

If the touchscreens that are being replaced were purchased with HAVA funding, then further HAVA funding may not be used for this purpose. If the touchscreens were purchased from state funding, then HAVA funding could be used for this purpose. I would assume we would follow the same guidelines in #1 concerning both the 251 and 101 funding.

And, of course, we are free to use state funding (or funding from the purchase of the systems) to upgrade as long as we remain in compliance with federal and state guidelines.

Thank you (and Julie) for taking the time to speak with me today. I appreciate the time and quick response. I look forward to hearing back from you.

Sincerely,

**Amy K. Tuck, Esq.**

Director, Division of Elections

Florida Department of State

The R.A. Gray Building

500 South Bronough Street, Room 316

Tallahassee, Florida 32399

850.245.6200 phone

850.245.6217 fax

020648



"Tuck, Amy K."  
<AKTuck@dos.state.fl.us>  
03/14/2007 11:30 AM

To ecortes@eac.gov  
cc  
bcc

Subject RE: HAVA Funding

History

This message has been replied to and forwarded.

Sorry – one more issue. There is some consideration of using an “AutoMARK” system instead of the VVPAR. I would assume this would follow along the same lines as the considerations for the VVPAR. Let me know if you need more information on that before responding.

Thanks again.

---

**From:** Tuck, Amy K.  
**Sent:** Wednesday, March 14, 2007 11:25 AM  
**To:** ecortes@eac.gov  
**Subject:** HAVA Funding  
**Importance:** High

Edgardo,

I wanted to summarize our earlier conversation to make sure I am clear on how to proceed on this issue.

1. VVPAR (Voter verifiable paper audit record)

These can be paid for from HAVA funding under certain circumstances although this is not a requirement in HAVA and does not meet Title 3 requirements.

Section 251 funding can be used for Title 3 activities or for improving the administration of elections for federal office. Under this guideline, Florida can do the following:

- a. Certify that we have met the requirements of Title 3 and use the remaining 251 funds for improving federal elections.
- b. Or if we have not met the requirements for Title 3, we can certify that we will not use more than the minimum payment (est. 11.6m) for “non-Title 3” activities.

As a state, we did certify in August, 2006 that we have met the requirements for Title 3, so we would be in position a. (above). I would assume that we could then use the Section 251 funds to provide voter verifiable paper audit record devices for touchscreens under the argument that it is to improve federal elections.

Section 101 funding can be used to improve administration of elections for federal office. If Florida decided to use this funding, we would not have to certify to the EAC.

2. Optical Scan

If the touchscreens that are being replaced were purchased with HAVA funding, then further HAVA funding may not be used for this purpose. If the touchscreens were purchased from state funding, then HAVA funding could be used for this purpose. I would assume we would follow the same guidelines in #1 concerning both the 251 and 101 funding.

And, of course, we are free to use state funding (or funding from the purchase of the systems) to upgrade as long as we remain in compliance with federal and state guidelines.

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To ecortes@eac.gov  
cc  
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020651



"Tuck, Amy K."  
<AKTuck@dos.state.fl.us>  
03/14/2007 10:42 AM

To ecortes@eac.gov  
cc  
bcc

Subject RE: Response: Using HAVA funds to replace voting equipment

History

 This message has been replied to.

I'm in the office now – meeting got moved to 12. If you have time, I can give you a call right now.

---

**From:** ecortes@eac.gov [mailto:ecortes@eac.gov]  
**Sent:** Wednesday, March 14, 2007 10:13 AM  
**To:** Tuck, Amy K.  
**Subject:** RE: Response: Using HAVA funds to replace voting equipment

I have a meeting at noon but we can do it after your 11am, depending on when that is over. If not, we can schedule for sometime this afternoon. Our general counsel will be joining us on the call.

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

"Tuck, Amy K." <AKTuck@dos.state.fl.us>

03/14/2007 08:43 AM

To ecortes@eac.gov  
cc

Subject RE: Response: Using HAVA funds to replace voting equipment

That would be great. I have a meeting at 11 but am otherwise here this

020652

morning. Let me know your schedule and we'll call you.

-----Original Message-----

From: ecortes@eac.gov [mailto:ecortes@eac.gov]  
Sent: Wednesday, March 14, 2007 8:36 AM  
To: Tuck, Amy K.  
Subject: Re: Response: Using HAVA funds to replace voting equipment

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----- Original Message -----

From: "Tuck, Amy K." [AKTuck@dos.state.fl.us]  
Sent: 03/14/2007 08:30 AM AST  
To: Edgardo Cortes  
Subject: RE: Response: Using HAVA funds to replace voting equipment

Thank you. I guess we are all a little confused. We had originally thought we could use some funding for the optical scan part of the legislation but not for the vvpats. Based on this response it would seem that we could not use any of the funding for this legislation.

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From: ecortes@eac.gov [mailto:ecortes@eac.gov]  
Sent: Wednesday, March 14, 2007 8:14 AM  
To: Tuck, Amy K.  
Cc: Leonard, Barbara M.  
Subject: Fw: Response: Using HAVA funds to replace voting equipment  
Importance: High

Amy,

I am on my way to work but am delayed due to traffic. However, I am forwarding you this response I sent to Bob West from the FL legislature who asked this question on Monday. Please read this over and let me know if it helps. Thanks.

----- Original Message -----

From: Edgardo Cortes  
Sent: 03/12/2007 02:41 PM EDT  
To: bob.west@myfloridahouse.gov  
Subject: Response: Using HAVA funds to replace voting equipment

Mr. West,

You requested information this morning via telephone on whether Florida could use its remaining HAVA \$251 funds to replace DRES previously purchased with HAVA funds with optical scan voting systems. Since you have requested an answer by this afternoon to assist in your legislative session and a specific answer to your question would require us to collect additional information and would take additional time, I am including a response sent to Washington State regarding a similar question. Please review this and see if it is sufficient for what you need. I have also included an explanation of acceptable uses of HAVA funds as well as other federal rules and regulations that are applicable to the use of HAVA funds. I have highlighted the sections most closely related to your request. Please let me know if you have any additional questions or if you need further clarification. Thank you.

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## Sources and Uses of HAVA Funds

There are three sources of funding provided by HAVA for use to improve the administration of federal elections and to meet the requirements of Title III of HAVA (specifically to implement provisional voting, to improve voting technology, to develop and implement a statewide voter registration database, to provide information to voters, and to verify and identify voters according to the procedures set forth in HAVA). Those sources are Section 101, Section 102 and Section 251 funds.

The funds received by a state under Section 101 can be used for the following purposes:

- A. Complying with the requirements under title III.
- B. Improving the administration of elections for Federal office.
- C. Educating voters concerning voting procedures, voting rights, and voting technology.
- D. Training election officials, poll workers, and election volunteers.
- E. Developing the State plan for requirements payments to be submitted under part 1 of subtitle D of title II.
- F. Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.
- G. Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.
- H. Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

Section 102 funds can be used ONLY for the purposes of replacing punch card and lever voting systems with voting systems that comply with Section 301(a) of HAVA.

Section 251 funds can be used to implement any of the Title III requirements, including purchasing compliant voting systems, implementing provisional voting, providing information to voters in the polling place, developing and implementing a statewide voter registration list, and identifying voters. In addition, states and local governments can use HAVA funds to improve the administration of elections for Federal office when one of two conditions is met: (1) the state has met the requirements of Title III; or (2) the state notifies EAC of its intention to use an amount not to exceed the amount of the minimum payment that the state either did or could have received under the Section 252 formula for that purpose.

The uses of Section 251 funds (and Section 101 funds, when used to meet the requirements of Title III) must be accounted for in the state's plan as originally submitted or later amended. Any material change in the use of 251 funds (and Section 101 funds as specified above) from the approved state plan will require the state to revise its plan and submit the revisions to the EAC for publication and approval.

Costs must be Allowable, Allocable and Reasonable

In addition to the restrictions on the uses of funds imposed by HAVA, when these funds were distributed by either the General Services

Administration (GSA) or the EAC, those funds were made subject to several circulars developed by the Office of Management and Budget, specifically OMB Circulars A-87 (governs the use of federal funds to purchase goods for state and local governments), A-102 (governs the management of federal funds for state and local governments), A-122 (governs the use of federal funds to purchase goods for non-profits) and A-133 (dealing with audits). These circulars further restrict the appropriate uses of Federal funds requiring generally that costs paid for by HAVA funds are allowable, allocable (directly or through an indirect cost rate), and reasonable.

#### Allowable Costs

A cost is allowable if it is necessary for the proper and efficient performance and administration of the federally sponsored program. Costs that fall within the specifically identified uses of HAVA funds in either Sections 101, 102 or Title III are allowable.

#### Allocable Costs

A state can allocate an expense by charging only a portion equal to the percentage of use for HAVA related purposes to the HAVA grant. This can be accomplished by either using only that percentage of HAVA fund per unit cost or by seeking reimbursement from the other departments within the state for their portion of the usage. The question of allocability arises generally in one of two circumstances. First, is the cost allocable to the program to which it is billed? Just because a cost is allowable under one or more funding programs of HAVA do not mean that it is allocable to each and every program. For example, if an expense is not directly related to meeting any of the Title III requirements, it is allocable only to Section 101 funds and Section 251 funds pursuant to the provisions of Section 251(b) that allow for the use of Title II funds for the improvement of the administration of elections for federal office only up to the minimum payment amount. Second, is the cost allocable to benefit a Federal election? Most of the uses identified in HAVA require the funds to be used to benefit a Federal election. Thus, costs that strictly benefit a state or local election are not allocable to the HAVA funding programs.

#### Indirect Costs

In some circumstances, the expense may be an indirect one that can be covered by an indirect cost rate. In that instance, the state may submit an indirect cost rate proposal in which it identifies and supplies information regarding direct and indirect costs of operation. Circular A-87 and ASMB C-10, Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government, provide guidance on negotiating indirect costs rates.

An indirect cost rate provides a state with the basis for allocating administrative costs that are inextricably linked to other services provided by the Secretary of State such that they cannot easily be segregated into those costs that directly benefit the HAVA funding program and those that do not. For example, the cost of printers and copy machines that are used for both Federal and State election activities and that are below the State's threshold for capitalized equipment may be expensed and included in the indirect cost pool. On the other hand, if you include an asset in the fixed capital assets section of your balance sheet and depreciate the asset, you should consider the asset as a capital expenditure and include only depreciation expense in the pool. [Click here](#) to see a power point presentation on indirect costs presented by KPMG on behalf of the EAC.

## Reasonable Costs

A state must do some assessment as to whether the costs are reasonable. This is done by determining that the cost is justified based upon factors such as the frequency of use, leasing versus purchasing, and actual cost for the good or service.

Excerpt from response to Washington State, sent August 10, 2006:

"The question of the Snohomish County audio units brings up several issues. The issue as I understand it is that Snohomish County bought some accessible voting systems with HAVA funds that do not meet the 2002 requirements. Although it is possible, it is also unlikely that a voting system could be compliant with HAVA Section 301(a) and not meet the 2002 FEC Voting System Standards (particularly in regards to the tested error rate). Please see EAC Advisory 2005-004 for more information on helping to determine whether a particular system meets the standards of Section 301(a).

If the county purchased equipment which was not compliant with HAVA section 301(a), then HAVA funds could not be used to purchase these systems. Any use of HAVA funds for the purpose of purchasing voting equipment that is not compliant with 301(a) is a misuse of HAVA funds and should be reimbursed to the state Election Fund. While Snohomish County did take initiative to purchase equipment early, it turns out that this equipment is not usable. If this is the case, then HAVA funds can be used for the purchase of replacement voting systems.

If the county has already purchased a voting system which is compliant with Section 301(a) and are simply replacing the system because they are not happy with it or feel they could get something better, then this cannot be paid for using HAVA funds. Replacement of newly purchased equipment that is HAVA compliant and in good working order does not appear to meet the test of reasonableness for using federal funds.

Purchasing voting systems is an acceptable use of HAVA funds. You must determine which of the above scenarios Snohomish County falls into in order to decide which system HAVA funds will be used for. The other system should be paid for with non-HAVA funds. In either scenario, HAVA funds cannot be used to purchase both voting systems."

Edgardo Cortés  
Election Research Specialist  
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1225 New York Ave. NW, Ste. 1100  
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202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

020656



"Tuck, Amy K."  
<AKTuck@dos.state.fl.us>  
03/14/2007 08:43 AM

To ecortes@eac.gov  
cc  
bcc  
Subject RE: Response: Using HAVA funds to replace voting equipment

History

✉ This message has been replied to

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-----Original Message-----

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Sent: Wednesday, March 14, 2007 8:36 AM  
To: Tuck, Amy K.  
Subject: Re: Response: Using HAVA funds to replace voting equipment

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To: Tuck, Amy K.  
Cc: Leonard, Barbara M.  
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Importance: High

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To: bob.west@myfloridahouse.gov  
Subject: Response: Using HAVA funds to replace voting equipment

Mr. West,

You requested information this morning via telephone on whether Florida could use its remaining HAVA \$251 funds to replace DREs previously

020657

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020658

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202-566-3127 fax  
ecortes@eac.gov

020661



"Tuck, Amy K."  
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To ecortes@eac.gov  
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- H. Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

Section 102 funds can be used ONLY for the purposes of replacing punch card and lever voting systems with voting systems that comply with Section 301(a) of HAVA.

Section 251 funds can be used to implement any of the Title III requirements, including purchasing compliant voting systems, implementing provisional voting, providing information to voters in the polling place, developing and implementing a statewide voter registration list, and identifying voters. In addition, states and local governments can use HAVA funds to improve the administration of elections for Federal office when one of two conditions is met: (1) the state has met the requirements of Title III; or (2) the state notifies EAC of its intention to use an amount not to exceed the amount of the minimum payment that the state either did or could have received under the Section 252 formula for that purpose.

The uses of Section 251 funds (and Section 101 funds, when used to meet the requirements of Title III) must be accounted for in the state's plan as originally submitted or later amended. Any material change in the use of 251 funds (and Section 101 funds as specified above) from the approved state plan will require the state to revise its plan and submit the revisions to the EAC for publication and approval.

Costs must be Allowable, Allocable and Reasonable

In addition to the restrictions on the uses of funds imposed by HAVA, when these funds were distributed by either the General Services Administration (GSA) or the EAC, those funds were made subject to several circulars developed by the Office of Management and Budget, specifically OMB Circulars A-87 (governs the use of federal funds to purchase goods for state and local governments), A-102 (governs the management of federal funds for state and local governments), A-122 (governs the use of federal funds to purchase goods for non-profits) and A-133 (dealing with audits). These circulars further restrict the appropriate uses of Federal funds requiring generally that costs paid for by HAVA funds are allowable,

020663

allocable (directly or through an indirect cost rate), and reasonable.

#### Allowable Costs

A cost is allowable if it is necessary for the proper and efficient performance and administration of the federally sponsored program. Costs that fall within the specifically identified uses of HAVA funds in either Sections 101, 102 or Title III are allowable.

#### Allocable Costs

A state can allocate an expense by charging only a portion equal to the percentage of use for HAVA related purposes to the HAVA grant. This can be accomplished by either using only that percentage of HAVA fund per unit cost or by seeking reimbursement from the other departments within the state for their portion of the usage. The question of allocability arises generally in one of two circumstances. First, is the cost allocable to the program to which it is billed? Just because a cost is allowable under one or more funding programs of HAVA do not mean that it is allocable to each and every program. For example, if an expense is not directly related to meeting any of the Title III requirements, it is allocable only to Section 101 funds and Section 251 funds pursuant to the provisions of Section 251(b) that allow for the use of Title II funds for the improvement of the administration of elections for federal office only up to the minimum payment amount. Second, is the cost allocable to benefit a Federal election? Most of the uses identified in HAVA require the funds to be used to benefit a Federal election. Thus, costs that strictly benefit a state or local election are not allocable to the HAVA funding programs.

#### Indirect Costs

In some circumstances, the expense may be an indirect one that can be covered by an indirect cost rate. In that instance, the state may submit an indirect cost rate proposal in which it identifies and supplies information regarding direct and indirect costs of operation. Circular A-87 and ASMB C-10, Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government, provide guidance on negotiating indirect costs rates.

An indirect cost rate provides a state with the basis for allocating administrative costs that are inextricably linked to other services provided by the Secretary of State such that they cannot easily be segregated into those costs that directly benefit the HAVA funding program and those that do not. For example, the cost of printers and copy machines that are used for both Federal and State election activities and that are below the State's threshold for capitalized equipment may be expensed and included in the indirect cost pool. On the other hand, if you include an asset in the fixed capital assets section of your balance sheet and depreciate the asset, you should consider the asset as a capital expenditure and include only depreciation expense in the pool. [Click here to see a power point presentation on indirect costs presented by KPMG on behalf of the EAC.](#)

#### Reasonable Costs

A state must do some assessment as to whether the costs are reasonable. This is done by determining that the cost is justified based upon factors such as the frequency of use, leasing versus purchasing, and actual cost for the good or service.

020664

Excerpt from response to Washington State, sent August 10, 2006:

"The question of the Snohomish County audio units brings up several issues. The issue as I understand it is that Snohomish County bought some accessible voting systems with HAVA funds that do not meet the 2002 requirements. Although it is possible, it is also unlikely that a voting system could be compliant with HAVA Section 301(a) and not meet the 2002 FEC Voting System Standards (particularly in regards to the tested error rate). Please see EAC Advisory 2005-004 for more information on helping to determine whether a particular system meets the standards of Section 301(a).

If the county purchased equipment which was not compliant with HAVA section 301(a), then HAVA funds could not be used to purchase these systems. Any use of HAVA funds for the purpose of purchasing voting equipment that is not compliant with 301(a) is a misuse of HAVA funds and should be reimbursed to the state Election Fund. While Snohomish County did take initiative to purchase equipment early, it turns out that this equipment is not usable. If this is the case, then HAVA funds can be used for the purchase of replacement voting systems.

If the county has already purchased a voting system which is compliant with Section 301(a) and are simply replacing the system because they are not happy with it or feel they could get something better, then this cannot be paid for using HAVA funds. Replacement of newly purchased equipment that is HAVA compliant and in good working order does not appear to meet the test of reasonableness for using federal funds.

Purchasing voting systems is an acceptable use of HAVA funds. You must determine which of the above scenarios Snohomish County falls into in order to decide which system HAVA funds will be used for. The other system should be paid for with non-HAVA funds. In either scenario, HAVA funds cannot be used to purchase both voting systems."

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

020665



"Tuck, Amy K."  
<AKTuck@dos.state.fl.us>  
03/13/2007 11:00 PM

To ecortes@eac.gov  
cc "Leonard, Barbara M." <BMLeonard@dos.state.fl.us>  
bcc

Subject HAVA Funding for Voter Verifiable Paper Audit Records

History:

 This message has been replied to.

Mr. Cortes,

Florida is requesting guidance on whether HAVA Section 251 funds can be used to purchase optical scan voting systems to replace existing touchscreen voting systems that are compliant with HAVA Section 301(a).

Prior to passage of the Help America Vote Act, during the 2001 Legislative Session, the Florida Legislature passed the Florida Election Reform Act of 2001, Chapter 2001-40, Laws of Florida. The legislation included an appropriation of funds to be distributed to counties for voting systems assistance.

The funds were distributed to counties in equal installments over a two year period to assist with purchasing voting systems to replace lever and punch cards machines as well as paper ballot voting systems. Florida distributed \$24,093,750 to assist counties with purchasing new voting systems.

At the time that counties were replacing voting systems to comply with changes to Florida law, fifteen counties opted to purchase touchscreen voting systems and the remaining counties either purchased or already had precinct-based optical scan voting systems.

We are currently in the 2007 Legislative Session. The Governor has some proposed legislation that would provide the following:

1. A precinct-based optical scan in all precincts.
2. One touchscreen with voter verifiable paper audit record in each precinct (ADA)
3. Allow for counties to either use an optical scan or touchscreen (retrofitted) for use for early voting.

In reviewing this legislation, the question has been asked as to what HAVA funds, if any, we can use to pay for these changes. Although I know we've been working off the FAQ and advice you've given other states, I thought it was important to ask based on our circumstances as to what we can and cannot fund with HAVA funds.

I realize this is late notice, but we do need an answer sooner rather than later. If you need to call to discuss further, please feel free to do so. My direct line is 850.245.6285 and my cell is 850.294.5298. I apologize for the urgency but as we move through session, it has become an issue that we need to be able to answer definitively. I look forward to hearing from you.

Thank you.

Amy K. Tuck  
Director  
Division of Elections  
Florida Department of State

020666



"West, Bob"  
<Bob.West@myfloridahouse.gov>

04/02/2007 03:26 PM

To ecortes@eac.gov

cc

bcc

Subject RE: Response: Using HAVA funds to replace voting equipment

History: This message has been replied to and forwarded

Edgardo,

What are the restrictions on the use of the interest from the HAVA money and were do I find those rules. Can we use the interest to replace Florida DRE's with optical scan?

Thanks

Bob West - Legislative Analyst  
Florida House of Representatives  
Ethics and Elections  
402 HOB  
Tallahassee, FL 32399-1300  
Office 850-488-9204  
Direct 850-922-9457

---

**From:** ecortes@eac.gov [mailto:ecortes@eac.gov]  
**Sent:** Monday, March 12, 2007 2:41 PM  
**To:** West, Bob  
**Subject:** Response: Using HAVA funds to replace voting equipment  
**Importance:** High

Mr. West,

You requested information this morning via telephone on whether Florida could use its remaining HAVA §251 funds to replace DREs previously purchased with HAVA funds with optical scan voting systems. Since you have requested an answer by this afternoon to assist in your legislative session and a specific answer to your question would require us to collect additional information and would take additional time, I am including a response sent to Washington State regarding a similar question. Please review this and see if it is sufficient for what you need. I have also included an explanation of acceptable uses of HAVA funds as well as other federal rules and regulations that are applicable to the use of HAVA funds. I have highlighted the sections most closely related to your request. Please let me know if you have any additional questions or if you need further clarification. Thank you.

**Sources and Uses of HAVA Funds**

There are three sources of funding provided by HAVA for use to improve the administration of federal elections and to meet the requirements of Title III of HAVA (specifically to implement provisional voting, to improve voting technology, to develop and implement a statewide voter

020667

registration database, to provide information to voters, and to verify and identify voters according to the procedures set forth in HAVA). Those sources are Section 101, Section 102 and Section 251 funds.

The funds received by a state under Section 101 can be used for the following purposes:

- A. Complying with the requirements under title III.
- B. Improving the administration of elections for Federal office.
- C. Educating voters concerning voting procedures, voting rights, and voting technology.
- D. Training election officials, poll workers, and election volunteers.
- E. Developing the State plan for requirements payments to be submitted under part 1 of subtitle D of title II.
- F. Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.
- G. Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.
- H. Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

Section 102 funds can be used ONLY for the purposes of replacing punch card and lever voting systems with voting systems that comply with Section 301(a) of HAVA.

Section 251 funds can be used to implement any of the Title III requirements, including purchasing compliant voting systems, implementing provisional voting, providing information to voters in the polling place, developing and implementing a statewide voter registration list, and identifying voters. In addition, states and local governments can use HAVA funds to improve the administration of elections for Federal office when one of two conditions is met: (1) the state has met the requirements of Title III; or (2) the state notifies EAC of its intention to use an amount not to exceed the amount of the minimum payment that the state either did or could have received under the Section 252 formula for that purpose.

The uses of Section 251 funds (and Section 101 funds, when used to meet the requirements of Title III) must be accounted for in the state's plan as originally submitted or later amended. Any material change in the use of 251 funds (and Section 101 funds as specified above) from the approved state plan will require the state to revise its plan and submit the revisions to the EAC for publication and approval.

**Costs must be Allowable, Allocable and Reasonable**

In addition to the restrictions on the uses of funds imposed by HAVA, when these funds were distributed by either the General Services Administration (GSA) or the EAC, those funds were

made subject to several circulars developed by the Office of Management and Budget, specifically OMB Circulars A-87 (governs the use of federal funds to purchase goods for state and local governments), A-102 (governs the management of federal funds for state and local governments), A-122 (governs the use of federal funds to purchase goods for non-profits) and A-133 (dealing with audits). These circulars further restrict the appropriate uses of Federal funds requiring generally that costs paid for by HAVA funds are allowable, allocable (directly or through an indirect cost rate), and reasonable.

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in the fixed capital assets section of your balance sheet and depreciate the asset, you should consider the asset as a capital expenditure and include only depreciation expense in the pool. [Click here](#) to see a power point presentation on indirect costs presented by KPMG on behalf of the EAC.

### Reasonable Costs

A state must do some assessment as to whether the costs are reasonable. This is done by determining that the cost is justified based upon factors such as the frequency of use, leasing versus purchasing, and actual cost for the good or service.

### **Excerpt from response to Washington State, sent August 10, 2006:**

“The question of the Snohomish County audio units brings up several issues. The issue as I understand it is that Snohomish County bought some accessible voting systems with HAVA funds that do not meet the 2002 requirements. Although it is possible, it is also unlikely that a voting system could be compliant with HAVA Section 301(a) and not meet the 2002 FEC Voting System Standards (particularly in regards to the tested error rate). Please see EAC Advisory 2005-004 for more information on helping to determine whether a particular system meets the standards of Section 301(a).

If the county purchased equipment which was not compliant with HAVA section 301(a), then HAVA funds could not be used to purchase these systems. Any use of HAVA funds for the purpose of purchasing voting equipment that is not compliant with 301(a) is a misuse of HAVA funds and should be reimbursed to the state Election Fund. While Snohomish County did take initiative to purchase equipment early, it turns out that this equipment is not usable. If this is the case, then HAVA funds can be used for the purchase of replacement voting systems.

If the county has already purchased a voting system which is compliant with Section 301(a) and are simply replacing the system because they are not happy with it or feel they could get something better, then this cannot be paid for using HAVA funds. Replacement of newly purchased equipment that is HAVA compliant and in good working order does not appear to meet the test of reasonableness for using federal funds.

Purchasing voting systems is an acceptable use of HAVA funds. You must determine which of the above scenarios Snohomish County falls into in order to decide which system HAVA funds will be used for. The other system should be paid for with non-HAVA funds. In either scenario, HAVA funds cannot be used to purchase both voting systems.”

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct

020670

202-566-3127 fax  
ecortes@eac.gov

020671



"Bradshaw, Sarah"  
<SBradshaw@dos.state.fl.us>

11/16/2006 11:28 AM

To psims@eac.gov, BLeonard@dos.state.fl.us  
cc ecortes@eac.gov, scogan@eac.gov  
bcc  
Subject RE: Permission to Use HAVA Report Narratives

Peggy:

Yes, it is fine with us. We're glad that our reports include what you are looking for.

Sarah Jane

---

**From:** psims@eac.gov [mailto:psims@eac.gov]  
**Sent:** Thursday, November 16, 2006 10:34 AM  
**To:** BLeonard@dos.state.fl.us; Bradshaw, Sarah  
**Cc:** ecortes@eac.gov; scogan@eac.gov  
**Subject:** Permission to Use HAVA Report Narratives

Dear Barbara and Sarah Jane:

EAC would like to use portions of the good supporting narrative provided with your state's annual HAVA reports as an example for states that are having difficulty providing the supporting information sought by EAC and required by HAVA. Would this be OK with you?

Peggy Sims  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave, NW - Ste 1100  
Washington, DC 20005  
Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)  
Fax: 202-566-3127  
email: psims@eac.gov

020672

Edgardo Cortes /EAC/GOV  
04/10/2007 10:18 AM

To "West, Bob"  
<Bob.West@myfloridahouse.gov>@GSAEXTERNAL  
cc  
bcc  
Subject RE: Response: Using HAVA funds to replace voting  
equipment

Bob,  
I apologize for the delayed response but I have been out of the office for a few days. We have also received an almost identical question from your Secretary of State's office and are preparing a formal response in coordination with our General Counsel's office. We realize you are in currently in legislative session and need these answers as soon as possible. Please let me know if there are additional questions you would like us to include in this response. Thanks.

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov  
"West, Bob" <Bob.West@myfloridahouse.gov>



"West, Bob"  
<Bob.West@myfloridahouse.gov>  
04/02/2007 03:26 PM

To ecortes@eac.gov  
cc  
Subject RE: Response: Using HAVA funds to replace voting  
equipment

Edgardo,

What are the restrictions on the use of the interest from the HAVA money and were do I find those rules. Can we use the interest to replace Florida DRE's with optical scan?

Thanks

Bob West - Legislative Analyst  
Florida House of Representatives  
Ethics and Elections  
402 HOB  
Tallahassee, FL 32399-1300  
Office 850-488-9204  
Direct 850-922-9457

**From:** ecortes@eac.gov [mailto:ecortes@eac.gov]  
**Sent:** Monday, March 12, 2007 2:41 PM  
**To:** West, Bob

020673

**Subject:** Response: Using HAVA funds to replace voting equipment  
**Importance:** High

Mr. West,

You requested information this morning via telephone on whether Florida could use its remaining HAVA §251 funds to replace DREs previously purchased with HAVA funds with optical scan voting systems. Since you have requested an answer by this afternoon to assist in your legislative session and a specific answer to your question would require us to collect additional information and would take additional time, I am including a response sent to Washington State regarding a similar question. Please review this and see if it is sufficient for what you need. I have also included an explanation of acceptable uses of HAVA funds as well as other federal rules and regulations that are applicable to the use of HAVA funds. I have highlighted the sections most closely related to your request. Please let me know if you have any additional questions or if you need further clarification. Thank you.

### Sources and Uses of HAVA Funds

There are three sources of funding provided by HAVA for use to improve the administration of federal elections and to meet the requirements of Title III of HAVA (specifically to implement provisional voting, to improve voting technology, to develop and implement a statewide voter registration database, to provide information to voters, and to verify and identify voters according to the procedures set forth in HAVA). Those sources are Section 101, Section 102 and Section 251 funds.

The funds received by a state under Section 101 can be used for the following purposes:

- A. Complying with the requirements under title III.
- B. Improving the administration of elections for Federal office.
- C. Educating voters concerning voting procedures, voting rights, and voting technology.
- D. Training election officials, poll workers, and election volunteers.
- E. Developing the State plan for requirements payments to be submitted under part 1 of subtitle D of title II.
- F. Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.
- G. Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.
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Section 102 funds can be used ONLY for the purposes of replacing punch card and lever voting

020674

systems with voting systems that comply with Section 301(a) of HAVA.

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Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

020677

Edgardo Cortes /EAC/GOV  
03/12/2007 02:41 PM

To bob.west@myfloridahouse.gov  
cc  
bcc Jeannie Layson/EAC/GOV; Juliet E. Hodgkins/EAC/GOV;  
Margaret Sims/EAC/GOV  
Subject Response: Using HAVA funds to replace voting equipment

Mr. West,

You requested information this morning via telephone on whether Florida could use its remaining HAVA §251 funds to replace DREs previously purchased with HAVA funds with optical scan voting systems. Since you have requested an answer by this afternoon to assist in your legislative session and a specific answer to your question would require us to collect additional information and would take additional time, I am including a response sent to Washington State regarding a similar question. Please review this and see if it is sufficient for what you need. I have also included an explanation of acceptable uses of HAVA funds as well as other federal rules and regulations that are applicable to the use of HAVA funds. I have highlighted the sections most closely related to your request. Please let me know if you have any additional questions or if you need further clarification. Thank you.

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The funds received by a state under Section 101 can be used for the following purposes:

- A. Complying with the requirements under title III.
- B. Improving the administration of elections for Federal office.
- C. Educating voters concerning voting procedures, voting rights, and voting technology.
- D. Training election officials, poll workers, and election volunteers.
- E. Developing the State plan for requirements payments to be submitted under part 1 of subtitle D of title II.
- F. Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.
- G. Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.
- H. Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election

020678

information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

Section 102 funds can be used ONLY for the purposes of replacing punch card and lever voting systems with voting systems that comply with Section 301(a) of HAVA.

Section 251 funds can be used to implement any of the Title III requirements, including purchasing compliant voting systems, implementing provisional voting, providing information to voters in the polling place, developing and implementing a statewide voter registration list, and identifying voters. In addition, states and local governments can use HAVA funds to improve the administration of elections for Federal office when one of two conditions is met: (1) the state has met the requirements of Title III; or (2) the state notifies EAC of its intention to use an amount not to exceed the amount of the minimum payment that the state either did or could have received under the Section 252 formula for that purpose.

The uses of Section 251 funds (and Section 101 funds, when used to meet the requirements of Title III) must be accounted for in the state's plan as originally submitted or later amended. Any material change in the use of 251 funds (and Section 101 funds as specified above) from the approved state plan will require the state to revise its plan and submit the revisions to the EAC for publication and approval.

#### **Costs must be Allowable, Allocable and Reasonable**

In addition to the restrictions on the uses of funds imposed by HAVA, when these funds were distributed by either the General Services Administration (GSA) or the EAC, those funds were made subject to several circulars developed by the Office of Management and Budget, specifically OMB Circulars A-87 (governs the use of federal funds to purchase goods for state and local governments), A-102 (governs the management of federal funds for state and local governments), A-122 (governs the use of federal funds to purchase goods for non-profits) and A-133 (dealing with audits). These circulars further restrict the appropriate uses of Federal funds requiring generally that costs paid for by HAVA funds are allowable, allocable (directly or through an indirect cost rate), and reasonable.

#### **Allowable Costs**

A cost is allowable if it is necessary for the proper and efficient performance and administration of the federally sponsored program. Costs that fall within the specifically identified uses of HAVA funds in either Sections 101, 102 or Title III are allowable.

#### **Allocable Costs**

A state can allocate an expense by charging only a portion equal to the percentage of use for HAVA related purposes to the HAVA grant. This can be accomplished by either using only that percentage of HAVA fund per unit cost or by seeking reimbursement from the other

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departments within the state for their portion of the usage. The question of allocability arises generally in one of two circumstances. First, is the cost allocable to the program to which it is billed? Just because a cost is allowable under one or more funding programs of HAVA do not mean that it is allocable to each and every program. For example, if an expense is not directly related to meeting any of the Title III requirements, it is allocable only to Section 101 funds and Section 251 funds pursuant to the provisions of Section 251(b) that allow for the use of Title II funds for the improvement of the administration of elections for federal office only up to the minimum payment amount. Second, is the cost allocable to benefit a Federal election? Most of the uses identified in HAVA require the funds to be used to benefit a Federal election. Thus, costs that strictly benefit a state or local election are not allocable to the HAVA funding programs.

### Indirect Costs

In some circumstances, the expense may be an indirect one that can be covered by an indirect cost rate. In that instance, the state may submit an indirect cost rate proposal in which it identifies and supplies information regarding direct and indirect costs of operation. Circular A-87 and ASMB C-10, *Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government*, provide guidance on negotiating indirect costs rates.

An indirect cost rate provides a state with the basis for allocating administrative costs that are inextricably linked to other services provided by the Secretary of State such that they cannot easily be segregated into those costs that directly benefit the HAVA funding program and those that do not. For example, the cost of printers and copy machines that are used for both Federal and State election activities and that are below the State's threshold for capitalized equipment may be expensed and included in the indirect cost pool. On the other hand, if you include an asset in the fixed capital assets section of your balance sheet and depreciate the asset, you should consider the asset as a capital expenditure and include only depreciation expense in the pool. [Click here](#) to see a power point presentation on indirect costs presented by KPMG on behalf of the EAC.

### Reasonable Costs

A state must do some assessment as to whether the costs are reasonable. This is done by determining that the cost is justified based upon factors such as the frequency of use, leasing versus purchasing, and actual cost for the good or service.

### **Excerpt from response to Washington State, sent August 10, 2006:**

“The question of the Snohomish County audio units brings up several issues. The issue as I understand it is that Snohomish County bought some accessible voting systems with HAVA funds that do not meet the 2002 requirements. Although it is possible, it is also unlikely that a voting system could be compliant with HAVA Section 301(a) and not meet the 2002 FEC Voting System Standards (particularly in regards to the tested error rate). Please see EAC Advisory

2005-004 for more information on helping to determine whether a particular system meets the standards of Section 301(a).

If the county purchased equipment which was not compliant with HAVA section 301(a), then HAVA funds could not be used to purchase these systems. Any use of HAVA funds for the purpose of purchasing voting equipment that is not compliant with 301(a) is a misuse of HAVA funds and should be reimbursed to the state Election Fund. While Snohomish County did take initiative to purchase equipment early, it turns out that this equipment is not usable. If this is the case, then HAVA funds can be used for the purchase of replacement voting systems.

If the county has already purchased a voting system which is compliant with Section 301(a) and are simply replacing the system because they are not happy with it or feel they could get something better, then this cannot be paid for using HAVA funds. Replacement of newly purchased equipment that is HAVA compliant and in good working order does not appear to meet the test of reasonableness for using federal funds.

Purchasing voting systems is an acceptable use of HAVA funds. You must determine which of the above scenarios Snohomish County falls into in order to decide which system HAVA funds will be used for. The other system should be paid for with non-HAVA funds. In either scenario, HAVA funds cannot be used to purchase both voting systems.”

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

Edgardo Cortes /EAC/GOV  
03/14/2007 08:36 AM

To "Amy K. Tuck" <AKTuck@dos.state.fl.us>  
cc  
bcc  
Subject Re: Response: Using HAVA funds to replace voting  
equipment

I can be available for a call later this morning if you want. Let me know.

----- Original Message -----

From: "Tuck, Amy K." [AKTuck@dos.state.fl.us]  
Sent: 03/14/2007 08:30 AM AST  
To: Edgardo Cortes  
Subject: RE: Response: Using HAVA funds to replace voting equipment

Thank you. I guess we are all a little confused. We had originally thought we could use some funding for the optical scan part of the legislation but not for the vvpats. Based on this response it would seem that we could not use any of the funding for this legislation.

-----Original Message-----

From: ecortes@eac.gov [mailto:ecortes@eac.gov]  
Sent: Wednesday, March 14, 2007 8:14 AM  
To: Tuck, Amy K.  
Cc: Leonard, Barbara M.  
Subject: Fw: Response: Using HAVA funds to replace voting equipment  
Importance: High

Amy,

I am on my way to work but am delayed due to traffic. However, I am forwarding you this response I sent to Bob West from the FL legislature who asked this question on Monday. Please read this over and let me know if it helps. Thanks.

----- Original Message -----

From: Edgardo Cortes  
Sent: 03/12/2007 02:41 PM EDT  
To: bob.west@myfloridahouse.gov  
Subject: Response: Using HAVA funds to replace voting equipment

Mr. West,

You requested information this morning via telephone on whether Florida could use its remaining HAVA \$251 funds to replace DREs previously purchased with HAVA funds with optical scan voting systems. Since you have requested an answer by this afternoon to assist in your legislative session and a specific answer to your question would require us to collect additional information and would take additional time, I am including a response sent to Washington State regarding a similar question. Please review this and see if it is sufficient for what you need. I have also included an explanation of acceptable uses of HAVA funds as well as other federal rules and regulations that are applicable to the use of HAVA funds. I have highlighted the sections most closely related to your request. Please let me know if you have any additional questions or if you need

020682

further clarification. Thank you.

#### Sources and Uses of HAVA Funds

There are three sources of funding provided by HAVA for use to improve the administration of federal elections and to meet the requirements of Title III of HAVA (specifically to implement provisional voting, to improve voting technology, to develop and implement a statewide voter registration database, to provide information to voters, and to verify and identify voters according to the procedures set forth in HAVA). Those sources are Section 101, Section 102 and Section 251 funds.

The funds received by a state under Section 101 can be used for the following purposes:

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202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

020685

Edgardo Cortes /EAC/GOV  
03/14/2007 08:14 AM

To "Amy K. Tuck" <AKTuck@dos.state.fl.us>  
cc "Barbara M. Leonard" <BMLeonard@dos.state.fl.us>  
bcc  
Subject Fw: Response: Using HAVA funds to replace voting  
equipment

Amy,

I am on my way to work but am delayed due to traffic. However, I am forwarding you this response I sent to Bob West from the FL legislature who asked this question on Monday. Please read this over and let me know if it helps. Thanks.

Edgardo Cortes

----- Original Message -----

**From:** Edgardo Cortes  
**Sent:** 03/12/2007 02:41 PM EDT  
**To:** bob.west@myfloridahouse.gov  
**Subject:** Response: Using HAVA funds to replace voting equipment

Mr. West,

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- D. Training election officials, poll workers, and election volunteers.
- E. Developing the State plan for requirements payments to be submitted

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F. Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.

G. Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.

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020687

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ecortes@eac.gov

020689

Edgardo Cortes /EAC/GOV

03/16/2007 11:35 AM

To "Tuck, Amy K."

<AKTuck@dos.state.fl.us>@GSAEXTERNAL

cc "Leonard, Barbara M." <BMLeonard@dos.state.fl.us>

bcc

Subject Re: HAVA Funding for Voter Verifiable Paper Audit Records



Amy and Barbara,

Do you have any additional documentation for the issues identified during your state single audit. I have a copy of your response letter to the state auditor dated June 15, 2006 but many of the items are planned actions. Do you have supporting documentation to show you've completed those things? I am trying to write our audit resolution report and would prefer it show as much completed as possible rather than using the report to ask for this info. Let me know. Thanks.

Edgardo Cortés  
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020690

Edgardo Cortes /EAC/GOV  
03/14/2007 04:54 PM

To "Tuck, Amy K."  
<AKTuck@dos.state.fl.us>@GSAEXTERNAL  
cc Juliet E. Hodgkins/EAC/GOV  
bcc Jeannie Layson/EAC/GOV  
Subject RE: HAVA Funding

Amy,

Sorry for the longer response on this email. Its been a pretty busy day.

With question 1, I forgot that Florida did file a certification under HAVA section 251(b)(2)(A). This means you are correct, Florida can use any remaining requirements payments for the improvement of administration of elections for federal office. No additional certification is needed. VVPAR would fall under this category. Section 101 funds can be used for this purpose without any certification.

With #2, you are correct. Replacement of newly purchased equipment that is HAVA compliant and in good working order does not appear to meet the test of reasonableness for using federal funds. Our initial take on the automark system is that it would fall into this category because you would be replacing the current DREs with a new system.

Again, this is our general take on this without having reviewed any detailed information about Florida's particular situation. Let me know if you need any more info. Thanks.

Edgardo Cortés  
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"Tuck, Amy K."  
<AKTuck@dos.state.fl.us>  
03/14/2007 11:30 AM

To ecortes@eac.gov  
cc  
Subject RE: HAVA Funding

Sorry – one more issue. There is some consideration of using an "AutoMARK" system instead of the VVPAR. I would assume this would follow along the same lines as the considerations for the VVPAR. Let me know if you need more information on that before responding.

Thanks again.

---

**From:** Tuck, Amy K.  
**Sent:** Wednesday, March 14, 2007 11:25 AM  
**To:** ecortes@eac.gov  
**Subject:** HAVA Funding  
**Importance:** High

Edgardo,

020691

I wanted to summarize our earlier conversation to make sure I am clear on how to proceed on this issue.

1. VVPAR (Voter verifiable paper audit record)

These can be paid for from HAVA funding under certain circumstances although this is not a requirement in HAVA and does not meet Title 3 requirements.

Section 251 funding can be used for Title 3 activities or for improving the administration of elections for federal office. Under this guideline, Florida can do the following:

- a. Certify that we have met the requirements of Title 3 and use the remaining 251 funds for improving federal elections.
- b. Or if we have not met the requirements for Title 3, we can certify that we will not use more than the minimum payment (est. 11.6m) for "non-Title 3" activities.

As a state, we did certify in August, 2006 that we have met the requirements for Title 3, so we would be in position a. (above). I would assume that we could then use the Section 251 funds to provide voter verifiable paper audit record devices for touchscreens under the argument that it is to improve federal elections.

Section 101 funding can be used to improve administration of elections for federal office. If Florida decided to use this funding, we would not have to certify to the EAC.

2. Optical Scan

If the touchscreens that are being replaced were purchased with HAVA funding, then further HAVA funding may not be used for this purpose. If the touchscreens were purchased from state funding, then HAVA funding could be used for this purpose. I would assume we would follow the same guidelines in #1 concerning both the 251 and 101 funding.

And, of course, we are free to use state funding (or funding from the purchase of the systems) to upgrade as long as we remain in compliance with federal and state guidelines.

Thank you (and Julie) for taking the time to speak with me today. I appreciate the time and quick response. I look forward to hearing back from you.

Sincerely,

**Amy K. Tuck, Esq.**

Director, Division of Elections  
Florida Department of State  
The R.A. Gray Building  
500 South Bronough Street, Room 316  
Tallahassee, Florida 32399  
850.245.6200 phone  
850.245.6217 fax

020692

Edgardo Cortes /EAC/GOV  
03/14/2007 10:47 AM

To "Tuck, Amy K."  
<AKTuck@dos.state.fl.us>@GSAEXTERNAL  
cc  
bcc  
Subject RE: Response: Using HAVA funds to replace voting  
equipment

We can do 11am. Please call my direct line - 202-566-3126.

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov  
"Tuck, Amy K." <AKTuck@dos.state.fl.us>



"Tuck, Amy K."  
<AKTuck@dos.state.fl.us>  
03/14/2007 10:42 AM

To ecortes@eac.gov  
cc  
Subject RE: Response: Using HAVA funds to replace voting  
equipment

I'm in the office now – meeting got moved to 12. If you have time, I can give you a call right now.

---

**From:** ecortes@eac.gov [mailto:ecortes@eac.gov]  
**Sent:** Wednesday, March 14, 2007 10:13 AM  
**To:** Tuck, Amy K.  
**Subject:** RE: Response: Using HAVA funds to replace voting equipment

I have a meeting at noon but we can do it after your 11am, depending on when that is over. If not, we can schedule for sometime this afternoon. Our general counsel will be joining us on the call.

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

020693

"Tuck, Amy K." <AKTuck@dos.state.fl.us>

03/14/2007 08:43 AM

To: ecortes@eac.gov  
cc

Subject: RE: Response: Using HAVA funds to replace voting equipment

That would be great. I have a meeting at 11 but am otherwise here this morning. Let me know your schedule and we'll call you.

-----Original Message-----

From: ecortes@eac.gov [mailto:ecortes@eac.gov]  
Sent: Wednesday, March 14, 2007 8:36 AM  
To: Tuck, Amy K.  
Subject: Re: Response: Using HAVA funds to replace voting equipment

I can be available for a call later this morning if you want. Let me know.

----- Original Message -----

From: "Tuck, Amy K." [AKTuck@dos.state.fl.us]  
Sent: 03/14/2007 08:30 AM AST  
To: Edgardo Cortes  
Subject: RE: Response: Using HAVA funds to replace voting equipment

Thank you. I guess we are all a little confused. We had originally thought we could use some funding for the optical scan part of the legislation but not for the vvpats. Based on this response it would seem that we could not use any of the funding for this legislation.

-----Original Message-----

From: ecortes@eac.gov [mailto:ecortes@eac.gov]  
Sent: Wednesday, March 14, 2007 8:14 AM  
To: Tuck, Amy K.  
Cc: Leonard, Barbara M.  
Subject: Fw: Response: Using HAVA funds to replace voting equipment  
Importance: High

Amy,

I am on my way to work but am delayed due to traffic. However, I am forwarding you this response I sent to Bob West from the FL legislature who asked this question on Monday. Please read this over and let me know if it helps. Thanks.

----- Original Message -----

020694

From: Edgardo Cortes  
Sent: 03/12/2007 02:41 PM EDT  
To: bob.west@myfloridahouse.gov  
Subject: Response: Using HAVA funds to replace voting equipment

Mr. West,

You requested information this morning via telephone on whether Florida could use its remaining HAVA \$251 funds to replace DREs previously purchased with HAVA funds with optical scan voting systems. Since you have requested an answer by this afternoon to assist in your legislative session and a specific answer to your question would require us to collect additional information and would take additional time, I am including a response sent to Washington State regarding a similar question. Please review this and see if it is sufficient for what you need. I have also included an explanation of acceptable uses of HAVA funds as well as other federal rules and regulations that are applicable to the use of HAVA funds. I have highlighted the sections most closely related to your request. Please let me know if you have any additional questions or if you need further clarification. Thank you.

#### Sources and Uses of HAVA Funds

There are three sources of funding provided by HAVA for use to improve the administration of federal elections and to meet the requirements of Title III of HAVA (specifically to implement provisional voting, to improve voting technology, to develop and implement a statewide voter registration database, to provide information to voters, and to verify and identify voters according to the procedures set forth in HAVA). Those sources are Section 101, Section 102 and Section 251 funds.

The funds received by a state under Section 101 can be used for the following purposes:

- A. Complying with the requirements under title III.
- B. Improving the administration of elections for Federal office.
- C. Educating voters concerning voting procedures, voting rights, and voting technology.
- D. Training election officials, poll workers, and election volunteers.
- E. Developing the State plan for requirements payments to be submitted under part 1 of subtitle D of title II.
- F. Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.
- G. Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.
- H. Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

Section 102 funds can be used ONLY for the purposes of replacing punch card and lever voting systems with voting systems that comply with Section 301(a) of HAVA.

Section 251 funds can be used to implement any of the Title III requirements, including purchasing compliant voting systems, implementing

020695

provisional voting, providing information to voters in the polling place, developing and implementing a statewide voter registration list, and identifying voters. In addition, states and local governments can use HAVA funds to improve the administration of elections for Federal office when one of two conditions is met: (1) the state has met the requirements of Title III; or (2) the state notifies EAC of its intention to use an amount not to exceed the amount of the minimum payment that the state either did or could have received under the Section 252 formula for that purpose.

The uses of Section 251 funds (and Section 101 funds, when used to meet the requirements of Title III) must be accounted for in the state's plan as originally submitted or later amended. Any material change in the use of 251 funds (and Section 101 funds as specified above) from the approved state plan will require the state to revise its plan and submit the revisions to the EAC for publication and approval.

#### Costs must be Allowable, Allocable and Reasonable

In addition to the restrictions on the uses of funds imposed by HAVA, when these funds were distributed by either the General Services Administration (GSA) or the EAC, those funds were made subject to several circulars developed by the Office of Management and Budget, specifically OMB Circulars A-87 (governs the use of federal funds to purchase goods for state and local governments), A-102 (governs the management of federal funds for state and local governments), A-122 (governs the use of federal funds to purchase goods for non-profits) and A-133 (dealing with audits). These circulars further restrict the appropriate uses of Federal funds requiring generally that costs paid for by HAVA funds are allowable, allocable (directly or through an indirect cost rate), and reasonable.

#### Allowable Costs

A cost is allowable if it is necessary for the proper and efficient performance and administration of the federally sponsored program. Costs that fall within the specifically identified uses of HAVA funds in either Sections 101, 102 or Title III are allowable.

#### Allocable Costs

A state can allocate an expense by charging only a portion equal to the percentage of use for HAVA related purposes to the HAVA grant. This can be accomplished by either using only that percentage of HAVA fund per unit cost or by seeking reimbursement from the other departments within the state for their portion of the usage. The question of allocability arises generally in one of two circumstances. First, is the cost allocable to the program to which it is billed? Just because a cost is allowable under one or more funding programs of HAVA do not mean that it is allocable to each and every program. For example, if an expense is not directly related to meeting any of the Title III requirements, it is allocable only to Section 101 funds and Section 251 funds pursuant to the provisions of Section 251(b) that allow for the use of Title II funds for the improvement of the administration of elections for federal office only up to the minimum payment amount. Second, is the cost allocable to benefit a Federal election? Most of the uses identified in HAVA require the funds to be used to benefit a Federal election. Thus, costs that strictly benefit a state or local election are not allocable to the HAVA funding programs.

#### Indirect Costs

In some circumstances, the expense may be an indirect one that can be covered by an indirect cost rate. In that instance, the state may submit

an indirect cost rate proposal in which it identifies and supplies information regarding direct and indirect costs of operation. Circular A-87 and ASMB C-10, Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government, provide guidance on negotiating indirect costs rates.

An indirect cost rate provides a state with the basis for allocating administrative costs that are inextricably linked to other services provided by the Secretary of State such that they cannot easily be segregated into those costs that directly benefit the HAVA funding program and those that do not. For example, the cost of printers and copy machines that are used for both Federal and State election activities and that are below the State's threshold for capitalized equipment may be expensed and included in the indirect cost pool. On the other hand, if you include an asset in the fixed capital assets section of your balance sheet and depreciate the asset, you should consider the asset as a capital expenditure and include only depreciation expense in the pool. [Click here](#) to see a power point presentation on indirect costs presented by KPMG on behalf of the EAC.

#### Reasonable Costs

A state must do some assessment as to whether the costs are reasonable. This is done by determining that the cost is justified based upon factors such as the frequency of use, leasing versus purchasing, and actual cost for the good or service.

Excerpt from response to Washington State, sent August 10, 2006:

"The question of the Snohomish County audio units brings up several issues. The issue as I understand it is that Snohomish County bought some accessible voting systems with HAVA funds that do not meet the 2002 requirements. Although it is possible, it is also unlikely that a voting system could be compliant with HAVA Section 301(a) and not meet the 2002 FEC Voting System Standards (particularly in regards to the tested error rate). Please see EAC Advisory 2005-004 for more information on helping to determine whether a particular system meets the standards of Section 301(a).

If the county purchased equipment which was not compliant with HAVA section 301(a), then HAVA funds could not be used to purchase these systems. Any use of HAVA funds for the purpose of purchasing voting equipment that is not compliant with 301(a) is a misuse of HAVA funds and should be reimbursed to the state Election Fund. While Snohomish County did take initiative to purchase equipment early, it turns out that this equipment is not usable. If this is the case, then HAVA funds can be used for the purchase of replacement voting systems.

If the county has already purchased a voting system which is compliant with Section 301(a) and are simply replacing the system because they are not happy with it or feel they could get something better, then this cannot be paid for using HAVA funds. Replacement of newly purchased equipment that is HAVA compliant and in good working order does not appear to meet the test of reasonableness for using federal funds.

Purchasing voting systems is an acceptable use of HAVA funds. You must determine which of the above scenarios Snohomish County falls into in order to decide which system HAVA funds will be used for. The other system should be paid for with non-HAVA funds. In either scenario, HAVA funds cannot be used to purchase both voting systems."

020697

Edgardo Cortés  
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U.S. Election Assistance Commission  
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Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

020698

Edgardo Cortes /EAC/GOV  
03/14/2007 10:12 AM

To "Tuck, Amy K."  
<AKTuck@dos.state.fl.us>@GSAEXTERNAL  
cc  
bcc  
Subject RE: Response: Using HAVA funds to replace voting  
equipment

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"Tuck, Amy K."  
<AKTuck@dos.state.fl.us>  
03/14/2007 08:43 AM

To ecortes@eac.gov  
cc  
Subject RE: Response: Using HAVA funds to replace voting  
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Subject: RE: Response: Using HAVA funds to replace voting equipment

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020699

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From: ecortes@eac.gov [mailto:ecortes@eac.gov]  
Sent: Wednesday, March 14, 2007 8:14 AM  
To: Tuck, Amy K.  
Cc: Leonard, Barbara M.  
Subject: Fw: Response: Using HAVA funds to replace voting equipment  
Importance: High

Amy,

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- E. Developing the State plan for requirements payments to be submitted under part 1 of subtitle D of title II.
- F. Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.
- G. Improving the accessibility and quantity of polling places,

020700

including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.

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020701

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020702

reimbursed to the state Election Fund. While Snohomish County did take initiative to purchase equipment early, it turns out that this equipment is not usable. If this is the case, then HAVA funds can be used for the purchase of replacement voting systems.

If the county has already purchased a voting system which is compliant with Section 301(a) and are simply replacing the system because they are not happy with it or feel they could get something better, then this cannot be paid for using HAVA funds. Replacement of newly purchased equipment that is HAVA compliant and in good working order does not appear to meet the test of reasonableness for using federal funds.

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Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

020703

Edgardo Cortes /EAC/GOV  
04/05/2007 04:15 PM

To "Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us>@GSAEXTERNAL  
cc "Tuck, Amy K." <AKTuck@dos.state.fl.us>  
bcc  
Subject Re: Question Regarding Section 101 Funds

Barbara,  
Sorry for the delay in getting back to you - we have been swamped this week. I won't be in the office tomorrow but if you can email me the question, I can work on it over the weekend to get you a response for Monday. Thanks.

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov  
"Leonard, Barbara M." <BMLeonard@dos.state.fl.us>



"Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us  
>  
03/30/2007 04:15 PM

To ecortes@eac.gov  
cc "Tuck, Amy K." <AKTuck@dos.state.fl.us>  
Subject Question Regarding Section 101 Funds

Hi Edgardo,

Would you please give me a call. We have a question regarding the use of HAVA Section 101 funds.

Thanks,  
Barbara Leonard  
Florida Division of Elections  
850-245-6201

This response is provided for reference only and does not constitute legal advice or representation. As applied to a particular set of facts or circumstances, interested parties should refer to the Florida Statutes and applicable case law, and/or consult a private attorney before drawing any legal conclusions or relying upon the information provided.

Please note: Florida has a very broad public records law. Written communications to or from state officials regarding state business constitute public records and are available to the public and media upon request unless the information is subject to a specific statutory exemption. Therefore, your e-mail message may be subject to public disclosure.

020704

Edgardo Cortes /EAC/GOV  
03/30/2007 03:19 PM

To "Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us>@GSAEXTERNAL, "Tuck,  
Amy K." <AKTuck@dos.state.fl.us>  
cc Jeannie Layson/EAC/GOV  
bcc  
Subject FL Audit Resolution 

Amy and Barbara,  
Attached is a PDF of the audit resolution for the Florida single audit. The original is being mailed out to Secretary Browning today and this will be posted on our website Monday afternoon. As always, our communications director Jeannie Layson is available to assist with any media inquiries regarding our audit resolutions. Please let me know if you have any questions. Thanks.



Audit Resolution 3-30-07 FL 1.PDF

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

020705

Edgardo Cortes /EAC/GOV  
03/21/2007 09:12 AM

To "Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us>@GSAEXTERNAL  
cc  
bcc  
Subject RE: HAVA Funding for Voter Verifiable Paper Audit Records  


Thanks so much. I'll forward you a copy of the resolution once its finished.

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov  
"Leonard, Barbara M." <BMLeonard@dos.state.fl.us>



"Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us  
>  
03/21/2007 08:14 AM

To ecortes@eac.gov  
cc  
Subject RE: HAVA Funding for Voter Verifiable Paper Audit Records

Edgardo,

The legislative budget issue requesting additional funds for state match was inadvertently scanned twice.  
It is only one page.

Thanks,  
Barbara

-----Original Message-----

**From:** ecortes@eac.gov [mailto:ecortes@eac.gov]  
**Sent:** Tuesday, March 20, 2007 4:03 PM  
**To:** Leonard, Barbara M.  
**Subject:** RE: HAVA Funding for Voter Verifiable Paper Audit Records

No problem, let me know in the morn. Thanks!

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct

020706

202-566-3127 fax  
ecortes@eac.gov

020707

Edgardo Cortes /EAC/GOV  
03/20/2007 04:02 PM

To "Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us>@GSAEXTERNAL  
cc  
bcc  
Subject RE: HAVA Funding for Voter Verifiable Paper Audit Records  


No problem, let me know in the morn. Thanks!

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
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202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

020708

Edgardo Cortes /EAC/GOV  
03/20/2007 03:24 PM

To "Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us>@GSAEXTERNAL  
cc  
bcc  
Subject RE: HAVA Funding for Voter Verifiable Paper Audit Records  


Barbara,  
Both pages in the PDF that shows the legislative budget request appear to be the same. Are the pages different or was the same page copied twice?

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
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ecortes@eac.gov  
"Leonard, Barbara M." <BMLeonard@dos.state.fl.us>



"Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us  
>  
03/20/2007 01:40 PM

To ecortes@eac.gov  
cc "Tuck, Amy K." <AKTuck@dos.state.fl.us>, "Bradshaw,  
Sarah" <SBradshaw@dos.state.fl.us>  
Subject RE: HAVA Funding for Voter Verifiable Paper Audit Records

Edgardo,

Attached are the following documents providing updated information regarding the findings included in the Florida Auditor General's Operational Audit Report # 2006-194:

Department of State Inspector General's Follow-up Review to Auditor General Report Number  
2006-194  
Letter dated December 13, 2006 from Inspector General to Secretary of State Cobb  
Budget issue included in the FY 2007-08 Legislative Budget Request regarding additional funds for  
State Match  
Florida Voting Systems Certification Checklist & Test Record

If you have any questions, please let us know.

Thanks,  
Barbara

-----Original Message-----

**From:** ecortes@eac.gov [mailto:ecortes@eac.gov]  
**Sent:** Friday, March 16, 2007 11:36 AM  
**To:** Tuck, Amy K.  
**Cc:** Leonard, Barbara M.

020709

**Subject:** Re: HAVA Funding for Voter Verifiable Paper Audit Records

Amy and Barbara,

Do you have any additional documentation for the issues identified during your state single audit. I have a copy of your response letter to the state auditor dated June 15, 2006 but many of the items are planned actions. Do you have supporting documentation to show you've completed those things? I am trying to write our audit resolution report and would prefer it show as much completed as possible rather than using the report to ask for this info. Let me know. Thanks.

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax



ecortes@eac.gov 2007-005 AG follow up HAVA FVRS dr final.doc 2007-005 Cover Letter HAVA FVRS.doc



BVSC-010 Florida Voting Systems Certification Checklist and Test Record.doc FY 2007-08 LBR HAVA State Match.pdf

020710

Edgardo Cortes /EAC/GOV  
03/19/2007 01:36 PM

To "Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us>@GSAEXTERNAL  
cc  
bcc  
Subject RE: HAVA Funding for Voter Verifiable Paper Audit Records  


I just got back to the office. I'm available whenever you're ready.

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

020711

Edgardo Cortes /EAC/GOV  
03/16/2007 03:48 PM

To "Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us>@GSAEXTERNAL  
cc "Tuck, Amy K." <AKTuck@dos.state.fl.us>  
bcc  
Subject RE: HAVA Funding for Voter Verifiable Paper Audit Records  


1:30 sounds great. I'll be here.

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov  
"Leonard, Barbara M." <BMLeonard@dos.state.fl.us>



"Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us  
>  
03/16/2007 03:35 PM

To ecortes@eac.gov  
cc "Tuck, Amy K." <AKTuck@dos.state.fl.us>  
Subject RE: HAVA Funding for Voter Verifiable Paper Audit Records

Edgardo,

How about Monday about 1:30 pm? I'll give you a call if that time is agreeable.

Barbara

-----Original Message-----

**From:** ecortes@eac.gov [mailto:ecortes@eac.gov]  
**Sent:** Friday, March 16, 2007 2:18 PM  
**To:** Leonard, Barbara M.  
**Subject:** RE: HAVA Funding for Voter Verifiable Paper Audit Records

Great! Can we set up a time to chat on Monday? I'm available anytime after 10am.

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct

020712

202-566-3127 fax  
ecortes@eac.gov

"Leonard, Barbara M." <BMLeonard@dos.state.fl.us>

03/16/2007 02:00 PM

To: ecortes@eac.gov  
CC: "Tuck, Amy K." <AKTuck@dos.state.fl.us>  
Subject: RE: HAVA Funding for Voter Verifiable Paper Audit Records

Edgardo,

We should be able to forward something to you next week to document the steps that have been taken. We'll check with you first to be sure we're getting the information you need for your report.

Thanks,  
Barbara

-----Original Message-----

**From:** ecortes@eac.gov [mailto:ecortes@eac.gov]  
**Sent:** Friday, March 16, 2007 11:36 AM  
**To:** Tuck, Amy K.  
**Cc:** Leonard, Barbara M.  
**Subject:** Re: HAVA Funding for Voter Verifiable Paper Audit Records

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Edgardo Cortés  
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Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

020713

Edgardo Cortes /EAC/GOV  
03/16/2007 02:18 PM

To "Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us>@GSAEXTERNAL  
cc  
bcc  
Subject RE: HAVA Funding for Voter Verifiable Paper Audit Records  


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Edgardo Cortés  
Election Research Specialist  
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ecortes@eac.gov  
"Leonard, Barbara M." <BMLeonard@dos.state.fl.us>



"Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us>  
>  
03/16/2007 02:00 PM

To ecortes@eac.gov  
cc "Tuck, Amy K." <AKTuck@dos.state.fl.us>  
Subject RE: HAVA Funding for Voter Verifiable Paper Audit Records

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Thanks,  
Barbara

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**To:** Tuck, Amy K.  
**Cc:** Leonard, Barbara M.  
**Subject:** Re: HAVA Funding for Voter Verifiable Paper Audit Records

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Edgardo Cortés

020714

Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

020715

Edgardo Cortes /EAC/GOV  
02/16/2007 04:45 PM

To "Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us>@GSAEXTERNAL  
cc  
bcc  
Subject Re: FW: Guidance Regarding Use of HAVA Funds 

Barbara,  
Sorry for the delay but I was at the NASS and NASED conference over the weekend and then we had some bad weather that kept me from coming in. In regards to question #2, this is a purchase that is solely related to the statewide voter registration and therefore does not require pre-approval from the EAC. Just make sure to keep the proper records for audit purposes. Hope this helps. Thanks.

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov  
"Leonard, Barbara M." <BMLeonard@dos.state.fl.us>



"Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us  
>  
02/13/2007 02:02 PM

To ecortes@eac.gov  
cc  
Subject FW: Guidance Regarding Use of HAVA Funds

Edgardo,

Have you had a chance to review question #2 in our request below regarding the purchase of additional memory for our statewide voter registration system?

Thanks,  
Barbara

-----Original Message-----

**From:** Leonard, Barbara M.  
**Sent:** Friday, January 26, 2007 11:48 AM  
**To:** 'ecortes@eac.gov'  
**Cc:** Tuck, Amy K.; Bradshaw, Sarah  
**Subject:** RE: Guidance Regarding Use of HAVA Funds

Edgardo,

I believe that question #3 is related to the state single audit findings. It was included in the Operational Audit conducted by the Florida Auditor General's Office. I will forward you the original request for

020716

guidance that we sent to Peggy Sims last summer in case you don't have access to it.

Thanks,  
Barbara

-----Original Message-----

**From:** ecortes@eac.gov [mailto:ecortes@eac.gov]  
**Sent:** Friday, January 26, 2007 10:03 AM  
**To:** Leonard, Barbara M.  
**Subject:** Re: Guidance Regarding Use of HAVA Funds

Barbara,  
Just a quick question about #3. Is this question related to the state single audit findings? I am working on some audit resolutions and wanted to make sure its the same issue.

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

"Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us>

01/10/2007 04:08 PM

To ecortes@eac.gov  
cc "Tuck, Amy K." <AKTuck@dos.state.fl.us>, "Bradshaw, Sarah"  
<SBradshaw@dos.state.fl.us>  
Subject Guidance Regarding Use of HAVA Funds

Edgardo,

The Florida Department of State is requesting guidance regarding the use of HAVA funds for several items:

1. The computer equipment used to operate Florida's statewide voter registration system is currently housed in a state-owned facility that is in the process of being sold. As a result, the Department is moving its computer operations to a private facility.

Following our conversation this morning, the Department has determined that State funds will be

020717

used to pay for the expenses associated with moving all of the equipment (including the statewide voter registration system equipment) to the new location.

However, after the Department has completed its relocation of the computer room to another facility, it will be necessary to make rental payments to the owner of the building. Is it possible for the Department to use HAVA funds to pay a portion of the rent for the space occupied by computer equipment used to support the statewide voter registration system?

2. The Department needs to purchase additional memory in order to provide an identical back-up computer for the statewide voter registration system in case of a disaster. We have received quotes from three contractors on the State Purchasing Contract with the lowest quote being from Hewlett Packard at \$81,760. We are requesting EAC approval to use HAVA Section 251 funds for this purchase.

3. During the summer of 2006 the Department requested guidance from the EAC regarding the use of HAVA funds for annual and/or sick leave payments to employees filling HAVA-funded positions who terminated employment with the State. Could you check on the status of a response regarding this issue. If you need additional information, please let us know and we'll forward the original questions.

If you need any additional information regarding these items, please let us know. Thank you very much for your assistance.

Thanks,  
Barbara Leonard  
Florida Division of Elections  
HAVA Unit  
850-245-6201

020718

Edgardo Cortes /EAC/GOV  
01/26/2007 02:31 PM

To "Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us>@GSAEXTERNAL  
cc "Tuck, Amy K." <AKTuck@dos.state.fl.us>, "Bradshaw,  
Sarah" <SBradshaw@dos.state.fl.us>  
bcc  
Subject RE: Guidance Regarding Use of HAVA Funds

Barbara,

This was great information. This is the same issue I am working on in relation to the single audit. Just so you know, this means you will get the answer from me, but then it will also be addressed in an audit resolution report. That resolution report will cover this issue and the other issues identified during the single audit. Since EAC oversees HAVA funds, we are responsible for resolving issues identified during audits conducted by our Inspector General and also single audits conducted by each state. I'll keep you posted as we move forward in that process. Let me know if you have any questions. Thanks.

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov  
"Leonard, Barbara M." <BMLeonard@dos.state.fl.us>



"Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us>  
>  
01/26/2007 11:48 AM

To ecortes@eac.gov  
cc "Tuck, Amy K." <AKTuck@dos.state.fl.us>, "Bradshaw,  
Sarah" <SBradshaw@dos.state.fl.us>  
Subject RE: Guidance Regarding Use of HAVA Funds

Edgardo,

I believe that question #3 is related to the state single audit findings. It was included in the Operational Audit conducted by the Florida Auditor General's Office. I will forward you the original request for guidance that we sent to Peggy Sims last summer in case you don't have access to it.

Thanks,  
Barbara

-----Original Message-----

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**Sent:** Friday, January 26, 2007 10:03 AM  
**To:** Leonard, Barbara M.  
**Subject:** Re: Guidance Regarding Use of HAVA Funds

Barbara,  
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020719

working on some audit resolutions and wanted to make sure its the same issue.

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
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ecortes@eac.gov

"Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us>

01/10/2007 04:08 PM

To ecortes@eac.gov  
cc "Tuck, Amy K." <AKTuck@dos.state.fl.us>, "Bradshaw, Sarah"  
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020720

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3. During the summer of 2006 the Department requested guidance from the EAC regarding the use of HAVA funds for annual and/or sick leave payments to employees filling HAVA-funded positions who terminated employment with the State. Could you check on the status of a response regarding this issue. If you need additional information, please let us know and we'll forward the original questions.

If you need any additional information regarding these items, please let us know. Thank you very much for your assistance.

Thanks,  
Barbara Leonard  
Florida Division of Elections  
HAVA Unit  
850-245-6201

020721

Edgardo Cortes /EAC/GOV  
01/26/2007 10:02 AM

To "Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us>@GSAEXTERNAL  
cc  
bcc  
Subject Re: Guidance Regarding Use of HAVA Funds

Barbara,  
Just a quick question about #3. Is this question related to the state single audit findings? I am working on some audit resolutions and wanted to make sure its the same issue.

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
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866-747-1471 toll free  
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ecortes@eac.gov  
"Leonard, Barbara M." <BMLeonard@dos.state.fl.us>



"Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us  
>  
01/10/2007 04:08 PM

To ecortes@eac.gov  
cc "Tuck, Amy K." <AKTuck@dos.state.fl.us>, "Bradshaw,  
Sarah" <SBradshaw@dos.state.fl.us>  
Subject Guidance Regarding Use of HAVA Funds

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Following our conversation this morning, the Department has determined that State funds will be used to pay for the expenses associated with moving all of the equipment (including the statewide voter registration system equipment) to the new location.

However, after the Department has completed its relocation of the computer room to another facility, it will be necessary to make rental payments to the owner of the building. Is it possible for the Department to use HAVA funds to pay a portion of the rent for the space occupied by computer equipment used to support the statewide voter registration system?

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020722

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If you need any additional information regarding these items, please let us know. Thank you very much for your assistance.

Thanks,  
Barbara Leonard  
Florida Division of Elections  
HAVA Unit  
850-245-6201

020723

Edgardo Cortes /EAC/GOV  
01/16/2007 04:45 PM

To "Leonard, Barbara M."  
<BMLeonard@dos.state.fl.us>@GSAEXTERNAL  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject Amending HAVA Financial Reports 

Dear Barbara,

You have asked whether your state was sent a request for amended financial reports of HAVA funds. The EAC mailed a notice to your chief state election official on January 10, 2007. Attached are electronic copies of the letters that were sent regarding your state and copies of the attachments. Please let me know if you have any additional questions about this request. Thank you.



Florida 102.doc



Model 269 Title II final.pdf



Coordinator Memo final.pdf



FL Sample Narrative.pdf



HI Sample Narrative.pdf



Model 269 Title I final.pdf

Edgardo Cortés  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Ste. 1100  
Washington, DC 20005  
866-747-1471 toll free  
202-566-3126 direct  
202-566-3127 fax  
ecortes@eac.gov

020724



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

March 30, 2007

Kurt Browning  
Secretary of State  
R. A. Gray Building  
500 S. Bronough Street, Room 316  
Tallahassee, Florida 32399-0250

Dear Secretary Browning:

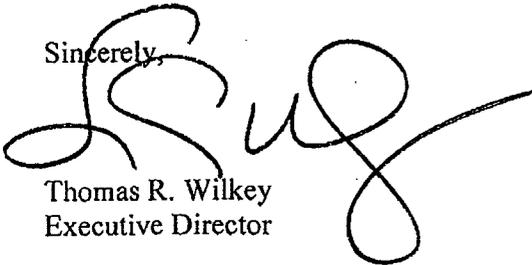
Attached is the final audit resolution report of the U.S. Election Assistance Commission (EAC) regarding the single audit of Help America Vote Act (HAVA) funds expended by the Florida Secretary of State's Office. The resolution is based upon the information provided by the audit conducted by the Auditor General of the State of Florida.

After careful consideration of all the facts presented, EAC has determined that the state must submit documentation that details the new state procedures to maintain an accurate and current list of voting systems in the state. The state must submit a timeline to the EAC indicating when the revised state plan will be submitted to EAC for publication in the *Federal Register*. The state must submit a copy of the new department policy indicating the requirement to sign salary certification statements.

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.

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

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**  
**Florida Single Audit – Assignment No. E-SA-FL-11-06**  
**Issued March 30, 2007**

**Summary of Decision**

The U.S. Election Assistance Commission (EAC or Commission) has determined that the state must submit documentation that details the new state procedures to maintain an accurate and current list of voting systems in the state. The state must submit a timeline to the EAC indicating when the revised state plan will be submitted to EAC for publication in the *Federal Register*. The state must submit a copy of the new department policy indicating the requirement to sign salary certification statements.

**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](http://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 Auditor General of the State of Florida conducted an audit under the Single Audit Act that covered the use of HAVA funds provided to Florida. The single audit report (Assignment No. E-SA-FL-11-06) for the State of Florida identified six 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.

### **State did not maintain a current list of certified voting systems used by counties**

EAC agrees with the finding that the state did not maintain a current listing of voting systems certified and in use by the counties. The state is creating new procedures to update the state list of voting systems on a regular basis, updated the list of voting systems certified and in use by Florida counties, and made the list available on its website at <http://election.dos.state.fl.us>. Within 30 calendar days, the state must submit documentation that details the new state procedures to maintain an accurate and current list of voting systems in the state.

### **State incorrectly calculated Maintenance of Effort**

EAC agrees with the findings that the state did not properly calculate the required maintenance of effort and did not maintain this level of expenditure for the 2004-2005 fiscal year. The state must update its HAVA state plan to account for the maintenance of effort. The state has indicated it has begun the process of updating the state plan. The

updated state plan must include how the state will spend the \$7,630 shortfall in maintenance of effort spending during the 2004-2005 fiscal year in the future. Within 30 calendar days, the state must submit a timeline to the EAC indicating when the revised state plan will be submitted to EAC for publication in the *Federal Register*.

**Salaries were not properly supported**

We agree with the findings that the state did not maintain appropriate records to document employee time spent on HAVA activities. EAC has requested that the OIG conduct a more in-depth review of these salary expenses to determine if costs allocated to salaries should be questioned in addition to the finding on lack of supporting documentation. In response to the findings on supporting documentation for salary costs, Florida has implemented new policies and procedures to appropriately track employee time spent on HAVA related activities. Within 30 calendar days, the state must submit a copy of the new department policy indicating the requirement to sign salary certification statements.

**Payments for unused leave to terminated employees was charged as a direct cost**

The state has repaid the state election fund for all unused leave payments made to terminated employees and charged as a direct cost to HAVA funds. The state has also requested the EAC to issue guidance on this issue to assist states in appropriately paying out unused leave to terminated employees working on HAVA programs. EAC will issue guidance on this matter during the 2007 federal fiscal year. No further action is required by the state on this matter at this time.

**Proper supporting documentation for expenditures was not always maintained**

EAC agrees with the finding that the state did not always properly support expenditures made with HAVA programs. The amount of expenditures that were not properly supported was not quantified during the single audit and no expenditures made with HAVA funded contracts were questioned. EAC will not make any determinations on potential repayment of unsupported costs until the OIG conducts a full audit of Florida's usage of HAVA funds through the regular OIG audit program. The state has detailed the new procedures it has put in place to ensure that all future payments made with HAVA funds have all the necessary supporting documentation prior to payment by the state. No further action is required by the state on this matter at this time.

**State did not follow federal requirements for interagency agreements**

EAC agrees with the finding that the state did not follow federal requirements for interagency agreements financed with HAVA funds. The state has detailed the new procedures it has put in place to ensure that all future interagency agreements made with HAVA funds meet all the necessary federal requirements and that appropriate monitoring is conducted by the state. No further action is required by the state on this matter at this time.

## **Final Management Decision**

EAC has determined that the state must submit documentation that details the new state procedures to maintain an accurate and current list of voting systems in the state. The state must submit a timeline to the EAC indicating when the revised state plan will be submitted to EAC for publication in the *Federal Register*. The state must submit a copy of the new department policy indicating the requirement to sign salary certification statements. All additional information requested from the state must be submitted to the EAC within 30 calendar days.

Florida 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**

**Florida Single Audit – Assignment No. E-SA-FL-11-06**

**Attachment 1**

020730



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

September 25, 2006

Memorandum

To: Thomas Wilkey  
Executive Director

From: Curtis W. Crider  
Inspector General

Subject: Findings in the State of Florida Auditor General Audit of the Department of State Help America Vote Act and the Florida Registration System  
(Assignment No. E-SA-FL-11-06)

The subject report (Attachment 1) contains several findings related to the Florida Department of State's (Department) administration of Help America Vote Act (HAVA) funds. The audit was performed by the Auditor General of the State of Florida, who is responsible for the report's findings.

The findings and recommendations are summarized below and presented in further detail in the attachment.

**Finding 3:** The Department did not maintain a current listing of voting systems certified and in use by the counties.

**Recommendation:** The Department should develop a current, reliable control listing; establish procedures to ensure that Supervisors of Elections submit all voting system information required by State law, and periodically confirm the accuracy of its listing with the Supervisor of Elections. Such confirmations should be made in connection with the Department's periodic reconciliation of its control listing to the voter systems information provided and on file at the Department.

**Proposed Corrective Actions:** The Department agreed that updated information was essential to determining whether the voting systems used by the counties met the requirements of the law. The Department indicated that it would institute a process to periodically confirm with the Supervisor of Elections that the information they have filed with the Department is accurate and that all information required by law is on file with the Department.

020731

**Finding 4:** The Department incorrectly calculated the required Maintenance of Effort (MOE) and did not maintain the required level of expenditures for the 2004-2005 fiscal year.

**Recommendation:** The Department should update the HAVA Plan to reflect the revised MOE amount. The Department should ensure that the required MOE level is met each fiscal year.

**Proposed Corrective Actions:** The Department agreed to update the State of Florida HAVA plan to reflect the revised required MOE amounts. In addition, the Department indicated that it will continue to review state expenditures in future years to ensure that the MOE threshold is exceeded. The Department indicated that in future years, the level of state effort should exceed the required threshold, compensating for the \$7,630 MOE shortfall for the 2004-2005 fiscal year.

**Finding 5:** Salary certifications required for employees who worked solely on HAVA were not maintained. Activity reports were not always maintained to support personnel costs charged to the HAVA program.

**Recommendation:** The Department's procedures should ensure that required documentation supporting charges to the HAVA Program (including certifications and personnel activity report) is properly and timely prepared and maintained. For any costs improperly charged to the HAVA Program, appropriate corrections should be made.

**Proposed Corrective Actions:** The Department indicated that it has instituted a procedure for obtaining time certifications from employees in HAVA funded positions. The certifications will be obtained on a semi-annual basis. If the Department becomes aware that any employee has worked on activities not related to the HAVA program, the costs associated with those other activities will be reimbursed to the HAVA program.

**Finding 6:** Contrary to Federal cost principles, payments for unused leave to terminated employees was charged as a direct cost instead of being allocated as a general administrative expense to all activities of the governmental unit.

**Recommendation:** The Department, in compliance with Federal cost principles; allocate as a general administrative expense unused leave payments. In addition, any costs improperly charged to the HAVA Program should be corrected.

**Proposed Corrective Actions:** The Department indicated that it would seek guidance from the Elections Assistance Commission on the proper disposition of unused leave payments.

**Finding 8:** HAVA program, expenditures were not always properly supported.

**Recommendation:** The Department should ensure that required contractual terms are met and services are received prior to payment. In addition, the Department should only pay contractors in amounts agreed upon by specific contract or purchase order.

020732

**Proposed Corrective Actions:** The Department indicated that the contract manager would review and certify that the requests for payment were properly supported and that contract requirements, milestones, and deliverables have been met prior to submitting the requests to Budget and Financial Services.

**Finding 9:** The Department did not always follow Federal requirements with regards to awards to other State agencies.

**Recommendation:** The Department should take steps to ensure that interagency agreements include all applicable Federal information and requirements and that appropriate monitoring is performed.

**Proposed Corrective Actions:** The Department indicated that it will ensure that interagency agreements with state agencies Utilizing HAVA funds include all of the information required by Federal standards. In addition, the Department would obtain the appropriate documentation to evidence expenditure of HAVA funds by the other State agencies.

Based on the findings, we recommend that the EAC ensure that the department completes its planned corrective actions. Please provide us with documentation of the action(s) taken to implement this recommendation by November 1, 2006. If you have any questions about this matter, please call me at (202) 566-3125.

cc: Chairman, U.S. Election Assistance  
Commission

Attachment

020733



# AUDITOR GENERAL

WILLIAM O. MONROE, CPA



DEPARTMENT OF STATE  
 HELP AMERICA VOTE ACT (HAVA)  
 AND THE  
 FLORIDA VOTER REGISTRATION SYSTEM (FVRS)  
 Operational Audit

## SUMMARY

This operational audit focused on the Department of State's administration of the Federal Help America Vote Act of 2002 (HAVA) during the period July 1, 2004, through February 28, 2006, and selected actions taken through May 23, 2006. In addition, we evaluated the effectiveness of selected controls related to the Florida Voter Registration System, implemented to satisfy specific requirements of the Act for a computerized Statewide voter registration list. Through June 30, 2005, the Department has been awarded \$160 million in HAVA funding on behalf of Florida.

### HELP AMERICA VOTE ACT

**Finding No. 1:** The Department did not have a procedure in place to evidence for the public record that voting systems being certified had met the requirements of Florida law.

**Finding No. 2:** The Department's established procedures did not prohibit the Secretary of State and any examiners from having a pecuniary (financial) interest in the examination of and approval of voting equipment.

**Finding No. 3:** The Department did not maintain a current, reliable control listing of voting systems certified and in use by the counties. In addition, the Department did not have a procedure in place to ensure that voting system information was on file with the Department.

**Finding No. 4:** The Department incorrectly calculated the required maintenance of effort that

was included in the State of Florida HAVA Plan and also did not maintain the required level of expenditures for the 2004-05 fiscal year.

**Finding No. 5:** Salary certifications required for employees who worked solely on the HAVA Program were not maintained. Also, personnel activity reports were not always maintained to support personnel costs charged to the HAVA Program.

**Finding No. 6:** Contrary to Federal cost principles, payment for unused leave to a terminating employee was charged as a direct cost to the Program instead of being allocated as a general administrative expense to all activities of the governmental unit.

**Finding No. 7:** Controls to ensure that voter education programs were in compliance with Florida law and Department rule were insufficient.

**Finding No. 8:** HAVA Program expenditures were not always properly supported.

**Finding No. 9:** The Department did not always follow Federal requirements with regards to awards to other State agencies.

### FLORIDA VOTER REGISTRATION SYSTEM (FVRS)

**Finding No. 10:** Improvements were needed in the Department's Information Technology (IT) risk management practices.

**Finding No. 11:** The Department had not adopted a governance model addressing the management, use, and operation of FVRS commensurate with its authority and

responsibility to ensure the system's security, uniformity, and integrity.

Finding No. 12: Although the Department had put measures in place to help ensure the integrity of data in FVRS, improvements were needed in the processes for identifying duplicate registrations and ineligible voters.

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#### BACKGROUND

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With the passage and signing of the Help America Vote Act (HAVA) on October 29, 2002, election reform began throughout our nation. HAVA contains numerous requirements that every state must meet to improve election administration in many areas. The requirements, most of which were to take effect between January 1, 2004, and January 1, 2006, include replacing punch card and lever-operated voting machines, allowing voters to verify their votes before casting their ballots, providing voters with provisional ballots, providing access for voters with disabilities, and creating a Statewide voter registration list.

HAVA created the Election Assistance Commission (EAC) as an independent commission to administer the provisions of the Act. Specifically, HAVA charges the EAC with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, and developing a national certification program for voting systems. The EAC also serves as a national clearinghouse and resource of information regarding election administration.

Funding comes from four different HAVA programs. As shown on Appendix A, through June 30, 2005, the Department had been awarded \$160,207,602 in HAVA funding on behalf of Florida relating to Titles I and II. For each of the four programs, HAVA limits the use of funds to particular purposes as follows:

- Title I, Section 101 funding is available to improve the overall administration of elections, including the training of voters and election officials.
- Title I, Section 102 funding (fully expended as of July 2003) provides funding for the replacement of punch card and lever-operated voting machines.

- Title II, Section 251 funding allows states to meet uniform minimum voting system standards; provide a provisional voting mechanism, as well as minimal voter information requirements; and maintain a single computerized statewide voter registration list. However, states, once meeting these requirements, can use the funds to improve the administration of Federal elections.
- Title II, Section 261 funding supports efforts undertaken to make polling locations accessible for individuals with disabilities.

Appendix B shows for each of the four programs the funds received, amounts spent or obligated, and the available balances.

In response to audit inquiry, the Department provided us with a document titled *Funds Revenue and Usage Life of HAVA Grant* that projects HAVA funds being fully depleted sometime during the 2019-20 fiscal year. For the majority of the awarded funds, there is no deadline by which the Department must expend the funds received. However, included in the award total is \$1.676 million in Title II, Section 261 funds that are available for drawdown from the Federal Government as expended. These funds must be expended within five years of the original award year.

HAVA requires all states to develop and implement a Statewide plan that includes 13 primary elements. The State of Florida HAVA Plan incorporated these 13 primary elements, and Appendix C contains a listing of the elements. Florida enacted legislative and local reforms to ensure that the elements are consistent with and clearly outlined in Florida Statutes, *Florida System Voting Standards (Standards)*, rules, and regulations.

The administration of elections in Florida occurs at the State and local levels. The Secretary of State is the Chief Election Officer under Florida law.<sup>1</sup> As Chief Election Officer, the Secretary of State is responsible for the coordination of the State's responsibilities under HAVA.

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<sup>1</sup> Section 97.012, Florida Statutes.

## FINDINGS AND RECOMMENDATIONS

## Help America Vote Act (HAVA)

## Finding No. 1: Voting System Certification Checklist

In accordance with Florida law,<sup>2</sup> the Department is to examine all makes of electronic or electromechanical voting systems submitted to it by any person owning (such as vendors) or interested in an electronic or electromechanical voting system (such as boards of county commissioners of any county seeking approval of a given system) and determine whether such systems comply with the voting systems requirements provided in Section 101.5606, Florida Statutes. Additionally, the Department has developed *Standards* that provide information and guidance on the State's requirements and evaluation methods for voting system certification. Upon determining that the voting system complies with such requirements, the Department issues a certificate.

Our audit disclosed that the Department had implemented voter system certification procedures that incorporated the requirements included in Section 101.5606, Florida Statutes. However, we noted that a procedure was not in place to evidence for the public record that the voting systems being certified had met the requirements of Florida law. Therefore, a determination could not be made by us as to whether the requirements of Florida law had been met with regard to voter system certifications.

Department personnel indicated during our field work that a document titled *Florida Voting Systems Certification Checklist & Test Record (Checklist)* had been drafted that would provide a mechanism to document the Department's processes performed relating to Section 101.5606, Florida Statutes. However, this *Checklist* was not in use during the audit period and no other document was available for such purposes.

<sup>2</sup> Sections 101.5605(1) and (2), Florida Statutes.

**Recommendation:** We recommend that the Department finalize the *Checklist* and utilize it to document for the public record that its voting system certification procedures meet the requirements of Florida law.

## Finding No. 2: Pecuniary Interests

Florida law<sup>3</sup> states that neither the Secretary of State nor any examiner shall have any pecuniary (financial) interest in the examination and approval of voting equipment.

In response to audit inquiry as to Department procedures to ensure compliance with the above-noted Florida law, Department staff referred us to the section of the *Department of State Employee Handbook (Handbook)* titled "Relationships with Regulated Entities." This section of the *Handbook* requires employees to disclose in writing to the Secretary of State or his/her designee of a financial interest in a regulated entity. While the *Handbook* provision may provide some assurance of the disclosure of pecuniary interests should they exist, a procedure requiring an affirmation as to the absence of pecuniary interests may be more effective and responsive to the significant loss of credibility that would result should the existence of a conflict of interest go undisclosed.

**Recommendation:** We recommend that the Department establish procedures requiring the periodic affirmation of the absence of pecuniary and other conflicts of interests.

## Finding No. 3: Certified Voting Systems

Florida election laws require the Department, among other duties, to:

- Examine and approve voting systems through a public process to ensure that the voting systems meet the standards outlined in Section 101.5606, Florida Statutes, and similar standards outlined in HAVA requirements under Section 301 of Title III. (Section 101.5605, Florida Statutes.)

<sup>3</sup> Section 101.5605(2)(c), Florida Statutes.

- Maintain voting system information including copies of the program codes, user and operator manuals, software, and any other information, specifications, or documentation relating to an approved electronic or electromechanical voting system and its equipment. (Section 101.5607, Florida Statutes.)

The Department is also responsible for demonstrating compliance with Federal laws, regulations, and contracts governing the use of HAVA funds.

To allow for a ready demonstration of record that all voting systems meet the requirements of State laws and HAVA requirements, the Department should have in place a current inventory of the voting systems in place in each county. To ensure the accuracy and completeness of voting system records and files, this inventory should then be compared periodically to the voting system information maintained on file pursuant to State law.<sup>4</sup> Our audit tests disclosed that such procedures were not in place. Specifically:

- The Department did not maintain a current, reliable control listing of specific certified voting systems and system configurations implemented in each county. In response to our request for an official control listing of voting systems currently in use by all 67 counties, the Bureau Chief of Voting Systems Certification referred us to a Web site maintained by the Department that provides a link to information about specific certified voting systems and the system configurations being implemented by each county and stated, "The web site is updated as we receive 'system acquisition' reports from the counties. There may be a lag between the time a county acquires its system and the time we receive such a report. In some cases, a county may forget to notify us. In addition, I don't think there is any such 'official' listing." Our review of the Web site and other listings provided by the Department disclosed several instances in which the voting systems shown were not HAVA compliant.

Absent a current, reliable control listing of specific certified voting systems and system configurations implemented in each county, the Department cannot be assured and demonstrate that voting systems in use by the counties meet the standards outlined in Section 101.5606, Florida Statutes, and similar standards outlined in HAVA requirements.

- The Department did not have a procedure in place to ensure that copies of program codes, user and operator manuals, software, and any other information, specifications, or documentation related to an approved electronic or electromechanical voting system and its equipment were on file with the Bureau of Voting Systems Certification. Section 101.5607(1)(a), Florida Statutes, requires that this information be filed with the Department by the Supervisor of Elections at the time of purchase or implementation. An appropriate procedure would include a periodic comparison of the control listing referenced in the preceding bullet to the voting system information on file at the Department.

During the audit period, funds were provided to counties for the purpose of purchasing accessible voting systems as required by Title III, Section 301, HAVA. We selected disbursements made to four counties and requested documentation from the Department demonstrating compliance with Section 101.5607(1)(a), Florida Statutes. Specifically, we examined Department records to determine if such information for the counties was on file. Our examination disclosed that voting system information was not available for one county; incomplete voting system information was available for another county; and, although some voting system information was on file for a third county, the information on file did not appear to reflect the purchase of the accessible voting system.

In response to audit inquiry, we were informed that the Department requests this information from the counties when the Department becomes aware that a county has purchased new equipment and that the Department currently has no procedures in place for routinely requesting such information periodically from each of the counties.

State law<sup>5</sup> requires the Department to maintain voting system information and provides that any such information or materials that are not on file with and approved by the Department, including any updated or modified materials, may not be used in an election. This is especially important because voting systems are upgraded, modified, and changed both before and after delivery to the counties, and the Department has a responsibility to maintain current and accurate voting system information for each county.

<sup>4</sup> Section 101.5607, Florida Statutes.

<sup>5</sup> Section 101.5607(1)(a), Florida Statutes.

Details of the exceptions noted in the bullets above were provided by us to the Department for immediate resolution.

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**Recommendation:** We recommend that the Department develop a current, reliable control listing; establish procedures to ensure that Supervisors of Elections submit all voting system information required by State law,<sup>6</sup> and periodically confirm the accuracy of its listing with the Supervisors of Elections. Such confirmations should be made in connection with the Department's periodic reconciliation of its control listing to the voting systems information provided and on file at the Department.

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**Finding No. 4: Maintenance of Effort**

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For activities funded by HAVA, the Department is to maintain the expenditures of the State at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ended June 30, 2000. The State of Florida HAVA Plan stated that, in determining Florida's maintenance of effort (MOE) expenditures, the Division of Elections' calculation included 1999-00 fiscal year expenditures for salaries and benefits, operating capital outlay, and voter fraud programs for the Division of Elections' Director's Office and the portion of the Bureau of Election Records' expenditures pertaining to election administration. The amount calculated and reported in the State of Florida HAVA Plan for the 1999-00 MOE totaled \$3,082,224.

Our tests of the data supporting the Department's MOE calculation disclosed that the Department failed to use the final expenditure data reported in the State's accounting system (Florida Accounting Information Resource Subsystem). The amounts used were those recorded as of June 28, 2000. Our tests also disclosed that the Department's calculation included, in some instances, budgeted rather than actual salary expenditures.

The final expenditure data as of June 30, 2000, as shown by the State's accounting system totaled \$3,570,408 (or \$488,184 more than the MOE

expenditure amount reported in the HAVA Plan). In addition, our tests disclosed that the Department MOE for the 2004-05 fiscal year totaled \$3,562,778, resulting in the Department failing to meet the required MOE of \$3,570,408 by \$7,630.

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**Recommendation:** The Department should update the State of Florida HAVA Plan to reflect the revised required MOE amount and ensure that the required MOE level is met each fiscal year in accordance with HAVA requirements.

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**Finding No. 5: Salary Certifications and Activity Reports**

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Federal cost principles<sup>7</sup> require that charges for salaries for employees who are expected to work solely on a single Federal award or cost objective be supported by periodic certifications that indicate that the employee worked solely on that program for the period covered by the certification. These certifications are to be prepared at least semiannually and signed by the employee or supervisory official having first-hand knowledge of the work performed by the employee. These principles also require that charges for salaries of employees who work on multiple activities or cost objectives should be distributed and supported by personnel activity reports or equivalent documentation.

In response to audit inquiry, the Department provided us with a listing of employees who worked solely on the HAVA Program during the period July 1, 2004, through February 28, 2006. We then requested certifications for each of the employees identified by the Department. We also selected nine employees who the Department represented to us had worked solely on the HAVA Program to verify that they had not worked on any other activity. These audit procedures disclosed the following deficiencies:

- Certifications were not always prepared in compliance with Federal cost principles. Specifically, certifications were not prepared for 12 employees who worked solely on the HAVA Program during the period July 1, 2004, through June 30, 2005. The salaries and benefits for these

<sup>6</sup> Section 101.5607(1)(a), Florida Statutes.

<sup>7</sup> Office of Management and Budget Circular No. A-87.

12 employees totaled \$524,787.63. Additionally, for 25 of the 27 employees who worked solely on the HAVA Program during the period July 1, 2005, through December 31, 2005, certifications were not obtained until April 2006. For 2 of the 27 employees, no certifications were on file. In response to audit inquiry, Department staff provided one certification that was signed on May 12, 2006, by an employee's supervisor attesting that the employee had worked solely on the HAVA Program. The employee had resigned on October 31, 2005. For the other instance, the Department stated that the employee worked on non-HAVA related activities and, since there are no time reports documenting the employee's work activities, the Department estimated that approximately 10 percent of the employee's time during the July 2005 through January 2006 period was related to non-HAVA related activities and that the Department was currently preparing correcting entries to reimburse the HAVA Program for the improper costs.

- For another employee working on multiple activities, charges were not supported by personnel activity reports, contrary to Federal cost principles. The employee, even though he had completed a certification that he worked solely on the HAVA Program, indicated to us that only approximately 75 percent of the time worked was related to the HAVA Program. However, the employee's personnel activity report did not identify the specific program areas worked on and, as a result, salary and benefits totaling approximately \$3,600 monthly were charged to the HAVA Program.

Without adequate procedures and supporting documentation, the Department cannot ensure that Federal funds have been expended only for authorized purposes.

In response to audit inquiry, Department staff stated, "After the Department of State became aware of the requirement for individuals filling HAVA-funded positions to complete certifications regarding work performed, a form was developed that could be customized for each employee. The certifications will be prepared on a semi-annual basis to coincide with the first and last six months of the state fiscal year. The first work certification forms cover the period from July 2005 through December 2005." The Department further indicated that it was in the process

of developing written procedures to address the certification requirements.

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**Recommendation:** We recommend that the Department's procedures ensure that required documentation supporting charges to the HAVA Program (including certifications and personnel activity reports) is properly and timely prepared and maintained. For any costs improperly charged to the HAVA Program, appropriate corrections should be made.

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**Finding No. 6: Unused Leave Payments**

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Federal cost principles<sup>a</sup> provide that payments to terminating employees for unused leave are allowable in the year of payment provided the payments are allocated as a general administrative expense to all activities of the governmental unit or component.

Our tests of salary expenditures disclosed that the Department did not allocate as a general administrative expense an unused leave payment, contrary to Federal cost principles. An employee terminated employment on October 31, 2005, and was paid \$22,274 for 470 hours of unused annual leave. The entire amount was paid from HAVA funds.

In response to audit inquiry, Department staff indicated that this payment was made in compliance with Department of Management Services Rule 60L-34.0041(6)(b), Florida Administrative Code. The Rule provides that a senior management service or selected exempt service employee who separates from State government shall be paid for unused annual leave up to a maximum of 480 hours. Department staff further indicated that Federal cost principles supported this unused leave payment. We disagree, as discussed above, because Federal cost principles require that such payments be allocated as a general administrative expense to all activities of the governmental unit or component.

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<sup>a</sup> Office of Management and Budget Circular No. A-87.

**Recommendation:** We recommend that the Department, in compliance with Federal cost principles, allocate as a general administrative expense unused leave payments. We also recommend that, for any costs improperly charged to the HAVA Program, appropriate corrections be made.

**Finding No. 7: Voter Education**

To receive Federal funds under HAVA,<sup>9</sup> the Department is required to describe how the State will provide for voter education. Under Florida law,<sup>10</sup> the Legislature appropriated \$3,000,000 from HAVA funds in each of the 2004-05 and 2005-06 fiscal years to the Department to be distributed to county Supervisors of Elections for voter education. To receive funds from these appropriations, Supervisors of Elections were required to submit to the Department a detailed description of the voter education program (Plan). Additionally, counties were required to certify to the Department that the county would provide matching funds for voter education in the amount equal to 15 percent of the amount received from the State.

We examined payments made to three counties from funds provided under Florida law.<sup>11</sup> We noted that each of the counties had entered into a *Memorandum of Agreement for Receipt and Use of Voter Education Funds (Agreement)*. This *Agreement* required Supervisors of Elections to annually submit a report to the Department detailing the actual expenditures made under the Plan.

Our audit disclosed:

- The Plan for one county failed to include four of the five voter education elements contained in the Standards for Nonpartisan Voter Education (Department rule).<sup>12</sup> The Plan failed to address a high school voter registration/education program; a college voter registration/education program; voter registration workshops; and the conduct of

demonstrations of county voting equipment. Voter education funds received by the county totaled \$27,127. Absent the voting education activities described above, the Department has no assurance that State law and HAVA requirements will be met.

- The activities, as reported in the expenditure report for another county, included \$109,021 for banner and billboard advertisements. This type of activity was not included in the county's Plan submitted to the Department. However, if included in the Plan, these expenditures would have been allowable. Subsequent to audit inquiry, Department staff stated that it appears that some counties had utilized voter education funds for activities that were not included in their Plans and that changes would be made to Department procedures to compare county-planned activities with actual voter education activities.
- The expenditure report for one county failed to delineate, as required by the standard reporting form, the State and county funds expended. Therefore, the Department could not determine from a review of the report if appropriate matching funds for voter education had been expended by the county. The county received State funds totaling \$180,910 and certified matching funds totaling \$27,136. Subsequent to audit inquiry, Department staff stated they will include language in the *Agreements* requiring a separate accounting for expenditures made with State and county funds.

In the instances noted above, the Department failed to ensure that the required Plans and expenditure reports submitted by the Supervisors of Elections were in compliance with Department rules and *Agreements*. This failure by the Department could result in noncompliance with Florida law and rules and HAVA requirements. (See Appendix C, Element 3.)

**Recommendation:** We recommend that the Department ensure that all Plans are in compliance with Department rules and *Agreements* and that voter education expenditures correspond with detailed descriptions in the Plans. In addition, we recommend the Department ensure that the matching expenditures are reported separately on the expenditure report.

<sup>9</sup> Section 254a3, HAVA.

<sup>10</sup> Chapters 2004-268 and 2005-70, Laws of Florida.

<sup>11</sup> Chapters 2004-268 and 2005-70, Laws of Florida.

<sup>12</sup> Department of State Rule 1S-2.033, Florida Administrative Code.

**Finding No. 8: Program Expenditures**

Federal cost principles<sup>13</sup> require appropriate documentation of expenditures. Absent such documentation, expenditures are not allowable for payment by Federal award. The Division of Elections is responsible for tracking and monitoring the use of HAVA funds in accordance with established State procedures, and the Director of the Division of Elections has final signature authority for HAVA expenditures. Our audit included examining Department records related to 19 HAVA expenditures totaling approximately \$8.9 million, excluding salary expenditures. We noted:

- A \$3,333.33 monthly payment was not supported by evidence showing that the required work had been completed. This payment was made pursuant to a contract for consulting services related to assisting the 67 counties in developing and implementing plans mandated by HAVA for the accessibility of polling places and voting equipment for persons with disabilities. The agreement, providing for payments totaling \$50,000, specified that a progress report was to be provided with the invoice. Subsequent to audit inquiry, Department staff stated that, rather than progress reports, the vendor was submitting weekly activity reports to the Assistant Secretary of State and the Director of the Division of Elections. Our review of the activity reports subsequently provided by the Department disclosed one activity report had been requested, after audit inquiry, on May 16, 2006, and another one was received after the invoice was paid. In addition, there was no evidence that the Department had reviewed the activity reports prior to making the payment. Also, the listed activity (traveling to Washington, D.C., to meet with congressional representatives) for one weekly activity report (week beginning November 2, 2004) did not appear to relate to the activities set out in the contract.

The process of receiving weekly activity reports from the contractor did not comply with the contract terms and did not allow for a proper preaudit as such documentation apparently was not forwarded to appropriate staff responsible for processing payments to the contractor.

- A \$39,645.48 payment to a contractor was not properly supported by evidence showing that the invoiced items were received. The payment related to uniform voter registration application forms that were to be provided to various cities. Documentation supporting the payment did not evidence that the forms ordered were shipped to and received in the proper quantities or types by the various cities listed on the vendor invoice. Such documentation may include, for example, notes on Department confirmation with the cities that the forms had been received. In addition, we noted that the combined payments to this contractor exceeded the purchase order total of \$75,750 by \$1,253. Department staff indicated that an appropriate change order had not been prepared.

For the instances described above, absent documentation to support the expenditures, the Department cannot demonstrate that, at the time of payment, the services or activities had been delivered or received and that the expenditures were allowable for payment by Federal award.

**Recommendation:** We recommend that the Department ensure that required contractual terms are met and services are received prior to payment. In addition, we recommend that the Department only pay contractors in amounts agreed upon by specific contract or purchase order.

**Finding No. 9: Interagency Agreements**

According to HAVA,<sup>14</sup> each state is to implement a computerized statewide voter registration list containing the name and registration of every legally registered voter in the state. The Department was awarded Federal funds on behalf of the State of Florida to meet the HAVA requirements.

Chapter 2003-397, Laws of Florida, appropriated the Department a lump sum totaling \$2,114,814 to implement HAVA and also provided that both the Florida Department of Law Enforcement (FDLE) and the Florida Department of Highway Safety and Motor Vehicles (DHSMV) each would receive two full-time equivalent positions and \$145,830 to assist in the development of the Statewide voter registration list.

<sup>13</sup> Office of Management and Budget Circular No. A-87.

<sup>14</sup> Section 303, HAVA.

The Department was required to enter into interagency agreements with both of these agencies prior to the release of the funds.

As the Department is using HAVA funds to develop the Statewide voter registration system, the Department should ensure that the interagency agreement includes all the specific Federal information associated with the HAVA program. Our review of one of the interagency agreements (FDLE) disclosed that the agreement did not provide all of the specific information related to the HAVA program. Specifically, we noted that the agreement did not include the:

- CFDA title and number.
- Name of the Federal agency.
- Requirements of Federal laws and regulations.
- Requirement of access to records by the Department and its auditors.

In addition, our examination of the \$145,830 interagency payment to FDLE disclosed that the Department failed to obtain evidence that the agency used the \$145,830 for only HAVA activities. Such evidence should include applicable salary records evidencing payroll amounts and salary certifications or activity reports.

Subsequent to audit inquiry, the Department requested and received salary certifications from FDLE evidencing that the employees assigned to the positions worked solely on the HAVA activities. However, no documentation was provided to evidence that the \$145,830 was actually expended for salary and benefit costs.

When the Department fails to monitor and include in interagency agreements specific Federal information associated with the HAVA program, assurance is reduced that Federal funds will be expended for allowable activities and accounted for in accordance with Federal cost principles and, if applicable, subject to audit in compliance with the applicable Federal requirements.

**Recommendation:** We recommend that the Department take the necessary steps to ensure that the interagency agreements include all applicable Federal information and requirements and that appropriate monitoring is performed.

#### FLORIDA VOTER REGISTRATION SYSTEM (FVRS)

The Department began developing FVRS in 2003 to comply with HAVA requirements. The State received a waiver from the EAC, permitted under HAVA provisions, and was granted an extension from January 1, 2004, until January 1, 2006, to implement FVRS. Pivotal to the design of FVRS was the retention of county voter registration systems. Each of the 67 counties was to remediate its registration systems to accommodate the FVRS interface and operating specifications. FVRS communicated with county voter registration systems using a service-oriented architecture that supported establishing communication and information exchange by providing a platform for receiving requests and generating response messages that were processed by county voter registration systems.

In accordance with Florida law,<sup>15</sup> each Supervisor of Elections maintained responsibility for updating voter registration information, entering new voter registrations into the Statewide voter registration system, and acting as the official custodian of documents received by the Supervisor of Elections related to the registration and changes in voter registration status of electors of the Supervisor of Elections county. While the Department was responsible for the overall security and integrity of FVRS, each Supervisor of Elections was responsible for ensuring that all voter registration and list maintenance procedures conducted were in compliance with any applicable requirements prescribed by rules of the Department through the Statewide voter registration system or prescribed by the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or HAVA.

<sup>15</sup> Section 98.015, Florida Statutes.

### Finding No. 10: Information Technology Risk Management

An effective risk management process is an important component of a successful information technology (IT) security program. Risk management is the process of identifying vulnerabilities and threats to IT resources used by an organization in achieving business objectives and deciding what measures, if any, to take in reducing risk to an acceptable level. Risk assessment is a tool that can provide information for the design and implementation of internal controls and in the monitoring and evaluation of those controls. Risk analysis forms the basis for developing effective security practices that include periodic reviews of user access rights and comparison of resources with recorded accountability to reduce the risk of errors, misuse, or unauthorized alteration.

During the audit, we noted certain deficiencies in the Department's IT risk management practices as follows:

- The Department had not completed a formal risk assessment for FVRS. In October 2005, the Department contracted with Integrated Computer Systems, Inc. (ICS), to perform an information security assessment on its network infrastructure and major applications in place at the time of the assessment. This assessment was completed before FVRS was fully implemented. In February 2006, the Department contracted with ICS to perform a complete assessment of FVRS. This assessment commenced in April 2006 and is scheduled for completion in June 2006.
- Authorizations for access to Department resources had not been properly documented for all FVRS users and access capabilities were not timely revoked or modified as necessary for individuals who had terminated employment. In addition, the Department did not have a formal process in place for the periodic monitoring of actual access capabilities through comparison to the authorizations. Good access controls include instituting policies and procedures for authorizing access to information resources, documenting such authorizations, and then periodically monitoring actual access capabilities through comparison to the authorizations. Department

policy<sup>16</sup> required that, immediately upon initial employment, reassignment, or termination, the designated division manager inform the Service Request Desk at the Central Computing Facility (CCF) via the Control Access form. Of 21 authorizations tested, we noted 19 instances where proper access documentation was not maintained. In addition, we noted two users with improper access capabilities to Department network resources. One user was added in error and the other had not had access capabilities properly revoked upon the completion of a contracted engagement. In response to audit inquiry, the Department indicated that access capabilities for these individuals had since been revoked.

When access capabilities are not limited to what is authorized and approved by management, the risk is increased of inappropriate use of information resources. In addition, without formal procedures for the periodic monitoring of actual access capabilities against what is authorized, the risk is increased that unauthorized access will not be identified and corrected in a timely manner.

**Recommendation:** Upon completion of the FVRS risk assessment, the Department should implement policies and procedures to mitigate identified risks, including ensuring that all access to Department systems is documented in a uniform manner according to policy, maintained in a central location, and periodically reviewed.

### Finding No. 11: IT Governance Model

An IT governance model contributes to the reliability and integrity of an application system and data processed therein and includes developing and maintaining procedures to ensure the proper use of the application and technological solutions put in place and proper data management. A consistent managed approach to securing all system environment components increases assurance that due diligence is exercised by all individuals involved in the management, use, maintenance, and operation of information systems.

<sup>16</sup> Information Technology Operating Procedure Number IT001, Logical Access Control.

According to HAVA,<sup>17</sup> adequate technological security measures shall be provided to prevent unauthorized access to the computerized voter registration list. Florida law<sup>18</sup> further directs the system to provide secured access for authorized voter registration officials and states that the Department may adopt rules governing the access, use, and operation of the Statewide voter registration system to ensure security, uniformity, and integrity of the system.

According to FVRS design, counties are to retain the greatest level of autonomy over county registration assets while still meeting the overall security objectives of FVRS, and the Department is responsible for the overall security and integrity of FVRS. Multiple entities are, therefore, working towards the common business purpose FVRS is to serve. Our audit focused on the important requirement of ensuring FVRS has adequate security structures and solutions in place for conducting business. We noted certain control deficiencies as follows:

➤ Aligning systems security with a business strategy requires centralized direction. A security program establishes a common framework and principles for assessing risk, developing and implementing consistent security procedures, and monitoring the effectiveness of those procedures. The Department, in conjunction with the county Supervisors of Elections' offices, had not developed a formal security program for FVRS. Prior to the implementation of FVRS, the Department prepared a FVRS Security Approach Plan which was intended to later serve as a roadmap for developing a comprehensive FVRS System Security Plan (SSP) that would include all applicable system security policies and procedures. In response to audit inquiry, Department staff indicated that the SSP continued to be in development.

The *Guide to FVRS (Guide)* was developed by the Department and distributed to the Supervisors of Elections as a precursor to the implementation of FVRS. The *Guide* states that the counties are responsible for security, including securing the physical location of equipment hosting the application or communications devices related to the local county system and securing network systems providing access to the local voter registration system. However, the Department had not developed formal written directives or guidance to ensure a consistent approach and enforcement across all environments in such matters as configuration management, virus protection, system software maintenance and updates, and patch management.

- Consistent user security mandates also require aligning system security with the business objective. Each county was responsible for designating a System Security Administrator (SSA) to assign and manage user access to the local county voter registration system along with network resources, as well as to FVRS. Guidelines to promote consistent, effective policies and procedures related to information resource classification and control, access authorization and review, distribution of user roles, logical access controls, and user security awareness training had not been developed by the Department. Additionally, while the *Guide* stated that training in user/identity management will be required of State and county SSAs, the Department had not yet conducted a formal training program.
- The Department was in the process of, but had not completed, the integration of FVRS system planning into its overall IT disaster recovery plan. In addition, although the Department indicated that disaster recovery plans had been requested from each county, there was no formal, written process in place for receiving and evaluating those plans to ensure their adequacy in recovering timely from a disruption to operations. As HAVA<sup>19</sup> requires all voter registration information obtained by any local election official in the State to be electronically entered into the computerized voter registration list on an expedited basis at the time the information is provided to the local official, absent or inadequate procedures to resume operations in a timely manner may cause delays in updating FVRS, thereby jeopardizing the accuracy and completeness of registration data.

<sup>17</sup> Section 303(a)(3), HAVA.  
<sup>18</sup> Sections 98.035(2) and 98.035(5), Florida Statutes.

<sup>19</sup> Section 303 (a)(1)(A)(vi), HAVA.

- Proper security administration ensures that violation and security activity is logged, reported, reviewed, and appropriately escalated on a regular basis to identify and resolve incidents involving unauthorized activity. The design of FVRS included the capability to log unauthorized attempts to penetrate the system and unauthorized procedures by authorized users. As of the completion of our audit field work, the Department had not devised a formal process for review and retention of these logs. However, in response to audit inquiries, Department staff indicated their intent to establish a process for monitoring the logs in near real time.
- The Department had not designated any individual positions in connection with FVRS or the Division of Elections as positions of special trust. Florida law<sup>20</sup> states that agencies shall designate positions that, because of the special trust or responsibility or sensitive location of those positions, require that persons occupying those positions be subject to a security background check, including fingerprinting, as a condition of employment. Further, it requires that persons of such positions undergo background investigations using level two screening standards, which include fingerprinting used for checks against statewide criminal and juvenile records through the Florida Department of Law Enforcement (FDLE) as well as checks for Federal criminal records through the Federal Bureau of Investigation. In fulfillment of their assigned responsibilities related to verification of voter registration records and determination of reliability and credibility of matching information, Bureau of Voter Registration Services' (BVRS) employees who have signed the Department-required Standards of Conduct Statements, had access to statutorily designated<sup>21</sup> confidential and publicly exempted information, records, and data including social security numbers, driver's license numbers, Florida identification (ID) numbers, and voter signatures. In addition, the BVRS Bureau Chief and backup delegate had access to records of individuals registered to vote as protected persons, whose personal information including home address and telephone number were exempt from disclosure by Florida law.<sup>22</sup> The Department had not designated BVRS employees as being in positions of special trust. Therefore, level two screenings

had not been performed. The Department did conduct level one background screenings, that include employment history checks as well as Statewide criminal correspondence checks through FDLE on all new employees. Without adequate background checks, including fingerprinting, the risk is increased that a person could inappropriately be employed in a position of special trust.

Security controls and procedures that vary in placement and degree among the Department and the counties may not provide for the achievement of a sustainable capability for proactive mitigation of security risks or incidents. Without a common foundation for applying management and security procedures for IT resources and data, security controls necessary to adequately protect information systems that support the operations, mission, and legal responsibility of FVRS may fail to be identified and consistently applied.

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**Recommendation:** The Department should, in coordination with the county Supervisors of Elections, adopt a governance model that includes security measures in support of, and for the protection of, the FVRS business purpose and the confidentiality, availability, and integrity of data contained therein. Specifically, written procedures should be established to address those areas noted above with consistent application to ensure the system's security, uniformity, and integrity.

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**Finding No. 12: FVRS Data Integrity**

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The Department's HAVA Plan specifies that the effective and efficient administration of elections depends on the completeness and accuracy of voter registration lists. Florida law<sup>23</sup> provides that the Department shall protect the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records. In the pursuit of this goal, the Department is directed by law to identify voters who are deceased, registered more than once, convicted of a felony and whose voting rights have not been restored, or adjudicated mentally incompetent and whose voting rights have not been

<sup>20</sup> Section 110.1127, Florida Statutes.

<sup>21</sup> Sections 97.0585 (1)(c) and 97.0585 (2), Florida Statutes.

<sup>22</sup> Section 119.071(4)(2)(d), Florida Statutes.

<sup>23</sup> Section 98.075, Florida Statutes.

restored. For those voters who have been identified as potentially ineligible due to felony conviction or adjudication of mental incompetence, the Department is directed to determine if such information is credible and reliable. Upon determination of the reliability and credibility of the information, the Department is required to forward such information to the appropriate Supervisor of Elections for final determination of voter ineligibility and removal from the voter system.

During the audit, we noted the following deficiencies in this process:

- Some circumstances were noted that may increase the possibility of duplicate registrations in FVRS. During the implementation of FVRS, the voter records used to populate the FVRS database were provided by individual county Supervisor of Elections offices from their voter registration systems. Counties were responsible for managing their duplicate records using FVRS transactions after migration was completed. The Department indicated that there were approximately 30,000 duplicate records identified prior to implementation. However, the Department had not determined whether these 30,000 records had been resolved by the counties. The Department had not yet implemented a systematic process to periodically scan for and identify duplicate registrations. Instead, manual checks were made by the Supervisors of Elections or the Department, for new or updated registrations received, at the time of initial entry into FVRS to help ensure that no new duplicate records were created. Department staff, on May 24, 2006, subsequent to our audit field work, indicated that a systematic matching process had been put into place. In addition, prior to the implementation of statutory changes in 1999,<sup>24</sup> the uniform voter registration application did not require applicants to supply the last four digits of their social security number and either a Florida driver's license number or Florida ID card number. Therefore, records for applicable voters in FVRS whose voter registration pre-dated these added requirements did not have any of these unique identification numbers associated with their record which would otherwise allow for more accurate matching of duplicate registrations and comparison of data in determination of ineligibility. The Department

indicated that it initiated a process for populating the blank fields with unique identifiers (i.e., Florida driver's license numbers or Florida ID card numbers) when available for applicable registered voters, from records provided by the Department of Highway Safety and Motor Vehicles (DHSMV).

- Although the Department had a systematic process in place for identifying potential felon matches within FVRS, it had not completed a comprehensive check of all felony convictions against all voters. As noted in the previous bullet, the FVRS database was populated from data in the individual county voter registration databases. FVRS, implemented in January 2006, is the successor to the Central Voter Database (CVDB) that was established in 2001. CVDB was designed as a tool to assist the Supervisors of Elections with their responsibility to perform final voter eligibility determinations. CVDB was to perform initial voter eligibility determinations to identify duplicate registrations, as well as voters who were deceased, convicted of a felony and had not had their voting rights restored, or adjudicated mentally incompetent and had not had their voting rights restored. The activation of the felon-matching component of CVDB was delayed until May 7, 2004, and was deactivated on July 10, 2004, upon the discovery of its inability to match felons to registered voters of Hispanic origin. FVRS was similar to CVDB in that it was also populated with voter data received from each of the 67 county voter registration databases. However, unlike CVDB, FVRS was designated by Florida law as the official list of registered voters in the State. Additionally, the identification of potential felon-registered voter matches under FVRS was distinct from the automated process implemented under CVDB. Initial potential matches from FVRS underwent comprehensive staff review and evaluation.

The Department's systematic process to identify potential felons consisted of preliminary assessments conducted by FDLE of voters who may have been convicted of a felony based on voter registration records provided to FDLE by the Department. Each new voter registration application and any updates to existing registration records which occurred after January 1, 2006, were submitted to FDLE for evaluation. The Department also provided FDLE with all active and inactive voter registrations maintained by FVRS on a monthly basis. These records were compared to felony convictions reported in the

<sup>24</sup> Section 97.052 (2), Florida Statutes.

preceding month. The purpose of this comparison was to identify any existing registered voter who may be matched with a new or recent felony conviction. Any matches were forwarded to the Department for further staff evaluation and verification by BVRS. The Department plans to assess all existing registrations against all felony convictions. This process will begin with the most recent registrations and incrementally expand to include older registrations as Department resources and workload permit.

- Verification and validation of voter information relies on information received from the external agencies, including the Florida Department of Health (Office of Vital Statistics), Clerks of the Circuit Court, United States Attorney's Office, FDLE, Board of Executive Clemency, Florida Department of Corrections, and DHSMV. Following input of a completed voter registration application into FVRS by an election official and verification of an applicant's Florida driver's license number, Florida ID card number, or the last four digits of the social security number through DHSMV and the Social Security Administration, the applicant was registered and eligible to vote. After this registration process takes place, automated matches of potential ineligibility based on death, adjudication of mental incapacity, or felony conviction were generated by daily comparisons of data from the external agency databases and voter registration information in FVRS. BVRS was responsible for manually evaluating those automated matches of potential ineligibility for credibility and reliability. Following match resolution by BVRS, only those matches determined to be credible and reliable were sent in the form of case files to the Supervisors of Elections for review.

The Department indicated that there had been instances where data supplied by other agencies was not accurate or timely. For example, the Department indicated that records which were supplied by the Office of Vital Statistics for the purposes of matching for deceased voters have, at times, contained inaccurate social security numbers. In response, the Department had put in place manual procedures to help mitigate this known data problem. Additionally, the Department indicated that data received from the Office of Vital Statistics, though received regularly, may lag as much as two to three months.

- Pursuant to Florida law,<sup>25</sup> the Department maintains oversight of registration records maintenance activities conducted by the Supervisors of Elections through certification. Each Supervisor of Elections is required to certify, no later than July 31 and January 31 of each year, to the Department activities conducted, during the first and second six months of the year, respectively, regarding procedures for removal of voters determined as ineligible. Should the Department determine that a Supervisor of Elections has not satisfied these requirements, it will be necessary for the Department to satisfy the requirements. Although the first certification is not due from the counties until July 2006, the Department had not formalized a process by which to determine whether Supervisors of Elections have satisfactorily met these statutory requirements.

The issues noted above may increase the risk that ineligible and duplicate voter registrations exist in FVRS, putting at risk the integrity and accuracy of the voter registration list.

**Recommendation:** The Department should implement FVRS matching functionality, as planned, to allow for systematic identification of possible duplicate voters. In addition, the Department should expand, as planned, current systematic felon matching to include matching of all existing registrations against all felony records. The Department should also implement a formalized process to determine if Supervisors of Elections have satisfactorily met certification requirements prescribed by Florida Statutes. Further, the Department should continue to work with agencies that supply the Department with data for matching and verification purposes to increase data reliability, integrity, and timeliness.

<sup>25</sup> Section 98.075(8), Florida Statutes.

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