



## **EAC MANAGEMENT DECISION:**

*Resolution of the OIG Audit Report on the Administration of Payments Received Under the Help America Vote Act by the State of Montana, for the Period June 5, 2003 Through September 30, 2009, Report No. E-HP-MT-02-10*

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November 30, 2010

### **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, and supports the distribution of HAVA funds to States for the acquisition of voting systems, 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](http://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.

## **Audit History**

The OIG issued an audit report on the administration of payments received under the Help America Vote Act (HAVA) by the Montana Secretary of State (SOS) on September 28, 2010. The audit concluded that except for the maintenance of adequate property records, financial reporting errors, lack of approval for capital expenditures, failure of selected counties to accrue interest on idle HAVA funds, and the determination of whether the SOS and its subgrantees met the requirement for maintenance of a base level of state outlays which were specifically omitted from the scope of work, the SOS generally accounted for and expended HAVA funds in accordance with the HAVA requirements.

### **I. Property Records**

The equipment inventory listings provided to the auditors by the State of Montana Office of the Secretary of State (SOS) and each of the seven counties visited did not contain the minimum information to properly identify and account for property as prescribed by Federal regulations. The auditors noted for each county visited, the listings included a description of the equipment, serial number and the location, but not the other required elements such as use, condition and the federal, state or county percentage of ownership. Inventory records for the State Voter Registration System held by the SOS also did not contain all of the required elements. As a result, there is no assurance that the accounting records accurately reflect the HAVA equipment controlled by the SOS and the counties.

SOS election officials informed the auditors that in 2009 staff reviewed the Common Rule and were working on bringing records prepared by previous administrations into compliance with the Rule.

#### **Recommendation:**

1. The auditors recommend that the SOS ensure that the property records at both the state and county level include the minimum information required by the Common Rule, and implement a procedure to ensure that the counties report changes in equipment listing to the SOS.

#### **SOS's Response:**

The SOS concurred with the recommendation and stated that the inventory control records for electronic voting equipment prepared by previous administrations had been revised to include the required minimum information to be compliant with Federal requirements. They also indicated that guidance had been issued to county election officials to ensure that Federal requirements are followed and changes to the equipment listing are reported to the SOS.

### **EAC Management Decision:**

The SOS has modified its inventory control records and issued guidance to county election officials to ensure Federal requirements are followed. EAC has reviewed the actions of the SOS and considers this matter closed.

### **II. Financial Accounting and Reporting**

The Elections Office was not able to reconcile its records of the HAVA funds with the state treasurer's records. The Elections Office uses its records to report to EAC. The auditors noted differences between the Elections Office's records as reported on the Financial Status Reports (SF 269) and the Montana State Accounting Budget and Human Resources System (SABHRS). As of December 31, 2008 the SABHRS Section 101 Fund Balance was \$2,002,290 compared to the SF 269 balance of \$1,948,837, a difference of \$53,453. Also, as of September 30, 2008 the SABHRS Section 251 Fund Balance was \$905,480 compared to the SF 269 Fund Balance of \$904,069, a difference of \$1,411.

HAVA receipts and expenditures were comingled in the state's accounting system through September 30, 2007, and were not individually coded as Section 101 and 251 funds. In preparing the Financial Status Report, SF 269, it was necessary for the staff to evaluate the entries in the accounting records for allocation to the appropriate fund, utilizing Excel worksheets to accumulate HAVA data for tracking purposes. As of December 31, 2008 and September 30, 2008, the accounting data utilized by the election office to account for HAVA financial activity did not reconcile to the election fund balances provided by the Elections Office from the state's accounting system. Thus, the accuracy of the Financial Status Reports, Form 269, filed with the EAC prior to 2009 is in question.

In addition, at the conclusion of the audit fieldwork, the September 30, 2009 balances were not reconciled; however, the Federal Financial Reports (SF 425) for 9/30/09, submitted to EAC subsequent to the fieldwork, were reconciled with the State Treasurer's records.

### **Recommendations:**

Auditors recommend that the Montana Secretary of State:

2. Improve internal controls over the accounting and reporting of HAVA financial activities to the EAC. For example, all financial reports should be reviewed and signed by an SOS official other than the preparer indicating concurrence with the data. Excel spreadsheets of HAVA expenditures should also be updated and reconciled to SABHRS at least monthly.
3. Coordinate with EAC to determine whether previously submitted financial status reports should be revised and re-submitted.

**SOS's Response:**

The SOS concurred with the recommendations and stated that Elections Office staff was not able to reconcile its records of the HAVA funds with the state treasurer's records due to funds not being set up properly and accounted for properly in the state accounting system. There were also large lump-sum transfers between the HAVA fund and the enterprise fund by a previous administration that were not easily tracked to specific invoices.

The SOS also stated that the current administration has done a complete reorganization of the SOS Fiscal Services Division, including bringing on a Chief Financial Officer with federal program and accounting experience, including expertise to oversee all fiscal activity and reporting. The SOS further stated that turnover in staff from previous administrations, and many different staff preparing reports, resulted in inconsistencies and non-reconciliation of HAVA financial reports with the state accounting system. The SOS advised that the reporting process was modified to have the Chief Financial Officer prepare the financial reports and the Deputy for Elections review and sign the reports, indicating concurrence with the data as compiled by the CFO.

Also, the EAC has been contacted regarding amendments to previously submitted financial status reports and the reports submitted for fiscal year 2009 have been updated to reflect adjustments to previously submitted reports according to discussions with the EAC.

**EAC Management Response:**

In addition to reorganizing the Fiscal Services Division, the SOS has improved internal controls over the accounting and reporting of HAVA financial activities and has amended previously submitted financial status reports. Financial reporting to the EAC is current. Based on the actions of the SOS, the EAC considers this matter closed.

**III. Subgrants to Counties**

The state did not execute formal written agreements with counties prior to disbursing HAVA funds. Counties were notified by email or other written correspondence of the purpose of HAVA funds awarded to them. However, counties were not advised of Federal requirements for prompt expenditure of these funds and to maintain the funds in interest bearing HAVA accounts. The auditors found that three counties visited had maintained undisbursed HAVA advances for 15 to 48 months at the time of the audit, totaling approximately \$14,500, that were deposited in non-interest bearing accounts. As a result, these funds did not accrue interest which could be used for future HAVA activities. Staff of the SOS told auditors they were not aware of this requirement.

Federal regulations at 41 CFR 105-71.137(a) require that states shall ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations, that subgrantees are aware of requirements imposed upon

them by Federal statute and regulations and conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

**Recommendations:**

We recommend that the Montana Secretary of State:

4. Survey all counties to determine the extent to which unspent advances are being held and require the counties to either return unneeded funds or to deposit the funds into interest bearing accounts;
5. Execute subgrant agreements with counties for any future HAVA advances, which detail all applicable Federal requirements, and require that any HAVA funds advanced to the counties be deposited into an election fund which accrues interest to be used for HAVA related activities;
6. Require counties holding unspent HAVA funds to determine the interest earnings lost during the period funds have been held and reimburse the election funds for this lost interest, and ensure that any funds repaid to the state include interest earnings.

**SOS's Response:**

The SOS concurred with our recommendations and stated that although grant applications for polling place accessibility improvements contained information that the project must be completed within six months of receiving funding, counties were not specifically advised of Federal requirements for prompt expenditure of these funds and to maintain the funds in interest bearing HAVA accounts

The SOS also said that previous administrations had information on the application for polling place accessibility grants stating that the project must be completed within six months, and each county signed the application. They further advised that the current administration was ensuring compliance by issuing a subgrant agreement to each county applying for HAVA project funding, and SOS staff was monitoring expenditures made to ensure no unspent funds remained at the county level once a project is completed.

Specifically the SOS said that:

- 1) They have surveyed counties and requested them to supply information about any unspent HAVA funds, and indicated the SOS would issue guidance, accordingly;
- 2) They had created and are providing subgrant agreements advising recipients of the federal cash management requirements;
- 3) They investigated unspent HAVA funds held by the counties and are working with any counties holding funds to determine and monitor repayment of lost interest.

**EAC Management Response:**

The EAC has reviewed the actions taken by the SOS. EAC will follow up with the SOS to ensure guidance was issued regarding prompt expenditure of HAVA funds. Additionally, the EAC will work with the SOS to determine whether counties have repaid any lost interest.

**IV. Approval of Capital Expenditures**

The state provided grants to its counties for improving security of voting equipment and polling place accessibility, and counties used some of these funds to make capital improvements such as building cages to store voting equipment, paving parking lots, constructing handicap accessible ramps, and installing automatic sliding doors. According to SOS officials the state did not request approval for these capital improvements from the Election Assistance Commission. The state provided a total of \$832,467 in polling place accessibility grants to its counties. However, the auditors could not determine how much of these distributions were used for capital improvements subject to EAC pre-approval.

OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, Attachment B, Section 15 (b)(3) states that capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

**Recommendation:**

7. The state should conduct a survey of all counties to determine which counties used security and polling place accessibility grants to make unapproved capital expenditures and submit this information to EAC for resolution.

**SOS's Response:**

The SOS concurred with the recommendation and said that the state had not requested approval of these capital improvements, because the grants were under \$5,000 each, and the state considered \$5,000 and over to be the threshold for a project to be considered a capital improvement needing prior approval, and because indication from the Commission seemed to confirm the \$5,000 threshold.

The SOS concurred with the recommendation, even though prior guidance from the Commission had indicated that any grants under \$5,000 were not considered capital improvements and therefore not subject to preapproval. The SOS stated that they would review all security and polling place grants to determine if any grants were made for capital improvements. They will compile and submit information to the EAC for consideration and resolution, and will request pre-approval from the EAC for any future grants made for polling place accessibility or security capital improvements.

**EAC Management Response:**

The EAC has reviewed the response of the SOS and has followed up with them regarding the misunderstanding of a dollar threshold for capital improvements. EAC will work with the SOS to determine if any grants were made for capital improvements.