



EAC MANAGEMENT DECISION:

Resolution of the OIG Audit Report on the Administration of Payments Received Under the Help America Vote Act by the Alabama Secretary of State for the Period April 30, 2003 Through January 31, 2010, Report No. E-HP-AL-06-10

March 28, 2011

BACKGROUND

The EAC is an independent, bipartisan agency created by the Help America Vote Act (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.

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 Alabama Secretary of State (SOS) on January 28, 2011. The audit concluded that the SOS generally accounted for and expended HAVA funds in accordance with requirements for the period from April 30, 2003 through January 31, 2010 except for maintenance of personnel certifications, approval of expenditures for sub-awards to counties, maintenance of adequate property records, security over HAVA funded equipment, questionable use of HAVA funds for non-qualifying promotional activities, and deposit of the state and counties program income related to the sale of voter registration lists to the HAVA fund.

Finding 1 – Personnel Certifications

The auditors found that the SOS did not complete semi-annual certifications for the one full-time employee that worked on the HAVA activities for the period of August 31, 2005 through September 30, 2006. There were also no timesheets available to verify the charged hours. However, the SOS did obtain the appropriate semi-annual certifications for the one full-time employee for the period from October 1, 2007 through September 30, 2009. There were no salaries and benefits charged to the HAVA election fund for the period October 1, 2006 through September 30, 2007.

Recommendation:

1. The auditors recommend that the EAC resolve with the SOS the appropriate corrective action regarding the lack of periodic certifications for the questioned period that personnel costs were paid from HAVA program funds.

SOS's Response:

The SOS's Office agreed to the finding and stated that the former SOS did not sign or keep proper records as required by OMB Circular A-87. The current SOS took office in January 2007, and, in October 2007, the SOS's Office began paying one full-time employee from HAVA funds. Since that period, the SOS's Office has maintained semi-annual certifications of work done by that employee, which are signed by the SOS.

EAC Response:

EAC will work with the SOS to resolve the issue regarding the lack of periodic personnel certifications for the questioned period.

Finding 2 – Sub-Awards to Counties

The SOS distributed sub-awards to counties to reimburse them for the purchase of voting equipment necessary to comply with HAVA. The counties seeking a sub-award from the SOS were required to submit an application, which included documentation and

affidavits to support the amount of the requested sub-award. To ensure the application received from the counties was complete the SOS completed an internal checklist. When the internal checklist was complete the SOS approved the sub-award amount to be remitted to the county.

During the testing of the HAVA sub-awards to counties, it was determined that five of the 47 sub-awards selected for testing did not comply with the administrative rules outlined. Improper approvals or lack thereof could lead to sub-awards made with HAVA funds for expenditures that might not be allowable costs.

Recommendations:

2. Determine whether the sub-awards in question are allowable HAVA expenditures, and secure appropriate approvals.
3. Review all sub-awards to counties to ensure that amounts paid were adequately supported by documentation and all payments were for qualified HAVA purposes.
4. Request reimbursements from counties for all unauthorized payments.

SOS's Response:

The SOS's Office agrees with the finding, and stated that the former SOS administered the grant program prior to the current SOS taking office in January 2007. The SOS's Office will determine whether the sub-awards in question are allowable HAVA expenditures and secure appropriate approvals. The SOS's Office will also review all sub-awards to counties to ensure that amounts paid were adequately supported by documentation and all payments were for qualified HAVA purposes.

EAC Response:

EAC will work with the SOS to determine whether the sub-awards in question were allowable HAVA expenditures. EAC will verify appropriate documentation and approvals were received as necessary. Finally, EAC will request reimbursement for any payments that cannot be adequately supported and qualified for HAVA purposes.

Finding 3 – Property Management

Voting Equipment

Property Records:

During the review of the counties' equipment/property management practices, the auditors determined that four of the seven counties visited did not comply with the requirements of 41 CFR 105-71.132 regarding the identification of equipment purchased with federal funds. The counties could not locate equipment that was included on the inventory listings because the listings had not been updated when equipment was

replaced. The counties do not maintain property records that include the following attributes: a description of the property, a serial number or other identification number, the source of property, who holds the title, the acquisition date and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sales price of the property.

Moreover, the acquisition cost of ten printers included in the SOS's statewide voter register system equipment listing was misstated. The equipment listing indicated that the cost of each printer was \$500; however the invoice indicated a cost of \$698.

Security:

During the site visits, the auditors noted that two of the seven counties did not comply with the requirements of 41 CFR §105-71.132(d)(3) with regards to ensuring that adequate security is provided at the location where the equipment is stored.

One county locks the doors to the room where the voting equipment is stored at night but the doors are open during the day and accessible to the public who use the adjoining room. Another county locks the doors to the rooms where the equipment is stored, but there are numerous personnel with keys that can access the voting equipment. Neither of the counties has standard security such as visitor logs, cameras or alarms.

Recommendations:

The auditors recommend that the SOS:

5. Require staff of the counties to conduct a physical inventory of all HAVA-funded equipment in their possession and use the results to correct property records.
6. Ensure that the property management records of the counties have at least the minimum information required in the federal requirements of 41 CFR §105-71.132 and the Alabama State Code Section 36-16-8.
7. Ensure that the property records are updated to reflect the correct acquisition cost for the ten printers.
8. Ensure that the property is secured in a manner consistent with the federal requirements of CFR §105-71.132.

SOS's Response:

The SOS's Office corrected the clerical error of the cost of ten printers listed in the property management system. The SOS's Office will also implement corrective action as follows:

- Require staff of the counties to conduct a physical inventory of all HAVA-funded equipment in their possession and use the results to correct property records.

- Ensure that the property management records of the counties have at least the minimum information required in the federal requirements of 41 CFR §105-71.132 and the Alabama State Code Section 36-16-8.
- Ensure that the property is secured in a manner consistent with the federal requirements of 41 CFR §105-71.132.

EAC Response:

EAC will work with the SOS to ensure appropriate corrective action consistent with federal and state requirements.

Finding 4 – Expenditures

The SOS expended \$26,459 in Section 101 HAVA funds for the “Take a Kid to Vote” project. This included \$23,229 for a booklet which was written for children who are not of voting age and \$3,230 for a radio advertisement which urged voters to take their children with them to the polls. The radio advertisement did not contain educational information. These expenditures are questionable uses of Section 101 HAVA funds.

Furthermore, the auditors could not conclude on the full amount expended on the “Take a Kid to Vote” project due to the vague descriptions on the invoices received from radio vendors for advertising costs.

HAVA Section 101(b)(1), subparts (B),(C) and (D) prescribe that HAVA funds can be used to improve the administration of elections for federal office; educate voters concerning voting procedures, voting rights, and voting technology; and training election officials, poll workers, and election volunteers.

SOS officials were not aware that the “Take a Kid to Vote” project may not be an allowable cost under Section 101 of HAVA.

Recommendation:

9. The auditors recommend that the EAC work with the SOS to resolve the issue of whether the costs associated with the “Take a Kid to Vote” project of approximately \$26,459 are allowable uses of HAVA funds. If it is determined that the project is not an allowable use of HAVA funds, the SOS should also determine if any additional HAVA funds have been spent on the “Take a Kid to Vote” project.

SOS’s Response:

The SOS’s Office agrees to the finding. The previous SOS developed and approved the “Take a Kid to Vote” project. The SOS’s Office will reimburse the HAVA Fund for the cost of the “Take a Kid to Vote” project in the amount of \$26,459.

EAC Response:

The EAC will work with the SOS to identify any unallowable costs associated with the “Take a Kid to Vote” project and request reimbursement of disallowed costs.

Finding 5 – Program Income

The SOS has not deposited program income, generated by the SOS and the counties from the sale of voter registration lists that was in excess of the costs associated with preparing the lists, into the HAVA election fund. The SOS and three of the counties the auditors visited prepared these lists from the SOS’s HAVA funded voter registration system. The program income has also not been reported to the EAC as required.

The state generates program income of approximately \$88,000 per fiscal year from the sale of voter registration lists. The voter registration system was complete as of the fiscal year ended September 30, 2008. The state does not know the amount of expenditures they incurred to generate the voter registration lists.

The *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments*, 41 CFR§ 105-71.125, states that program income means gross income received by the subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. Additionally, 41 CFR §105-71.141 states that each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency.

The *EAC Advisory 07-002 – Program Income and Set-off of Cost Incident to Program Income* authorizes states to dedicate program income to the HAVA grant and use the income for purposes and under conditions of the grant.

According to SOS election officials, the program income was deposited in an account to defray the cost of voter registration within the state. Under county law, counties are required to deposit the income into the counties’ general funds.

Recommendations:

The auditors recommend that:

10. The EAC work with the SOS to resolve the conflict between federal, state and county law which requires that program income be deposited in non-HAVA funds at the state and county levels.
11. The SOS provide guidance to the counties on how to properly record and report program income from the sale of voter registration lists generated from the state’s voter registration database. The SOS should also report such income to the EAC.

SOS's Response:

The SOS's Office strongly disagrees with the finding. The SOS does not believe the net income from the sale of voter registration lists should be deposited into the HAVA election fund. The information contained in the voter registration lists is owned by the state of Alabama. While HAVA funds were used to upgrade the technology for managing the voter list, it is still the property of the state of Alabama and state law provides that the income from the sale of the vote list should be deposited into a specific state fund within the Secretary of State's Office (Ala. Code, 1975 §§ 17-4-34(10): 17-4-38) long before HAVA was enacted.

EAC Response:

The EAC will work with the SOS to gather additional information and resolve the issue.