



EAC MANAGEMENT DECISION:

Resolution of the OIG Audit Report on the Administration of Payments Received Under the Help America Vote Act by the Texas Secretary of State for the Period January 1, 2006 Through November 30, 2010 Report No. E-HP-TX-01-11

October 20, 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 Texas Secretary of State (SOS) on August 22, 2011. Except for unsupported payroll charges, failing to deposit interest on program income, improper property management, and failing to deposit interest on insurance proceeds, the audit concluded that the SOS generally accounted for and expended HAVA funds in accordance with requirements mentioned for the period from January 1, 2006 through November 30, 2010.

Finding 1 – Unsupported Payroll Charges

The state of Texas charged a total of \$1,747,062 in payroll expenditures to the HAVA election fund from January 1, 2006 through November 30, 2010. Of this amount, the auditors questioned \$102,677 of salary for the five pay periods tested. The \$102,677 included \$56,672 for employees whose full salaries were paid with HAVA funds and \$46,005 for employees whose salaries were partially paid with HAVA funds. The full-time salaries were questioned because employees did not have semi-annual certifications that they worked only on HAVA related activities or their time cards did not indicate that the work was on HAVA related activities. The part-time salaries were questioned because the time cards did not indicate the hours worked on HAVA related activities.

Based on the internal control weakness, additional unsupported payroll charges could be as much as \$1.6 million for the pay periods not tested during which the same procedures were in effect.

Recommendation:

1. The auditors recommended that EAC work with the SOS to determine the appropriate corrective action regarding the lack of periodic payroll certifications and inadequate documentation of time charged to HAVA.

SOS's Response:

The state agreed that payroll charges were not supported. Prior to September 1, 2009 Election Division staff were 100 percent HAVA funded. The state said that appropriate supervisors will certify to the time periods in which employees who were HAVA funded did work full time on HAVA-related activities. Currently IT and Election Division staff members assigned to HAVA work part-time on HAVA activities and part-time on other election activities. For questioned costs related to part-time HAVA employees the state will either transfer state funds to the HAVA election account or identify state-funded HAVA-eligible expenditures equal to the amount in question. In the future, any personnel who are charged partially to HAVA will be documented accordingly on the employee's timesheet.

EAC Response:

EAC will work the SOS to determine the appropriate corrective action regarding the lack of periodic payroll certifications and inadequate documentations of time charged to HAVA.

Finding 2 – Interest on Program Income

Each of the seven counties visited earned program income from the rental of HAVA funded voting equipment to local jurisdictions within their counties. Pursuant to instructions from the SOS, all seven counties deposited this income into an election account held by their county treasuries. These funds are used only for HAVA related activities such as maintenance of HAVA funded voting equipment.

Five of these counties' election accounts earn interest which is deposited into an election account for HAVA purposes. One county's election account earns interest, but the interest is deposited into the county treasury and used for non-HAVA purposes. The other county's election account did not earn interest.

Recommendation:

2. The auditors recommended that EAC work with the SOS to resolve the issue of lost interest on program income.

SOS's Response:

The state agreed that the interest should be earned on program income and that interest should be used for HAVA eligible expenditures. The state will advise all Texas counties of this policy. The state said that the county that earned interest on its program income and deposited those funds into a county fund will be instructed to transfer that amount into the county's election fund.

The state disagrees that the one county which did not earn interest on program income should have to go back and calculate the potential lost interest, and put that amount in an election fund. The state said that when they set up HAVA sub-grants, counties were required to expend county funds, and then seek reimbursement from the HAVA election fund. The state told counties they could not hold HAVA funds which could earn interest. The state believes it is reasonable that the county interpreted the restriction against earning interest on grant payments to also apply to program income. They also said that in a previous EAC audit of HAVA funds in Texas the issue of program income was dealt with extensively. EAC did not raise the issue of the deposit of program income in an interest bearing account during the audit resolution process. The state also believes that the language in HAVA regarding interest appears to be permissive. That is, a state may earn interest on HAVA funds but there is no language in HAVA requiring interest to be earned.

EAC Response:

EAC will work with the SOS to resolve the issue of lost interest on program income.

Finding 3 – Property Management

In one of the counties visited, 38 HAVA funded laptop computers were stolen from the county election office warehouse in January 2009. These laptops had been purchased in August 2006 and August 2008 for an average cost of about \$1,500 each. The county notified local police of the theft, but the crime was never solved. SOS officials told the auditors that the county did not insure the HAVA funded equipment against loss or damage. The county has not replaced the stolen equipment.

Recommendation:

3. The auditors recommended that EAC work with the SOS to resolve the issue of the reimbursement to the HAVA account for the cost of the stolen laptop computers.

SOS's Response:

The state agreed with this finding and said that the county will be instructed to determine the depreciated value of the stolen equipment and given the option to either demonstrate it has spent county funds on HAVA-eligible expenditures equal to the depreciated value of the stolen equipment or use county funds equal to the depreciated value of the stolen equipment towards replacement equipment. The county will use program income to fund the balance of the replacement equipment.

EAC Response:

EAC will work with the SOS to ensure appropriate corrective action regarding the stolen laptop computers.

Finding 4 – Interest on Insurance Proceeds

In August 2010 a fire destroyed the warehouse where Harris County stored its HAVA funded voting equipment. In addition to the HAVA voting equipment, county vehicles and other county equipment and supplies used in elections were destroyed. According to the SOS officials, the county used its own funds to purchase an insurance policy on the building and its contents. The insurance policy provided funds for the replacement cost of the building and all of the contents. A Harris County official told the auditors that the insurance proceeds had been received in September 2010 and placed in a special fund with the county treasurer. Interest has been earned on the proceeds and deposited into this special fund.

Interest earned on the proceeds used to purchase HAVA replacement voting equipment between the dates the insurance funds were received and when they were paid out should be credited to the HAVA election account instead of the special fund.

Recommendation:

4. The auditors recommended that EAC work with the SOS to determine the amount of interest earned on the insurance proceeds which were used to purchase new voting equipment, and assure that the county transfers that amount into the HAVA election account.

SOS's Response:

The state said the county used its own funds to purchase the insurance policy and the proceeds and associated interest related to HAVA and non-HAVA election equipment are comingled. They said it is virtually impossible to determine interest earned on proceeds that replaced HAVA-funded equipment. They also pointed out that both the proceeds and the interest will be spent on election related expenses, both HAVA and non-HAVA.

EAC Response:

EAC will work with the SOS to gather additional information and ensure appropriate corrective action.