EAC MANAGEMENT DECISION:

Resolution of the OIG Audit Report on the Administration of Payments Received Under the Help America Vote Act by the Utah Office of Lieutenant Governor for the Period April 29, 2003 Through July 31, 2009 Report No. E-HP-UT-09-10

May 27, 2011

BACKGROUND

The EAC is an independent, bipartisan agency created by the Help America Vote Act of 2002 (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 Department of Inspector General (OIG) audits of state administration of HAVA funds. The EAC OIG has established a regular audit program to review the use of HAVA funds by States. The OIG's audit plan and audit reports can be found at www.eac.gov.

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 two 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 Utah Office of Lieutenant Governor (OLG) on March 31, 2011. Except for the maintenance of adequate property records for HAVA funded equipment, financial accounting and reporting errors, interest on HAVA and state matching funds, and the failure to deposit program income into the election fund, the audit concluded that the OLG generally accounted for and expended HAVA funds in accordance with requirements.

Finding 1 – Property Records for HAVA Funded Equipment

The equipment listings from the seven counties visited by the auditors did not conform to the requirements of 41 C.F.R. 105-71.132 (d)(1) (the Common Rule). The listings included a description of the equipment, serial number and the location, but did not include the federal, state, or county percentage of ownership, source of the property, who holds title, use and condition of property, acquisition date, cost, and percentage of federal participation in the cost.

OLG election officials indicated they were not aware of the detailed recordkeeping requirements of the Common Rule.

Recommendation:

1. The auditors recommended that EAC require the OLG ensure that the property records at counties include the minimum information required by the Common Rule.

OLG's Response:

OLG officials concurred with the finding and stated that they would work with the counties to implement the recommendation.

EAC Response:

EAC will work with OLG officials to ensure adherence with the property recordkeeping requirements of the Common Rule.

Finding 2 – Financial Accounting and Reporting Errors

Amounts reported on the financial status reports (FSRs), Forms SF269 and SF425, did not reconcile to the state's financial accounting system or the state treasury reports.

Recommendations:

The auditors recommended that:

2. EAC work with the OLG to determine whether it is necessary to file revised annual reports.
3. OLG officials develop procedures to ensure that the HAVA accounting records and reports are accurate.

OLG's Response:

OLG officials expressed reservations regarding the finding, because accounting records had been destroyed pursuant to state retention schedules after state auditors had completed audits and issues had been resolved. They stated that measures had been implemented which are intended to improve the record keeping system and to maintain the appropriate documentation.

EAC Response:

EAC will work with OLG officials to determine whether it is necessary to file revised reports. EAC will also review OLG's policies and procedures to ensure systems are in place to maintain accurate accounting records.

Finding 3 – Interest

Utah deposited its HAVA funds into the state's Public Treasury Investment Fund (PTIF). State policy requires users of the PTIF to maintain a minimum uninvested cash balance of $50,000, or ten percent of the investing fund's cash and investment balance. Interest earned on this uninvested cash balance is retained by the PTIF as a fee for the use of the PTIF. This policy is inconsistent with provisions of the Help America Vote Act which requires that interest on HAVA funds be deposited in the election fund.

Recommendation:

4. The auditors recommended that the EAC work with the OLG to determine whether the fee paid to the PTIF, equal to the interest on the $50,000 is an allowable HAVA expenditure. If not, the cumulative interest should be allocated and credited to the HAVA election fund.

OLG's Response:

OLG officials stated that they were complying with state policy, because it is a requirement to maintain deposits in PTIF.

EAC Response:

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.

EAC will work with the OLG to resolve the inconsistency between federal law and state policy. EAC will defer to the order of precedence that typically governs.

Finding 4 – State Matching Funds

The OLG asserted that it used in-kind expenditures to meet part of its state matching funds requirement; however, the state did not expend the amounts necessary to support this requirement prior to receiving 2003 and 2004 Section 251 funds. The state certified on July 6, 2004 and August 4, 2009 that it was in compliance with the requirements of Section 253(b) of the Help America Vote Act even though they had not deposited or expended sufficient funds to meet the state matching requirement by these dates.

In addition, the auditors were not able to test the full balance of in-kind expenditures. The state claimed that they had made a total of $953,624 of in-kind payments, used primarily for payment for voting equipment, state salaries, payroll expenses for HAVA related activities, and consulting services for development of the state-wide voter registration system. The auditors tested a sample of in-kind expenditures totaling $835,042 of which $658,934 was tested without exception. The state was unable to provide support for $176,108 of claimed in-kind expenditures, because records had been destroyed in accordance with the state's records retention policy.

Recommendations:

The auditors recommended the EAC work with the state:

5. to determine the amount of interest earnings that were not transferred to the election fund, because matching funds in-kind payments were not expended timely.
6. to resolve the issue of missing documentation on in-kind expenditures.

OLG's Response:

OLG officials believe that the excess matching funds of $86,935 will be adequate to offset any interest earnings that might be due, and they also believe they complied with state guidelines regarding the destruction of supporting documentation.

EAC Response:

EAC will work with OLG officials to determine the amount of any interest earnings that were not transferred to the election fund. Additionally, EAC will resolve the issue of missing documentation and articulate federal record retention requirements to ensure compliance.

Finding 5 – Program Income

The state of Utah used HAVA funds to purchase T-shirts with the word "VOTE" on the front and an Internet address, *leaveyourprint.com*, on the back. The Internet address linked to the Office of the Lieutenant Governor's website, which provided information about voting. The T-shirts were given to individuals who came to voter education events such as demonstrations of the state's HAVA funded voting machines. The election office also sold 1,010 of these T-shirts to counties for $5 per shirt for a total of $5,050. The income from these sales was deposited into the state's general fund rather than the HAVA election fund as required by the Common Rule.

Recommendation:

7. The auditors recommended that EAC work with the state to determine the net program income from the sale of the T-shirts, and require the state to transfer that amount into the election fund, plus any interest earnings that would have accrued on the funds.

OLG's Response:

OLG officials agreed with the finding and will implement the recommendation.

EAC Response:

EAC will work with OLG officials to ensure corrective action.