and we still don't have a network.

And, as a matter of fact, even after Hurricane Katrina within the military, the military itself, active-duty folks had a pretty darn good interoperable system, which has been much improved even since then. But the Guard and—the National Guard and the Reserves couldn't talk to the active duty folks. And I don't know if that has been fixed since then, but it was very apparent during Katrina that they couldn't even do that.

I know that—I mean, I am all for building out and securing a first-responder network, and I know that you all have worked really hard on getting that plan done. I guess I am a little bit confused, because on the one hand, your plan proposes to provide \$6.5 billion in assistance to first responders to build out a network, but then the National Governors Association wrote and asked that your plan be amended to allow the D block to be allocated to public safety. And then first responders say that they actually want to control the spectrum, and that priority access on—on a commercial network is insufficient in a crisis. And then we are told that all these different people are coming at it from different approaches.

I guess I want some clarification from you, if you would, because I don't know, why would it be preferable to auction the spectrum commercially and give first responders \$6.5 billion, while hoping the industry will work with them? Why wouldn't you just allocate the D block to first responders without giving them the \$6.5 billion, and then they can control the spectrum and establish their own relationship with industry to build out a reliable and a resilient network?

It is all a little bit too many different competing interests here. And, you know, the bottom line is, we want a system that works, and I don't know why we would pay \$6.5 billion for it if they could get it for free and then do it themselves. So I want to hear your reasoning behind it, if you wouldn't mind.

Mr. GENACHOWSKI. A couple points. One is the goal of finally delivering on the recommendation of the 9/11 Commission that we have interoperable communications, number one. And, two, that we have a mobile broadband first responders is absolutely vital. Two, we don't have the authority to do anything other than auction the spectrum. This was the allocation that Congress made, and for that to change, we couldn't do that on our own.

In connection with the National Broadband Plan, we put together a team led by a retired admiral who is just completely dedicated to tackling these issues. And the team developed a multi-part plan, that there is no single thing that can solve this. But their biggest concern was that the record of the last number of years suggests that if spectrum is allocated for public safety, and there isn't a plan

to build the network, it doesn't get built. And there is spectrum out there that has been allocated. This isn't like other areas that the FCC deals with where private investors will come and invest in networks and they would get them built.

And the conclusion of our staff on this was that if the funding issue isn't tackled directly, the towers and the equipment and everything else that needs to get done won't get done. And that is a suggestion and a request that we have made to Congress, making the point that if this is done now while the commercial four G networks are getting built out, the cost will be much, much less than if it is done in the future.

There are a series of things that are part of the plan that need to be done to make sure that the network not only gets built but that it gets built in a way that is interoperable. And so we have set up an office for interoperability coordinating with Homeland Security Department and the Justice Department to make sure that we don't repeat the errors of the past, and that there are people looking at standards for interoperability, so that as the new network is built out, that can happen.

And the team of course looked at the sufficiency of the spectrum as Congress had allocated it and came to the conclusion, dispassionate staff just looking at the facts, that the issue wasn't quantity of spectrum; the issue was funding to get the network built.

Mrs. EMERSON. Have the first responders even presented a plan? I don't know. I am really asking you, have you seen any kind of plan on the part of first-responder community?

Mr. GENACHOWSKI. There have been many, many discussions between the first-responder community and the agency. And I know from my own conversations with them that many parts of the plan they feel strongly represent real progress, as I think Chairman Serrano mentioned, on a bipartisan basis. The four members, two Democrats, two Republicans on the 9/11 Commission supported the ideas and the plan as the best thing that they have seen to really make progress on this. We will continue to work with the public safety community.

Our goals are the same, and we look forward to working with the public safety community, with this committee, with other committees to get this done for our country. It has not been a proud history. We have made much less progress over the last 10 years. Different people have different views on why that has occurred. But what is important to me was to set up the kind of team that had the right level of experience and could dispassionately look at it and make recommendations to Congress and for our own actions that we believe would accelerate interoperability and accelerate a mobile broadband public safety.

Mrs. EMERSON. So let's just say we all agree with you. Hypothetically, we all agree with you, and you have the go ahead and you are going to get this done, and you will get your \$6.5 billion to give out, hypothetically. How long will it take from start to finish to put in place a nationwide public safety network that is going to resolve all the communications issues we faced during both 9/11 and Katrina?

Mr. GENACHOWSKI. Two answers. Several years. And I would be happy to get back to you with something more specific. But I can tell you, it would be roughly built out on the same pace as the buildout of commercial networks. Because part of the idea is, as the commercial carriers are building up four G networks, let's take advantage of that buildout; let's do one truck roll, not two. Let's have equipment go out at the same time. Let's take advantage of the same towers. So the pace would be the pace that is driven by the commercial buildout, and the cost would be much less than if we didn't move forward on this, allow the commercial networks to be built out, and then came back and said, okay, now let's do another set of truck rolls to put in the equipment for public safety.

So I wish we could do it in 6 months. We can't. It will take several years. But it will be much faster than any other approach that we have seen.

Mrs. EMERSON. So several years. Is that under 10?

Mr. GENACHOWSKI. Yes.

Mrs. EMERSON. Is it more than 5? I am not—and I am not going to hold you to it. But just to give us a sense of—because we already have this other broadband deployment in place. I mean, I am happy to get EDGE in my district. You know? I mean, I am happy to get EDGE in some places. So what can I tell you, but nonetheless, it is worrisome in deploying a system like that. I mean, I just watched the nightmares that all of these little companies are going through trying to get approval from either RUS/NTIA just to do the broadband deployment from the stimulus bill, let alone some major national network. So I appreciate your answer. Thanks.

Mr. SERRANO. Mr. Fattah.

Mr. FATTAH. Thank you, Mr. Chairman. And I wish the Yankees well this year.

Mrs. EMERSON. What about the Cardinals?

Mr. FATTAH. But the Phillies are going to be the number one.

Mr. SERRANO. I suspect it will be the Yankees and the Phillies again.

Mr. FATTAH. I am with you.

Welcome to the committee. And you have a recommendation for an increase of \$19 million over your base from last year. Now, in part, you got some technology initiatives. There is also an additional 900,000 you are asking in terms of the, I guess the replacement of the vehicles you use now to protect public safety networks from interference. Would those dollars over the long term be backed out in future year budgets, assuming we do the Nationwide D block plan?

Mr. GENACHOWSKI. I am not sure they would. The public safety work that we do, and I am very proud of this, we have developed technologies over the years that have the ability to identify spectrum uses in different markets that has been of tremendous value to our sister agencies in government in dealing with disasters, and we would be happy to follow up with you and give you more examples. Some of them can't be discussed in a public setting. But they have been very valuable throughout the United States, especially with respect to disasters, and I think it is a program that has earned its presence.

Mr. FATTAH. Another part of this increase request is to recruit and hire talent on it, on cybersecurity issues and some other issues. Right? So, now, I assume you do have authority to be concerned about cybersecurity.

Mr. GENACHOWSKI. We are very concerned about—

Mr. FATTAH. This is on the Internet. Right?

Mr. GENACHOWSKI. Yeah.

Mr. FATTAH. There was some debate about whether you had any authority to have interactions around the Internet.

Mr. GENACHOWSKI. It is a very significant challenge for the country. As the FCC, as the expert agency responsible for communications, we have an important role to play here. It is vital that we have the expertise, the engineers and others, who can play a role in our system with respect to cybersecurity.

Mr. FATTAH. Now, in regards to one of your major goals of the agency, as you have identified, is to advancing a vibrant media landscape. In this regard, one of the big concerns has been about making sure that we continue to advance the interests of ownership, both in the media for African Americans, Hispanics, Native Americans, women. And I am, wondering whether it would be, as your role as chair, you see any major initiatives in this regard given the dearth of interest over the last decade in this issue.

Mr. GENACHOWSKI. It is a very important issue. And it becomes even more important as technologies change, as the next generation is looking at new media channels instead of old media channels. So we are both, with respect to older media, getting our arms around the data and pursuing initiatives to continue to encourage those goals with respect to older media. And I also think it is vitally important that we look at a broad opportunity with respect to new media and new technologies. And in some ways there is an even greater opportunity to make a difference there because there are new entrepreneurs starting every day. And so it is one of the reasons, if I may, that I think preserving a free and open Internet is so important, because it gives the opportunity from anyone from any background to start a media company, start a business, reach an audience and have a realistic chance to succeed.

Mr. FATTAH. Well, I concur. And I want to thank you for your work. And I know there is a libertarian streak that we should—that free and open might mean unfettered. I mean, we have a Federal highway system that is free and open, but you do have to be moving on the right direction. You can't be coming up the opposite way. So I want to concur with my colleagues' interest in this child pornography issue, that we need to be clear that, even though we are very interested in a free and open Internet, we don't mean that in that context that people should be able to abuse children and feel as though they can be anonymous and out of the reach or touch of the society in terms of addressing what is a, I think my Republican colleague said, an abomination. But we should be passionate about addressing at every turn people who are involved in that type of activity. So thank you very much.

Mr. GENACHOWSKI. I totally agree.

Mr. SERRANO. Thank you, Mr. Fattah.

I want to echo his words. I think it has to be said again that, on behalf of all members of this committee, we do believe in a free

and open Internet, but not one that then has the ability to bring harm to people. And that is, again, that is your challenge. That is the challenge for all of us. But it is clear that, as he says, you can't use the highway going in the wrong direction. You shouldn't use the Internet to bring harm to people.

Mr. GENACHOWSKI. Absolutely. We have free and open commercial markets in our regular business, and we enforce the hell out of our child pornography laws. And that should be the same approach with respect to these new technologies. It is vital.

Mr. SERRANO. Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman.

If I could throw out an idea that would allow you to very rapidly permit interoperability of our first responders and law enforcement, and I don't think it would cost much money, if any, and that would be to authorize the television broadcasters to use the currently unused part of their digital spectrum, and let them become Internet providers. If you authorize television broadcasters to function as Internet service providers, they can use the digital spectrum they currently broadcast on, large portions of which are unused, to sell that spectrum to the public, number one.

And then, number two, you can then also simply require them as they do, they have to carry public service messages and broadcast the—PBS, for example, it would be probably within your authority under the statute to authorize the television stations to provide a certain piece of that spectrum to law enforcement community. And then you would have instant interoperability. The whole country has got television service and the towers are there; the digital broadcast is there. That would work. And it is there, and you don't have to do anything other than change the rules and the marketplace to take care of it. Right?

Mr. GENACHOWSKI. Those are issues that we look at. There are some challenges. Broadcasting is a one-way medium; big towers transmitting in one way. And converting that infrastructure into something that works for two-way communications on a nationwide basis is—I wish it were easy.

Mr. CULBERSON. Sure. But the marketplace would solve it. If you authorize it—I guarantee you, I have talked to the television people about it because it occurred to me when I was looking at what they were doing, they have got big gaps. They have got big areas of the digital spectrum they are not using. I throw that out as an idea.

Number two, I know that Puerto Rico and others have cellular phone service, have television service. The cellular service alone, Mr. Chairman, I know provides people with iPhone or BlackBerry access to the Internet. And the purpose of what you are attempting to do you say is to provide the country with greater access to the Internet, but the broadband plan, the National Broadband Plan acknowledges that 95 percent of the country already has access to broadband at 4 megabits per second, and that, by 2013, 90 percent of the country is going to have access at 50 megahertz per second. So the marketplace is already taking care of this.

And, number two, I want to go back to your statement a minute ago. You said you are going to honor the statute. Now, if you are going to honor the statute, as we were just discussing, the statute does not give you the authority to regulate the Internet. You ac-

knowledge that—and I am reading from the District Court of Appeals opinion—in this case, the FCC does not claim that Congress has given it express authority to regulate the Internet. You acknowledge that. It was stipulated. And you are an attorney; you know what that means. You don't even contest it. By the way, you did not even appeal this decision to the U.S. Supreme Court.

So, Mr. Chairman, Chairman Serrano, the FCC stipulated in Federal court that they do not have the authority to regulate the Internet. And when the District Court of Appeals said you don't have the authority to regulate the Internet, they didn't even appeal that to the Supreme Court. They didn't even appeal it. So what they need to do is go to the authorizers and ask for statutory authority to do what you are attempting to do.

The Commission, Mr. Chairman, Chairman Serrano, and I know you know this, Chairman Genachowski, the FCC has ruled that the Internet is not a telecommunications service. You have ruled that it is an information service.

They simply don't have the authority, Chairman Serrano, to do what they are attempting to do. And it is not within the jurisdiction of this committee to fund unauthorized and, in this case, specifically prohibited activity.

So, therefore, Mr. Chairman, I don't think—we need to have—a hard part of our bill needs to say that none of the funds appropriated by this act may be used by the FCC to regulate the Internet, because it is not authorized by law.

I would repeat my question. Tell me, show me where in the statute you have the authority to.

Mr. FATAH. Mr. Chairman, you have asked this question several times.

Mr. CULBERSON. But he can't answer it.

Mr. FATAH. But yeah, but that is fine. But we don't badger witnesses.

Mr. CULBERSON. No, sir, I am not attempting to badger.

I mean to make the point to the committee, Mr. Fattah and Chairman Serrano, and this is really important, that the FCC stipulated in court they don't have this authority. They didn't appeal it. When the District Court of Appeals said, you don't have this authority, they didn't even appeal it. So they acknowledged, you don't have statutory authority to regulate the Internet.

Mr. SERRANO. Well, I understand that. But I know what you are trying to get at. But why don't you let him answer the question.

Mr. CULBERSON. And the question would be, where in the statute do you have the authority to regulate the Internet, when you stipulated to the D.C. Court you don't have this authority? And I just looked at title 2, section 201. That talks about communication services. These are the duty of every common carrier to furnish communication services and to hook up other carriers. And then section 202 of title 47, USC, again deals with communications services. That does not give you the authority to regulate the Internet, and you stipulated in Court of Appeals that you do not have the authority to regulate the Internet, and the standing rules of the FCC say you do not have the authority to regulate the Internet.

So my question is, where explicitly in statute or rule do you have the authority to regulate the Internet?

Mr. GENACHOWSKI. So, if I may. It has been a long time since I have been a practicing lawyer, so I would say a couple of things. One is, we have a great experienced legal staff at the FCC, and I would refer you to a long explanation of the legal issues that our general counsel has written.

If I could attempt to summarize some of it. The question of, does the FCC have the authority to determine, not that the Internet, but that providers of broadband communication services are providers of communications services under the provisions you mentioned. I believe one that they do, and that the Supreme Court in the Brand X decision and other decisions confirms that we have the authority to do so.

But we would be happy to provide a legal briefing for the committee. I have excellent lawyers that I rely on for this, institutional lawyers of the FCC, who are committed to making sure that consumer interest, competition interest, promoting innovation and investment are protected with respect to broadband communications.

Mr. SERRANO. Your time is up.

Mr. CULBERSON. He can't answer the question. It is not authorized.

Mr. SERRANO. No, no, he gave you an answer; but that you don't accept the answer. I understand that.

Mr. CULBERSON. May I ask him one follow-up? I will do another round.

Mr. SERRANO. One follow up. But let me preface your follow up by telling you that some members of this committee feel he has the authority to do so and the Commission does, and we are hopeful that they move ahead and do what they have to do, and then run into trouble with Congress if that is going to happen on behalf of the American people and the consumers. That is a good confrontation that I am willing to be supportive of on the Commission side. I don't want them to sit around waiting to see if they have when they feel they have it, and many of us feel that they have it and should use it.

Mr. CULBERSON. You are very gracious with the time, Mr. Chairman, and I do appreciate it. You are a gentleman and a scholar. It is fun working with you. I really mean it. I appreciate the extra time.

But I want to make sure Chairman Serrano and the committee members understand that the FCC stipulated, you would agree, Chairman Genachowski—I am quoting from the District Court of Appeals' opinion: In this case, the FCC does not claim Congress has given it express authority to regulate the Internet.

That is your position in court. You did not appeal it to the Supreme Court. And you do not have and have never claimed in court that you have the authority to regulate the Internet. Isn't that correct?

Mr. GENACHOWSKI. It is not, sir.

Mr. CULBERSON. I am quoting from the opinion.

Mr. GENACHOWSKI. I understand. We will provide you and the other members of the committee a full legal analysis. I will be happy to discuss it on an ongoing basis. But as I tried to indicate, I think we disagree on these legal points. And I do have excellent counsel at the FCC that is focused on these issues.

Mr. SERRANO. They did not claim it.

Mrs. EMERSON. Let me just say something, because one, we are talking about the Internet. Otherwise, we are talking about reclassifying the transmission component of broadband. And so it is not necessarily the same thing. So I just raise that as a question as a point of refereeing.

Mr. GENACHOWSKI. Thank you.

Mr. SERRANO. We don't always claim what we think we are. You are the greatest Member of Congress. You don't claim that all the time.

Mr. Fattah.

Mr. FATTAH. Just to clarify. I agree with the ranking member.

What the chairman has said is that they have the authority to regulate the providers of broadband. And it is different from the question regulating the Internet, even though the broadband providers are operating on the Internet.

So we can play games here, but the reality is that I think the question has been asked and answered. There has been an offering of a legal briefing. And none of us can assert what the law is. That is what we have the courts to determine, and that is why we have lawyers on all various sides of this. But let's proceed.

Thank you, Mr. Chairman.

Mr. SERRANO. Thank you.

And let's do this officially. Why don't we invite your legal staff to come and speak to our staffs and to discuss this at length. Because this chairman would rather you upset some Members of Congress when you defend the rights of the American people as consumers than to wait around to interpret totally whether you have one right or not.

Mr. GENACHOWSKI. Thank you. We will provide that briefing.

Mr. SERRANO. Ms. Lee.

Ms. LEE. Thank you very much. I apologize if this question is redundant due to my being late. I had things off the Hill I had to do. But good morning. Good to see you.

Mr. GENACHOWSKI. Good morning.

Ms. LEE. I know that you are concerned that the National Broadband Plan meets the digital future and is accessible to every American.

We talked with the Congressional Black Caucus when you came in. So it is very important I think to continue this discussion as it relates to diversity in media ownership, management, access, how it is integrated into the National Broadband Plan. Also, the fair and equitable contracting opportunities for minority- and women-owned contractors and subcontractors and the fulfillment of this national effort. So I just want to get a sense of how you are doing in terms of this, in terms of the diversity question and the inclusion question.

And also, it is really important, and I wanted to ask you this before, in terms of businesses and organizations that require people to submit their resume or information only through the computer, only through the Internet, they won't accept any other way of submission, how is that fair to people who don't have access? I mean, the digital divide is alive and well, unfortunately. And so when people—and I know, in my district, say, look, they won't accept my

resume unless I put it online. My God, can we stop that, at least until everyone has access to broadband and to the Internet and has enough money to buy a computer?

Mr. GENACHOWSKI. It is such a powerful point and such an important issue. The costs of digital exclusion today are so much higher than they were 10 years ago. Ten years ago, if you were looking for a job, you could get the newspaper and find a job and apply for it. Today, as you mentioned, more and more job postings are online only and job applications require online submissions.

Ms. LEE. But how can we stop that?

Mr. GENACHOWSKI. Well, I am not sure that our authority extends to address the hiring practices of companies.

Ms. LEE. Not hiring practices.

Mr. GENACHOWSKI. In the way they take applications. But we are very focused on tackling these digital divide issues as fast as we can. It is part of the urgency for moving forward on broadband, on the adoption issues, the inclusion issues, where there are clear gaps, low-income Americans, minority Americans, rural Americans, seniors are behind a level that is already too low. Students and others. So it is vital that we do this.

We suggested a series of things in our plan. Reforming the Universal Service Fund in a way that efficiently tackles this is vital. We suggested the creation of a digital literacy corps that would focus on the communities that are most behind and tackle that with a kind of energy that we are capable of as a country. And on the ownership entrepreneur side, we are doing a series of things working closely with the Small Business Administration to make sure that the programs that exist, the mentoring programs and others, are modernized to help small businesses, entrepreneurs from all communities take advantage of new technologies.

There is no silver bullet here, as you know, but there are a series of things we can pursue with energy. Some of them are within our jurisdiction. We will pursue them. Some of them are suggestions we have made to other agencies and to Congress. But it is very important, and I think the urgency is increased by the fact that the costs for jobs, for health care, for education, of not being online are much higher than they used to be, and they are getting higher every day.

Ms. LEE. But can't the FCC send out an, I won't say directive, but a suggestion that organizations and businesses not require resumes and information to be submitted online only? That that could be discriminatory, and until everyone, every household is wired, that they have to or they should have other means of being able to receive submissions that are critical to people in terms of their lives? Because I think if the FCC just said that, you know, the country would listen. And I know, oftentimes, I talk to companies and nonprofits even. I say, you guys are shutting out a whole population of people because you require online-only submissions. And they say, oh, yeah, we hadn't even thought about that.

So if the FCC would think it through and talk about it a little bit and send out a suggestion that this stop until every household is wired, you know, we may see a bit more fairness in terms of this whole system now.

Mr. GENACHOWSKI. We will work with you on this. And I think we also would need to work together on the other half of it. More and more companies tell me that they need their employees to have basic digital skills and tools.

Ms. LEE. Why sure. That is a given. You know, especially for many of our districts that are not wired and where the digital divide is huge. That is what we intend to do.

Mr. GENACHOWSKI. I agree. So working on the front end, as you said; this back end, we set goals in the plan with respect to schools and libraries in every community that are open to people to make sure that even as we try to get broadband into every home, that there is meaningful access in every local community to the ability to both have access to the Internet, and also to the digital skills and tools that one needs in order to have meaningful access and to be eligible for a lot of the jobs that more and more require digital skills and tools.

Ms. LEE. I look forward to working with you on that, because we have to send out that message that people can't be discriminated against because they don't have access to the Web and to the Internet and to broadband and to a computer. Okay. That is basic. Thanks a million.

Mr. SERRANO. Thank you, Ms. Lee.

I am going to try to wind this down. So I am going to submit most of the rest of my questions for the record. I have two quick ones, and then I will turn it over to the rest and wrap it up.

On wireless contract termination, something we all deal with, I went in recently just to reduce my minutes and ended up with a new phone and a new contract. Don't ask me why. And they told me if I reduce my minutes, then I couldn't get my five friends and relatives on it or whatever. And if I did that—it was like a scene from Mad, Mad, Mad, Mad World where they are all trying to figure out how to get the loot, and Sid Cesar says, well, you were in the car, so you get one share for having a car and one share for being you. You were on foot, but you had two people, so you get three shares. And Jonathan Winters says, It doesn't matter, I still get less than everybody else because I was alone. So it is every man for himself.

Have you ever tried going to redo your contract? It is where you reduce your minutes, you get less options. You get more options, then you are going to fall under this plan. You walk out of there and you say, I speak English, I speak Spanish, I don't speak this language. Very embarrassing.

So what happens when a new generation of iPhones or a new version of an android becomes available? Providers increase their cancellation fees to prevent customers from changing service providers. The FCC survey shows 43 percent of consumers have remained with their current service provider because of high early termination fees. What can the FCC do to restrict anti-competitive behavior so that consumers are not prevented from swapping service providers as technology improves and options increase?

And for the record, my explanation of my own personal account is not a statement about what I want done either for me or for the industry. It is just that I pride myself on the fact that I do a lot

of these things myself and therefore I know what consumers go through. But I am not asking for any special favors from anyone.

Mr. GENACHOWSKI. Our surveys and our complaints show a tremendous amount of consumer confusion over many different aspects of wired and wireless communications. It is a thing that we are very concerned about, because the more confused consumers are, the less they can make the market work and drive competition. So whether it is speed of broadband, whether it is how early termination fees work, we believe that there are real opportunities using information technology to provide greater disclosure, greater transparency to consumers in a form that ordinary people would understand so that consumers can help make the market work better. And we are pursuing that around bill shock. We are pursuing that around early termination fees. We are pursuing that around broadband speeds. And I think this is a promising approach that should empower consumers to help make the market work. With respect to—and one of the things consumers are confused about what choices they have with respect to different services and alternatives to signing up for long-term contracts.

We are also looking at the issue in general with respect to ETFs. We pay close to this. We are in active discussion with companies. On various occasions, we have seen things that have caused us to write letters to companies to ask them to explain some of what they have done, and in some cases, those letters have caused some of the companies to say, Oh, we didn't really mean that, and to adjust behaviors in ways that were more consumer friendly. But there is no question, there is tremendous confusion here, and I think we can play a helpful role in increasing transparency and disclosure and lessening consumer confusion.

Mr. SERRANO. I hope you do. And I know that I speak for all members of the committee when I say that. I hope you move in that direction to make life a little easier for folks. And not only that, to give them a real chance to be able to make wise decisions, because sometimes you are lost.

My last question. As you know, we are big-time baseball fans and believe that all American households should have regular access to baseball games from both leagues. Currently, Time Warner and the Mid-Atlantic Sports Network, MASN, are engaged in a dispute over Time Warner's cable carriage in Eastern North Carolina. In the past, that cable franchise carried the MASN which shows games of both the Nationals and the Orioles, the closest teams to the area. I understand that there have been two arbitration decisions in favor of MASN and that, in October of 2008, the media bureau of the FCC also ruled in MASN's favor. Time Warner has since appealed the decision. In the meantime, baseball fans there are missing out on these two teams.

So I asked you the question last year, but—I asked this question last year, but I understand there has still not been a ruling. Is there a reason that it has taken so long? And do you have any sense of how long it will take the commission to make a final decision so that folks in that part of the country will know where they stand?

Mr. GENACHOWSKI. The Bureau is actively working on it, and we need to bring it to conclusion. The issue of sports programing and

consumers and video carriage is one that occupies a good deal of our time. We adopted rules a couple of months ago that will make it easier for competitors to cable companies to get access to local regional sports networks. It had been both a real barrier to competition and also unfair to consumers who were signing up to the other networks. The retransmission consent issue that we talked about before, one of the areas where it tends historically has had some real impact on consumers is that that becomes a leverage point for negotiations between cable companies and broadcasters and consumers who want to watch the programming they want to watch end up getting hurt. And then there are issues like the one that you mentioned. So these are all activity on the plate of the FCC. On some, we have moved on, and I think we have made really good progress. On this particular one, we still need to act, and I will make sure we do soon.

Mr. SERRANO. Well, with that statement that you will move on it so that the folks know what is going on, especially with this kid in Washington who is going to keep striking people out. Okay.

Mrs. Emerson.

Mrs. EMERSON. Thanks. I have some questions I would like to submit to the record, Mr. Chairman. And just on that—one little quick question again on that retransmission thing, because my smaller carriers who cannot necessarily afford it pay much, much higher rates than my larger carriers for retransmission rights. And it is problematic because they just can't compete; but yet, quite frankly, the larger cable companies don't come in there, anyway, into these communities because they are very rural anyhow. So it is really—and those are also the communities where folks aren't allowed, don't have the means necessarily to be paying outrageously high cable bills. And so, quite frankly, if you can figure out how to make that work. I realize you believe in negotiation between the parties, and I think that is grand. But for some reason, the little guys, because they don't have as many people over whom to spread their higher costs, it makes it really problematic. And I am just making that statement. You don't have to really respond, but just because Joe brought it up.

Let me ask you a really quick question about Universal Service Fund, and you will have to forgive me, because I am actually late to be somewhere. How will this proposal—is it possible this proposal could increase the cost of phone service to customers living in high-cost areas? Number one. That is the first question. And how are you going to allocate the new funding? Is it going to be based on populations that are the most underserved or unserved? And is every State going to receive money? All sorts of things like that.

I just—you know, I know these are questions that I have, and of course, where I live, people still have land-line telephones. So I don't know if that, how regular, old-fashioned phone service is going to be impacted as well.

Mr. GENACHOWSKI. The Universal Service Fund is one of our most complex, challenging issues, but it also affects so many Americans, and it is so important to get it right for our broadband future, especially when it comes to rural America.

In putting together the broadband plan, we made the following recommendations. One is we need to transform the fund to apply to broadband, as we have discussed, particularly for rural areas. Our recommendation was that we do this not in a flash cut because we are concerned about ongoing provision of telephone service as broadband is coming in, but also not in a way that goes on indefinitely. So we put out a multiyear plan. It is a 10-year plan to gradually move the system from telephone service to broadband in a way that doesn't increase the rate of growth of the fund, because someone has to pay for it; in these times, it is very important for us to be fiscally prudent.

We have also suggested that there is a way to accelerate the transition. This is not something that we will do on our own, but we have suggested that Congress has the ability to authorize, appropriate essentially a bridge fund that would be sort of a one-time capital infusion into the Universal Service Fund that would allow the transition to happen more quickly in rural areas. And I would encourage the committee to look at that. We encourage Congress to look at it. We understand that it is a challenging time fiscally, but we wanted that option to be available because it would accelerate the transition.

And then, with respect to your question about unserved and underserved, the priority is unserved. It is getting broadband to the parts of the country that don't have it. So we are looking at all the various ways we can cut and cap the existing fund to free up money as quickly as possible for the Americans who are most in need and who don't have service wherever they live. And it applies both to high cost and the Lifeline and Link-Up as well as the rate program and the rural health care program.

Mrs. EMERSON. So where you have unserved, that means, unfortunately, in my district, a lot of white, you know, on the red and white maps on TV in a lot of the white area. And I have so much National Forest and so therein lies part of the issue, so that parts of my district are totally unserved as far as any kind of broadband. On the other hand, I have underserved areas, too, whereby like one half of—for example, you have got a little town, and on one side of Main Street, it is dial-up; other side, it is not 3G, but it may be EDGE or something like that. So would that be considered underserved, and would only be in the main part of the town, but if you lived anywhere on the outlying areas, you are out of luck?

Mr. GENACHOWSKI. I would say the principle is every American, wherever they live, should have access to broadband infrastructure. And one of the issues that comes up, including in the 95 percent figure that we heard earlier, is that it often looks at things on a zip code basis, on a county basis, and it obscures some of the real issues inside, where a county might be counted or a zip code might be counted as having broadband infrastructure, even though 20, 30, 40, 50 percent of the people inside don't have it. So we are going to be very practical about making sure that the Universal Service Fund goes to actually get people service where they need it. If you are part of the 20 percent that lives in a county or a zip code that doesn't have it, you shouldn't be penalized because you are in that zip code. We also have to figure out a way not to overfund areas that don't need it so we can target the money where it is really nec-

essary. It is not easy, but we are committed to taking it on. And not to reintroduce the authority issue, but this is part of what is at stake.

Mrs. EMERSON. I don't have as much of an issue with this part of it. And it is critically important, and it helps for lots of reasons, not the least of which is when you go to a little clinic and we can do telemedicine—you don't need it in your district. You can do telemedicine with MD Anderson, for example. That is pretty significant. And I would like for all of my constituents to have those same opportunities.

So, anyway, best of luck as you get that whole system deployed.

Mr. GENACHOWSKI. Thank you.

Mr. SERRANO. The last question goes to Mr. Culberson. However, the singular ruling does not allow him to ask anything about authority.

Mr. CULBERSON. If I could just ask Mrs. Emerson if you have got television service in all parts of your district, broadcast, where they can put rabbit ears.

Mrs. EMERSON. No, I do not. There are parts of my district where you have to use satellite in order to get television. And it is not necessarily local.

Mr. CULBERSON. But it is all digital now.

Mrs. EMERSON. Yes, it is.

Mr. CULBERSON. The way to do this, I am serious, if you would consider just granting television stations the ability to be Internet service providers, the marketplace will take care of this. And they can install the equipment, let them charge a fee for it, and through the satellites or through the transmission towers, they could provide Internet service on that unused portion of their digital spectrum to the country. Just consider it. Try to think outside the box, you know?

And a couple of follow ups, Mr. Chairman, because it is truly not a matter—and I am really not—this is not a matter of interpretation on my part. The D.C. Circuit Court of Appeals in the first week of April just handed down this decision in the Comcast case.

And if I could, Chairman Serrano, during the last part of my 5 minutes here, the remainder, just a couple of sentences. Let me quote for the record that the D.C. Court of Appeals says: In this case, we must decide whether the FCC has authority to regulate an Internet service provider's network management practices. The FCC acknowledges, Mr. Chairman, that it has no express statutory authority over such practices. And the commission relies on section 4(1) of the Communications Act which authorizes the commission to, quote, perform any and all acts and make such rules and regulations and issue such orders that are not inconsistent with this chapter as may be necessary in the execution of its functions.

Sort of like the necessary and proper clause, Chairman Serrano, of the Constitution, which has been interpreted very broadly to give Congress authority in areas that the Founders did not intend.

But here, the D.C. Court ruled explicitly you do not have authority to regulate the Internet service providers, regulate the Internet, not only because the statute doesn't allow you to do it, and you acknowledge that the FCC stipulated in court that you don't have this authority expressly in statute, but you are relying on this nec-

essary and proper clause. And the FCC has repeatedly ruled that the Internet is information services, not telecommunications services. Everything I have just said is accurate.

Mr. GENACHOWSKI. I disagree with you, sir. We will provide a full legal briefing.

Mr. CULBERSON. I just quoted from the D.C. Court. Did I misquote the D.C. Court of Appeals? I just read it to you.

Mr. GENACHOWSKI. I don't have it in front of me. I don't think you misquoted it. But the issue of whether transmission services by broadband providers is inside the Communications Act under its various titles is one in which many lawyers, including the career staff at the FCC and our excellent general counsel, believes that, under Brand X and other decisions, there is clearly the authority to move on it.

Mr. CULBERSON. Therefore, let me just quote you. This is the D.C. Court of Appeals: The FCC acknowledges that you have no express statutory authority over the regulation of the Internet. I am quoting from the D.C. Court of Appeals' opinion. That was your decision in court. Are you telling this committee that your position today on June 10 is different from the position you had in the D.C. Court of Appeals in April?

Mr. GENACHOWSKI. You are raising issues around definitions of information services, transmission services, telecommunication services that are very complex. We would be happy to—

Mr. CULBERSON. I am quoting from the Court of Appeals' opinion. You told the Court of Appeals you don't have authority. Have you changed that position?

Mr. GENACHOWSKI. The Court invalidated the approach that the Commission had taken. It did not invalidate other approaches that are now on the table for consideration. I would have preferred the other approach.

Mr. CULBERSON. Well, of course. You are an attorney.

Mr. GENACHOWSKI. But because the court disagreed with the mechanism that the FCC had used to protect consumers, promote competition, particular form, and the reasoning.

Mr. CULBERSON. I understand. My time is very limited. And forgive me for interrupting, and the chairman is very gracious with the time.

But, Mr. Chairman, it is a fact, and Chairman Genachowski cannot disagree that the FCC has standing rules that the Internet is information services, and he has not disagreed that the FCC stipulated, told the Federal Court of Appeals that the FCC has no—and I am quoting from the opinion—has no express statutory authority to regulate the Internet.

He can't quote me the statute. You haven't changed your position that you had in court. So, therefore, you, the FCC, has no express statutory authority to regulate the Internet.

So what my point is, Mr. Chairman, is that we need to have an amendment—and I will be offering an amendment—that none of the funds appropriated by this committee can be used to regulate the Internet. Because that is the ruling of the Court of Appeals; that is the ruling of the FCC.

And you have not appealed this to the Supreme Court. Have you?

Mr. GENACHOWSKI. Well, I look forward to working with you and others making sure that we can pursue investment on a broadband future for all Americans, because that is what is at stake in this debate.

Mr. CULBERSON. Leave that to the marketplace.

Mr. GENACHOWSKI. I disagree with you on the legal interpretations, but we will provide a full legal briefing, and I look forward to ongoing discussions about it.

Mr. CULBERSON. Mr. Chairman, you have been very gracious, and I appreciate the time.

Mr. SERRANO. I shouldn't alert you to what my comeback would be in committee when you propose that amendment. But my comeback will be, for the record, that what you are proposing also will not allow him to do anything about pornography if that is the case. And I am not a lawyer, but that is the way I would read it; that he could not move on anything, including something that we all agree he should be moving on this afternoon.

Mr. CULBERSON. Could we work together on an amendment to let him have that on the pornography?

Mr. SERRANO. See, I am not chairman of this committee to take power away from this committee only in the case of Washington, D.C., which I have stated I don't want to supervise Washington, D.C. So I am not going to be sending him to the authorizers to get powers I think the Commission has to carry out their duty. It is a matter of interpretation: Does he have all the total powers? Maybe not. Does he have enough powers to move on some very specific issues? Absolutely. And so as long as they are fighting on behalf of the American consumer and allowing the digital divide to be narrowed and done away with, I take—and maybe it is because I am not a lawyer and I take irresponsible stances—that some people say, stop, you can't do that much on behalf of the consumer. That would be a great day in America when people tell them to stop and tell the commission to stop. That is what I want to see happening. Thank you.

Mr. CULBERSON. Could I offer a suggestion? I would love to work with you on the amendment with Ms. Wasserman Schultz.

Mr. SERRANO. I always work with you. But we are not going to work on an amendment that says they cannot move ahead and do. That is something you will have to do on your own, because I think they should move ahead and do as much as they can.

Mr. CULBERSON. I was going to suggest a very narrow one to give them the authority to regulate child pornography and keep it off the Internet. We could work one up together with Ms. Wasserman Schultz and target that rifle shot authority in that one area, and otherwise—

Mr. SERRANO. Well, this is not the time.

Mr. CULBERSON. I would love to help you with that.

Mr. SERRANO. I think they should move on everything.

Mr. Chairman, thank you so much. I think it is clear to you that, notwithstanding the fact that the average American may not know what FCC stands for, that certainly this committee understands the major role you play. And from the unemployed person carrying a cell phone to the folks who sit at the major corporations, you can affect them all. And I think at the end of the day, just my personal

position, the ones who need the most protection are the ones at the bottom of the totem pole who get ripped off a lot of times. We are not here asking you to do a number, if you will, and not support major corporations in their desire to make the industries grow. You know, it is all for the country. But this whole issue of consumerism is very important to us.

But I think you have noticed that while we all agree on most of the issues and the approaches to them, we have certain interests. So Ms. Lee reminded you of diversity and how important it is, and it is something we all subscribe to. I would be very happy if I saw communications coming out of your office saying the territories are treated equally and that an American citizen with a need for the Internet in the Virgin Islands has the same right as one in L.A. and in Chicago and in D.C.

You have agreed to—and you are going to hate me for this. You have agreed to bring the legal team here, and I invite the gentleman to join the staff. That is the part you are just going to hate me for. Every member is always allowed to join the staff.

Mrs. Emerson spoke about the rural areas. With all the problems we have in the inner city, and God knows we have a lot of problems, it is hard for me to understand how you can be in a place where you can't get a telephone signal at all. And I don't mean an apartment in the Bronx or a television signal. So those are issues.

And, lastly, we all want you not to wait for any court ruling, but to move on the pornography issue.

We commend you for your work. We will support you in your challenge. And understand that, notwithstanding at times the tone of this committee, it wants to be a partner with you in moving ahead and resolving all of these issues. And thank you so much for your testimony today.

Mr. GENACHOWSKI. Thank you very much.

Mr. SERRANO. And this hearing is adjourned.

SUBCOMMITTEE ON FINANCIAL  
SERVICES AND GENERAL  
GOVERNMENT

HEARING

ON

THE FY 2011 BUDGET REQUEST OF  
THE FEDERAL COMMUNICATIONS  
COMMISSION

Questions for the Record

for

The Federal Communications Commission

June 9, 2010

**Questions for the Record  
Submitted by Chairman Serrano**

**Auctioning of Spectrum now Held by Broadcasters**

The Broadband Plan proposes that broadcasters be allowed to give up some of their spectrum in return for some of the auction proceeds. The broadcasters strongly objected to the possibility that some of their valuable and underutilized spectrum might be taken away involuntarily.

**1. Could you describe the extent to which this spectrum is underutilized and why it is valuable?**

**RESPONSE:**

The spectrum currently used by television broadcasters, particularly in the UHF band between 470 MHz and 698 MHz, is ideally suited for mobile broadband uses for a number of reasons. First, the propagation characteristics of this band allows for wide coverage areas, which reduces the need for dense network builds that require many towers, and therefore reduces the cost of deployment. Second, this band allows for better in-building penetration, which also simplifies the network build and provides a better consumer experience. Third, the UHF band is wide enough to configure into nationwide blocks, which is the optimal configuration as data traffic increases dramatically in the coming years.

I believe that some of the UHF spectrum can be put to a higher and better use for wireless broadband for a number of reasons. Use of the mobile Internet and other mobile applications continues to increase at a rapid rate, while television viewing over the television spectrum has been declining since the late 1980s. Indeed, nearly 90% of Americans do not rely solely on over-the-air as the means for receiving television programming. In addition many broadcasters have not yet taken advantage of the additional capacity afforded to them by the digital transition – either through multicasting, high definition television or mobile DTV – and thus some portion of this valuable spectrum remains unused. My aim is to find ways to ensure the vitality of broadcasting while improving the efficient use of this precious resource. One possible solution to this is channel-sharing. Channel-sharing takes advantage of the benefits of the DTV transition while also making most efficient use of television spectrum by enabling two television stations to operate on one 6-megahertz channel, while preserving their ability to broadcast in HD or broadcast multiple streams, including mobile streams. Another efficiency enhancement resulting from our incentive auction proposal is the planned post-

auction repacking, which will result in a much more efficient allocation of television spectrum, and correct some of the legacy inefficiencies that have historically plagued the band for the past many decades.

**2. What are the prospects and timeframe for implementing this proposal in the Broadband Plan?**

**RESPONSE:**

We have proposed and are seeking Congressional Authority to implement a voluntary program by which only those broadcasters that want to contribute spectrum to the auction would do so, and would be able to exchange their spectrum for a portion of the auction proceeds. If granted by Congress we can move expeditiously to implement a completely voluntary program in the next few years.

**Small Business**

There is a huge digital divide in this country. Even small business owners, especially those in disadvantaged areas, may not be as technology savvy as they need to be in order to promote their goods and services and transact business online. The Broadband Plan includes a digital literacy initiative that promotes partnership between SBA's SCORE program and private sector partners to provide education and training to small businesses.

**3. What are the major impediments to faster implementation of IT among small businesses?**

**RESPONSE:**

The challenges that small businesses, located in disadvantaged areas, face in utilizing broadband to grow their businesses certainly include, but are not limited to, insufficient digital literacy. Many of the areas where such small businesses are located lack access to high-speed internet. Where infrastructure is lacking digital literacy becomes a moot point. It is not uncommon for at-risk communities to be the last on the list to receive advanced cable, fiber optics or enhanced telephone services. In most rural counties, nearly 50% of businesses lack access to broadband at speeds of 4 Mbps or higher.

In areas with high-speed connectivity, many small businesses find their broadband communications services to be too slow and they lack choices to select alternative hardware or wireless service providers. Finally, small businesses pay an average of

three times more per employee than large businesses for comparable broadband services.

**Broadband Service in the Territories**

During the hearing I asked about your decision to decline to institute an insular wireline program. I understand that part of the reason for this decision was the recent increase in telephone subscribers in Puerto Rico, which has presumably been largely driven by new wireless service. This is wonderful news for telephone service.

4. **As we move forward with implementing broadband for all Americans, including equal service for those in the territories, do you think that broadband will require wireline service? If so, how do you plan to address the ongoing lack of sufficient wired infrastructure in Puerto Rico?**

**RESPONSE:**

I am committed to ensuring that all Americans, including those in the territories, have access to high-quality broadband and voice service. To achieve this goal, the National Broadband Plan recommended that the Commission create a Connect America Fund (CAF) to directly support broadband and voice service in areas that are unserved, as well as areas that are currently served with the assistance of high-cost universal service support. Consistent with the principles of competitive and technological neutrality, the Plan further recommended that any broadband provider that can meet or exceed the specifications set by the FCC for the provision of broadband and voice service should be eligible to receive support under the CAF. This could include wireline, wireless, and satellite broadband providers.

I have committed to initiate a rulemaking in the near term that would seek comment on these issues, among other things. I also anticipate that we would seek comment on whether unique circumstances exist in insular areas and how any unique circumstances should be taken into account, as we did in the April 21, 2010 rulemaking that initiated reform of the high-cost universal service program.

**Questions for the Record  
Submitted by Ranking Member Emerson**

**Emergency Response Interoperability Center**

Your budget request proposes a \$1.5 million increase to establish an Emergency Response Interoperability Center to ensure the operability and interoperability public safety wireless broadband communications. Several other Federal agencies work with public safety agencies on interoperable communications including the National Institute of Standards and Technologies, the Department of Justice and the Department of Homeland Security.

- What work will this Center perform that is unique to the FCC's mission?
- How will you ensure that the Center's efforts are well coordinated with Justice, Homeland and NIST?

**RESPONSE:**

The Commission established the Emergency Response Interoperability Center (ERIC) in connection with its ongoing rulemaking proceeding to establish a nationwide, interoperable public safety broadband network in the 700 MHz band. The mission of ERIC is to ensure that the public safety broadband network will be fully operable and interoperable on a nationwide basis, both day-to-day as well as during times of emergency. To accomplish this mission, ERIC is tasked by the Commission with implementing national interoperability standards and developing technical and operational procedures for the network. The Commission has jurisdiction to implement these requirements and procedures under Sections 1, 4(i), 4(j), 5(b), 5(c), 201(b) and 303(r) of the Communications Act of 1934, as amended.

In terms of coordination, ERIC is already actively working with the Department of Justice, the Department of Homeland Security, and the Department of Commerce, including the National Institute of Standards and Technology and the National Telecommunications and Information Administration. ERIC has established a weekly meeting with these Federal partners to ensure that work to further the development of the interoperability framework for the public safety broadband network is well-coordinated. In addition, ERIC is performing regular outreach with each of these Departments. The Commission is also in the process of finalizing Memorandums of Understanding relating to ERIC with several of these federal partners to further the coordination effort.

On April 23<sup>rd</sup>, the Commission announced the establishment of the Center.

- If the Center is being established this year instead of in fiscal year 2011, do you still need a \$1.5 million increase for fiscal year 2011?

**RESPONSE:**

Yes. The FCC established ERIC in 2010 because it was critical that ERIC begin its work as soon as possible. The Commission has recently granted authority to 21 state and local jurisdictions to begin broadband network deployment. In order to ensure that these deployments are interoperable from the outset, and will support nationwide interoperability in the long run, ERIC must establish initial interoperability requirements starting in the next few months. To date, however, ERIC has been staffed with existing resources, and current staffing levels will not provide sufficient resources for ERIC to fully perform its important role after this fiscal year. Further, the current FCC budget does not account for the necessary travel and other expenses that will be required for ERIC to work with the public safety community, equipment vendors, and Federal partners to perform its mission. Therefore, increased fiscal year 2011 funding is critical if ERIC is to have an impact on the recently authorized state and local efforts.

**Consolidated Out-Dated IT Licensing Systems**

Your budget request proposes a \$1.4 million increase to continue work begun in fiscal year 2009 to consolidate and upgrade your licensing systems. I understand that many of these systems are more than 10 years old.

- How many years will this consolidation take and how much total funding do you estimate will be needed?
- Do you have experienced IT program and contract management staff in place to successfully implement a multi-year and multi-million IT project?

**RESPONSE:**

Full consolidation of the licensing systems is anticipated to take approximately five years. The implementation of the new system is being pursued in phases so that existing legacy systems are replaced on a rolling basis beginning in Fiscal Year 2011. The full acquisition cost for the system is approximately \$22 million; however, most of the funds will be provided through offsets from deferred system and lifecycle maintenance on the existing legacy systems. As such, the Commission has only sought a net increase in \$4.5 million over the fiscal years 2009 through 2011 - \$1.5 million in this year's budget submission. As legacy systems are retired in FY 2011, future year acquisition funds will be supported by the cost savings derived from the new, more efficient licensing platform.

The FCC has several experienced IT Program Management and Contract Management staff in place to successfully implement a multi-year and multi-million IT project. Many of the IT Managers currently employed by the Commission have previously developed and deployed large information management systems comparable to that being pursued in this consolidation effort.

#### **Staffing Increase**

Your budget request proposes 75 additional staff. I am interested in learning more about the work that these additional staff would perform.

- Can you tell us how many staff would be engineers or technology experts that would provide assistance to first responders, local governments and service providers?
- How many additional staff would be attorneys working to implement controversial new regulations?

#### **RESPONSE:**

The additional staff will be devoted primarily to implementing the National Broadband Plan, increasing our openness and transparency, and strengthening our role in government and industry cyber-security preparedness. The specific allocations by occupation have not been finalized, but will include engineers, attorneys, economist/econometricians, statisticians, business and market analysts and data analysts and architects. One example of how we propose to allocate these additional staffing resources includes a projected increase of more than 30 positions in the areas of public safety and homeland security. To support our expanded public safety and homeland security goals, we will need attorneys with expertise in privacy law and homeland security compliance requirements as well as engineers and data analysts able to understand the technical needs of the public safety communities nationwide.

#### **Cyber Security Certification Program**

Recently, the Commission issued a Notice of Inquiry seeking input on the establishment of voluntary cyber security certification program to encourage communications service providers to implement a full range of cyber security best practices. I am pleased that the Federal government is increasing its efforts to address cyber security. As our use of broadband and mobile technologies increase, more and more of our personal information is vulnerable to criminals and espionage. However, the Department of Homeland Security is the lead Federal agency addressing cyber security in the United States.

- What unique role does the FCC play in the area of cyber security?

**RESPONSE:**

The FCC's role is to promote "a rapid, efficient, Nation-wide, and world-wide wire and radio communications service" to the American public. Among the Commission's statutory purposes for carrying out this role is doing so "for the purpose of national defense [and] for the purpose of promoting safety of life and property through the use of wire and radio communication." In times of emergency, the Commission's primary mission becomes more focused on these purposes, i.e., ensuring that essential communications networks and services are operable, reliable, and quickly restored. Given its statutory role, the FCC has a unique role to play in adopting rules and policies to strengthen the critical communications infrastructure, and in maintaining the reliability and security of communications networks.

Most cyber attacks are not an attack *on* the communications infrastructure but an attack *through* it. Targets are more often the information systems that lie across the communications infrastructure from attackers, and the communications infrastructure is merely an unwilling enabler. The communications infrastructure is not immune to cyber attacks, though, and a successful attack on this critical infrastructure could be crippling to our nation's way of life. The FCC, in concert with other Federal agencies and in cooperation and partnership with the private sector, has a role to play in preventing cyber attacks and mitigating their effects when they do occur. The Commission's unique role in this team effort is on the protection of the critical communications infrastructure against cyber attacks. We do, of course, stand ready to support our Federal partners in efforts to respond to a cyber attack.

The Commission is considering several measures to strengthen the security of the nation's critical communications infrastructure to prevent and withstand cyber attacks. The National Broadband Plan, which the Commission released in March after gathering and considering a substantial record, includes recommendations to strengthen the cyber security of the critical communications infrastructure. Following up on these recommendations, the Commission is actively considering:

- Establishing a voluntary cyber security certification program to create additional incentives for industry implementation of important security methods and procedures.
- Creating cyber security information reporting systems to help us monitor the

health of the network and provide us with data with which to work with communications providers on preventative measures.

- Taking steps to improve the communications infrastructure resiliency, thereby mitigating the effect of cyber attacks.
- Discussing cyber security issues with international organizations and the regulatory authorities of other nations.
- Finally, the Commission is formulating a roadmap, in coordination with the Executive Branch, that will identify the five most critical cybersecurity threats to the communications infrastructure and its end users, including a two-year plan for the FCC to address these threats.

Moreover, the FCC chartered a new federal advisory committee, the Communications Security, Reliability and Interoperability Council (CSRIC), which held its first meeting Dec. 7, 2009. The Council is expected to recommend actions to enhance the security, reliability and resiliency of America's communications systems.

- How are you coordinating your efforts with the Department of Homeland Security?

**RESPONSE:**

To ensure that our cybersecurity efforts are effective, the FCC is building successful policies and programs, while coordinating with the White House Cyber-Security Coordinator, Howard Schmidt, and with the Department of Homeland Security (DHS). The FCC staff has met not only with Mr. Schmidt but also with several members of his staff. We have also met with Rand Beers, DHS Under Secretary, National Protection & Programs Directorate; Philip Reitingger, DHS Deputy Undersecretary of National Protection and Programs Directorate; and Greg Schaffer, Assistant DHS Secretary for Cybersecurity and Communications. We have discussed with them what the FCC is doing at sector-specific coordinating councils hosted by DHS. Moreover, the FCC staff participates in interagency groups, such as the DHS National Communications System (NCS), to coordinate government cyber security and other communications network security policy, and the Joint Telecommunication Resources Board (JTRB), which provides expert counsel and recommendations on communications issues to the Director of the White House Office of Science and Technology Policy (OSTP). Further, our staff

monitors daily appropriate sources of information (e.g., trade journals, professional newsletters, the Federal Register, etc.) for any developments within our sister agencies that may have an impact on the FCC cybersecurity efforts.

- Will your efforts create confusion among service providers and consumers if multiple agencies are working on similar programs to address the same problem?

**RESPONSE:**

Currently DHS does not have an effort that is similar to the voluntary cyber security certification program or other programs that the FCC is considering. Also, as mentioned above, the FCC's focus has been on cybersecuring the critical communications infrastructure, which has not been the primary focus of other agencies. In this respect the Commission has not been working directly with consumers, but rather with their communications service providers. Typically, these service providers have a very sophisticated understanding of the FCC's role in promoting safety of life and property through the use of wire and radio communications. Virtually all of these providers are acutely aware of the major cybersecurity problems that confront the nation, and their efforts are to be commended as many are making security software available to their customers, frequently free, in their efforts to protect their customers' computers from malware. Recognizing this difficult challenge, many providers welcome the Commission's efforts to secure cyberspace.

**Retransmission Consent**

This spring I met with several small cable providers who expressed concern regarding existing retransmission consent regulations. Many of these operators are paying significantly higher rates for the same content than larger operators, and I share their concerns that small companies and their customers (my constituents) in rural American are being overcharged for service. I understand the FCC is reviewing the retransmission consent issue.

- Could you update Committee regarding the status of this review?

**RESPONSE:**

Given recent concerns raised that the Commission's current retransmission consent policies need a fresh look, I directed the Media Bureau to begin a review of our retransmission consent regulations to determine whether the existing framework

continues to be effective or whether reforms may be necessary to protect consumers and ensure fairness to all parties.

Subsequent to the commencement of the Bureau's review, a coalition representing a number of MVPDs and public interest groups submitted a *Petition for Rulemaking* seeking to reform the retransmission consent rules. Among other things, the *Petition* proposes that the Commission establish new mechanisms that provide for mandatory arbitration when a MVPD and the broadcaster are not able to reach a retransmission consent agreement, continued carriage of broadcast signals during the negotiation or dispute resolution process, and the adoption of rules to address the practice of tying broadcast programming to the carriage of non-broadcast services. The Media Bureau issued a *Public Notice* inviting public comment on the proposals and issues discussed in the *Petition*. The comment period recently closed and we received comments from a broad range of interested parties, including consumers, programmers, broadcasters and MVPDs that serve small and rural areas. The Media Bureau currently is reviewing the record compiled in the proceeding and will draft recommendations regarding how the Commission should proceed.

**Questions for the Record  
Submitted by Congressman Culberson**

You have asked for a significant increase in your FY' 11 budget for personnel—75 FTE's which would represent a 10% increase (185 FTE's) over five years. While I understand the needs that are represented by the implementation of the broadband plan, as stewards of the taxpayer's dollars, I think we should be wary about adding employees to the federal payroll.

- As you yourself have noted, we are transitioning to a broadband world, so rather than hiring additional staff, could you examine re-tasking current employees?

**RESPONSE:**

Not since the enactment of the Telecommunications Act of 1996 has the FCC been charged with such an ambitious new set of requirements. At the time of the 1996 Act, the FCC had increased its staffing level from a low of 1753 FTEs in 1993 to 2112 FTEs in 1995. This influx of new talent and expertise allowed the FCC to implement the complex requirements of the 1996 Act fully and on time. Today, the FCC is charged with an equally ambitious agenda but with a much smaller workforce lacking the needed skills. Our current workforce of 1830 FTEs at the end of FY 2010 is fully engaged with our ongoing commitments, and therefore not available for re-tasking. The additional positions are essential to the completion of our additional requirements such as implementing the National Broadband Plan, examining the future of media, increasing our openness and transparency, and strengthening our role in government and industry cyber-security preparedness. Even with these new positions, our staffing will still remain well below historical levels.

I am concerned about how much resources the FCC will use up as it attempts to regulate broadband instead of trying to encourage broadband adoption and deployment.

- How long was it between the time that the FCC decided the *Comcast-Bit Torrent* case and the time it was reversed by the Court of Appeals?

**RESPONSE:**

The FCC issued the Memorandum Opinion and Order at issue in *Comcast Corp. v. FCC* on August 20, 2008. The D.C. Circuit issued its decision in *Comcast Corp. v. FCC* approximately a year and a half later, on April 6, 2010.

No one doubts that if the FCC decides to regulate broadband, those new rules will be challenged in court.

- Assuming this challenge goes to the Supreme Court, how long would that take?

**RESPONSE:**

Historically, when the Supreme Court has reviewed a Commission order, its decision has been issued approximately two to three years after the FCC order. For example:

- On November 6, 2006, the Commission released an order finding that utterances in two awards shows broadcast on television were indecent. *See Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, 21 FCC Rcd 13299 (2006). The United States Court of Appeals for the Second Circuit vacated the Commission's order. *See Fox Television Stations, Inc. v. FCC*, 489 F.3d 444 (2007). The Supreme Court reversed the judgment of the Second Circuit and remanded the case on April 28, 2009, roughly two years and six months after the Commission released its order.
- The Commission released a declaratory ruling classifying cable modem service as an information service on March 15, 2002. *See Inquiry Concerning High Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd 4798 (2002). The Supreme Court upheld the Commission's ruling three years and three months later, on June 27, 2005. *See NCTA v. Brand X Internet Services*, 545 U.S. 967 (2005).
- The Commission released its Local Competition Order, which implemented provisions of the Telecommunications Act of 1996, on August 8, 1996. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996). The Supreme Court upheld the Commission's order in part two years and five months later, on January 25, 1999. *See AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999).

It should be noted that if the Commission were to alter its legal framework for broadband Internet services, the ensuing court challenge to that change might well be completed years earlier than the alternative path of litigating the Commission's jurisdiction to issue various substantive orders on a case-by-case basis under the current legal framework and the recent *Comcast* decision.

- How much taxpayer money will be spent defending the FCC's new rules?

**RESPONSE:**

Any defense would be performed by existing FCC staff which is funded by regulatory fees. Regulated companies and other interested persons routinely file lawsuits challenging final FCC actions (as well as non-final actions, which are not properly reviewable by the courts). Lawsuits are filed regardless of whether the Commission comes out one way or the other, and it is impossible to quantify the incremental cost of adopting one particular legal or policy approach, as opposed to an alternative path. As noted above, if the Commission were to alter its legal framework for broadband Internet services, the ensuing court challenge to that change might well be faster and less expensive than the alternative path of litigating the Commission's jurisdiction to issue various substantive orders on a case-by-case basis under the current legal framework and the recent *Comcast* decision.

- Can you please explain the specific problem you are trying to address with your proposal to dramatically increase the level of regulation on Internet Service Providers?

**RESPONSE:**

The recent decision of the United States Court of Appeals for the D.C. Circuit in *Comcast v. FCC* casts doubt on whether the legal framework the Commission chose for broadband Internet services nearly a decade ago is adequate to achieve widely supported broadband policies, which prior Commissions thought they had legal authority to implement. To evaluate its options, the Commission adopted a *Notice of Inquiry* at its June 17 Open Meeting to initiate a public discussion on how the Commission should proceed in light of *Comcast*. The *Notice* does not propose to increase regulation on Internet Service Providers. Rather, the *Notice* seeks comment on all options, and invites any ideas for how the Commission

should proceed, including: maintaining the current “information service” classification of services such as cable modem and DSL Internet access; classifying broadband Internet connectivity service as a “telecommunications service” to which all the requirements of Title II of the Communications Act would apply; and a “third way” – similar to the highly successful approach that has been used for cell phone services since 1993 – under which the Commission would identify the Internet connectivity service that is offered as part of wired broadband Internet service as a telecommunications service and forbear from applying all provisions of Title II other than the small number that are needed to implement fundamental universal service, competition and market entry, and consumer protection policies. I am enclosing a copy of the *Notice* for your information. The reply comment period closed on August 12 and the Commission staff is currently reviewing the large volume of responses in the record.

- What industry wide problem exists today among Internet service providers that warrants the government having unfettered ability to regulate Internet rates and micromanage network engineers?

**RESPONSE:**

Neither the *Open Internet Notice of Proposed Rulemaking* nor the recently adopted *Notice of Inquiry* propose regulating Internet rates or micromanaging network engineers. The *Notice of Inquiry* is not about unbundling and price regulation. Rather, it is about fixing the basic legal foundation for broadband policy, which will enable us to accomplish widely supported goals, including reforming universal service to ensure all Americans can enjoy the benefits of broadband. The *Open Internet Notice of Proposed Rulemaking* proposes high-level rules of the road to provide greater clarity regarding network management practices and preserve Internet openness, while protecting broadband providers’ ability to reasonably manage their networks.

- Will you consider the concerns of churches and other wireless microphone users as you continue to deliberate interference protections for wireless microphones?

**RESPONSE:**

In a pending Further Notice of Proposed Rulemaking the Commission is considering how to revise rules concerning the use of wireless microphones. The Commission will review all of the information in the record in deciding how to

best address the concerns of the many wireless microphones users, including houses of worship, schools, libraries, museums, theaters, and concert halls. In many of the bands in which these wireless microphones operate, there also are other important uses of the bands, and wireless microphone users are required to share spectrum with such users, including television broadcasters and unlicensed TV band white spaces devices. The Commission must carefully balance the important interests among all of these users before it adopts final rules for wireless microphones.

- Will you consider the language in H.R. 4353, which provides for geolocation database protections for 13 specific classes of professional wireless microphone users, including Houses of Worship, arenas, theaters, restaurants, stadiums, and museums?

**RESPONSE:**

The Commission recently adopted a Second Memorandum Opinion and Order that revised the rules unlicensed devices operating in the TV White Spaces. The rules included several provisions to minimize the risk of harmful interference wireless microphones. Two TV channels will be reserved in every market that can be used by wireless microphones and are available for used by TV White Space devices. These two channels can accommodate at least 12 to 16 wireless microphones at any given location, which should be sufficient for most uses. In addition, many other TV channels will not be available for TV White Space devices at any given location. These channels will be identified in a publicly accessible data base and can be used for additional wireless microphones without concern of interference from TV White Space devices.

The Commission also recognized that certain venues and events, such as the kinds you describe, use many wireless microphones and cannot be accommodated in the reserve channels and other channels that are not being used by TV White Space devices. The Commission established a process where these venues and events can be included in the data base of locations and channels where TV White Space devices may not operate. The TV White Space fixed transmitters and portable transmitters must be located at least 1000 meters and 400 meters away from these sites.

We believe that these measures strike an appropriate balance in accommodating existing users of wireless microphones while creating opportunities for innovation

and investment in new devices and services and making more efficient use of the TV spectrum.

The National Broadband plan recommends that “States should reduce impediments and financial disincentives to using commercial service providers for Smart Grid communications.”

- What **more** can be done to ensure/motivate utilities to leverage commercial technologies for their Smart Grid applications?

**RESPONSE:**

A beginning point towards the goal of encouraging utilities to leverage commercial technologies for Smart Grid applications is to ensure a thorough understanding of the evolving communications requirements of electric utilities. As an input to the NBP plan, the FCC solicited public comment on Smart Grid technologies, and a number of utilities filed detailed responses. Many utilities declined to comment, however, and others understandably declined to reveal confidential or sensitive information in public filings. Thus, the NBP recommends that DOE, in collaboration with the FCC, conduct a thorough study of the communications requirements of electric utilities, including, but not limited to, the requirements of the Smart Grid. Building upon the FCC’s research and development in the NBP proceeding, DOE should collect data about utilities’ current and projected communications requirements, as well as the types of networks and communications services they use. Such an analysis will bring to light barriers to utilities’ adoption or deployment of commercial technologies for their Smart Grid applications. The DOE has already begun to implement this recommendation, by issuing a RFI on utility Smart Grid communications.

- What activities are specifically recommended for removing financial disincentives and who is undertaking them?

**RESPONSE:**

The NBP recommends that state public utility commissions (PUCs) review regulatory requirements applicable to electric utilities to ensure that utilities’ financial interests do not lead them to reject the use of commercial networks, thereby making suboptimal communications and technology decisions. Specifically, as rate-of return regulated utilities, large utilities typically earn guaranteed profits on the assets they deploy—including private communications

networks—but only receive cost recovery if they use commercial networks. The NBP recommends that state regulators carefully evaluate a utility’s network requirements and commercial network alternatives before authorizing a rate of return on private communications systems. Consistent with the Energy Independence and Security Act of 2007 (EISA), the plan recommends that PUCs also consider letting recurring network operating costs qualify for a rate of return similar to capitalized utility-built networks. California is currently considering this question.

Moreover, in many states, electric utility incentives are still oriented toward deploying assets and selling more power, not selling less or cleaner power. While this structural problem is outside the scope of the National Broadband Plan, despite its explicit Congressional mandate to address energy efficiency, a national strategy to support the growth of the Smart Grid must recognize that many large electric utilities have inherent financial incentives to deploy regulator-approved communications systems but have mixed-to-poor incentives to use these systems to deliver energy more efficiently.

- Why should utilities be allocated or re-allocated spectrum (as they have requested) if there is existing infrastructure via commercial technologies that will be utilized for other critical applications like public safety?

**RESPONSE:**

Utilities will need greater communications across the grid, and many are increasingly using wireless technologies, which are often more cost-effective than wired facilities in reaching wide areas or distributed assets. These wireless networks include licensed commercial networks, licensed private networks, and private networks operating at power levels where FCC licenses are not required.

Developing a Smart Grid is national policy set forth by EISA 2007, and the NBP recommends that the federal government continue to explore the issue of providing spectrum, recommending that “NTIA and the FCC should specifically explore possibilities for coordination of Smart Grid use in appropriate federal bands. Any new broadband network built in the identified spectrum should be required to meet standards of interoperability, customer data accessibility, privacy and security. Use of this spectrum should not be mandated, so that legacy systems are not stranded and that commercial, other shared networks and unlicensed wireless networks can be used where appropriate.”

Dedicating spectrum for the Smart Grid could have advantages and disadvantages. Potential advantages include: 1) providing another mechanism for the federal government to drive national interoperability standards and best practices of cybersecurity, privacy, and consumer data access; 2) vendor standardization and competition, which could lead to lower equipment prices or more functionality; and 3) a possible acceleration of smart grid deployments. Risks/disadvantages to dedicating spectrum include: 1) possible sub-optimal use of spectrum; 2) fewer applications and users on commercial networks to drive down the cost for all users; 3) the opportunity cost to the U.S. Treasury of not auctioning off the spectrum to commercial broadband users; and 4) a near-term effect of “freezing the market” while companies re-evaluated their Smart Grid technology road maps.

It should be noted that the NBP has a number of general spectrum recommendations that will also benefit the Smart Grid. Increasing spectrum transparency, promoting incentives to improve the secondary market, and providing more opportunities for unlicensed uses – all of these have the potential to be beneficial to Smart Grid networks, including both commercial and private networks. Recent FCC rulings to unlock spectrum – such as the clarification of WCS rules – can also benefit the Smart Grid. Specifically, WCS licensees can now satisfy their build-out requirements by serving utility customers in fixed applications; i.e. Smart Grid applications.

- Will this encourage the build out of duplicative networks that stick the American energy consumers with the bill?

**RESPONSE:**

A variety of possible models could be employed to provide spectrum to the industry and avoid the possible build out of duplicative networks that impose further energy costs on American consumers. For example, utilities could share spectrum with federal users or with public safety networks (also recommended in the NBP). Other models might result in a private network for electric utilities, by dedicating spectrum to utilities with specific build-out requirements or auctioning spectrum for critical infrastructure uses (which includes the Smart Grid, but could also include natural gas and water management, among others), thereby supporting applications with a high level of reliability, such as those for grid control and protection. The costs and benefits to American consumers – in financial, public safety, and homeland security terms – must be weighed, whatever the model.

Ultimately state regulators and utilities will need to choose the networking strategy that is the most appropriate and cost-effective for their ratepayers.

The National Broadband plan recommends “The Federal Communications Commission (FCC) should start a proceeding to explore the reliability and resiliency of commercial broadband communications networks.”

- Will these reliability standards be applied to the private technologies that Utilities are currently deploying and considering for their CIP Smart Grid Applications?

**RESPONSE:**

There are over 3,000 utilities in the U.S. that serve customers across very different topologies and regulatory regimes. There is not a single solution or a “representative” network for the Smart Grid. Many utilities use a mix of commercial and private networks in the Smart Grid and will continue to do so.

Although, electric utilities traditionally prefer to build and maintain private networks for mission critical communications, some utilities do use commercial networks for mission critical communications today. Commercial networks can be made secure and resilient, as demonstrated by their use in the federal government (DoD, DHS, etc.). For some smaller utilities, the lack of internal networking expertise and personnel might have driven the decision to use commercial facilities.

The NBP recommends that the FCC start a proceeding to explore the reliability and resiliency of commercial broadband networks (Rec. 12.1). As noted in the NBP, commercial broadband networks, and wireless broadband networks in particular, can serve more mission-critical and wide-area utility communications needs as service providers adopt measures to improve the reliability and resiliency of these networks during emergency scenarios. Because 97.8% of Americans are already covered by at least one 3G network, a hardened commercial wireless data network could serve as a core part of the Smart Grid. The benefits of a more reliable commercial broadband network are much broader than enabling the Smart Grid alone. A more reliable network would also benefit homeland security, public safety, businesses and consumers, who are increasingly dependent on their broadband communications, including their mobile phones. Today, more than 22% of households in America do not subscribe to fixed-line telephone service.

The North American Electric Reliability Corporation, an organization under the U.S. Federal Energy Regulatory Commission's (FERC) authority, has been responsible since 1968 for the reliability of the bulk power system. NERC develops and enforces reliability standards. As of June 18, 2007, FERC granted NERC the legal authority to enforce reliability standards with all users, owners, and operators of the bulk power system in the United States, and made compliance with those standards mandatory and enforceable.

- Does having a double –standard for reliability and resiliency testing indirectly support the adoption of “sub-optimal choices” (see section 12.2 page 270) that are being made due to financial incentives (guaranteed profits/rate of return for proprietary buildouts of duplicative network technology)?

**RESPONSE:**

Reliability and resiliency standards should be consistently applied, regardless of the nature of the network – private or commercial. Thus, for example, the NBP recommends that the North American Electric Reliability Corporation (NERC), the organization under FERC's authority responsible for the reliability of the bulk power system, should revise its security requirements to provide utilities more explicit guidance about the use of commercial and other shared networks for critical communications. In future versions of the Critical Infrastructure protection (CIP) standard, NERC should clarify whether such networks are suitable for grid control communications. NERC should also clarify how its CIP requirements will coexist with the cybersecurity standards of the National Institute of Standards and Technology (NIST). The perceived ambiguity on CIP requirements appears to be slowing utility decision-making and stifling the deployment of some Smart Grid applications on commercial networks.

- What is the FCC doing to ensure that ALL technologies being considered for Critical infrastructure meet the same high standards for reliability and resiliency?

**RESPONSE:**

The FCC will work closely with FERC, DOE and other applicable organizations to ensure that all technologies being considered for critical infrastructure meet the same high standards for reliability and resiliency, thereby removing incentives –

financial or regulatory – to the deployment or use of suboptimal technologies or networks.

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