U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL

FINAL REPORT:

ADMINISTRATION OF PAYMENTS RECEIVED UNDER THE HELP AMERICA VOTE ACT BY THE DELAWARE COMMISSIONER OF ELECTIONS

APRIL 14, 2003 THROUGH SEPTEMBER 30, 2013

Report No.
E-HP-DE-03-14
April 2015

U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL
1335 East West Highway - Suite 4300
Silver Spring, MD 20910

Memorandum

April 6, 2015

To: Alice Miller
Acting Executive Director

From: Curtis W. Crider
Inspector General

Subject: Final Performance Audit Report - Administration of Payments Received Under the Help America Vote Act by the Delaware Commissioner of Elections (Assignment Number E-HP-DE-03-14)

We contracted with the independent certified public accounting firm of McBride, Lock & Associates, LLC to audit the administration of payments received under the Help America Vote Act (HAVA) by the Delaware Commissioner of Elections (Office).

In its audit, McBride, Lock & Associates, LLC concluded that the Office generally accounted for and expended the HAVA funds in accordance with applicable requirements for the period from April 14, 2003 through September 30, 2013. However the following exceptions were identified:

1. The Office does not have established policies and procedures addressing financial management activities including purchasing, payment, payroll, equipment management, Federal financial reporting and Federal grant oversight and administration.

2. The Office submitted financial reports that could not be supported by underlying accounting records.

3. The Office did not adequately support all salaries and wages charged to the grant award.

4. The Office's equipment management is inadequate in regards to the maintenance of property records and the performance of a physical observation of inventory.

5. The Office did not credit interest timely and did not support the accuracy of interest credited to Election Funds.

6. The Office included capital expenditures as direct costs in which indirect costs were applied.

7. The Office did not provide adequate documentation to support allowability for certain expenditures.

8. The Office expended $725,045 of HAVA funds for purposes that are not allowable under the award's terms and conditions or HAVA regulations.

9. The Office did not perform a competitive bidding process for the procurement of goods and services.

In the report, McBride, Lock & Associates, LLC summarized the Office's response to the recommendations, as well as their comments on the responses after the recommendations. The Office generally agreed with the findings and recommendations. The EAC indicated that it would work with the Office to resolve the issues in the report. The Office's complete response is included as Appendix A-1 and the EAC's complete response is included as Appendix A-2.

We would appreciate being kept informed of the actions taken on our recommendations as we will track the status of their implementation. Please respond in writing to the findings and recommendation included in this report by June 8, 2015. Your response should include information on actions taken or planned, targeted completion dates, and titles of officials responsible for implementation.

To fulfill our responsibilities under Government Auditing Standards, the Office of Inspector General:

- Reviewed McBride, Lock & Associates, LLC's approach and planning of the audit;
- Evaluated the qualifications and independence of the auditors;
- Monitored the progress of the audit at key points;
- Reviewed the audit report, prepared by McBride, Lock & Associates, LLC to ensure compliance with Government Auditing Standards; and
- Coordinated issuance of the audit report.

McBride, Lock & Associates, LLC is responsible for the attached auditor's report and the conclusions expressed in the report. We do not express any opinion on the conclusions presented in McBride, Lock & Associates, LLC's audit report.

The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit reports issued, actions taken to implement our recommendations, and recommendations that have not been implemented.

If you have any questions regarding this report, please call me at (301) 734-3104.

Attachment

cc: Director of Grants and Payments

Performance Audit Report

Administration of Payments Received Under the Help America Vote Act by the Delaware Commissioner of Elections

Prepared for

The United States Election Assistance Commission (EAC)
Office of Inspector General

By

McBride, Lock & Associates, LLC

February 2015

McBRIDE, LOCK & ASSOCIATES, LLC

CERTIFIED PUBLIC ACCOUNTANTS
KANSAS CITY

Performance Audit Report
Administration of Payments Received Under the Help America Vote Act by the Delaware Commissioner of Elections

TABLE OF CONTENTS

U.S. Election Assistance Commission
Performance Audit Report
Administration of Payments Received Under the Help America Vote Act by the Delaware Commissioner of Elections

EXECUTIVE SUMMARY

McBride, Lock & Associates, LLC was engaged by the United States Election Assistance Commission (EAC) Office of the Inspector General to conduct a performance audit of the Delaware Commissioner of Elections Office (Office) from inception in April 14, 2003 through September 30, 2013 to determine whether the Office used payments authorized by Sections 101, 102, and 251 of the Help America Vote Act of 2002 (the HAVA) in accordance with HAVA and applicable requirements; accurately and properly accounted for property purchased with HAVA payments and for program income; maintained state expenditures at a level not less than the level maintained in the fiscal year ending prior to November 2000; and met HAVA requirements for Section 251 funds for an election fund and for a matching contribution.

In addition, the Commission requires states to comply with certain financial management requirements, specifically:

- Comply with the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Government*, 41 CFR 105-71, (originally Office of Management and Budget Circular A-102, also known as the "Common Rule").

- Expend payments in accordance with cost principles set forth in *Cost Principles for State and Local Governments*, 2 CFR 225, (originally Office of Management and Budget Circular A-87) for establishing the allowability or unallowability of certain items of cost for federal participation.

- Follow the requirements of the Federal Cash Management and Improvement Act.

- Submit detailed annual financial reports on the use of Title I and Title II payments.

- Comply with the provisions of *Audits of States, Local Governments and Non-Profit Organizations* (Office of Management and Budget Circular A-133).

We conducted this performance audit in accordance with *Generally Accepted Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.

Based on the audit procedures performed, except for the matters discussed below, we concluded that the Office generally accounted for and expended the Grant funds in accordance with the

requirements mentioned above for the period from April 14, 2003 through September 30, 2013. The exceptions are as follows:

1. The Office does not have established policies and procedures addressing financial management activities including purchasing, payment, payroll, equipment management, Federal financial reporting and Federal grant oversight and administration.

2. The Office submitted financial reports that could not be supported by underlying accounting records.

3. The Office did not adequately support all salaries and wages charged to the grant award.

4. The Office's equipment management is inadequate in regards to the maintenance of property records and the performance of a physical observation of inventory.

5. The Office did not credit interest timely and did not support the accuracy of interest credited to Election Funds.

6. The Office included capital expenditures as direct costs in which indirect costs were applied.

7. The Office did not provide adequate documentation to support allowability for certain expenditures.

8. The Office expended $725,045 of HAVA funds for purposes that are not allowable under the award's terms and conditions or HAVA regulations.

9. The Office did not perform a competitive bidding process for the procurement of goods and services.

We have included in this report as Appendix A, the Delaware Commissioner of Election's written response to the draft report. Such response has not been subjected to the audit procedures and, accordingly, we do not provide any form of assurance on the appropriateness of the response or the effectiveness of the corrective actions described therein.

BACKGROUND

The Help America Vote Act of 2002 (HAVA) created the U.S. Election Assistance Commission (Commission) to assist States and insular areas (hereinafter referred to as States) with improving the administration of federal elections and to provide funds to States to help implement these improvements. The Commission administers payments to States authorized by HAVA under Titles I and II, as follows:

- Title I, Section 101 payments are for activities such as complying with HAVA requirements for uniform and nondiscriminatory election technology and administration

requirements (Title III), improving the administration of elections for federal office, educating voters, training election officials and pool workers, and developing a State plan for requirements payments.

- Title I, Section 102 payments are available only for the replacement of punchcard and lever action voting systems.

- Title II, Section 251 requirements payments are for complying with Title III requirements for voting system equipment; and addressing provisional voting, voting information, Statewide voter registration lists, and voters who register by mail.

Title II also requires that states must:

- Have appropriated funds equal to five percent of the total amount to be spent for activities for which requirements payments are made.

- Maintain the expenditures of the State for activities funded by the requirements payment at a level that is not less than the expenditures maintained by the State for the fiscal year ending prior to November 2000.

- Establish an election fund for amounts appropriated by the State for carrying out activities for which requirements payments are made, for the Federal requirements payments received, for other amounts as may be appropriated under law and for interest earned on deposits of the fund.

The Awardee – The Delaware Commissioner of Elections

The HAVA funds were awarded to the Delaware Commissioner of Elections. The administration of elections in Delaware is a state responsibility. Four state agencies are involved: the Commissioner of Elections and the Department of Elections for each of Delaware's three counties. The Commissioner of Elections is appointed by the Governor and confirmed by the State Senate. The Commissioner of Elections is responsible for establishing and assuring election management standards incorporating uniformity in the conduct of elections, the application of election standards, and voting equipment, among other duties. The Department of Elections for each county report to respective Boards of Election that are appointed by the Governor. The Department conducts elections in accordance with the Delaware Code and with standards and operating procedures established by the Commissioner.

Help America Vote Act State of Delaware State Plan

To plan the implementation of the HAVA, the Commissioner appointed the HAVA Committee and established a state HAVA website to provide information and receive public comments to assist in the development of the State Plan. HAVA Committee members include citizens, election officials, the Governor's Office, state officials, and representatives from various advocacy organizations including the disabled community.

The objectives of the project funded by HAVA, as set forth in the state plan, were to update existing voting equipment or purchase equipment to accommodate people with disabilities, train poll workers on new or modified voting equipment, programming to enhance and make fully HAVA compliant the central statewide voter registration database, provide provisional voting and voter education, and comply with the training mandates of the Act.

The Commissioner of Elections established and is maintaining an election fund for the exclusive purpose of carrying out activities of HAVA. Additionally, the Office has managed all expenditures funded by HAVA and has not distributed any of the requirements payments to the local units of government.

AUDIT OBJECTIVES

The objectives of our audit were to determine whether the Office:

1. Used payments authorized by Sections 101, 102, and 251 of the Grant in accordance with Grant and applicable requirements;

2. Accurately and properly accounted for property purchased with Grant payments and for program income;

3. Met HAVA requirements for Section 251 funds for creation of an election fund, providing required matching contributions, and meeting the requirements for maintenance of a base level of state outlays, commonly referred to as Maintenance of Expenditures (MOE).

In addition to accounting for Grant payments, the Grant requires states to maintain records that are consistent with sound accounting principles that fully disclose the amount and disposition of the payments, that identify the project costs financed with the payments and other sources, and that will facilitate an effective audit. The Commission requires states receiving Grant funds to comply with certain financial management requirements, specifically:

- Comply with the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Government,* 41 CFR 105-71, (originally Office of Management and Budget Circular A-102, also known as the "Common Rule").

- Expend payments in accordance with cost principles set forth in *Cost Principles for State and Local Governments*, 2 CFR 225, (originally Office of Management and Budget Circular A-87) for establishing the allowability or unallowability of certain items of cost for federal participation.

- Follow the requirements of the Federal Cash Management and Improvement Act.

- Submit detailed annual financial reports on the use of Title I and Title II payments.

- Comply with the provisions of *Audits of States, Local Governments and Non-Profit Organizations* (Office of Management and Budget Circular A-133).

SCOPE AND METHODOLOGY

We audited the Grant funds received and disbursed by the Office from April 14, 2003 through September 30, 2013 as shown in the following table:

Description	HAVA Section 101	HAVA Section 102	HAVA Section 251	Total
Funds Received from EAC	$ 5,000,000	$ -	$ 13,021,803	$ 18,021,803
State Matching Funds	-	-	687,000	687,000
Program Income	472,080	-	1,281,830	1,753,910
Total Funds	$ 5,472,080	$ -	$ 14,990,633	$ 20,462,713
Less Disbursements	(5,467,766)	-	(12,089,138)	(17,556,904)
Fund Balance	$ 4,314	$ -	$ 2,901,495	$ 2,905,809

AUDIT RESULTS

We conducted this performance audit in accordance with *Generally Accepted Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.

Based on the audit procedures performed, except for the matters discussed below, we concluded that the Office accounted for and expended the HAVA funds in accordance with the requirements mentioned above for the period from April 14, 2003 through September 30, 2013. The exceptions to applicable compliance requirements are described below.

Finding No. 1 – Documentation of Policies and Procedures

Key internal control policies affecting financial management activities including purchasing, payment, payroll, equipment management, Federal financial reporting and Federal grant oversight and administration, had not been addressed in policy and procedure documentation. The Office relied heavily on written documentation set forth in State manuals, and electronic controls implemented in the accounting system. Due to the few personnel involved in award administration, accounting and financial reporting, policies and procedures had developed informally over the years.

Federal regulations, specifically 41 CFR § 105-71.120 –*Standards for Financial Management Systems* require that:

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds, and

(b) Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets.

The State of Delaware Office of Management and Budget (OMB) Budget and Accounting Policy, Chapter 2 – Internal Controls states, "A well-designed system of internal controls must include written policies and procedures to ensure each control object is met. Failure to meet control objectives constitutes a weakness in an agency's internal controls system." Further it states, "Management is responsible for maintaining and communicating written policies and procedures to ensure an effective system of internal controls exists within each agency. Effective policies and procedures help ensure management directives are carried out and necessary actions are taken to address risks to the achievement of the agency's objectives."

A key aspect of maintaining an effective system of internal controls is the documentation of related policies and procedures to ensure these criteria are current, approved, communicated, incorporated into training materials, and updated when appropriate.

The lack of documented internal control policies and procedures may result in a lack of awareness, consistency in application, and compliance of regulations, which could allow for noncompliance with grant terms and conditions to occur and not be detected.

The Office recently adopted the State's financial and procurement policies and procedures and supplemented these policies with their own internal policies.

Recommendation:

We recommend that the EAC resolve with the Office the adequacy of the recently adopted and developed internal policies. Specifically, these policies and procedures should address financial management activities including purchasing, payment, payroll, equipment management, Federal financial reporting and Federal grant oversight and administration. Additionally, the EAC should require the Office to provide training to personnel involved in the administration of Federal awards to ensure the understanding of the new policies. Further, these procedures should be reviewed and updated on a regular basis.

Commissioner of Election Response:

The Office of the State Election Commissioner has always used the State of Delaware's financial and procurement policies and procedures. We have now formally adopted the state policies and procedures for this office and have supplemented with our internal policies.

Auditor's Response:

The corrective action is responsive to the concerns. The EAC should consider the updated policies and procedures in resolving the finding. The EAC should ensure the policies and procedures include training for personnel involved in the administration of Federal awards.

Finding No. 2 – Financial Reporting

The Office submitted financial reports for Section 101 and Section 251 funds that could not be supported by underlying accounting records.

The terms and conditions of the HAVA awards require the submission of accurate and complete Federal Forms 269 (Financial Status Report) and 425 (Federal Financial Report) which reflect the uses of award funds and the interest and program income generated from those funds. HAVA Title IX, Section 902. AUDITS AND REPAYMENT OF FUNDS, Part (a) – Recordkeeping Requirement states, "Each recipient of a grant or other payment made under this Act shall keep such records with respect to the payment as are consistent with sound accounting principles, including records which fully disclose the amount and disposition by such recipient of funds, the total cost of the project or undertaking for which such funds are used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit."

The Office's latest Federal Financial Report (FFR) submission of the Section 101 funds was for the period ending September 30, 2012. The financial report indicated Federal funds authorized were fully expended and $915 of remaining program income was unexpended. No FFR was filed for the period ending September 30, 2013. The amount of program income earned and amount expended reported on the FFR did not agree to the accounting records. The discrepancies noted are as follows:

	FFR Reported	Accounting Records	Variance
Total Federal program income earned	$ 438,440	$ 472,080	$ (33,640)
Progam income expended	437,525	467,766	(30,241)
Unexpended program income	$ 915	$ 4,314	$ (3,399)

The Office's submission of the FFR for Section 251 funds for the period ending September 30, 2013 could not be reconciled to the accounting records. Discrepancies were noted in the expenditures for Federal funds, recipient share and program income. The discrepancies noted for the Section 251 fund expenditures are as follows:

	FFR Reported	Accounting Records	Variance
Federal share of expenditures	$12,551,760	$10,850,877	$ 1,700,883
Recipient share of expenditures	3,927,481	669,976	3,257,505
Program income expended	782,142	568,285	213,857
Total Expenditures	$17,261,383	$12,089,138	$ 5,172,245

Additionally, the recipient share required and the program income earned could not be reconciled. The discrepancies noted for the Section 251 revenues are as follows:

	FFR Reported	Accounting Records	Variance
Federal funds authorized	$13,021,803	$13,021,803	$ -
Recipient share required	3,928,100	687,000	3,241,100
Program income earned	1,079,907	1,281,830	(201,923)
Total Expenditures	$18,029,810	$14,990,633	$ 3,039,177

The Office has performed the above reconciliation and has submitted revised financial reports.

Recommendation:

We recommend that the EAC review the Office's reconciliation and revised financial reports to ensure that all expenditures, matching contributions and program income earned have been fully disclosed.

Commissioner of Election Response:

We have provided to the EAC revised financial report that dovetail with our accounting records.

Auditor's Response:

The corrective action is responsive to the concerns.

Finding No. 3 – Unsupported Payroll Costs Charged to the Grant

The Office did not adequately support all salaries and wages charged to the grant award.

Office of Management and Budget Circulars and Guidance, Cost Principles for State, Local, and Indian Tribal Governments 2 CFR § 225, Appendix B.8.h.(3) states that "Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and

wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first-hand knowledge of the work performed by the employee."

Appendix B.8.h.(4), states that "Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (5)… Such documentary support will be required where employees work on… (b) A Federal award and a non Federal award"

Appendix B.8.h.(5), states that "Personnel activity reports or equivalent documentation must meet the following standards: (a) They must reflect an after the fact distribution of the actual activity of each employee, (b) They must account for the total activity for which each employee is compensated, (c) They must be prepared at least monthly and must coincide with one or more pay periods, (d) They must be signed by the employee, and (e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but maybe used for interim accounting purposes."

The sample selection of 77 payroll transactions found 73 instances (95%) where the employee did not have an adequate work effort certification for the pay period. Timesheets do not provide for distribution of time between Federal grant activity and state activity. The sample did indicate that in 2013 the timesheets reflected the time between Office activities and the State Fair, which is considered HAVA related. The timesheets reviewed also indicated that 40 of the 77 (52%) did not have signatures of the employee and/or supervisor to certify the accuracy of the time worked. Additionally, it was noted that there was no formal authorization of the initial pay rates for employees maintained by the Office.

Of the $81,399 of salary costs reviewed $77,718 (95%) was determined to be unsupported. There was $14,331 in fringe benefits and $4,734 in indirect costs that were charged to the grant in association with the unsupported salary costs.

Further, review of the payroll process indicated that the Office Manager approves the majority of the employees' timesheets and then uploads in the payroll system. The Delaware OMB then sends back a pay confirmation two to three days after submission. At that point the payroll is locked by OMB and cannot be changed. The pay confirmation is reviewed by both the Office Manager and the Commissioner of Elections and approval of the pay is then sent to OMB by the Office. Given that the payroll is locked at that point and no changes can be made controls could be strengthened by a review of someone independent of the process to verify hours have been posted correctly.

The Office has provided retroactive certifications signed by the supervisor to certify that the time charged to the grant was an accurate reflection of the time expended on HAVA projects. Additionally, the Office reviewed all payroll records for documentation of HAVA hours. All timesheets have been retroactively signed by the employee to the extent possible and the Office has adopted an internal payroll policy.

Recommendation:

We recommend that EAC review the above supplemental information provided by the Office to ensure it resolves the following recommendations that the Office:

(a) Transfer into the election fund $77,718 for the questioned salary charges, $14,331 for applicable fringe benefits and $4,734 for the applicable indirect costs as cited above.

(b) Perform and provide additional analysis for all payroll charges allocated to HAVA prior to September 30, 2013 to determine the extent of any unsupported payroll costs.

(a) Implement written policies and provide training to ensure that employees who expend efforts on Federal activities to accurately record their time in the Office's timekeeping system.

Commissioner of Election Response:

We have reviewed and corrected all payroll records and have provided our Internal Payroll Policy which also addresses distribution of time and approvals of timesheets in accordance with 2 CFR § 225 Appendix B.

Auditor's Response:

The Office's corrected payroll records and Internal Payroll Policy should be reviewed by the EAC in resolving this finding.

Finding No. 4 – Inadequate Equipment Management

The Office's equipment management is inadequate for the maintenance of property records and the performance of a physical observation of inventory.

The *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* 41 CFR § 105-71.132 (d) (The "Common Rule") section states that, (1) "Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds the title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property and (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years."

The State of Delaware Office of Management Budget, Budget and Accounting Policy, Chapter 13 Asset Management 13.2.3 states, "Each agency may use its own discretion when selecting items to be maintained in its NOCAP (non-capitalized equipment) listing. However, agencies should consider costs versus benefits in developing individual NOCAP listing policies and procedures. When establishing inclusion criteria for NOCAP listings, agencies should consider

factors such as grant requirements, insurance provisions, and the costs and benefits of maintaining and monitoring the selected items involved." It further states that the agencies are responsible for ensuring the assets in excess of $5,000 and less than $25,000 (the state threshold for capitalization) are properly accounted for in the NOCAP records.

The Office did not have documented policies regarding the maintenance of the equipment listing and conduct a physical inventory. The inventory list provided a column for every item necessary for an adequate inventory list. However, the acquisition costs and dates were not populated for most assets. Additionally, the list provided many small supply purchases such as individual computer mice and keyboards.

The audit performed physical observations of the voting machines and various equipment items at each of the three counties and at the central office. The observation indicated that there were minor discrepancies regarding the condition and use and location of a few items when compared to the inventory listing maintained by the Office. For instance, one printer was no longer at the county as it had been replaced and was not updated on the inventory list. Items were listed as new on the inventory listing but the servers and computers were not indicated as no longer in use. Further, the inventory listing indicates that four iPhones were purchased with HAVA funds in June 2012.

Office of Management and Budget Circulars and Guidance, Cost Principles for State, Local, and Indian Tribal Governments 2 CFR § 225, Appendix B.15.a.(4) defines general purpose equipment as equipment which is not limited to research, medical, scientific or other technical activities. Appendix B.15.b.(1) indicates that general purpose equipment is unallowable as direct charges except where approved in advance by the awarding agency. The iPhones would be considered general purpose equipment and would not be an allowable HAVA purchase.

The Office has reviewed and revised its Equipment Management Policy and updated its inventory listing so that all fields are populated, items under the $5,000 threshold have been eliminated and the missing asset has been added.

Recommendation:

We recommend that EAC resolve with the Office the adequacy of the Office's formalized policies and procedures regarding inventory management and the conduct of a documented biennial physical inventory. Additionally, the EAC should review the Office's inventory system to ensure all fields are populated with the required data for assets purchased with Federal funds.

We also recommend that the EAC resolve with the Office to identify the amount of HAVA funds expended for the purchase of the four iPhones and transfer that amount into the Election Fund.

Commissioner of Election Response:

Our Equipment Management Policy is being updated every two years and our internal equipment spreadsheet has been populated with acquisition date and cost fields. We have eliminated items under the $5,000 threshold. We believe the finding regarding the iPhones should be removed.

Auditor's Response:

The Office's Equipment Management Policy and internal equipment spreadsheet should be reviewed by the EAC in resolving this finding. EAC should also provide a determination whether the four iPhones should be considered an allowable expenditure.

Finding No. 5 – Interest Earned on the Election Fund

The Office untimely credited interest earnings on the Elections Fund.

HAVA Section 254(b)(1) requires that the following monies be deposited into its election fund:

(a) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment is made to the State under this part.

(b) The requirements payment made to the State under this part.

(c) Such other amounts as may be appropriated under law.

(d) Interest earned on deposits of the fund.

The Office has received $13,021,803 in Section 251 funds as of September 30, 2013, which resulted in a matching requirement of $685,358. The Board has met the matching requirement. However, the matching funds made available in the general funds of the Office were not credited interest during the period of review. It was further noted that the initial 2003 Requirement Payment was received on August 5, 2004 and required a matching contribution of $218,421. A matching contribution of $220,000 was made available on April 6, 2005 which is approximately eight months after it was required.

Additionally, the Office was required to reimburse $416,009 to the Election Fund in order to resolve audit findings regarding unallowable costs identified in the June 30, 2006 and June 30, 2007 single audit performed for the State of Delaware. The amount was reimbursed and made available for HAVA expenditure in the general funds but not credited interest during the time of expenditure.

Further, the accounting records do not indicate that interest was credited for the Federal funds received until June 2005. The initial Section 101 funds were received by the Office on April 14, 2003. Interest was not credited to the Election Fund for approximately two years. The accounting records did indicate that a large amount of interest was credited to the fund in June 2005 which

was to include the interest not credited from the inception of the fund. However, support for the calculation was not provided to assure the accuracy of the posting.

During the audit, requests were made to validate interest credited to the fund in order to verify that the entire balance in the Election Fund was considered from the inception of the fund through September 30, 2013. The Office has not been able to provide support for the interest calculations requested and therefore it cannot be assured that interest was appropriately accounted for during the period of review.

The accounting records provided $472,080 in Title I interest and $1,281,830 in Title II interest credited to the fund. However, analysis indicated that during Fiscal Year 2007 no interest was credited for the 2003 Requirements Payment of $4,150,000. The minimum balance maintained during the fiscal year was approximately $339,500. Additionally, during fiscal year 2013 the same balance was debited interest thereby reducing the amount of available funds. The amount of interest debited amounted to approximately $663 from July 1, 2012 to September 30, 2013.

The Treasurer's Office has recalculated the interest on the grant funds, and the Office will submit the documentation.

Recommendation:

We recommend that the EAC review the Treasurer's Office recalculation of interest to ensure the Office has taken the following into consideration:

(a) Calculation includes the amount of interest lost due to the untimely crediting of interest earnings for the matching funds and the reimbursement of unallowable costs that were accounted for in the general funds of the Office. The calculation considers:

   a. The earlier of the date matching contributions were provided or the date the matching contributions were required. The contributions would be required by the date the Section 251 Requirements Payments were received

   b. Compound interest through the date of transfer into the Election Fund.

(b) Review the calculation to ensure that interest credited to the Election Fund is appropriate based on the effective interest rates and balances maintained from the inception of the fund to September 30, 2013.

(c) Review the calculation to ensure that interest has been earned on the 2003 Requirements Payments during fiscal year 2007. Additionally ensure the calculation considered the activity from July 1, 2012 through September 2013, and ascertained why interest was debited to the fund.

(d) Once all above items have been considered and the final interest amount is determined, ensure that the correct amount of interest is transferred to the Election Fund. This amount should include compound interest through the date of transfer.

Commissioner of Election Response:

The Delaware Treasurer's Office recalculated the interest on the grant funds and documentation has been provided.

Auditor's Response:

The Office's recalculation of interest on grant funds should be reviewed by the EAC in resolving this finding.

Finding No. 6 – Indirect Cost Allocation

The Office included capital expenditures as direct costs in which indirect costs were applied.

Office of Management and Budget Circulars and Guidance, Cost Principles for State, Local, and Indian Tribal Governments 2 CFR § 225, Appendix E.C.2.(b) states, "Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs".

The indirect cost agreements negotiated with the EAC and HHS indicates the base to apply indirect costs is "Total Direct Costs excluding capital expenditures (building, individual items of equipment, alterations and renovations), subawards and flow-through funds."

The Office negotiated indirect cost rate agreements for fiscal years 2005 through fiscal year 2013 through EAC and HHS. Due to availability of funds the Office only applied interest rates to the grant expenditures incurred from fiscal year 2006 through fiscal year 2010. Our review of the grant expenditures after exclusions for equipment and renovations and alterations indicated multiple transactions that are capital expenditures in which an indirect cost rate was applied.

The audit sampled 46 transactions that were from vendors that provided goods or services that could be considered capital expenditures and were not excluded from the base for the application of the indirect cost rate. There were nine transactions identified that represented construction cost for polling place accessibility in excess of $5,000. These costs represent renovations and alterations and should be excluded from the direct cost base. Additionally, one transaction could not be supported by invoices to support that the costs were not for capital expenditures. The total of the ten transactions was $145,580 and the applicable indirect costs charged were $24,399. The invoice not provided accounted for $29,095 of the $145,580.

Recommendation:

We recommend the EAC address and resolve the following recommendations that the Office:

(a) Transfer into the Election Fund $29,095 for the transaction that was unsupported and $24,399 for the indirect costs charged on capital expenditures.

(b) Implement written policies to ensure that indirect costs are only applied to direct costs as defined by the indirect cost agreement.

Commissioner of Election Response:

As stated in our preliminary response, we did not apply the indirect cost rate to capital expenditures which were polling place accessibility improvements allowable under HAVA that would not extend the useful life of a building.

Auditor's Response:

The EAC should consider any additional documentation the Office may provide to support these transactions being non-capital in nature. The EAC should provide a final determination on whether the expenditures were properly included in the base used to apply the indirect cost rate.

Finding No. 7 – Unsupported Costs

Certain expenditures were not supported by invoices and contracts to support the allowability of the expenditures.

Office of Management and Budget Circulars and Guidance, Cost Principles for State, Local, and Indian Tribal Governments 2 CFR § 225, Appendix A.C.1.j states, "To be allowable under Federal awards, costs must meet the following general criteria: (j) Be adequately documented."

The *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* 41 CFR § 105-71.120 (b)(6) (The "Common Rule") section states that, "Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contracts and subgrant award documents, etc."

The audit sampled 70 transactions and identified the following issues and discrepancies:

- 11 of the 70 transactions were missing a contract or were not identified as not having a contract to ensure that the costs were charged in accordance with the contract agreement.

- 13 of the 70 transactions were missing an invoice to provide the detail of the costs incurred.

- 7 of the 70 transactions were missing either a payment voucher and/or purchase order to indicate that the costs were properly approved when procured or when paid.

- 12 of the 70 transactions were missing sufficient evidence regarding final work product or deliverables that provide the allowability of the transaction.

The transactions noted above had overlapping exceptions. In total, 26 transactions reviewed did not have sufficient evidence to support that the cost was allowable to HAVA grants. 8 of those

transactions were determined to be for unallowable activities, and are identified in Finding No. 8. The remaining 18 transactions represent $511,058 in unsupported costs. An additional $61,338 was charged as indirect costs for these transactions.

Recommendation:

We recommend that the EAC address and resolve the following recommendations that the Office:

(a) Transfer to the election fund $511,058 for the unsupported costs cited above along with the applicable indirect costs of $61,338.

(b) Develop and implement policies and procedures regarding maintenance of supporting source documentation for all Federal expenditures incurred.

Commissioner of Election Response:

A spreadsheet has been provided that included requested documentation supporting these costs.

Auditor's Response:

The 18 transactions identified as unsupported costs were those costs not resolved after review of the additional documentation provided by the Office.

Finding No. 8 - Questioned Costs

The Office expended HAVA funds for purposes that are not allowable under the award's terms and conditions or HAVA regulations.

HAVA authorizes payments to states under Titles I and II as follows:

- Title I, Section 101 payments are for activities such as complying with Title III of HAVA for uniform and nondiscriminatory election technology and administration requirements, improving the administration of elections for Federal office, educating voters, training election officials and poll workers, and developing a state plan for requirements payments.

- Title I, Section 102 payments are available only for the replacement of punch card and lever action voting systems.

- Title II, Section 251 requirements payments are for complying with Title III requirements for voting system equipment; and for addressing provisional voting, voting information, statewide voter registration lists, and voters who register by mail.

Office of Management and Budget Circulars and Guidance, Cost Principles for State, Local, and Indian Tribal Governments 2 CFR § 225, Appendix B.15.b.(3) states, "Capital expenditures for improvements to land, buildings or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency."

HAVA Section 251(b)(1) states, "Except as provided in paragraph (2), a State receiving a requirements payment shall use the payment only to meet the requirements of title III."

The audit identified 8 invoices selected that represented unallowable charges to HAVA funds. They are as follows:

- 1 of the 8 invoices reviewed included contractual expenditures which included an element of campaign finance. The invoice, for $37,500, was to a vendor for Campaign Finance. No indirect costs were incurred for this invoice.

- 1 of the 8 invoices reviewed represented general fund expenditures paid for by HAVA funds. The invoice, for $13,933, was to a vendor who printed registration forms. No indirect costs were incurred for this invoice.

- 3 of the 8 invoices reviewed represented contractual services to renovate real property. However, pre-approval for the renovations was not obtained from the EAC. The total invoices for the contractual services were $201,901. It was noted that one of the vendors had a contract to renovate and construct a training area for HAVA purposes. The total contract for the training room was $534,619. Total questioned costs for the renovations amounted to $573,316. No indirect costs were incurred for these invoices. The Office has requested retroactive approval for the training facility.

- 3 of the 8 invoices reviewed represented work performed for polling place accessibility which is an allowable charge under Title I of HAVA. However, these expenditures were paid for by Title II funds prior to a certification being filed by the state under Section 251(b)(2)(A) or (B) under the Act. The state did file a certification as of November 30, 2007. Twenty additional invoices were found to the same vendors that were paid for using Title II funds prior to the certification. The total invoices amounted to $100,296. There was $14,383 in indirect costs charged for these invoices.

Total questioned costs for the contracts and 28 invoices totaled $725,045 and $14,383 charged as indirect costs.

Recommendation:

We recommend that the EAC address and resolve the following recommendations that the Office:

(a) Transfer to the election fund $725,045 for the questioned costs cited above along with the applicable indirect costs of $14,383.

(b) Develop and implement policies and procedures and provide training to ensure that charges to HAVA are allowable, allocable and reasonable to HAVA.

Commissioner of Election Response:

We are in agreement that the charges for campaign finance ($37,000) and voter registration applications ($13,933.26) are unallowable and should be reimbursed to the election fund.

We have provided documentation regarding charges to Delaware's Dept. of Technology and Information. We have requested retroactive approval from the EAC for the training facility in New Castle County.

Regarding the polling place accessibility upgrades, Delaware certified under Sec 251(b)(2)(B) to the EAC in November 2007 that it did not exceed the minimum amount under section 252(c) of TITLE II funds appropriated for TITLE III requirements, for TITLE I activities. That certification applies to funds expended and still holds today that Delaware did not exceed the minimum allowable from TITLE II funds to be spent on TITLE I activities. The finding in the NFR is misinterpreting the certification and requirement under Sec. 251(b)(2)(A) which addresses expenditures going forward after meeting the requirements of TITLE III. The certification under Sec. 251(b)(2)(B) applies to funds expended before meeting all TITLE III requirements.

Auditor's Response:

EAC should consider the retroactive approval for the training facility in New Castle County.

The audit took the position that Section 251(b)(2) allows States to use requirement payments on non-Title III activities only after the State provides either the certification detailed in 251(b)(2)(A) or the certification detailed in 251(b)(2)(B). Since it is the EAC's position that the certification may be provided retroactive to the use of requirement payments on non-Title III activities, the audit considers this item resolved.

Finding No. 9 –Procurement Procedures

The Office did not have formal policies and procedures relating to the procurement of goods and services.

The *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* 41 CFR § 105-71.136 (a) (the "Common Rule") states that, "When procuring property and services under a grant, a State will allow the same policies and procedures it uses for procurements from its non-Federal funds."

The State of Delaware Office of Management and Budget (OMB) Budget and Accounting Policy, Chapter 5 – Procurement Section 5.3 provides small purchase procedures and bidding thresholds. Section 5.3.1 provides thresholds for materiel and non-professional services purchases as less than $10,000 open market purchase, $10,000 - $24,999 three written quotes and

$25,000 and more is a formal bid. Section 5.3.3 provides thresholds for professional services as less than $50,000 open market and over $50,000 is a formal RFP process.

Title 29 of the State Delaware Code, Section 6904(1), states that procurement guidelines shall not apply to the office of the Commissioner of Elections or the several departments of elections in the purchase of material or work which is the subject of the contract and which is necessary to enable the Department of Elections to conduct a primary, general, or special election.

Office of Management and Budget Governmentwide Guidance for Grants and Agreements 2 CFR § 180.220 states that a covered transaction include procurement contracts awarded by a non-Federal agency when the contract is expected to equal or exceed $25,000. Section 180.300 states that when the non-federal agency enters into a covered transaction they must verify that the vendor is not excluded or disqualified by (a) checking the EPLS, (b) collection a certification from that person; or (c) adding a clause or condition to the covered transaction with that person.

Although the Office is exempt from procurement guidelines, formal policies and procedures should be established to ensure that Federal funds are provided to only responsible bidders. Procuring all contractual services and goods through full and open competition helps prevent misuse of federal funds and responsible bidders are selected for goods and services needed for HAVA purposes.

Our review of 70 transactions identified 30 transactions that would meet the various thresholds of open market bids as identified in the State procedures. 7 of these transactions did not have a documented bidding process. Additionally, ten invoices were identified that were in excess of $25,000 and there was no evidence the Office ensured the vendor was not excluded or disqualified. The ten invoices were all subsequent to September 2008, which is the date the Office implemented policies to ensure this was verified in future transactions. This was issue was brought up in single audit finding performed for fiscal year 2006.

The Office recently adopted the State's financial and procurement policies and procedures and supplemented these policies with their own internal policies.

Recommendation:

We recommend that the EAC review the Office's recently implemented policies and procedures to ensure:

(a) Services and equipment purchased with Federal funds will be solicited through fair and open bidding.

(b) Documentation will be maintained to support that interested bidders and multiple quotations were evaluated and that the best value is achieved with Federal funds.

(c) Documentation will be maintained which supports that Federal funds are not provided to excluded or disqualified parties.

Commissioner of Election Response:

The Office of the State Election Commissioner has used the State of Delaware's procurement policies and procedures and they have been formally adopted for this office. They have been supplemented with our internal policies which have been provided.

Auditor's Response:

The corrective action is responsive to the concerns.

We provided a draft of our report to the appropriate individuals of the Office of the Delaware Commissioner of Election. We considered any comments received prior to finalizing this report.

The Office responded on March 19, 2015 and generally agreed with the report's findings and recommendations. The EAC responded on March 10, 2015 and stated that it generally agrees with the findings in the draft audit report and will work with the Office to ensure appropriate corrective action.

The Office's complete response is included as Appendix A-1 and the EAC's complete response as Appendix A-2.

McBride, Lock & Associates, LLC performed the related audit procedures between June 3, 2014 and February 10, 2015.

(Original Signed by McBride, Lock & Associates, LLC)

McBride, Lock & Associates, LLC
February 10, 2015

APPENDIX A-1

STATE OF DELAWARE
OFFICE OF THE STATE ELECTION COMMISSIONER

ELAINE MANLOVE, STATE ELECTION COMMISSIONER

March 19, 2015

Inspector General Curtis Crider
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

Dear Inspector General Crider:

I have received your report entitled "Administration of Payments Received Under the Help America Vote Act by the Delaware Commissioner of Elections," dated February 2015 and would like to take this opportunity to respond in brief to each individual finding. In December 2014, we had provided to the auditors comprehensive detailed information, policy changes and responses concerning these potential findings.

Finding No. 1 – Documentation of Policies and Procedures

The Office of the State Election Commissioner has always used the State of Delaware's financial and procurement policies and procedures. We have now formally adopted the state policies and procedures for this office and have supplemented with our internal policies. Those policies were provided in our original response.

Finding No. 2 – Financial Reporting

We have provided to the EAC revised financial report that dovetail with our accounting records.

Finding No. 3 – Unsupported Payroll Costs Charged to the Grant

We have reviewed and corrected all payroll records and have provided our Internal Payroll Policy which also addresses distribution of time and approvals of timesheets in according with 2 CFR § 225 Appendix B.

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WWW.ELECTIONS.DELAWARE.GOV

Finding No. 4 – Inadequate Equipment Management

Our Equipment Management Policy is being updated every two years and our internal equipment spreadsheet has been populated with acquisition date and cost fields. We have eliminated items under the $5,000 threshold. We believe the finding regarding the iPhones should be removed.

Finding No. 5 – Interest Earned on the Election Fund

The Delaware Treasurer's Office recalculated the interest on the grant funds and documentation has been provided.

Finding No. 6 – Indirect Cost Allocation

As stated in our preliminary response, we did not apply the indirect cost rate to capital expenditures which were polling place accessibility improvements allowable under HAVA that would not extend the useful life of a building.

Finding No. 7 – Unsupported Costs

A spreadsheet has been provided that included requested documentation supporting these costs.

Finding No. 8 – Questioned Costs

We are in agreement that the charges for campaign finance ($37,000) and voter registration applications ($13,933.26) are unallowable and should be reimbursed to the election fund.

We have provided documentation regarding charges to Delaware's Dept. of Technology and Information. We have requested retroactive approval from the EAC for the training facility in New Castle County.

Regarding the polling place accessibility upgrades, Delaware certified under Sec 251(b)(2)(B) to the EAC in November 2007 that it did not exceed the minimum amount under section 252(c) of TITLE II funds appropriated for TITLE III requirements, for TITLE I activities. That certification applies to funds expended and still holds today that Delaware did not exceed the minimum allowable from TITLE II funds to be spent on TITLE I activities. The finding in the NFR is misinterpreting the certification and requirement under Sec. 251(b)(2)(A) which addresses expenditures going forward after meeting the requirements of TITLE III. The certification under Sec. 251(b)(92)(B) applies to funds expended before meeting all TITLE III requirements.

Finding No. 9 – Procurement Procedures

The Office of the State Election Commissioner has used the State of Delaware's procurement policies and procedures and they have been formally adopted for this office. They have been supplemented with our internal policies which have been provided.

If you have questions or need additional information, please contact me.

Very truly yours,

Elaine Manlove

Elaine Manlove
State Election Commissioner

APPENDIX A-2

EAC RESPONSE TO THE DRAFT AUDIT:

OIG Performance Audit Report on the Administration of Payments Received Under the Help America Vote Act by the Delaware Commissioner of Elections for the Period April 14, 2003 through September 30, 2013.

March 10, 2015

MEMORANDUM

To: Curtis Crider
Inspector General

From: Alice P. Miller, Chief Operating Officer &
Acting Executive Director

Subject: Draft Performance Audit Report – "Administration of Payments Received under the Help America Vote Act by the Delaware Commissioner of Elections"

Thank you for this opportunity to review and respond to the draft audit report for the Delaware Commissioner of Elections Office (Office).

The Election Assistance Commission (EAC) generally agrees with the findings in the draft audit report and will work with the Office to ensure appropriate corrective action. However, EAC would like to note the conditions for using Title II funds (Requirements Payments). A State receiving a Requirements Payment shall use the payment only to meet the requirements of Title III. A State may use a Requirements Payment to carry out other activities to improve the administration of elections for Federal office if the State certifies to EAC that the State has implemented the requirements of Title III ***or*** the amount expended with respect to such other activities does not exceed an amount equal to the minimum payment amount applicable to the State under section 252(c) of the Help America Vote Act.

APPENDIX B

Appendix B

AUDIT METHODOLOGY

Our audit methodology included:

- Assessing audit risk and significance within the context of the audit objectives.
- Obtaining an understanding of internal control that is significant to the administration of the HAVA funds and of relevant information systems controls as applicable.
- Identifying sources of evidence and the amount and type of evidence required.
- Determining whether other auditors have conducted, or are conducting, audits of the program that could be relevant to the audit objectives.

To implement our audit methodology, below are some of the audit procedures we performed.

- Interviewed appropriate Office employees about the organization and operations of the HAVA program.
- Reviewed prior single audit reports and other reviews related to the State's financial management systems and the HAVA program for the period under review.
- Reviewed policies, procedures and regulations for the Office management and accounting systems as they relate to the administration of the HAVA program.
- Analyzed the inventory lists of equipment purchased with HAVA funds
- Tested major purchases and the supporting documentation.
- Tested randomly sampled payments made with HAVA funds.
- Tested amounts charged as indirect costs by verifying the approved rate and the reasonableness of the base.
- Evaluated compliance with the requirements for accumulating financial information reported to the Commission on the financial status reports and progress reports, accounting for property, purchasing HAVA related goods and services, and accounting for salaries.
- Verified the establishment and maintenance of an election fund.
- Verified the State expenditures met the Maintenance of Expenditures requirement
- Conducted site visits of selected counties to observe physical security/safeguard of equipment purchased with HAVA funds and ensure compliance with federal regulation.
- Verified that the matching requirement was timely met and matching expenditures met the prescribed criteria and allowability requirements of HAVA.
- Verified program income was properly accounted for and not remitted to the State's general fund.

APPENDIX C

Appendix C

MONETARY IMPACT AS OF SEPTEMBER 30, 2013

Description	Questioned Costs	Additional Funds for Program
Unsupported Payroll Costs	$ 96,783	$ -
Indirect Cost Allocation	53,494	-
Unsupported Costs	572,396	-
Questioned Costs	739,428	-
Total	$1,462,101	$ -

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