



EAC MANAGEMENT DECISION:

Resolution of the OIG Audit Report on the Administration of Payments Received Under the Help America Vote Act by the New York State Board of Elections for the Period May 1, 2003 Through April 30, 2010, Report No. E-HP-NY-08-10

May 5, 2011

BACKGROUND

The EAC is an independent, bipartisan agency created by the Help America Vote Act of 2002 (HAVA). EAC assists and guides state and local election officials in improving the administration of elections for Federal office. EAC distributes HAVA funds to States for the acquisition of voting systems, and supports the establishment of statewide voter registration lists, and other activities to improve the administration of elections for Federal office. EAC monitors State use of HAVA funds to ensure funds distributed are being used for authorized purposes. To help fulfill this responsibility, the EAC determines the necessary corrective actions to resolve issues identified during Single Audit Act and Department of Inspector General (OIG) audits of state administration of HAVA funds. The EAC OIG has established a regular audit program to review the use of HAVA funds by States. The OIG's audit plan and audit reports can be found at www.eac.gov.

The EAC Audit Follow-up Policy authorizes the EAC Executive Director to issue the management decision for OIG audits of Federal funds to state and local governments, to non-profit and for-profit organizations, and for single audits conducted by state auditors and independent public accountants (external audits). The Executive Director has delegated the evaluation of final audit reports provided by the OIG and single audit reports to the Director of the HAVA Grants Division of EAC. The Division provides a recommended course of action to the Executive Director for resolving questioned costs, administrative deficiencies, and other issues identified during an audit. The EAC Executive Director issues the EAC Management Decision that addresses the findings of the audit and details corrective measures to be taken by the State. In this particular instance, citing a potential conflict of interest, the Executive Director has delegated this responsibility to the EAC General Counsel.

States may appeal the EAC management decisions. The EAC Commissioners serve as the appeal authority. A State has 30 days to appeal the EAC management decision. All appeals must be made in writing to the Chair of the Commission. The Commission will render a decision on the appeal no later than 60 days following receipt of the appeal or, in the case where additional information is needed and requested, 60 days from the date that the information is received from the State. The appeal decision is final and binding.

Please note, with two vacancies the Commission presently lacks a quorum to conduct appeals. The 30 day period to file an appeal remains in place. However, the 60 day period for a decision will toll until a Commission quorum is reestablished.

AUDIT HISTORY

The OIG issued an audit report on the administration of payments received under the Help America Vote Act (HAVA) by the New York State Board of Elections (BOE) on March 7, 2011. The audit concluded that the BOE generally accounted for and expended HAVA funds in accordance with financial management requirements for the period from May 1, 2003 through April 30, 2010 except for issues with providing state matching funds on a timely basis, time cards and semi-annual certifications in support of HAVA funded payroll charges, and maintenance of adequate property records to properly account for HAVA funded equipment.

Finding 1 – HAVA Section 251 State Match

The BOE established an election fund to hold HAVA funds in accordance with the requirements of HAVA Section 254. HAVA also requires that the election fund hold the five percent state matching funds that enabled New York to qualify for federal HAVA Section 251 funds. Furthermore, interest earned from the investment of the money in the election fund must also be deposited into the election fund. The timely deposit of the state match and of monthly interest earnings increases the election fund balance upon which each subsequent month's interest earnings are based, resulting in a compounding effect that adds additional funds to the program.

BOE determined that the state had a requirement to provide matching funds totaling \$9,052,509 to be eligible to receive Section 251 funds. However, the state did not deposit the matching funds into its election fund. The matching funds were appropriated by the state, but remained in the general fund until expended. The state partially met its match by requiring counties to contribute five percent of the cost of voting equipment purchased by the state on behalf of the counties as well as through state funded HAVA related expenditures. New York's Office of General Services (OGS), the office that tracks HAVA financial activity, calculated that, as of April 30, 2010, the state and its counties had only expended \$8,462,457 against the state matching requirement, resulting in a shortfall of \$590,052. Further, the state did not transfer any interest earned on the balances in the general funds into the HAVA election fund as required. The state estimated that the lost interest was \$1,017,958 as of April 30, 2010.

Recommendations:

The auditors recommended that the BOE:

1. Deposit into the election fund the state match shortfall of \$590,052, or such other amount as determined at the date of transfer.

2. Transfer the lost interest earnings of \$1,017,958 into the election fund along with any additional interest that may accrue until the date of the transfer.

BOE's Response:

BOE said that they take no exception to this finding and will work with EAC to ensure that appropriate corrective action is taken.

EAC Response:

EAC will work with the BOE to ensure the appropriate amounts are transferred into the election fund.

Finding 2 – Personnel Certifications

The BOE used HAVA funds to pay salaries for employees during the periods from May 4, 2006 through December 26, 2007 and July 23, 2009 through April 30, 2010. Between May 4, 2006 and December 26, 2007, the BOE charged the HAVA fund \$495,602 for the full salaries for personnel who worked on HAVA activities. These charges were not supported by semi-annual certifications that the employees worked only on HAVA-related activities or by other documentation such as timecards that showed the employees worked on HAVA-related activities.

BOE officials said that they were not aware of the requirement to prepare semi-annual certifications.

Recommendation:

3. The auditors recommended that the EAC resolve with the BOE the appropriate corrective action regarding the untimely completion of the semi-annual certifications and the lack of other documentation, such as time cards for the 2006 to 2007 period personnel costs were paid with HAVA funds.

BOE's Response:

BOE said that they take no exception to this finding and will work with EAC to ensure that appropriate corrective action is taken.

EAC Response:

EAC will work with the BOE to resolve the issue regarding the lack of personnel documentation for the period in question.

Finding 3 – Property Records

The inventory records for the BOE HAVA funded State Voter Registration System (SVRS) equipment did not contain all of the elements required by the Common Rule. The records did not list the source of the property, who holds the title, the percentage of federal participation, and the condition.

BOE election officials informed the auditors that they were not aware of the detailed recordkeeping requirements of the Common Rule.

Recommendation:

4. The auditors recommended that the BOE ensure that the property management records for HAVA equipment list the source of the property, who holds the title, the percentage of federal participation, and the condition.

BOE's Response:

BOE said that they take no exception to this finding and will work with EAC to ensure that appropriate corrective action is taken.

EAC Response:

EAC will work with the BOE to ensure appropriate corrective action consistent with the Common Rule.