

UNITED STATES
ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL



SEMIANNUAL REPORT TO CONGRESS

*For the Period:
April 1, 2016 Through
September 30, 2016*



U.S. Election Assistance Commission
Office of Inspector General
1335 East-West Highway, Suite 4300
Silver Spring, MD 20910

October 31, 2016

To: Thomas Hicks, Chairman
U.S. Election Assistance Commission

The Inspector General Act of 1978 (Public Law 95-452), as amended, calls for the preparation of semiannual reports to the Congress summarizing the activities of the Office of Inspector General (OIG) for the six-month periods ending on March 31st and September 30th each year. I am pleased to enclose the report for the period from April 1, 2016 to September 30, 2016.

The Act requires that you transmit the report to the appropriate committees of the Congress within 30 days of receipt, together with any comments you may wish to make.

For the last few years, the OIG has accomplished its mission by contracting for audits with independent public accounting firms and buying services from other Federal agencies. Contracted audits in process during the most recently completed six-month period covered the EAC financial statements, EAC's compliance with the Federal Information Security Modernization Act of 2014, and use of Help America Vote Act funds in the states or territories of Mississippi, Vermont, South Dakota, Puerto Rico, Maryland, and New Hampshire.

This report is the second semiannual report I am issuing since my appointment as Inspector General. I look forward to continuing to work with the Commissioners and employees of the Election Assistance Commission to improve Commission programs and operations.

Sincerely,

A handwritten signature in blue ink that reads "Patricia L. Layfield". The signature is written in a cursive style.

Patricia L. Layfield
Inspector General

cc: Commissioner Matthew Masterson, Vice-Chair
Commissioner Christy A. McCormick

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Election Assistance Commission Profile

Congress established the U.S. Election Assistance Commission (EAC or Commission) through the passage of the Help America Vote Act of 2002 (HAVA). EAC is an independent, bipartisan commission that serves as a national clearinghouse and resource for the compilation of information and review of procedures for the administration of Federal elections. HAVA authorized four commissioners, who are appointed by the President and approved by the U.S. Senate. Commissioners serve four-year terms. EAC currently has three commissioners.

EAC's principal duties include maintaining a national clearinghouse of information on election administration, testing and certifying/decertifying/recertifying voting systems, adopting voluntary voting system guidelines, and administering payments and grants authorized by HAVA. EAC has distributed over \$3 billion in payments and grants to the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa (hereinafter referred to as "states"). States use the funds to purchase voting equipment, establish statewide voter registration lists, implement provisional voting, educate voters, train officials and poll workers, improve polling places, and recruit poll workers.

Office of Inspector General Profile

HAVA required the appointment of an inspector general for the EAC and amended the Inspector General Act (IG Act) of 1978 (5 U.S.C.A. App. 3) to identify the EAC as a Designated Federal Entity (DFE). EAC appointed its Inspector General in 2006. The Office of Inspector General currently consists of one employee, the Inspector General. The first Inspector General retired as of September 2015 and the Commission appointed the current Inspector General in February 2016.

Despite its small size, the OIG performs all of the duties required of the inspector general under the IG Act, including:

- Conducting and supervising audits, investigations, and other services (e.g., evaluations) relating to the programs and operations of the EAC;
- Providing leadership and coordination and recommending actions to management, which (1) promote economy, efficiency, and effectiveness in agency programs and operations; and (2) prevent and detect fraud, waste, abuse, and mismanagement of government resources; and
- Keeping the Commission, management, and Congress fully informed regarding problems and deficiencies, and the progress of corrective actions.

The OIG's program to ensure economy, efficiency and integrity in the use of funds does not exclusively translate into audits of the EAC or of its payment and grant recipients. The OIG also investigates allegations of waste, fraud, abuse and mismanagement in EAC programs and operations. The OIG operates a hotline to receive complaints regarding EAC, its programs, and its funding recipients.

Audits

During the six months ended September 30, the Office of Inspector General initiated two audits of internal EAC operations.

Fiscal Year 2016 Financial Statements

We contracted with Brown & Company CPAs, PLLC (Brown & Company) to conduct the audit of EAC's fiscal year 2016 financial statements. Brown & Company is currently conducting the audit in accordance with generally accepted auditing standards promulgated by the American Institute of Certified Public Accountants (AICPA), *Government Auditing Standards*, and Office of

Management and Budget Bulletin No. 15-02. The OIG is monitoring the work in accordance with practices recommended by the Council of the Inspectors General on Integrity and Efficiency (CIGIE) and the Government Accountability Office.

Federal Information Security Modernization Act of 2014

The OIG hired CliftonLarsonAllen LLP (CLA), an independent certified public accounting firm, to conduct an audit of EAC's compliance with the Federal Information Security Modernization Act of 2014 (FISMA) and related information security policies, procedures, standards, and guidelines. The audit includes assessing the EAC's effort to develop, document, and implement an agency-wide program to provide information security for the information and information systems that support the operations and assets of the EAC.

In addition to the usual scope of the FISMA audit, CLA assisted the OIG in developing the report required by Division N of the Consolidated Appropriations Act of 2016 (P.L. 114-113). As part of that Act, Congress enacted the Cybersecurity Information Sharing Act of 2015 (CISA). Section 406(b)(1) of CISA required the Office of Inspector General (OIG) to "submit to appropriate committees of jurisdiction in the Senate and House of Representatives a report, which shall include information collected from the covered agency for the contents described in paragraph (2) regarding the Federal computer systems of the covered agency." Because the subject matter of the CISA report was so closely related to FISMA, the OIG requested CLA to gather information for and prepare the report required by CISA as part of the FISMA engagement.

The content required by paragraph (2) included the following items:

1. A description of the logical access policies and practices used by the covered agency to access a covered system, including whether appropriate standards were followed.

2. A description and list of the logical access controls and multi-factor authentication used by the covered agency to govern access to covered systems by privileged users.
3. If the covered agency does not use logical access controls or multi-factor authentication to access a covered system, a description of the reasons for not using such logical access controls or multi-factor authentication.
4. A description of the following information security management practices used by the covered agency regarding covered systems:
 - a. The policies and procedures followed to conduct inventories of the software present on the covered systems of the covered agency and the licenses associated with such software.
 - b. What capabilities the covered agency utilizes to monitor and detect exfiltration and other threats, including—
 - i. data loss prevention capabilities;
 - ii. forensics and visibility capabilities; or
 - iii. digital rights management capabilities.
 - c. A description of how the covered agency is using the capabilities described in clause (ii).
 - d. If the covered agency is not utilizing capabilities described in clause (ii), a description of the reasons for not utilizing such capabilities.
5. A description of the policies and procedures of the covered agency with respect to ensuring that entities, including contractors, that provide services to the covered agency are implementing the information security management practices described in subparagraph (4).

The report contained no specific findings; however, it alluded to several issues that will be more fully developed and, if determined to be findings, reported as part of the 2016 FISMA report. Although the CISA explicitly provided for the required report to be prepared as part of the FISMA project, it required the report to be issued to Congress within 120 days of the Act's passage. Therefore, we issued the CISA report as required in August 2016. Due to the sensitive nature of the information Congress requested us to include in the report, we did not issue it publicly.

Survey of Purchases by the New York City Board of Elections

The OIG initiated a survey of certain purchases of voting machines and related equipment by the New York City Board of Elections. The survey is a planning process used to identify risks, objectives, scope, and methodology. The objective of the survey was to determine whether controls over the procurement of certain voting machines and related equipment present sufficient risk to justify performance of a more detailed audit or evaluation of those purchases. As of September 30, the IG was reviewing the survey to determine whether to continue or terminate the project based on the risks identified.

State Audits

EAC has distributed HAVA funds to states for use to improve the administration of Federal elections by purchasing new equipment, establishing and operating statewide voter lists, implementing provisional voting, and verifying the identity of persons who wish to register to vote. The OIG conducts audits of the states' use of HAVA funds. Through the audits, the OIG examines:

- whether the recipient used HAVA funds in accordance with HAVA and other applicable Federal requirements;
- whether the recipient has properly accounted for purchases made with HAVA funds and any income derived from those purchases;

- whether grant funding was maintained and accounted for in keeping with HAVA; and
- whether the recipient provided sufficient matching funds and maintained Federal monies in a separate, interest-bearing election fund.

The OIG initiated six state audits during this period, to include audits of Mississippi, Vermont, South Dakota, Puerto Rico, Maryland, and New Hampshire. The OIG contracted with the professional auditing firm of McBride, Lock & Associates, LLC, to conduct these HAVA funds audits.

In conjunction with the audit of New Hampshire, the OIG issued a report entitled *Management Advisory Report: Nature of HAVA Funds and the Applicability of Federal Criteria*. The purpose of the report was to bring to the attention of the Commission questions regarding the nature of HAVA funds and the applicability of Federal laws, regulations, and Government-wide guidance to the payments made under HAVA.

The State of New Hampshire has long disagreed with the characterization of payments under HAVA as grants. In a 2011 letter, the then EAC General Counsel memorialized the substance of a conversation with a New Hampshire Assistant Secretary of State. According to the letter, EAC and the State of New Hampshire had reached an impasse regarding the distribution of HAVA §251 funds for the years 2008–2010. The State objected to the EAC requirement to enter into a grant agreement requiring certification of compliance with various Federal laws and regulations concerning the use of Federal money. The State contended the EAC was limited in its ability to require certification to those provisions contained in HAVA. EAC believed it was obligated to follow not just the requirements of HAVA when distributing the requirements payments, but also guidance issued by other relevant and controlling Federal authorities, including circulars issued by the Office of Management and Budget. At the time, the Commission lacked a quorum, so agency staff members were unable to raise the issue to that level for decision.

To break the stalemate between the EAC and the State of New Hampshire, the EAC General Counsel at the time reached a compromise with the State. If the State would execute the grant agreement without any iteration, accompanying it with a formal protest outlining its objections, the EAC would release the 2008–2010 requirements payments allotted to New Hampshire. The EAC General Counsel also agreed to present the issue to the full Commission when a quorum was restored, and request its referral of the matter to a body of competent jurisdiction for resolution, such as the U.S. Government Accountability Office, or any other such entity that the EAC and the State agreed upon. EAC’s General Counsel also formally noted the State’s protest and promised not to take the position that the signed grant agreement in any way prevented the State from asserting its stated position.

During the OIG audit, because of its long-standing position, the State of New Hampshire objected to the OIG references to the terms grant or award, or the presumption of the applicability of Federal guidance in the OIG audit planning documents. The State considered auditors’ requests for documentation related to grants or awards not to apply since they believed the State had no grants or awards under HAVA. The OIG continues to believe that the HAVA funds are grants as defined by the Grant and Cooperative Agreements Act of 1977 (31 U.S.C. 6301 et seq.)

The OIG’s management advisory report contained one two-part recommendation for the Commission to consider whether the payments of HAVA funds are grants and to refer the issue, as necessary, to another body of competent jurisdiction for resolution, such as the U.S. Government Accountability Office. The determination of the nature of HAVA funds would in turn determine the applicability to those payments of Federal laws, regulations, and other Government-wide criteria, such as those published by the Office of Management and Budget (OMB).

Investigations

The OIG did not issue any investigative reports during this semiannual reporting period.

OIG Hotline Information

The OIG receives and investigates complaints of fraud, waste, abuse, and mismanagement in EAC programs or by EAC grant recipients. In order to facilitate filing complaints, the OIG maintains an on-line complaint submission form, a hotline telephone, a hotline e-mail address and a hotline fax number. Complaints originate from EAC employees, EAC funding recipients and any member of the public. Persons making complaints can do so confidentially or anonymously and the OIG does not release names without the complainant's consent unless the Inspector General determines that it is necessary to do so in the course of the investigation or audit.

The OIG considers the incoming calls, e-mails, and other forms of correspondence to be contacts. The IG analyzes each contact to determine whether it is a complaint to be evaluated or a contact that is outside the OIG authority. Whenever possible, the IG refers contacts that are outside of the OIG authority to the most likely source of help for the issue being reported.

After a hotline complaint is logged and assigned a number, the Inspector General evaluates the complaint according to the OIG *Guidelines for Evaluating OIG Hotline Complaints*. Each complaint is evaluated as to whether it is a high priority or low priority complaint. The EAC OIG considers many factors when deciding whether to open an investigation based on a hotline complaint, and acknowledges that not every allegation or complaint received can be investigated. The factors considered may include:

- the merits of the allegations;
- existing priorities, commitments, and resources;

- the credibility of witnesses;
- the nature of the alleged violations;
- the available evidence;
- the elements of required proof;
- known mitigating circumstances; and
- the subject's current employment status with the agency.

During the semiannual reporting period ended September 30, 2016, the OIG received 105 contacts. Eight of the contacts were complaints and the OIG closed five of those complaints during the period. Three complaints remained open.

The remaining 97 contacts generally pertained to the 2016 election season. Given the September 30 cutoff date, the primary elections were the most frequent topic of voting-related complaints and comments during the semiannual period. The contacts included allegations of candidate or campaign wrongdoing (24%), problems with casting ballots (20%), concerns about voter fraud (20%), problems with voter registration (16%), voter intimidation or suppression (4%), and other (16%). The IG referred most of the contacts to websites for State or local boards of elections or Department of Justice websites that provide information about voting rights and public integrity.

Other Activities

Reviews of Legislation, Rules, Regulations, and Other Issuances

The OIG conducts regular monitoring of EAC program activities and policy-making efforts. We provide comment to significant policy statements, rulemaking and legislation that affects the EAC.

Matters Referred to Prosecuting Authorities

None.

Denial of Access to Records

None.

Peer Review Activity

Section 989C of the Dodd–Frank Act contains additional semiannual reporting requirements pertaining to peer review reports. Federal Inspectors General are required to engage in peer review processes related to both their audit and investigative operations. In keeping with Section 989C, the EAC OIG is reporting the following information related to its audit peer review activities. These activities cover our role as both the reviewed and the reviewing OIG.

Audit Peer Reviews

In 3–year cycles, CIGIE coordinates peer reviews of each OIG’s audit organization. A full peer review tests an OIG’s system of quality control in accordance with the *CIGIE Guide for Conducting External Peer Reviews of the Audit Organizations of Federal Offices of Inspector General*, based on requirements in the *Government Auditing Standards*.

A modified peer review tests the established policies and procedures for the audit function of an OIG that has not performed any audits using its own staff. *Government Auditing Standards* describe components of a system of quality control necessary to provide an OIG with reasonable assurance of conforming to applicable professional standards, which includes the established policies and procedures for the audit function.

During this semiannual reporting period, the Federal Maritime Commission (FMC) OIG conducted a modified peer review of the EAC OIG’s audit policies and procedures in effect at March 31, 2015. FMC’s modified peer review was conducted in accordance with the *CIGIE Guide for Conducting Peer Reviews of the Audit Organizations of Federal Offices of Inspector General* for assessing established audit policies and procedures.

In addition, the FMC applied certain limited procedures in accordance with guidance established by the CIGIE related to the EAC OIG’s monitoring of audits and attestation engagements, collectively referred to as “audits”, performed by

Independent Public Accountants (IPAs) under contract where the IPA served as the auditor. The purpose of the limited procedures was to determine whether the EAC OIG had controls to ensure IPAs performed contracted work in accordance with professional standards. However, FMC OIG's objective was not to express an opinion and accordingly, they did not express an opinion, on the EAC OIG's monitoring of work performed by IPAs.

During their review, the FMC OIG (1) obtained an understanding of the nature of the EAC OIG, (2) assessed established audit policies, procedures, and EAC OIG's IPA monitoring process, and (3) interviewed the IG. They also visited the EAC OIG office and reviewed three IPA monitoring projects.

Based on the review, FMC OIG determined that the established policies and procedures for the audit function at March 31, 2015, were current and consistent with applicable professional standards as stated. They also issued a letter dated July 20, 2016 setting forth one finding, which they did not consider to be of sufficient significance to affect their conclusions on the established policies and procedures.

Government Auditing Standards require audit organizations that perform audits or attestation engagements in accordance with GAGAS to establish and maintain a system of quality control and to undergo an external peer review at least once every three years. The EAC OIG's most recent peer review period covered the three-year period from April 1, 2012 to March 31, 2015. However, the EAC OIG did not complete this current peer review in a timely manner based on the timeframe established by GAGAS, which requires the report to be issued within six months after the end of the period under review.

Two factors caused the delay in the completion of the peer review. The previous EAC IG believed a conflict existed between the EAC OIG and the FMC OIG assigned to conduct the peer review. CIGIE later determined that a conflict did not exist and the assigned peer review team could perform the EAC OIG peer review; however, by the time CIGIE made that determination, the previous EAC IG's September 2015 retirement was imminent. The retirement of the previous

IG, and the passage of time until EAC appointed a new, permanent IG in February 2016 contributed to the delay in the completion of the peer review. The current EAC IG concurred with the finding and recommendation in the draft letter of comment and committed to obtaining the next peer review for the period ending March 31, 2018, by September 30, 2018.

During this semiannual reporting period, the EAC OIG did not perform a peer review of another OIG.

Reports Issued

EAC Audits

Management Advisory Report: EAC Needs to Resolve Questions Regarding the Nature of HAVA Funds and the Applicability of Federal Criteria (Assignment No. E-NS-NH-07-16), May 2016

Report Regarding Covered Systems, Prepared Pursuant to the Cybersecurity Information Sharing Act of 2015 (Assignment No. I-PA-EAC-02B-16), August 2016

State Audits

None.

Monetary Impact of Audit Activities

Questioned Costs*	\$-
Potential Additional Program Funds	-
Funds to Be Put to Better Use	-
Total	\$-

*Unsupported costs are included in questioned costs.

Reports With Questioned Costs

<u>Category</u>	<u>Number</u>	<u>Questioned Costs</u>	<u>Unsupported Costs</u>
A. For which no management decision had been made by the beginning of the reporting period.	2	\$ 1,569,008	\$ -
B. Which were issued during the reporting period.	-	<u>-</u>	<u>-</u>
Subtotals (A + B)	2	1,569,008	-
C. For which a management decision was made during the reporting period.	1	<u>(734,060)</u>	<u>-</u>
(i) Dollar value of recommendations that were agreed to by management.		(734,060)	-
(ii) Dollar value of recommendations not agreed to by management.		-	-
D. For which no management decision has been made by the end of the reporting period.	1	\$ <u>834,948</u>	\$ <u>-</u>

Reports With Potential Additional Program Funds

<u>Category</u>	<u>Number</u>	<u>Dollar Value</u>
A. For which no management decision had been made by the beginning of the reporting period.	-	\$ -
B. Which were issued during the reporting period.	-	<u>-</u>
Subtotals (A+B)	-	-
C. For which a management decision was made during the reporting period.	-	-
(i) Dollar value of recommendations that were agreed to by management.	-	-
(ii) Dollar value of recommendations that were not agreed to by management.	-	-
D. For which no management decision has been made by the end of the reporting period.	-	\$ -

Reports With Funds to Be Put to Better Use

<u>Category</u>	<u>Number</u>	<u>Dollar Value</u>
A. For which no management decision had been made by the beginning of the reporting period.	-	\$ -
B. Which were issued during the reporting period.	-	<u>-</u>
Subtotals (A+B)	-	-
C. For which a management decision was made during the reporting period.	-	-
(i) Dollar value of recommendations that were agreed to by management.		-
(ii) Dollar value of recommendations that were not agreed to by management.		-
D. For which no management decision has been made by the end of the reporting period.	-	-
E. Reports for which no management decision was made within six months of issuance.	-	\$ -

Summary of Reports More Than Six Months Old Pending Corrective Action at September 30, 2015

The following is a list of audit and evaluation reports that are more than six months with management decisions for which corrective action has not been completed. It provides report number, title, issue date, and the number of recommendations without final corrective action.

I-EV-EAC-01-07B	Assessment of the U.S. Election Assistance Commission's Program and Financial Operations, February 2008, 4 recommendations
E-HP-VI-01-13	Election System of the Virgin Islands' Compliance with the Help America Vote Act of 2002, October 2013, 4 Recommendations

**Summary of Reports More Than Six Months Old
Pending Management Decision at September 30, 2015**

None.

Reporting Requirements of the IG Act

<u>Section of the Act</u>	<u>Requirement</u>	<u>Page</u>
Section 4(a)(2)	Review of Legislation and Regulations	9
Section 5(a)(1)	Significant Problems, Abuses, and Deficiencies	None
Section 5(a)(2)	Recommendations for Corrective Action With Respect to Significant Problems, Abuses, and Deficiencies	None
Section 5(a)(3)	Significant Recommendations From Agency's Previous Report on Which Corrective Action Has Not Been Completed	18
Section 5(a)(4)	Matters Referred to Prosecuting Authorities and Resulting Convictions	None
Section 5(a)(5)	Matters Reported to the Head of the Agency	None
Section 5(a)(6)	List of Reports Issued During the Reporting Period	13
Section 5(a)(7)	Summary of Significant Reports	2-7
Section 5(a)(8)	Statistical Table - Questioned Costs	15
Section 5(a)(9)	Statistical Table - Recommendations That Funds Be Put to Better Use	17
Section 5(a)(10)	Summary of Audit Reports Issued Before the Commencement of the Reporting Period for Which No Management Decision Has Been Made	None
Section 5(a)(11)	Significant Revised Management Decisions Made During the Reporting Period	None
Section 5(a)(12)	Significant Management Decisions With Which the Inspector General Is in Disagreement	None
Section 5(a)(13)	Information Described Under Section 804(b) of the Federal Financial Management Improvement Act of 1996	None
Section 5(a)(14)(A)	Peer Review Reports Conducted on U.S. Election Assistance Commission Office of Inspector General during the Reporting Period	10

Reporting Requirements of the IG Act

<u>Section of the Act</u>	<u>Requirement</u>	<u>Page</u>
Section 5(a)(14)(B)	Statement of Peer Review Conducted on the U.S. Election Assistance Commission Office of Inspector General during a Prior Reporting Period	None
Section 5(a)(15)	Outstanding Recommendations from a Peer Review Report on the U.S. Election Assistance Commission Office of Inspector General	11-12
Section 5(a)(16)	Peer Review Reports Conducted by the U.S. Election Assistance Commission Office of Inspector General	None

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Help to ensure efficient, effective, and transparent EAC operations and programs

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To Report Fraud, Waste and Abuse Involving the U.S. Election Assistance Commission or Help America Vote Act Funds

By Mail: U.S. Election Assistance Commission
Office of Inspector General
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

E-mail: eacoig@eac.gov

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

On-Line Complaint Form: www.eac.gov/inspector_general/
FAX: (301) 734-3115





Inspector General

U.S. Election Assistance Commission

This report, as well as other OIG reports and testimony, are available on the internet at:
www.eac.gov/inspector_general/