



U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

March 30, 2007

Roger Williams
Secretary of State
P.O. Box 12887
Austin, Texas 78711-2887

Dear Secretary Williams:

Attached is the final audit resolution report of the U.S. Election Assistance Commission (EAC) regarding the audit of Help America Vote Act (HAVA) funds expended by Texas. The resolution is based upon the information provided by the audit conducted by the EAC Office of Inspector General.

After careful consideration of all the facts presented, EAC has determined that the State of Texas has already made the appropriate adjustments for the \$180,609.00 in unapproved indirect costs and has filed the appropriate amended reports. No further action is required on this issue. The state must ensure that counties retroactively calculate net program income for HAVA funds. Texas must also provide documentation to the EAC within 30 calendar days to show the state has provided appropriate guidance to counties regarding program income computation, use, and reporting. This documentation also must disclose how the state will monitor the proper implementation of this guidance by the counties.

The state shall have 30 days to appeal EAC's management decision. The appeal must be made in writing to the Chairman of the EAC. Within 30 days of receiving the appeal, the Commission may hold a hearing to consider the appeal, take evidence or testimony related to the appeal, and render a decision on the appeal, if appropriate at that time. The Commission will render a final and binding decision on the appeal no later than 60 days following the receipt of the appeal or the receipt of any requested additional information. If the state does not file an appeal, this decision will become final and binding at the expiration of the appeal period.

We appreciate your cooperation in this matter as we work together to ensure that HAVA funds are used in accordance with the law.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Wilkey", written over the word "Sincerely".

Thomas R. Wilkey
Executive Director



U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

Final Audit Resolution Report
Texas Audit – Assignment No. E-HP-TX-06-06
Issued March 30, 2007

Summary of Decision

The U.S. Election Assistance Commission (EAC or Commission) has determined that the State of Texas has already made the appropriate adjustments for the \$180,609.00 in unapproved indirect costs and has filed the appropriate amended reports. No further action is required on this issue. The state must ensure that counties retroactively calculate net program income for HAVA funds. Texas must also provide documentation to the EAC within 30 calendar days to show the state has provided appropriate guidance to counties regarding program income computation, use, and reporting. This documentation also must disclose how the state will monitor the proper implementation of this guidance by the counties.

Background

The EAC is an independent, bipartisan agency created by Help of America Vote Act of 2002 (HAVA). It assists and guides state and local election administrators in improving the administration of elections for federal office. EAC provides assistance by dispersing federal funds to states to implement HAVA requirements, adopting the voluntary voting system guidelines, and serving as a national clearinghouse and resource of information regarding election administration. EAC is also responsible for the accreditation of testing laboratories and the certification, decertification, and recertification of voting systems.

In addition to EAC's role in distributing HAVA funds, the agency is responsible for monitoring the fiscally responsible use of HAVA funding by the states. The EAC seeks to ensure funds distributed under HAVA are being utilized for the purposes mandated by HAVA to ultimately improve the administration of federal elections. To fulfill this responsibility, the EAC conducts periodic fiscal audits of state HAVA fund expenditures and determines the any corrective actions necessary to resolve issues identified during audits. EAC is also responsible for resolving issues identified during state single audits conducted under the Single Audit Act. The EAC Office of Inspector General (OIG) has established a regular audit program in order to review the use of HAVA funds by states. The OIG's audit plan and audit findings can be found at www.eac.gov.

The Audit Follow-up Policy approved by the Commission authorizes the EAC Executive Director to issue the management decision for external audits and single audits. The Executive Director has delegated the evaluation of final audit reports provided by the OIG and single audit reports issued by the states to the EAC Programs and Services Division. 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 a Final Audit Resolution (management decision) that addresses the findings of the audit and details corrective measures to be taken by the state.

When an audit identifies questioned costs, the EAC considers not only whether the state followed proper procurement procedures, but also whether the expenditures actually served to further the goals of HAVA. EAC has identified three methods of resolution regarding questioned costs: 1) Expenditures that were identified as permissible under HAVA and federal cost principles, but did not follow appropriate procedures do not have to be repaid; 2) Expenditures that may have been permissible under HAVA but lacked adequate documentation must be repaid to the state election fund, which was created in accordance with HAVA section 254(b)(1); and 3) Expenditures that were clearly not permissible under HAVA or federal cost principles must be repaid to the U.S. Treasury. In addition to repayment of funds, the EAC may require future reporting by a state to ensure that proper internal controls and procedures have been established to prevent future problems.

States may appeal the EAC management decision. The EAC Commissioners serve as the appeal authority. A state has 30 days to appeal EAC's 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 conducted an audit of Texas's HAVA expenditures from May 1, 2003 through December 31, 2005 of HAVA funds received through Sections 101, 102, and 251. The Final Audit Report (Assignment No. E-HP-TX-06-06) was issued October 18, 2006 and identified two issues that require EAC resolution.

Audit Resolution

The following categories explain the results of the audit outlined in the final audit report and how the EAC reached its final audit resolution regarding the issues identified by the OIG.

Improper reporting of indirect costs (questioned costs)

We agree with the OIG findings that the State of Texas improperly charged \$180,609.00 in indirect costs against HAVA Section 101 funds and reported these charges in its previous Financial Status Report. At the time the reports were filed, there was no approved indirect cost rate applicable to Texas HAVA funds. Also, the amount of indirect costs was calculated incorrectly, if the rate proposed by the state was employed, resulting in excessive charges for indirect costs. The EAC has previously determined that states can retroactively request an indirect cost rate and after a final indirect cost rate is negotiated and approved by the EAC, a state may retroactively charge the approved rate to HAVA funds. EAC also agrees that the state initially calculated indirect costs incorrectly.

The established EAC audit resolution criteria would usually require the \$180,609.00 in questioned costs to be repaid to the state election fund. However, EAC has negotiated and approved an indirect cost rate with the State of Texas. Furthermore, Texas has already recalculated its indirect costs in accordance with this rate, reducing the amount charged to \$62,223.00, and has filed amended financial status reports reflecting the change. Therefore, no further action is necessary to resolve this audit issue.

Improper computing, reporting, and use of program income

The OIG audit findings show that “program income has not been properly computed, reported, and (if applicable) used to support HAVA-related activities (Report No. E-HP-TX-06-06, pg. 4).” In Texas, the counties have generated program income by leasing voting equipment for use in local elections. This equipment had been procured with HAVA funds. The state has requested EAC allow its counties to deduct the costs to generate gross program income, pursuant to the Common Rule, and report only net program income.

The Common Rule permits the Federal agency granting the funds to allow a grantee to set off costs incident to the program income from the gross program income, thereby reducing the amount of program income that must, in this case, be re-dedicated to use for purposes expressly allowed under Section 251 of HAVA. The concept of costs incident to the program income is more complicated than it may appear. There must be a determination of what costs are incident to the program income and which are not. Likewise, there must be documentation to justify these costs.

EAC has considered which costs are incident to program income. Costs associated with the following activities, if appropriately documented, may be deducted from the gross program income to determine the “net program income” that must be returned to the election fund for use consistent with Section 251 of HAVA:

- Costs of storing voting systems prorated to the local government and the particular election;
- Costs of maintaining and/or upgrading voting systems prorated to the local government and the particular election;
- Costs of transporting voting systems to polling places for the particular election;
- Costs of programming voting systems for the particular election;
- Costs associated with any election function performed by the county on behalf of the local government incident to the specific election, including but not limited to auditing the election, producing poll books for the election, and hiring and compensating poll workers.

While this list may not be exclusive, it represents EAC’s thinking on the types of costs that can be deducted from program income. If Texas has other costs that it believes should be considered as incident to the generation of program income, those types of costs, an explanation of how they are derived, and an argument in favor of why they should be considered incident to the program income and therefore deductible should be forwarded to the EAC for consideration.

The only appropriate treatment of program income is for the county that earns the program income during the grant period to dedicate the income to uses permitted under HAVA, Section 251. Section 251 mandates that requirements payments be used solely to implement the requirements of Title III, except that a state may use the funds for other improvements to the administration of federal elections if the state certifies to the EAC either that: (1) it has met the Title II requirements, or (2) it will use no more than the minimum amount of requirements payments awarded to each state (\$11, 596,803) for other improvements to the administration of federal elections. After the expiration of the grant period, the income generated by the lease of voting systems may be used by the county as it chooses.

The EAC grants Texas' request to report only net program income, in line with the guidance provided above and with the recently issued EAC advisory regarding program income. Counties must report all applicable program income to the state, which must report the statewide aggregate of county program income on its annual financial status reports in the program income section. County reports to the state concerning program income must be properly documented to be used in the event of future audits. If proper records for program income are not kept at the county level and available for future audits, any future findings of unaccounted program income may result in the state having to repay the state election fund for the calculated program income for non-compliant counties. Texas must provide documentation to the EAC within 30 calendar days to show the state has provided guidance to counties regarding the proper computation, use, and reporting of program income. This documentation also must disclose how the state will monitor the proper implementation of this guidance by the counties.

The state must ensure that counties retroactively calculate net program income for HAVA funds. If program income has been generated in the past, the state must revise any appropriate financial status reports to reflect any net program income. If the state determines that no program income was earned, then the state must submit a certification to EAC detailing the steps it took to make that determination and any supporting documentation.

Final Management Decision

EAC determines that the State of Texas has already made the appropriate adjustments for the \$180,609.00 in unapproved indirect costs to the state election fund and filed the appropriate amended reports. No further action is required on this issue.

The state must ensure that counties retroactively calculate net program income for HAVA funds. If program income has been generated in the past, the state must revise any appropriate financial status reports to reflect any net program income. If the state determines that no program income was earned, then the state must submit a certification to EAC detailing the steps it took to make that determination and any supporting documentation. Texas must also provide documentation to the EAC within 30 calendar days to show the state has provided appropriate guidance to counties regarding program income computation, use, and reporting. This documentation also must disclose how the state will monitor the proper implementation of this

guidance by the counties. As a result of the audit findings regarding program income and Texas' request for guidance, the EAC has issued an advisory (EAC Advisory 2007-002) providing information about HAVA program income to all states in order to prevent similar problems in future state audits.

If the state believes that anything in this final management decision is an adverse action and the state does not agree, the state shall have 30 days to appeal EAC's management decision. The appeal must be made in writing to the Chairman of the EAC. Within 30 days of receiving the appeal, the Commission may hold a hearing to consider the appeal, take evidence or testimony related to the appeal, and render a decision on the appeal, if appropriate at that time. The Commission will render a final and binding decision on the appeal no later than 60 days following the receipt of the appeal or the receipt of any requested additional information. If the state does not file an appeal, this decision will become final and binding at the expiration of the appeal period.

Final Audit Resolution Report

Texas Audit – Assignment No. E-HP-TX-06-06

Attachment 1



**U.S. ELECTION ASSISTANCE
COMMISSION
OFFICE OF INSPECTOR GENERAL**

FINAL AUDIT REPORT:

**ADMINISTRATION OF PAYMENTS
RECEIVED UNDER THE HELP AMERICA
VOTE ACT BY THE TEXAS SECRETARY
OF STATE**

**Report No.
E-HP-TX-06-06
October 2006**



U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL
1225 New York Ave. NW - Suite 1100
Washington, DC 20005

October 18, 2006

Memorandum

To: Thomas Wilkey
Executive Director

From: Curtis Crider *Curtis W. Crider*
Inspector General

Subject: Final Audit Report on the Administration of Payments Received Under the Help America Vote Act by the Texas Secretary of State (Assignment No. E-HP-TX-06-06)

This report presents the results of the subject audit. The objectives of the audit were to determine whether Texas (1) expended Help America Vote Act (HAVA) payments in accordance with the Act and related administrative requirements and (2) complied with the HAVA requirements for replacing punch card or lever voting machines, for appropriating a 5 percent match for requirements payments, for establishing an election fund, and for maintaining state expenditures for elections at a level not less than expended in fiscal year 2000.

The report concluded that Texas generally complied with requirements and identified two areas needing management attention, as follows:

- ✓ Texas financed indirect costs with HAVA funds before the Election Assistance Commission (EAC) approved the State's indirect cost rate. This resulted in the improper use of HAVA funds of \$180,609 for indirect costs which we classified as questioned costs.
- ✓ Texas needed to take additional steps to ensure that income from county leasing of HAVA-financed voting equipment is accurately computed, reported and properly used.

In an October 12, 2006 response to the draft report (Appendix 3), Texas stated that it had completed appropriate action to resolve the indirect costs finding and was waiting for EAC approval of its measures. Regarding program income, Texas requested approval from EAC to offset the cost of generating gross program income to determine net program income.

Please provide us with your written response to the recommendations included in this report by December 22, 2006. Your response should contain information on actions taken or planned, including target dates and titles of EAC officials responsible for implementing the recommendations

Section 5(a) of the Inspector General Act (5 U.S.C. § App.1) requires the Office of Inspector General to list this report in its semiannual report to Congress.

If you have any questions regarding this report, please call me at (202) 566-3125.

BACKGROUND

HELP AMERICA VOTE ACT

The Help America Vote Act of 2002 (HAVA or the Act) created the U.S. Election Assistance Commission (EAC or Commission) to assist states and insular areas with the administration of Federal elections and to provide funds to states to help implement these improvements. HAVA authorizes payments to states under Titles I and II, as follows:

- ✓ Title I, Section 101 payments are for activities such as complying with Title III of HAVA for uniform and nondiscriminatory election technology and administration requirements, improving the administration of elections for Federal office, educating voters, training election officials and poll workers, and developing a state plan for requirements payments.
- ✓ Title I, Section 102 payments are available only for the replacement of punchcard and lever action voting systems.
- ✓ Title II, Section 251 requirements payments are for complying with Title III requirements for voting system equipment; and for addressing provisional voting, voting information, statewide voter registration lists, and voters who register by mail.

Title II also requires that states must:

- ✓ Have appropriated funds “equal to 5 percent of the total amount to be spent for such activities [activities for which requirements payments are made].” (Section 253(b)(5)).
- ✓ “Maintain the expenditures of the State for activities funded by the [requirements] payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.” (Section 254 (a)(7)).
- ✓ Establish an election fund for amounts appropriated by the state “for carrying out the activities for which the requirements payment is made,” for the Federal requirements payments received, for “such other amounts as may be appropriated under law,” and for “interest earned on deposits of the fund.” (Section 254 (b)(1)).

**FUNDING FOR
TEXAS**

HAVA funds received and expended by Texas are as follows:

<i>TYPE OF PAYMENT</i>	<i>AMOUNT RECEIVED</i>	<i>OUTLAYS</i>	
		<i>AMOUNT</i>	<i>AS OF¹</i>
101	\$17,206,595	\$841,251	12/31/05
102	6,269,521	4,219,039	12/31/05
251	160,691,949	24,852,392	09/30/05
Totals	\$184,168,065	\$29,912,682	

**FINANCIAL
MANAGEMENT
REQUIREMENTS**

Within the Office of the Texas Secretary of State, HAVA programs are administered by the Elections Division and the Administrative Services Division. To account for the HAVA payments, the Act requires recipients to maintain records that are consistent with sound accounting principles, that fully disclose the amount and disposition of the payments, that identify project costs financed with the payments and with other sources, and that will facilitate an effective audit.

In addition, the Commission notified states of other management requirements. Specifically, that states must:

- ✓ Comply with the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* (also known as the “Common Rule”).
- ✓ Expend payments in accordance with cost principles for establishing the allowability or unallowability of certain items of cost for federal participation issued by the Office of Management and Budget (OMB) in Circular A-87.
- ✓ Submit annual financial reports on the use of Title I and Title II payments.

OBJECTIVE

The objectives of our audit were to determine whether Texas (1) expended HAVA payments in accordance with the Act and related administrative requirements and (2) complied with the HAVA requirements for replacing punch card or lever voting machines, for establishing an election fund, for appropriating a 5 percent match for requirements payments, and for maintaining state expenditures for elections at a level not less than expended in fiscal year 2000. Specifically, we audited expenditures from May 1, 2003 through

¹ EAC requires states to submit annual reports on the expenditure of HAVA Sections 101, 102, and 251 funds. For Sections 101 and 102, reports are due on February 28 for the activities of the previous calendar year. For Section 251, reports are due by March 30 for the activities of the previous fiscal year ending on September 30.

December 31, 2005, and reviewed controls to assess their adequacy over the expenditure of HAVA funds. We also evaluated compliance with certain HAVA requirements for the following activities:

- ✓ Accumulating financial information reported to EAC on the Financial Status Reports (Standard Forms number 269).
- ✓ Accounting for property.
- ✓ Purchasing goods and services.
- ✓ Accounting for salaries.
- ✓ Charging indirect costs.
- ✓ Spending by counties.

We also determined whether Texas had complied with the requirements in HAVA applicable to Section 251 requirements payments for:

- ✓ Establishing and maintaining the election fund.
- ✓ Appropriating funds equal to five percent of the amount necessary for carrying out activities financed with Section 251 requirements payments.
- ✓ Sustaining the State's level of expenditures for elections.

RESULTS OF AUDIT

SUMMARY

We concluded that Texas (1) generally administered HAVA funds in accordance with requirements and (2) properly established the State election fund, appropriated and deposited into the election fund its matching monies, and sustained the appropriate level of state expenditures for elections. Also, our audit identified two areas regarding the management of HAVA funds that need further attention. First, Texas financed indirect costs with HAVA funds before EAC approved the State's indirect cost rate. This resulted in the improper use of HAVA funds of \$180,609 for indirect costs which we classified as questioned costs. Second, we found that the State needs to take additional steps to ensure that income from county leasing of HAVA-financed voting equipment is accurately computed, reported and properly used.

INDIRECT COSTS

Texas reported on the Financial Status Report (SF-269) for HAVA Section 101 funds for the period ending December 31, 2005, the expenditure of \$180,609 for indirect costs. The SF-269 indicated that the indirect costs were based on a provisional rate of 49.768 percent applied to a base of \$362,901. Although Texas had submitted its

indirect cost rate proposal to EAC, EAC had not yet approved the rate. Federal cost principles contained in OMB Circular A-87 require an indirect cost rate to be approved by the cognizant Federal agency (EAC) before the rate is used.² As such, we questioned the use of HAVA funds for indirect costs of \$180,609.

Notwithstanding the lack of an approved indirect cost rate, we noted that Texas incorrectly calculated indirect costs. Specifically, Texas applied the proposed rate of 49.768 percent to total direct costs less payments to counties resulting in the \$180,609 charge for indirect costs. However, the Texas indirect cost proposal specifies that the rate will be applied to only personal services costs, which would result in a lesser charge for indirect costs.

Texas made adjustments to its reported indirect costs after we informed them of our finding. On July 6, 2006, Texas submitted amended SF-269s to EAC in which it reduced its indirect charge from \$180,609 to \$62,223. Texas based its reduction on the application of its current pending rate of 48.548 percent applicable to personal services of \$128,168. This calculation reflects the proper application of the rate. Therefore, if EAC approves an indirect cost rate of 48.548 percent for fiscal years 2004 and 2005, Texas has made the proper adjustments and no further action is necessary regarding this matter.

In response to this finding, Texas stated that it had:

received the EAC Cognizant Agency Indirect Cost Negotiation Agreement Filing Ref: TX-SFY05-06 dated September 19, 2006 approving the indirect cost rate of 48.548 percent. As noted in the audit report, the SOS has already made the accounting adjustment to reflect the 48.548 percent rate. Accordingly, the SOS requests that the EAC conclude that no further action is necessary.

Recommendation:

1. We recommend that EAC resolve the questioned costs of \$180,609.

***PROGRAM
INCOME***

Program income has not been properly computed, reported and (if applicable) used to support HAVA-related activities. According to the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* (41 CFR 105-71.125), program income is defined as gross income received from a grant-supported activity during the grant period and includes items such as

² OMB Circular A-87, Attachment E, Part E.1 requires indirect cost rates to be reviewed, negotiated and approved by the cognizant Federal agency before it will be accepted and used by all Federal agencies.

fees from the use or rental of real or personal property acquired with grant funds. In the case of the HAVA program, the grant-supported activity is the acquisition of voting machines. And, according to a December 28, 2005 EAC letter to the Texas Secretary of State, the grant period started on the date HAVA funds were disbursed to the State (May 1, 2003 for 102 funds and June 15, 2004 for 251 funds) and will end on the date that the State and/or a political subdivision of the State expends all the funds received (which has yet to occur).

The Uniform Administrative Requirements also stipulate, in part, that the costs incident to the generation of program income may be deducted from gross income to determine program income, if authorized by Federal regulations or the grant agreement.

Computation: Three of the four counties we visited during our audit collected revenue that included program income. For example, Texas granted Harris County about \$21 million as reimbursement for the purchase of HAVA-compliant voting equipment. Harris County has subsequently entered into lease agreements with local governments, such as the City of Houston and county school districts, to support elections. The lease agreements included fees for election judges, supervisors, clerks, training booklets, postage, technical support, polling places, printing and supplies, rental of voting equipment, and several similar items. Harris County lease revenues beginning in fiscal year 2004 are as follows:

<u>Fiscal Year</u>	<u>Amount</u>
2003 - 2004	\$4,423,593
2004 - 2005	3,924,776
2005 - 2006	2,538,523
2006 - 2007	<u>178,095</u>
Total	<u>\$11,064,987</u>

To compute program income, an analysis must be performed that:

- ✓ Determines the specific grant periods for 102- and 251-funded voting equipment included in the leases. (The periods will differ because the funds were received by Texas on different dates.)
- ✓ Determines gross revenues applicable to only the use of HAVA-funded equipment from total lease revenue.
- ✓ Identifies the costs of generating the gross program income

applicable to the HAVA-funded activities.

- ✓ Reduces, subject to EAC approval, gross program income by the applicable costs.

Reporting: Both the federal Standard Form 269 and the Texas online grant application, approval, and payment system provide for reporting program income. However, none of the counties we visited reported any program income. Texas should ensure that its counties accurately report program income for subsequent reporting to EAC.

Use: In its December 28, 2005 letter to Texas, EAC said that counties which generate program income should dedicate the income to uses permitted under HAVA, Section 251. In this regard, we noted that Harris County deposited the revenue from its support of local elections into its general fund. Therefore, counties with program income should establish a separate fund that reserves the income for uses only as authorized under HAVA, Section 251.

Although Texas incorporated into its grant agreements the Uniform Administrative Requirements and also had a separate section in the agreements on program income, its guidance was prepared before EAC defined the grant period. Thus, state guidance did not identify the parameters for determining program income.

Recommendations:

We recommend that EAC ensure that the Texas Office of the Secretary of State:

2. Provides guidance to counties on computing, reporting, and using program income.
3. Ensures that counties follow the guidance for program income.

SCOPE AND METHODOLOGY

To accomplish our objective, we reviewed:

- ✓ The prior single audit report and other reviews related to the Secretary of State's financial management systems and the HAVA program for the last 2 years.
- ✓ Policies, procedures and regulations for the Texas Secretary of State's management and accounting systems as they relate to the administration of HAVA programs.
- ✓ Inventory lists of equipment purchased with HAVA funds.
- ✓ Major purchases.
- ✓ Supporting documents maintained in the accounting system for payments made with HAVA funds.
- ✓ Support for reimbursements to counties.
- ✓ Certain Texas laws that impacted the election fund.
- ✓ Appropriations and expenditure reports for State funds used to maintain the level of expenses for elections at least equal to the amount expended in fiscal year 2000 and to meet the five percent matching requirement for section 251 requirements payments.
- ✓ Information regarding source/supporting documents kept for maintenance of effort and matching contributions.

We also interviewed appropriate Division employees about the organization and operation of the HAVA program.

We conducted our review in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. As such, we included tests and procedures as considered necessary under the circumstances to evaluate the Division's controls over the administration of HAVA payments. Because of inherent limitations, a study and evaluation made for the limited purposes of our review would not necessarily disclose all weaknesses in administering HAVA payments.

MONETARY IMPACT

<u><i>Description</i></u>	<u><i>Questioned Costs</i></u>
Indirect Costs	<u>\$180,609</u>

The State of Texas



Elections Division
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Austin, Texas 78711-2060
www.sos.state.tx.us

Phone: 512-463-5650
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TTY: 7-1-1
(800) 252-VOTE (8683)

Roger Williams
Secretary of State

October 12, 2006

Mr. Roger La Rouché
US Election Assistance Commission Acting Inspector General
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

RE: HELP AMERICA VOTE ACT "HAVA" REPORT NO. E-HP-TX-06-06

Dear Mr. La Rouché:

Enclosed for your review are the written comments to the findings issued in the draft report entitled "Administration of Payments Received Under the Help America Vote Act by the Texas Secretary of State" Assignment No. E-HP-TX-06-06.

Thank you for your visit to Texas and the assistance you provided to my staff. If you have any additional questions, please do not hesitate to contact my office.

Sincerely,


Roger Williams
Texas Secretary of State

Cc: Paul DeGregorio, Chairman US Election Assistance Commission
Tom Wilkey, Executive Director US Election Assistance Commission

The State of Texas



Elections Division
P.O. Box 12060
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Roger Williams
Secretary of State

October 12, 2006

Mr. Roger La Rouche
US Election Assistance Commission Acting Inspector General
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

RE: HELP AMERICA VOTE ACT "HAVA" REPORT NO. E-HP-TX-06-06

Dear Mr. La Rouche:

Enclosed for your review are the written comments to the findings issued in the draft report entitled "Administration of Payments Received Under the Help America Vote Act by the Texas Secretary of State" Assignment No. E-HP-TX-06-06.

Thank you for your visit to Texas and the assistance you provided to my staff. If you have any additional questions, please do not hesitate to contact my office.

Sincerely,

Roger Williams
Texas Secretary of State

Cc: Paul DeGregorio, Chairman US Election Assistance Commission
Tom Wilkey, Executive Director US Election Assistance Commission

TEXAS SECRETARY OF STATE COMMENTS
DRAFT AUDIT REPORT
ADMINISTRATION OF PAYMENTS RECEIVED UNDER
THE HELP AMERICA VOTE ACT BY THE TEXAS SECRETARY OF STATE
ASSIGNMENT NO. E-HP-TX-06-06

INDIRECT COSTS – AUDIT RESULT

The EAC Office of Inspector General reported the following:

Texas reported on the Financial Status Report (SF-269) for HAVA Section 101 funds for the period ending December 31, 2005, the expenditure of \$180,609 for indirect costs. The SF-269 indicated that the indirect costs were based on a provisional rate of 49.768 percent applied to a base of \$362,901. Although Texas had submitted its indirect cost rate proposal to EAC, EAC had not yet approved the rate. Federal cost principles contained in OMB Circular A-87 require an indirect cost rate to be approved by the cognizant Federal agency (EAC) before the rate is used.¹ As such, we questioned the use of HAVA funds for indirect costs of \$180,609.

Notwithstanding the lack of an approved indirect cost rate, we noted that Texas incorrectly calculated indirect costs. Specifically, Texas applied the proposed rate of 49.768 percent to total direct costs less payments to counties resulting in the \$180,609 charge for indirect costs. However, the Texas indirect cost proposal specifies that the rate will be applied to only personal services costs, which would result in a lesser charge for indirect costs.

Texas made adjustments to its reported indirect costs after we informed them of our finding. On July 6, 2006, Texas submitted amended SF-269s to EAC in which it reduced its indirect charge from \$180,609 to \$62,223. Texas based its reduction on the application of its current pending rate of 48.548 percent applicable to personal services of \$128,168. This calculation reflects the proper application of the rate. Therefore, if EAC approves an indirect cost rate of 48.548 percent fiscal years 2004 and 2005, Texas has made the proper adjustments and no further action is necessary regarding this matter.

Recommendation:

We recommend that EAC resolve the questioned costs of \$180,609.

SOS Management Response:

The SOS received the EAC Cognizant Agency Indirect Cost Negotiation Agreement Filing Ref: TX-SFY05-06 dated September 19, 2006 approving the indirect cost rate of 48.548 percent. As noted in the audit result, the SOS has already made the accounting adjustment to reflect the 48.548 percent rate. Accordingly, the SOS requests that the EAC conclude that no further action is necessary.

PROGRAM INCOME – AUDIT RESULT

The EAC Office of Inspector General reported the following:

Program income has not been properly computed, reported and (if applicable) used to support HAVA-related activities. According to the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* (41 CFR 105-71.125), program income is defined as gross income received from a grant-supported activity during the grant period and includes items such as fees from the use or rental of real or personal property acquired with grant funds. In the case of the HAVA program, the grant-supported activity is the acquisition of voting machines. And, according to a December 28, 2005 EAC letter to the Texas Secretary of State, the grant period started on the date HAVA funds were

¹ OMB Circular A-87, Attachment E, Part E.1 requires indirect cost rates to be reviewed, negotiated and approved by the cognizant Federal agency before it will be accepted and used by all Federal agencies.

disbursed to the State (May 1, 2003 for 102 funds and June 15, 2004 for 251 funds) and will end on the date that the State and/or a political subdivision of the State expends all the funds received (which has yet to occur).

The Uniform Administrative Requirements also stipulate, in part, that the costs incident to the generation of program income may be deducted from gross income to determine program income, if authorized by Federal regulations or the grant agreement.

Computation: Three of the four counties we visited during our audit collected revenue that included program income. For example, Texas granted Harris County about \$21 million as reimbursement for the purchase of HAVA-compliant voting equipment. Harris County has subsequently entered into lease agreements with local governments, such as the City of Houston and county school districts, to support elections. The lease agreements included fees for election judges, supervisors, clerks, training booklets, postage, technical support, polling places, printing and supplies, rental of voting equipment, and several similar items. Harris County lease revenues beginning in fiscal year 2004 are as follows:

<u>Fiscal Year</u>	<u>Amount</u>
2003 – 2004	\$4,423,593
2004 – 2005	3,924,776
2005 – 2006	2,538,523
2006 – 2007	<u>178,095</u>
Total	<u>\$11,064,987</u>

To compute program income, an analysis must be performed that:

- ✓ Determines the specific grant periods for 102- and 251- funded voting equipment included in the leases. (The periods will differ because the funds were received by Texas on different dates.)
- ✓ Determines gross revenues applicable to only the use of HAVA-funded equipment from total lease revenue.
- ✓ Identifies the costs of generating the gross program income applicable to the HAVA-funded activities.
- ✓ Reduces, subject to EAC approval, gross program income by the applicable costs.

Reporting: Both the federal Standard Form 269 and the Texas online grant application, approval, and payment system provide for reporting program income. However, none of the counties we visited reported any program income. Texas should ensure that its counties accurately report program income for subsequent reporting to the EAC.

Use: In its December 28, 2005 letter to Texas, the EAC said that counties which generate program income should dedicate the income to uses permitted under HAVA, Section 251. In this regard, we noted that Harris County deposited the revenue from its support of local elections into its general fund. Therefore, counties with program income should establish a separate fund that reserves the income for uses only as authorized under HAVA, Section 251.

Although Texas incorporated into its grant agreements the Uniform Administrative Requirement and also has a separate section in the agreements on program income, its guidance was prepared before the EAC defined the grant period. Thus, state guidance did not identify the parameters for determining program income.

Recommendation:

We recommend that the EAC ensure that the Texas Office of the Secretary of State:

1. Provides guidance to counties on computing, reporting, and using program income.
2. Ensures that counties follow the guidance for program income.

SOS Management Response:

Pursuant to the Uniform Administrative Requirements, gross program income must be reduced, subject to EAC approval, by the costs to generate the gross program income. In other words, the costs to maintain the HAVA-compliant voting equipment should reduce the program income generated by leasing the equipment.

The SOS submitted a letter dated August 1, 2006 to the EAC requesting that Texas be allowed to deduct costs incurred as a result of earning program income. Furthermore, it is our estimation that the expenses incurred by counties as a result of supporting and maintaining the new HAVA-mandated equipment exceed earned program income. Pending the response to that inquiry, the SOS will instruct the counties on how to compute, report, and use program income. In addition, the SOS reviews compliance with program income guidelines as part of its current monitoring program.

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