



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

FINAL REPORT:

**Final Audit Report - Administration of
Payments Received Under the Help
America Vote Act by the Hawaii Office of
Elections**

APRIL 23, 2003 THROUGH SEPTEMBER 30, 2009

**Report No.
E-HP-HI-01-10
February 2011**



**U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL
1201 New York Ave. NW - Suite 300
Washington, DC 20005**

February 4, 2011

Memorandum

To: Thomas Wilkey
Executive Director

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

Subject: Final Audit Report - Administration of Payments Received Under the Help America
Vote Act by the Hawaii Office of Elections (Assignment Number E-HP-HI-01-10)

We contracted with the independent certified public accounting firm of Clifton Gunderson LLP (Clifton Gunderson) to audit the administration of payments received under the Help America Vote Act (HAVA) by the Hawaii Office of Elections (HOE). The contract required that the audit be done in accordance with U.S. generally accepted government auditing standards. Clifton Gunderson is responsible for the attached auditor's report and the conclusions expressed therein.

In its audit of the HOE, Clifton Gunderson concluded that the HOE did not account for and expend HAVA funds in accordance with the HAVA requirements and the financial management requirements established by the U.S. Election Assistance Commission. The auditors noted that the HOE did not maintain equipment inventory records that conformed to the Common Rule; used HAVA funds to pay for expenses that are questionable as appropriate uses of the funds; did not transfer interest earnings on HAVA funds to the election fund; included \$1,339,192, plus interest, as Section 102 funds in error; did not perform periodic reconciliations of HAVA funds to ensure that financial reports were accurate; and did not prepare semi-annual certifications to support personnel costs of \$219,471.

In its April 1, 2010 and October 4, 2010 responses to the findings and recommendations (Appendices A-1 and A-2, respectively), the HOE generally agreed with the finding and recommendations, and provided corrective action. However, they disagreed with the assessment that certain advertising costs and computer purchases should not be allowable uses of HAVA funds.

On October 28, 2010, you provided us with your written response to the recommendations (Appendix A-3), which indicated general agreement. 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 finding and recommendation included in this report by April 4, 2011. Your response should include information on actions taken or planned, targeted completion dates, and titles of officials responsible for implementation.

The legislation, as amended, creating the Office of Inspector General (5 U.S.C. § App.3) requires semiannual reporting to Congress on all audit reports issued, actions taken to implement audit recommendations, and recommendations that have not been implemented. Therefore, this report will be included in our next semiannual report to Congress.

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

PERFORMANCE AUDIT REPORT
ADMINISTRATION OF PAYMENTS RECEIVED
UNDER THE
HELP AMERICA VOTE ACT
BY THE
STATE OF HAWAII

April 23, 2003 Through September 30, 2009

UNITED STATES
ELECTION ASSISTANCE COMMISSION



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**U.S. Election Assistance Commission
Performance Audit of the Administration of Payments Received Under the
Help America Vote Act by the State of Hawaii**

EXECUTIVE SUMMARY

Clifton Gunderson LLP was engaged by the U.S. Election Assistance Commission (EAC or the Commission) Office of Inspector General to conduct a performance audit of the Hawaii Office of Elections (HOE) for the period April 23, 2003 through September 30, 2009 to determine whether the State of Hawaii used payments authorized by Sections 101, 102, and 251 of the Help America Vote Act of 2002 (HAVA or the Act) in accordance with HAVA and applicable requirements; accurately and properly accounted for program income and property purchased with HAVA payments; and met HAVA requirements for Section 251 funds for an election fund and for a matching contribution. We did not include a determination of whether the HOE and its subgrantees met the requirements for maintenance of a base level of state outlays because the Commission is reviewing its guidance on the applicability of the maintenance of a base level of state outlays to the HOE's subgrantees.

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 Governments* (also known as the "Common Rule") as published in the Code of Federal Regulations 41 CFR 105-71.
- Expend payments in accordance with cost principles for establishing the allowance or disallowance of certain items of cost for federal participation issued by the Office of Management and Budget (OMB) in Circular A-87.
- Submit detailed annual financial reports on the use of Title I and Title II payments.

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. Because of inherent limitations, a study and evaluation made for the limited purposes of our review would not necessarily disclose all weaknesses in administering HAVA payments.

Our audit concluded that the HOE did not account for and expend HAVA funds in accordance with the requirements mentioned above for the period from April 23, 2003 through September 30, 2009. We noted exceptions needing HOE management attention as follows:

- Inventory listings of election office equipment did not conform to the requirements of 41 C.F.R. 105-71.132 (d) (1), (the Common Rule). The fixed asset listing did not contain all of the required information such as: description of equipment, location of equipment, condition of equipment, acquisition date, nor the funding of the purchase of equipment (specifically, whether the equipment item was purchased with HAVA funds).

- The HOE used HAVA funds totaling \$49,475.77 to pay for interest on delinquent invoices, advertising that was unrelated to voter education, and computers to be used in the daily operations of the elections office. These expenditures did not meet the HAVA guidelines or federal regulations as appropriate uses of the funds.
- An undetermined amount of interest earnings on HAVA balances had not been transferred by the state to the election fund since February 2009.
- As of September 30, 2009, the election fund included \$1,339,192.30, plus interest, that was received as part of a special distribution by the EAC to selected states under the Consolidated Appropriation Resolutions Act, Public Law (PL) 108.7. This fund should not be co-mingled with the HAVA funds.
- The HOE did not perform periodic reconciliations to agree the HAVA accounting records with the state's official accounting records, resulting in errors in the annual financial status reports, Form SF269, filed with the EAC, and an unreconciled difference of \$42,000 as of September 30, 2009.
- The HOE lacked appropriate documentation or semi-annual certifications to support personnel costs charged to HAVA totaling \$219,471.19.

We have included in this report as Appendix A-1 the HOE management's formal response on April 1, 2010 to the findings and recommendations, and as Appendix A-2 the HOE management's followup response to the draft audit report, dated October 4, 2010, which clarified their position on the responses. Although we have included management's written responses to our findings and recommendations, such responses have not been subjected to the audit procedures and, accordingly, we do not provide any form of assurance on the appropriateness of the responses or the effectiveness of the corrective actions described therein.

The draft report, including the HOE responses, was provided to the Executive Director of the EAC for review and comment. The EAC responded on October 28, 2010, and generally agreed with the report's findings and recommendations. The response indicated that the EAC would work with the HOE to ensure corrective action, to resolve disagreements on allowability of expenditures, and to determine appropriate resolution regarding the lack of personnel certifications. The EAC's complete response is included as Appendix A-3.

BACKGROUND

HAVA created the Commission to assist states and insular areas with the improvement of the administration of federal elections and to provide funds to states to help implement these improvements. HAVA authorizes payments to states under Titles I and II, as follows:

- Title I, Section 101 payments are for activities such as complying with Title III of HAVA for uniform and nondiscriminatory election technology and administration requirements, improving the administration of elections for federal office, educating voters, training election officials and poll workers, and developing a state plan for requirements payments.
- Title I, Section 102 payments are available only for the replacement of 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.

Title II also requires that states must:

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

AUDIT OBJECTIVES

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

1. Used payments authorized by Sections 101, 102, and 251 of HAVA in accordance with HAVA and applicable requirements;
2. Accurately and properly accounted for property purchased with HAVA payments and for program income;
3. Met HAVA requirements for Section 251 funds for an election fund and for a matching contribution. We did not determine whether the HOE met the requirement for maintenance of a base level of state outlays, because the Commission is reviewing its guidance on the applicability of the maintenance of a base level of state outlays to subgrantees of the HOE.

In addition, to accounting for HAVA payments, the Act 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 HAVA funds to comply with certain financial management requirements, specifically:

1. Comply with the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* (also known as the “Common Rule”) as published in the Code of Federal Regulations at 41 CFR 105-71.
2. Expend payments in accordance with cost principles for establishing the allowance or disallowance of certain items of cost for federal participation issued by the OMB.
3. Submit detailed annual financial reports on the use of Title I and Title II payments.¹

¹ EAC requires states to submit annual reports on the expenditure of HAVA Sections 101, 102, and 251 funds. Through December 31, 2008, for Sections 101 and 102, reports were due on February 28 for the activities of the previous calendar year, and, for Section 251, reports were due by March 30 for the activities of the previous fiscal year ending on September 30. Beginning in calendar year 2009, all reports will be effective as of September 30, 20XX for the fiscal year ended that date and will be due by December 31, 20XX.

SCOPE AND METHODOLOGY

We audited the HAVA funds received and disbursed by the HOE from April 23, 2003, through September 30, 2009, (77-month period) as shown in the following table:

TYPE OF PAYMENT	FUNDS RECEIVED					TOTAL AVAILABLE	FUND DISBURSED	DATA AS OF
	EAC PAYMENT	PROGRAM INCOME	STATE MATCH	INTEREST EARNED				
Section 101	\$ 5,000,000	\$ 0	\$ 0	\$ 1,149,790	\$ 6,149,790	\$ 1,533,295	9/30/2009	
Section 102	0	0	0	0	0	0	0	9/30/2009
Section 251	11,596,803	0	0	899,348	12,496,151	9,797,769	9/30/2009	
Total HAVA Funds	<u>\$16,596,803</u>	<u>\$ 0</u>	<u>\$0</u>	<u>\$2,049,138</u>	<u>\$18,645,941</u>	<u>\$11,331,064</u>	9/30/2009	

- Notes: 1) The balances above do not include \$1,339,192.30 that was received under P.L. 108-7 prior to HAVA and deposited in the election fund as described in Finding IV below. The interest earnings shown as posted to Section 101 funds includes interest that was earned on the PL 108-7 funds; however, the amount of those earnings has not been determined and the election fund balance is overstated. Our recommendation under Finding IV is to compute the interest earnings applicable to these funds and to transfer them to the general fund.
- 2) Hawaii did not deposit its state matching funds totaling \$610,358 into the election fund. Instead, it considered in-kind expenditures prior to receipt of requirements payments as satisfying its state match.

Our audit methodology is set forth in Appendix B.

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. Because of inherent limitations, a study and evaluation made for the limited purposes of our review would not necessarily disclose all weaknesses in administering HAVA payments.

We concluded that the HOE did not account for and expend HAVA funds in accordance with the requirements mentioned above. Exceptions identified include the state's failure to properly account for equipment purchased with federal funds, to utilize HAVA funds only for allowable purposes, to deposit interest earnings timely; reconcile the HOE's election fund balance to the Hawaii State Treasurer's Office (STO) account balances, and to maintain semi-annual personnel certifications. Also, the HOE co-mingled HAVA funds with other federal distributions intended for reimbursement of state expended funds. The HOE generally agreed with the findings and recommendations and has taken action on or is working to resolve the exceptions described below as set forth in Appendix A. However, the HOE disagreed with the finding regarding the improper use of HAVA funds for advertising costs and equipment purchases, and detailed their objection in Appendix A-1. In its formal response to the draft report, Appendix A-2, the HOE expanded on its position regarding the findings relating to the questioned costs listed in Appendix C:

I. Property Management

Since the state of Hawaii leases its voting equipment when needed for elections, the inventory listing provided by the Hawaii Office of Elections included only equipment that was housed at the elections office. In addition, the listing was not maintained in accordance with the Common Rule as follows:

- The fixed asset listing did not contain all of the required information such as: description of equipment, location of equipment, condition of equipment, acquisition date, nor the funding source of the purchase of equipment (specifically, whether the equipment item was purchased with HAVA funds).

In addition, computer equipment purchased with HAVA funds, such as monitors and laptops to be used for Hawaii Computerized Voter Registration (HCVR) and other HAVA activities, were used primarily for operations.

The risks of loss, theft or misappropriation is increased if properties are not properly accounted for in the accounting records or are not properly tagged as property of the HOE.

The *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* 41 CFR § 105-71.132 *Equipment* states that property records must be maintained that include a description of the property, serial number or other identification number, the source of property, who holds the title, the acquisition date, and costs of the property, percentage of federal participation in the cost of the property, the locations, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal funds and shall not encumber the property without approval of the federal awarding agency.

Current election office management and staff stated that they were not familiar with the regulations governing equipment acquired with federal funds.

Recommendations:

We recommend the HOE:

1. Update its equipment inventory records to include all information required by federal guidelines and identify the equipment purchased with HAVA funds.
2. Perform periodic inventories of equipment to facilitate proper accountability and safeguarding of assets for which federal funds were used to acquire.

HOE's Response:

The HOE agreed with the corrective action recommended.

II. Procurements:

During our test of other direct costs, we identified costs that are ineligible or unallowable under the HAVA Act and other federal guidelines as follows:

- Interest totaling \$2,971.61 was paid on seven invoices that were delinquent in payment (over 90 days). Interest incurred on late payment of invoices, wherein an interest penalty is paid, is not an allowable use of federal funds.
- Advertising costs to “get out and vote” were incurred totaling \$3,591.62. Although advertising costs are allowable, advertising to “get out the vote” are specifically not allowable under the HAVA program.
- Computers were purchased totaling \$42,912.54 using HAVA funds. However, the computers are used in the daily operations of the elections offices, and are not restricted solely for HAVA related activities. A determination could be not made as to what portion of these costs is an appropriate use of HAVA funds.

OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, Attachment B, Item 16, Fines and Penalties, states that:

- Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, federal, state, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the federal award or written instructions by the awarding agency authorizing in advance such payments.

EAC Funding Advisory Opinion FAO-08-005 states that:

- Neither Section 101 nor 251 funds may be used to conduct voter registration drives or get out the vote efforts; including advertising for the event, setting up booths, and paying salaries of employees who register new voters.
- HAVA authorizes the use of Section 101 funds to educate voters about registering to vote. However, as noted in above, 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 Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments 41 CFR § 105-71.132(c) Use (1) t states that:

the recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal funds and shall not encumber the property without approval of the federal awarding agency.

The HOE management stated that the office had experienced significant turnover in key positions, which possibly contributed to the limited knowledge of current staff regarding federal regulations and the HAVA Act requirements.

There is a potential loss of HAVA funds totaling \$49,375.77 as discussed in detail in the condition above.

In addition, there is a potential for additional questioned costs for the amounts that were not included in our test sample but were part of the total costs paid for the same activities questioned in the condition above:

- \$10,784.17 of computer equipment costs.
- \$29,809.29 for radio advertising costs for "get out and vote".

Recommendations:

We recommend that:

3. The HOE discontinue the use of HAVA funds to pay interest charged on delinquent invoices, and ensure that the state reimburses the election fund for any late payment interest paid to date.
4. The EAC work with the HOE to determine the allowability of the advertising costs and the equipment costs.

HOE Response:

The HOE agreed with the corrective action recommendation to discontinue the use of HAVA funds to pay interest charged on delinquent invoices.

The HOE also agreed with the corrective action recommendation to work with the EAC to determine the allowability of the advertising costs and the equipment costs. However, they disagreed with the assessment that the advertising costs were not educational, and believe that the computer costs incurred in operating the HOE were expended for "improving the administration of elections for federal office." Full details on the HOE position are shown in Appendices A-1 and A-2.

III. Interest Earned

The State of Hawaii, Department of Budget and Finance, Financial Administration Division – Treasury, determines the interest earned on HAVA funds using a pooling of funds approach and allocating the interest monthly based on average balances. The allocation is an electronic distribution as determined by the state's accounting system. However, the allocation of the interest earned is not recorded timely and the HAVA election fund had not received all of the interest earnings to which it was entitled as of September 30, 2009. Interest earned for March 2009 through September 30, 2009 had not been recorded or credited to the HAVA funds. The last interest income posted was for February 2009 earnings, which was recorded in September 2009. The amount of unrecorded interest earned has not yet been determined.

Sec. 254(b) (1) D of the HAVA requires that the interest earned on deposits of the fund be deposited into the HAVA election fund.

The Funds Custody Manager in the treasury office informed us that there was a staffing shortage in her office resulting from budget cuts that caused the delays in transferring the interest earned.

The HAVA election fund is understated by an undetermined amount of interest earned as of September 30, 2009 and going forward as long as the recording delays continue.

Recommendations:

We recommend that the HOE:

5. Determine the amount of delinquent interest due the election fund and transfer it to the fund.
6. Implement procedures to follow up with the treasurer's office periodically to ensure timely recording of interest earned.

HOE Response:

The HOE agreed with the corrective action recommended.

IV. Reimbursement of Funds (Pre-HAVA Distribution)

Prior to the enactment of the Help America Vote Act (HAVA) of 2002, the State of Hawaii used its own funds to obtain electronic voting equipment for the regularly scheduled general election for federal office held in November 2000. Subsequent to the passing of the HAVA, the Consolidated Appropriation Resolutions Act, Public Law (PL) 108-7, signed on February 20, 2003, authorizes a one-time payment to those states that had upgraded or replaced their voting systems prior to the November 2000 election. The State of Hawaii received \$1,339,192.30 as a reimbursement for qualifying equipment purchased for the 2000 election in accordance with PL 108-7.

On April 23, 2003, the previous Chief Elections Officer (CEO) filed the required state certification statement for reimbursement stipulating that the state had spent \$2,500,000 for qualifying equipment and accessories, and that the state would not be eligible to receive Sec. 102 funds, which were appropriated as part of the HAVA provisions. However, in a letter to the Governor excerpted below, dated May 16, 2003, describing HAVA funding received to date, the previous CEO incorrectly described this special payment as Sec. 102 funds.

"On May 3, 2003, the State of Hawaii received an additional \$1,339,192.30 pursuant to Section 102 of the Act. This money will be used as a reimbursement for monies spent for the replacement of punch card voting machines."

The \$1.3 million was deposited in the HAVA election fund, and is still included with the HAVA fund balances as of September 30, 2009. In addition, interest has accrued on the funds since May 2003 through February 2009, and is included in the election fund. This has resulted in the HAVA fund balance being overstated by the \$1,339,192.30, plus compounded interest.

Excerpt from *H.J. Res. 2 (P.L. 108-7) Consolidated Appropriations Resolution, 2003 (Enrolled as Agreed to or Passed by Both House and Senate)* states that:

ELECTION REFORM REIMBURSEMENTS

For necessary expenses to carry out a program under which a one-time payment shall be made to the chief election authority of each state which, on a statewide basis, obtained optical scan or electronic voting equipment for the administration of elections for federal office in the state prior to the regularly scheduled general election for federal office in November 2000, \$15,000,000: Provided, That the amount of the payment made with respect to a state under such program shall be equal to the costs incurred by the state in obtaining optical scan or electronic voting equipment used to administer the most recent regularly scheduled general election for federal office in the state, except that in no case may the amount of the payment exceed \$4,000 per voting precinct in the state at the time of the election: Provided further, That total payments made under such program shall not exceed \$15,000,000.

Excerpts from *House Report 107-575 - Treasury, Postal Service, And General Government Appropriations Bill, 2003* state that:

H.R. 3295, the Help America Vote Act of 2001, authorizes appropriations for states to upgrade and replace voting systems with optical scan or electronic voting equipment on a statewide basis. H.R. 3295 does not, however, take into account those states that had upgraded or replaced their voting systems prior to the November 2000 election. The Committee has included new language to rectify this disparity by providing authorization and appropriations for one-time payments to those states that obtained optical scan or electronic voting equipment prior to the regularly scheduled general election for federal office held in November 2000. It is the Committee's understanding that this provision affects five states with a total estimated cost of approximately \$23,000,000.

The current Office of Elections' management and staff did not know why the funds were not deposited in the state's general fund, since they were not on staff at the time.

Recommendation:

7. We recommend the HOE officials determine whether these funds should remain in the HAVA election funds or transferred to the state's general fund.

HOE Response:

The HOE stated that they agreed with the corrective action recommended, and have transferred the original reimbursement money to the general funds. Interest which had accrued on the original funds is still in the process of being determined. After it is calculated, they will consult with the Department of Budget and Finance (DBF) if the funds should likewise be transferred to the general fund. To the extent the DBF permits the interest money to remain in the HAVA account, the HOE would like guidance on whether funds in addition to the requirements payments may be deposited in the HAVA account, to the extent that the State of Hawaii agrees to use those funds for HAVA purposes (i.e. matching funds or other commitments of funds by the state for HAVA purposes).

V. Financial Accounting and Reporting

The Office of Elections does not reconcile the HAVA funds in its books against the State Treasurer's records. We noted differences between the Office of Election's records as reported on the Financial Status Reports and Hawaii's accounting system, Financial Accounting & Management Information System (FAMIS). As of September 30, 2009 the Office of Election's computed HAVA fund balance was \$8,661,280.33 and Hawaii's Financial Accounting and Management Information System (FAMIS) account balances totaled \$8,619,280.33, resulting in an unreconciled difference of \$42,000. Consequently, amounts reported on financial reports may not be accurate and errors could occur and not be detected in a timely manner.

HAVA receipts and expenditures were co-mingled in the Office of Elections accounting system until April 2007, and were not individually coded as Section 101 or Section 251 funds. In preparing the Financial Status Report, SF 269, it was necessary for the staff to evaluate the entries in the accounting records for allocation to the appropriate fund, utilizing Excel worksheets to accumulate HAVA data for tracking purposes.

HAVA Section 902. Audits and Repayment of Funds, Part (a) – Recordkeeping Requirement. states that 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.

We were informed that the HOE has experienced significant turnover, specifically in its accounting staff, therefore, reconciliations have not been performed as necessary.

Recommendations:

We recommend the HOE:

8. Perform monthly reconciliations of HAVA funds and accounts to ensure that all receipts and disbursements are properly recorded and accounted for in the state's accounting records.
9. Resolve the unreconciled difference of \$42,000.
10. Coordinate with EAC if corrected SF 269s need to be filed retroactively or prospectively.

HOE Response:

The HOE agreed with the corrective action recommended.

VI. Personnel Documentation and Certifications

The HOE did not complete semi-annual certifications for employees that worked full-time or solely on HAVA activities.

We identified only one employee position that was chargeable to the HAVA program. The position description of the employee indicates that the duties are for HAVA-related activities.

However, there were no timesheets or other documentation to support the number of hours worked, overtime hours, leave taken, and holidays for total HAVA personnel charges of \$219,471,19. Accordingly, there was no assurance that salaries and fringe benefit costs paid to HOE staff was incurred for work done solely on HAVA activities during the audit period.

OMB Circular A-87, in Attachment B Section 8(h) (3) requires that:

(3) 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.

The staff of the HOE stated that they were not aware of this requirement.

Recommendation:

11. We recommend that the EAC consult with the HOE to determine the appropriate corrective action regarding the lack of periodic certifications.

HOE Response:

The HOE agreed with the corrective action recommended, and noted that the NFR stated that the position description for the employee indicates that the duties are HAVA-related activities. Specifically, the employee position was created to implement a Section 261 grant to assure access for individuals with disabilities. As such, the employee has always worked solely on HAVA activities. Going forward, the State of Hawaii will submit the required semi-annual certifications.

We provided a draft of our report to the appropriate individuals of the HOE and the Commission. We considered any comments received prior to finalizing this report.

The draft report, including the HOE responses, was provided to the Executive Director of the EAC for review and comment. The EAC responded on October 28, 2010, and generally agreed with the report's findings and recommendations. The response indicated that the EAC would work with the HOE to ensure corrective action, to resolve disagreements on allowability of expenditures, and to determine appropriate resolution regarding the lack of personnel certifications. The EAC's complete response is included as Appendix A-3.

CG performed its work between October 5, 2009 and October 23, 2009.

Clifton Gunderson LLP

Calverton, Maryland
May 31, 2010



**STATE OF HAWAII
OFFICE OF ELECTIONS**

SCOTT T. NAGO
CHIEF ELECTION OFFICER

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
www.hawaii.gov/elections

April 1, 2010

Curtis Crider, Inspector General
U.S. Election Assistance Commission
Office of Inspector General
1225 New York Ave., NW, Suite 1100
Washington, D.C. 20005

Re: NOTICE OF FINDINGS AND RECOMMENDATIONS

Dear Mr. Crider:

I am writing in response to the six Notices of Findings and Recommendation (NFR) that you sent to us by email on March 22, 2010.

1. NFR # 1 Fixed Asset Listing

We agree with the corrective action recommended.

2. NFR # 2 Procurement-Disbursements

We agree with the corrective action recommendation to discontinue the use of Help America Vote Act (HAVA) funds to pay interest charged on delinquent invoices.

We likewise agree with the corrective action recommendation to work with the Election Assistance Commission (EAC) to determine the allowability of the advertising costs and the equipment costs.

In regards to the advertising material, it is our position that it was educational as opposed to a "get out the vote" effort. 42 USC § 15301(b)(1)(C). Additionally, it is not clear whether the specific advertising at issue was actually paid for with HAVA funds, as opposed to being treated as free public service announcements by the vendors (i.e. some ads were paid for and others were provided for free by the vendors as public service announcements).

Mr. Curtis Crider
April 1, 2010
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As for the computers, it is our position that the computers are an allowable HAVA expense used for "improving the administration of elections for Federal office." 42 USC § 15301(b)(1)(B). The very nature of the Office of Elections is the administration of federal elections. Specifically, all primary and general elections are regularly scheduled county/state/federal combined elections. To the extent there is ever a special election for a county office; the election is separately conducted by the county. Any vacancy in a state office is handled either through appointment by the Governor or a special election held in conjunction with a regularly scheduled election (i.e. county/state/federal combined election).

The Office of Elections has no other responsibilities which are separate and distinct from our duty to administer elections, which as noted above involve Federal offices. The unique statutory structure of elections in Hawaii mandates the central administration of federal elections by the Office of Elections, as opposed to on the county level, which occurs in other states. As it relates to "improving the administration of elections," the new computers provide (at that time) current hardware and software compatibility and features to run the offices newly developed election management program, Phoenix. The election management programs – the computer is used on – manages and tracks a wide array of logistical and personnel resources necessary to conduct this state's elections.

To the extent our interpretation of what constitutes "improving the administration of elections for Federal office" is incorrect, further guidance from the EAC should be provided on this matter.

Finally, to the extent the recommendations noted above involve possible reimbursement, we would like to discuss whether this can be waived or if the State would be allowed to off-set this through the expenditure of state funds for HAVA purposes above and beyond our maintenance of effort (MOE) requirements. A review of our finances indicates that for several years the State of Hawaii has been utilizing state funds for HAVA expenses in excess of its MOE requirements. In other words, if we were to reimburse the HAVA account, it would simply result in the State of Hawaii spending an equivalent amount less of its general funds on HAVA expenses. Additionally, there is the issue of whether the State of Hawaii should receive some type of credit or off-set for these past expenditures in excess of MOE.

3. NFR #3

As per your email, there is no NFR #3 as it was incorporated into NFR #6.

4. NFR # 4 Interest Earned

We agree with the corrective action recommended.

Mr. Curtis Crider
April 1, 2010
Page 3

5. NFR # 5 Pre-HAVA funds not reimbursed to State General Fund

We agree with the corrective action recommended. We have transferred the original reimbursement money to the state general fund. Interest which has accrued on the original funds is still in the process of being determined. After it is calculated we will consult with the Department of Budget and Finance if the funds should likewise be transferred to the general fund. To the extent the Department of Budget and Finance permits the interest money to remain in the HAVA account, we would like guidance on whether funds in addition to the federal requirements payments may be deposited into the HAVA account, to the extent the State agrees to use those funds for HAVA purposes (i.e. matching funds or other commitments of funds by the State for HAVA purposes).

6. NFR # 6 Financial Accounting and Reporting

We agree with the corrective action recommended.

7. NFR # 7 Personnel Costs

We agree with the corrective action recommended. As noted by the NFR the position description of the employee indicates that the duties are for HAVA -related activities. Specifically, the employee position was created to implement a HAVA Section 261 grant to assure access for individuals with disabilities. As such, the employee has always worked solely on HAVA activities. Going forward, the State of Hawaii will submit the required semi-annual certifications.

If you have any questions or require any additional information, please feel free to contact us at (808) 453-8683 or by email at elections@hawaii.gov.

Sincerely,



SCOTT T. NAGO
Chief Election Officer

STN:AHS:cr
OE-093-10



STATE OF HAWAII
OFFICE OF ELECTIONS

SCOTT T. NAGO
CHIEF ELECTION OFFICER

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
www.hawaii.gov/elections

October 4, 2010

VIA E-MAIL (CCRIDER@EAC.GOV)

Curtis Crider, Inspector General
U.S. Election Assistance Commission
Office of Inspector General
1225 New York Ave., NW, Suite 1100
Washington, D.C. 20005

Re: Draft Performance Audit Report

Dear Mr. Crider:

Thank you for the opportunity to comment on your draft performance audit report.

We continue to stand by our comments made in our April 1, 2010 response to the six Notices of Findings and Recommendation (NFR) that you sent us on March 22, 2010, which you have included as Appendix A to your draft report.

Having said that, to the extent you plan to recommend possible reimbursement of HAVA funds, we would ask you to consider the totality of the circumstances in making such a decision.

First, we would note that this is the first audit of the Office of Elections regarding its use of HAVA funds and in fact the Office of Elections has never previously received federal funds or participated in a corresponding audit. As such, we would ask for the EAC's understanding as any errors were not intentional.

Second, fundamental interpretations of provisions of HAVA were not firmly in place at the time of the audit. For example, the interpretation of the maintenance of effort provision as noted in the report was not resolved at the time of the audit.

Mr. Curtis Crider
October 4, 2010
Page 2

Third, the allegations regarding ineligible expenses for voting materials and computers require an interpretation of the law and facts surrounding those expenses. In recognition of this, the EAC issues advisory opinions on various fact patters. We believe our materials were in line with those advisory opinions. To the extent the EAC were to entertain deeming these expenses ineligible, we would contend that due process would require the EAC to review the actual voting materials, and to direct any questions regarding those materials to the Office of Elections to respond to.

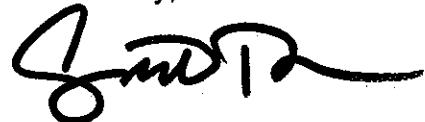
In terms of the computers, we have stated our position, see Appendix A to the Draft Report, that said computers were used to improve the administration of elections for federal office, as allowed for under HAVA. The auditors point to no specific evidence to contradict the position of the Office of Elections. Yet again, we are more than happy to respond to direct questions from the EAC on this matter.

Fourth, we would note that if the EAC is concerned that these alleged ineligible expenses, result in less than the appropriate amount of money being spent toward compliance with HAVA, the opposite is true in that we have historically spent significantly in excess of that amount, even taking into account these alleged ineligible expenses.

In the end, we appreciate the purpose of the audit and our mutual goal to ensure that federal grant monies are spent appropriately and consistent with the law.

If you have any questions or require any additional information, please feel free to contact us at (808) 453-VOTE(8683) or by email at elections@hawaii.gov.

Sincerely,



SCOTT T. NAGO
Chief Election Officer

STN:AS:cl
OE-245-10



EAC RESPONSE TO THE DRAFT AUDIT:

OIG Performance Audit Report on the Administration of Payments Received Under the Help America Vote Act by the State of Hawaii, for the Period April 23, 2003 Through September 30, 2009.

October 28, 2010

MEMORANDUM

To: Curtis Crider
Inspector General

From: Thomas Wilkey
Executive Director

Subject: Draft Performance Audit Report – “Administration of Payments Received Under the Help America Vote Act by the State of Hawaii”.

Thank you for this opportunity to review and respond to the draft audit report for Hawaii.

The Election Assistance Commission (EAC) generally concurs with the results of the review and recommendations. The EAC will work with the Hawaii Office of Elections (HOE) to ensure appropriate corrective action. Where the state disagrees with the recommendations, the EAC will work with the HOE to determine the allowability of incurred advertising and equipment costs. Additionally, the EAC will consult with the HOE to determine the appropriate corrective action regarding the lack of periodic personnel certifications.

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.
- Understanding 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 HOE employees about the organization and operations of the HAVA program.
- Reviewed prior single audit report and other reviews related to the state's financial management systems and the HAVA program for the last 2 years.
- Reviewed policies, procedures and regulations for the HOE's management and accounting systems as they relate to the administration of HAVA programs.
- Analyzed the inventory lists of equipment purchased with HAVA funds.
- Tested major purchases and supporting documentation.
- Tested randomly sampled payments made with the HAVA funds.
- Verified support for reimbursements to local governments (counties, cities, and municipalities).
- Reviewed certain state laws that impacted the election fund.
- Examined appropriations and expenditure reports for state funds used to meet the five percent matching requirement for section 251 requirements payments.
- Evaluated compliance with the requirements for accumulating financial information reported to the Commission on the Financial Status Reports, Form SF-269, accounting for property, purchasing HAVA related goods and services, and accounting for salaries.
- Verified the establishment and maintenance of an election fund.

MONETARY IMPACT AS OF SEPTEMBER 30, 2009

<i>Description</i>	<i>Questioned Costs</i>	<i>Additional Funds for Program</i>
Interest payments on delinquent invoices	\$2,972	\$0
Advertising costs not considered to be educational	\$3,592	\$0
Computer equipment used for non-HAVA purposes	\$42,912	\$0
Election fund balance in excess of state accounting balance	\$42,000	\$0
Lack of semi-annual HAVA employment certifications	<u>\$219,471</u>	<u>\$0</u>
Totals	<u>\$310,947</u>	<u>\$0</u>

- Note:** 1) There is an undetermined amount of interest due the election fund for the months from March to September 2009.
- 2) As of September 30, 2009, the HAVA election fund included \$1,339,192.30 that was distributed to the state under P.L. 108-7, plus accumulated interest, that was due to the state's general fund.

OIG's Mission

The OIG audit mission is to provide timely, high-quality professional products and services that are useful to OIG's clients. OIG seeks to provide value through its work, which is designed to enhance the economy, efficiency, and effectiveness in EAC operations so they work better and cost less in the context of today's declining resources. OIG also seeks to detect and prevent fraud, waste, abuse, and mismanagement in these programs and operations. Products and services include traditional financial and performance audits, contract and grant audits, information systems audits, and evaluations.

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Washington, DC 20005

To order by phone: Voice: (202) 566-3100
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Office of Inspector General
1201 New York Ave. NW - Suite 300
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E-mail: eacoig@eac.gov

OIG Hotline: 866-552-0004 (toll free)

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