



## **EAC MANAGEMENT DECISION:**

*Resolution of the OIG Audit Report on the Administration of Payments Received Under the Help America Vote Act by the Massachusetts Secretary of the Commonwealth for the Period May 2003 Through September 30, 2012 Report No. E-HP-MA-06-12*

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January 16, 2014

### **BACKGROUND**

The EAC is an independent, bipartisan agency created by the Help America Vote Act (HAVA). EAC assists and guides state and local election officials in improving the administration of elections for Federal office. EAC distributes HAVA funds to States for the acquisition of voting systems, and supports the establishment of statewide voter registration lists, and other activities to improve the administration of elections for Federal office. EAC monitors State use of HAVA funds to ensure funds distributed are being used for authorized purposes. To help fulfill this responsibility, the EAC determines the necessary corrective actions to resolve issues identified during Single Audit Act and Office of Inspector General (OIG) audits of state administration of HAVA funds. The EAC OIG has established a regular audit program to review the use of HAVA funds by States. The OIG's audit plan and audit reports can be found at [www.eac.gov](http://www.eac.gov).

The EAC Audit Follow-up Policy authorizes the EAC Executive Director to issue the management decision for OIG audits of Federal funds to state and local governments, to non-profit and for-profit organizations, and for single audits conducted by state auditors and independent public accountants (external audits). The Executive Director has delegated the evaluation of final audit reports provided by the OIG and single audit reports to the Director of the HAVA Grants Division of EAC. The Division provides a recommended course of action to the Executive Director for resolving questioned costs, administrative deficiencies, and other issues identified during an audit. The EAC Executive Director issues the EAC Management Decision that addresses the findings of the audit and details corrective measures to be taken by the State.

States may appeal the EAC management decisions. The EAC Commissioners serve as the appeal authority. A State has 30 days to appeal the EAC management decision. All appeals must be made in writing to the Chair of the Commission. The Commission will render a decision on the appeal no later than 60 days following receipt of the appeal or, in the case where additional information is needed and requested, 60 days from the date that the information is received from the State. The appeal decision is final and binding.

Please note with four Commissioner vacancies, the Commission presently lacks a quorum to conduct appeals. The 30 day period to file an appeal remains in place. However, the 60 day period for a decision will toll until a Commission quorum is reestablished.

## **AUDIT HISTORY**

The OIG issued an audit report on the administration of payments received under the Help America Vote Act (HAVA) by the Secretary of the Commonwealth of Massachusetts' (Office) on November 21, 2013. Based on the audit procedures performed, except for the matters discussed below, the auditors concluded that the Office generally accounted for and expended the Grant funds in accordance with grant and audit requirements for the period from May 2003 through September 30, 2012.

### **Finding 1 – Financial Reporting**

The auditors found that the Office submitted financial reports that could not be supported by underlying accounting records.

Additionally, 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.”

### **Recommendation:**

The auditors recommend that the EAC require the Office to implement controls to ensure that grant activity is reconciled periodically to ensure that the Federal financial reports reflect actual activity of the election fund.

### **Secretary of the Commonwealth’s Response:**

The Division has implemented the necessary internal controls to ensure that accurate future financial reporting on cumulative reports by individual grant is supported by underlying accounting records. Further, the Division has established enhanced oversight to properly track expenditures and account for grant funds to ensure compliance with HAVA. The Division will regularly monitor HAVA grant activity, which will be reconciled quarterly. Also, the Division has submitted revised financial reports to address the concerns noted in the finding.

**EAC Response:**

The submission of the revised FSRs and the implementation of internal controls regarding financial reporting, as noted by the auditors, are responsive and adequate to resolve the finding. **EAC considers this matter closed.**

**Finding 2 – Interest Earned on Federal Funds**

The auditors found that the Office untimely credited interest earnings to the Elections Fund.

Cash management requirements as set forth in 41 CFR § 105-71.121 (f) address the effect of interest income on grant payments, and states that “grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.”

**Recommendation:**

The auditors recommend that the EAC require the Office to calculate the amount of interest to transfer to the election fund for the untimely crediting of interest earnings. This calculation should consider the period from the inception of the HAVA grant funds through the date of transfer and include any compound interest. The amount determined should be transferred into the election fund.

**Secretary of Commonwealth’s Response:**

The Division, in conjunction with the Massachusetts State Treasurer and State Comptroller, established the Election Fund as an interest bearing account. The Division acknowledges that for a brief period of time, the interest earned on the account was not properly credited back to the Election Fund.

The Division has now calculated the remaining amount of interest as \$153,169 and the compound interest as \$23,286 to be transferred into the Election Fund. These figures include the period from the inception of the HAVA grant funds through June 30, 2013. The Deposit of these funds into the Election Fund will properly allocate the interest earned on HAVA grant funds and remedy any untimely crediting of interest earnings.

The Division is currently working with the Massachusetts State Treasurer and State Comptroller to complete this transfer and properly allocate and credit the appropriate interest to the Election Fund.

**EAC Response:**

As noted by the auditors and confirmed by EAC, corrective action is responsive to the concerns of the auditors. **EAC considers this matter closed.**

### **Finding 3 – Inadequate Equipment Management**

The auditors found that the Office’s property records are inadequate.

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 data 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.”

#### **Recommendation:**

The auditors recommend that the EAC address and resolve the following recommendations that the Secretary of the Commonwealth of Massachusetts’ Office:

- (a) Implement procedures to ensure that an inventory listing is created and maintained for equipment purchased with HAVA funds that complies with the Common Rule.
- (b) An analysis should also be performed to ensure that all purchases have been ultimately recorded through those inventory records.
- (c) Conduct a physical inventory at least once every two years and formally document the performance and any reconciliation efforts.

#### **Secretary of Commonwealth’s Response:**

The Division has undertaken comprehensive measures to ensure that all inventory of equipment, including workstations, voting systems, memory cards, and hardware maintained off-site purchased with HAVA funds is catalogued, updated, and maintained pursuant to the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* (OMB Circular A-102), 41 CFR § 105-71.132(d) (the Common Rule). Specifically, inventory listings have been amended to ensure inclusion of all of the following information required by the Common Rule: description of property; serial number or other identifying number; source of property; titleholder of property; date of acquisition; property costs; percentage of Federal participation in the cost of the property; location of the property; use and condition of property; and disposition data and sale price of property.

The Division currently conducts ongoing inventory evaluations that exceed the requirements under HAVA, and will conduct a comprehensive physical inventory and reconcile results with the property records at least once every two years. In addition, all municipalities within the Commonwealth have been informed of their obligations under

HAVA regarding equipment inventory management and recordkeeping for equipment that has been paid for in any part using HAVA funds.

**EAC Response:**

Consistent with the auditor's response, EAC accepts the corrective action plan. **EAC considers this matter closed.**

**Finding 4: HAVA Section 251 State Match**

The auditors found that the Office did not deposit into the election fund the required state match for all Section 251 requirements payments.

As a condition to receiving Section 251 requirements payments the State has to certify that it is in compliance with section 253(b) of the Act. Section 253(b)(5) states that "The State has appropriated funds for carrying out the activities for which the requirements payment is made in an amount equal to 5 percent of the total amount to be spent for such activities..."

**Recommendation:**

The auditors recommend that the EAC address and resolve the following recommendations that the Massachusetts Secretary of the Commonwealth's Office:

- (a) Deposit adequate matching funds into the election fund to satisfy the \$2,666,577 in questioned costs. This amount may consider the analysis provided by the Office as a reduction of \$1,811,088 of the required \$2,666,577.
- (b) Calculate the amount of interest to transfer to the election fund for the untimely deposit of matching funds. This calculation should consider the period from the date the requirements payments were received through the date the matching requirement was met and include any compound interest through the date of the transfer. The amount determined should be transferred into the election fund.

**Secretary of the Commonwealth's Response:**

The Division acknowledges that \$57,005,182 in Section 251 funds was received as of September 30, 2012 and resulted in a state matching requirement of \$3,000,273 pursuant to HAVA, 42 U.S.C. § 15401/4 (establishing the 5% matching requirement). The Division has reviewed its HAVA obligations and accounted for all but \$185,102 of the questioned costs of \$2,666,577.

During the audit process, the Division provided MLA with documentation of \$1,811,088 in matching state expenditures made with state monies, which would have qualified to be paid for using HAVA funds, similar to the accepted state match practice used in many other states. The finding states that during fieldwork, the Division identified \$344,426 of

the \$1,811,088 that “was not reimbursed to the municipalities for replacement of punch card or lever voting machines.” The Division would like to clarify that 100% of the monies received under Section 102, which were specifically for replacement of punch card and lever machines, were provided to municipalities for reimbursement in addition to a percentage of Section 101 funds. While HAVA authorized an appropriation of \$4,000 for each precinct that used punch card or lever voting machines during the 2000 Presidential Election for replacement of such equipment, the actual appropriation was \$3,192 per precinct. The amounts available to Massachusetts under Section 102 (\$1,519,497) did not cover full reimbursement to the cities and towns. Accordingly, after consultation with MLA, the Division utilized the additional amounts paid by the municipalities as state matching funds. The Division will make documentation available for the EAC supporting this position.

Further, on July 12, 2013, \$716,511 was deposited into the Election Fund. Of this total amount, \$432,020 was allocated to the interest on the state match, which satisfies the state matching interest requirement. The remaining \$284,491 was allocated to the state match.

The Division has incurred additional matching expenses of \$385,896 for programming and related costs for the AutoMARK Voter Assist Terminals, accessible voting equipment required by HAVA, associated with the Special U.S. Senate Primary held on April 30, 2013 and General Election held on June 25, 2013. This reduces the remaining obligation of \$570,998 to \$185,102. The Division has also incurred additional expenses associated with the statewide database of registered voters required by HAVA, which qualify as state matching expenses. Of those costs, \$185,102 has been paid for with state funds, which fulfills the state match requirements. The Division can provide this documentation to both the OIG and EAC, if necessary.

Accordingly, the Division has fully expended State matching funds as required by HAVA. The Division has established procedures to maintain proper compliance with the 5% state matching requirement under HAVA for any future requests for requirements payments that may be available.

**EAC Response:**

The Commonwealth has provided documentation to EAC that they have met the required matching requirements and maintained that match as outlined in HAVA. **EAC considers this matter closed.**

**Finding 5 – Improper Use of HAVA Award Funds**

The auditors found that 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.

In December 2009 the Office paid for the creation of two broadcast television Public Service Announcement's (PSA) to promote voting in the Special Federal Election cycle for Massachusetts' United States Senator. The subject of these PSAs was to inform the public that it was time for a Special Federal Election and that absentee ballots were available. The subject matter indicates "get out the vote" activities instead of educating the voters as allowed by Section 101 of HAVA.

The Office expended \$18,965 for the creation of the PSAs and also expended \$98,272 for the distribution of the PSAs to the local television networks. The total of \$117,237 was spent using Section 251 funds without a certification filed with the EAC as provided for in section 251(b)(2) of HAVA. The Office subsequently filed the EAC certification on July 8, 2013 which was subsequent to the fieldwork. The audit noted approximately \$427,407 was provided to the marketing firm that distributed the advertising using Section 251 funds during the period under review.

In its Funding Advisory Opinion FAO-08-005, the EAC states, "Neither Section 101 nor 251 funds can be used for "get out the vote" activities. In those cases where it is not clear whether a registration activity is educational or a get out the vote effort (i.e. encouraging citizens to vote on Election Day), the State should contact EAC for a determination on the basis of the specific circumstances."

The Funding Advisory Opinion further notes that, "Section 251 funds may be used for instructing individuals how to vote in the same manner as Section 101 funds if a State has submitted to the Election Assistance Commission one of the two certification provided for in section 251(b)(2) of HAVA."

The Office also developed an information booklet for voters that included a mail-in voter registration card. The booklet provided the public information on the impact of the Help America Vote Act of 2002, how to register to vote, voting procedures and voting rights by absentee ballots. The cost of this booklet was allocated to both HAVA funds and State funds. The cost of printing the mail-in voter registration cards was \$78,636.

In its above-referenced Funding Advisory Opinion, the EAC noted that, “Neither Section 101 nor 251 funds may be used to print, copy, or revise State voter registration forms. Providing voter registration forms is an activity that States have been carrying out for years, is not a requirement imposed by HAVA, is not educational (even if there are instructions on the form), is not an improvement to the administration of elections for Federal office and must continue to be funded by the State.”

The cost associated with the 2009 PSA ads and the mail-in voter registration cards are not allowable charges to the HAVA award. Accordingly, costs of \$195,873 charged to the award are questioned costs.

**Recommendation:**

The auditors recommend that the EAC address and resolve the following recommendations that the Massachusetts Secretary of the Commonwealth’s Office:

- (a) Transfer to the election fund \$195,873 for the questioned costs cited above.
- (b) Determine if advertising costs paid for with Section 251 funds are allowable due to the untimely certification as provided by Section 251(b)(2) of HAVA.

**Secretary of Commonwealth’s Response:**

The Division understands that HAVA authorizes payments to the Commonwealth and other states as noted above.

The finding questions the use of HAVA funds for Public Service Announcements (PSAs) and the printing of voter registration forms provided as part of an informational booklet sent to voters. Yet the EAC’s website for Frequently Asked Questions (FAQ) relative to HAVA funds states that voter education is allowable. In FAQ #23, the question asks whether a state or local government may use HAVA funds to produce and run radio and TV spots about registration deadlines, rights and responsibilities, absentee voting, information about grievance procedures, provisional ballots and ID requirements. The answer provided is generally, yes. The Division believes that these activities serve to educate voters and are therefore eligible to be paid for using HAVA funds.

Specifically, in December 2009, the Division used Section 251 funds for the creation of two broadcast television PSAs to inform the public of an upcoming Special Election for U.S. Senate and the procedure for obtaining absentee ballots. The purpose of the PSAs was to inform voters of their rights to participate in this Federal election and educate voters about the absentee ballot process in Massachusetts. The special election was held on January 19, 2010, in the middle of the winter, during a time when Federal elections do not normally take place. This was the first time a special election of this kind was held in Massachusetts. Accordingly, timely notification to voters of their rights to participate in this Federal special election was important and necessary. In addition, providing information on absentee ballot procedures was imperative given that Massachusetts law



does not permit early voting or “no-excuse” absentee voting. Consequently, unless otherwise qualified, all voters must vote at the polls on Election Day. Due to the potential for inclement winter weather, which has been shown to have a direct impact on the ability of many voters to go to the polls and participate, it was essential to educate voters prior to the special election of how to qualify and obtain an absentee ballot.

The Division acknowledges that Section 251 funds were used for the PSAs in question. EAC advisory opinion (09-001), the EAC states that “Certifications filed under Section 251(b)(2) are applicable to periods prior to the submission of the certifications.” On July 10, 2013, the Division certified to the EAC that the Commonwealth met the requirements of Title III of HAVA as of January 1, 2008. A copy of the certification was also provided to MLA. Therefore, the Division believes that the PSA costs paid for with Section 251 funds are permitted. If, however, the EAC determines that the certification of Section 251 funds was not timely, the Division respectfully suggests that in the alternative, Section 101 funds could have been used and are available for this purpose. Accordingly, if necessary, the financial reports for both Section 101 and Section 251 funds could be amended to designate the expenditure from Section 101 funds and document a credit to the Section 251 funds.

The Division printed and distributed an educational information booklet for voters that included a mail-in voter registration form paid for in part with Section 101 HAVA funds. As noted in the finding, the booklet provided the public information on the impact of the Help America Vote Act of 2002 including new voter identification requirements for first-time voters, how to register to vote, voting procedures and voting rights by absentee ballots.

This expense was incurred in 2004, four years prior to the first guidance issued by the EAC on the issue of using HAVA funds for printing voter registration forms. Although, FAO 08-005 states that Section 101 funds may not be used to print voter registration forms, it also states: “[E]ducating voters on voting procedures would include providing instructions on how to register to vote...” It further states that “Section 101 funds may be used at any time to instruct individuals on how to register to vote.” The voter registration forms in question contained additional information regarding how to register to vote and the applicable deadlines for registering to vote in order to be eligible to vote in the 2004 Presidential election. The form also contained information regarding the new identification requirements for first-time voters under HAVA. This additional information supplemented the standard instructions that appear on all voter registration forms and clearly was a voter education effort allowable under HAVA.

The Division believes that the questioned costs for the PSAs and printing of mail-in voter registration cards are activities eligible to be paid for using HAVA funds. The Division looks forward to working with the EAC by providing them with documentation and justification to support these expenditures.

**EAC Response:**

The Commonwealth is forwarding the scripts for the PSA ads for review and the materials included with the mail-in voter registration cards. As indicated in our Advisory Opinion, EAC will continue to make decisions regarding voter registration and “get out the vote” activities based on the specific circumstances. EAC will determine whether money was spent appropriately and ensure appropriate corrective action.