



U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

August 7, 2008

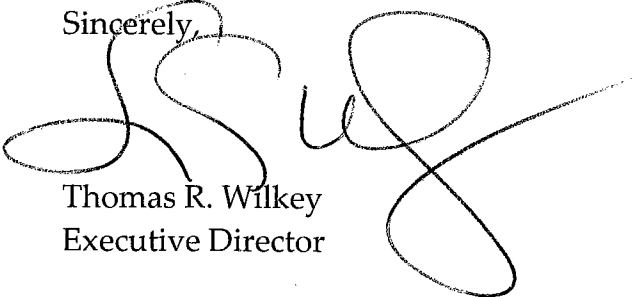
Honorable Elaine Manlove  
Commissioner of Elections  
111 S. West Street, Suite 10  
Dover, Delaware 19904

Dear Commissioner Manlove:

Enclosed is the management decision of the U.S. Election Assistance Commission regarding the findings pertaining to the administration of Help America Vote Act funds contained in the Single Audit of the State of Delaware for the Year ended June 30, 2007 (Report No. E-HP-DE-09-08).

Please provide a response to the management decision by September 8, 2008. If you, or members of your staff, have any questions about this matter, please contact Mr. Edgardo Cortés, Acting Director, Division of HAVA Payments and Grants, at (202) 566-3126.

Sincerely,

  
Thomas R. Wilkey  
Executive Director

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cc: Inspector General



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## **EAC MANAGEMENT DECISION:**

Resolution of Single Audit Report for the Year Ending June 30, 2007,  
Report No. E-SA-DE-09-08

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### **SUMMARY OF DECISION**

The Commissioner of Elections, Department of Elections, must submit to the U.S. Election Assistance Commission (EAC):

- (1) A copy of its procedures for approving vouchers and the instructions to Commission staff for implementing the new procedures.
- (2) A copy of the step that it included in its procurement procedures to make sure that the Commission does not use Federal funds to award a contract or a grant to a party that is currently excluded from receiving Federal contracts or grants.

### **BACKGROUND**

The EAC is an independent, bipartisan agency created by the Help of America Vote Act of 2002 (HAVA). It assists and guides state and local election officials in improving the administration of elections for Federal office. This includes distributing HAVA funds to States for the acquisition of voting systems, the establishment of a statewide voter registration list, and other activities to improve the administration of elections for Federal office. EAC also monitors State use of HAVA funds to ensure funds distributed are being used for authorized purposes. To help fulfill this responsibility, the EAC determines the necessary corrective actions to resolve issues identified during Single Audit Act and Office of Inspector General (OIG) audits of state administration of HAVA funds. The EAC OIG has established a regular audit program to review the use of HAVA funds by states. The OIG's audit plan and audit reports can be found at [www.eac.gov](http://www.eac.gov).

The Audit Follow-up Policy approved by the Commission authorizes the EAC Executive Director to issue the management decision for audits of Federal funds to state and local governments, non-profit organizations, and for-profit organizations (external audits) and single audits conducted by state auditors and independent public accountants. The Executive Director has delegated the evaluation of final audit reports

provided by the OIG and single audit reports to the EAC Election Administration Support Division (EASD). The EASD 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.

When an audit identifies questioned costs, the EAC considers not only whether the state followed proper procedures, but also whether the expenditures actually served to further the goals of HAVA. Generally, the EAC has identified three methods of resolution regarding questioned costs: (1) expenditures that were identified as permissible under HAVA and Federal cost principles, but did not follow appropriate procedures do not have to be repaid; (2) expenditures that may have been permissible under HAVA but lacked adequate documentation must be repaid to the state election fund, which was created in accordance with HAVA section 254(b)(1); and (3) expenditures that were clearly not permissible under HAVA or Federal cost principles must be repaid to the U.S. Treasury. In addition to repayment of funds, the EAC may require future reporting by a state to ensure that proper internal controls and procedures have been established to prevent future problems.

States may appeal the EAC management decision. 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.

### **AUDIT HISTORY**

The Office of the Auditor of Accounts for Delaware issued a Single Audit Act audit of the State for the year ending June 30, 2007, that included HAVA funds provided to the Department of Elections (The Department of Elections is administered by the Commissioner of Elections). The OIG transmitted the single audit to EAC on June 30, 2008 and highlighted three findings related to HAVA funds. The OIG Assignment Number used to track this audit is E-SA-DE-09-08.

## AUDIT RESOLUTION

The audit findings and the EAC decisions for resolving the findings are as follows:

### **1. Finding No. 07-COE-01: Allowable Costs (Repeat Finding)**

The audit reported that a sample of payroll transactions and intrastate transactions were not properly authorized. The report recommended that the "Commission implement policies and procedures to ensure that payment vouchers are appropriately approved in accordance with State and agency policy." The Commission replied that all payment vouchers and intergovernmental vouchers are appropriately being approved in accordance with State and agency policy.

### **EAC Management Decision**

The condition described in above finding was also identified in the single audit for fiscal year 2006. In response to the 2006 single audit, issued on March 30, 2007, the Commission responded that it had taken immediate corrective action. However, in the current single audit, which covers the period ending June 30, 2007, the auditors reported that vouchers were still not appropriately approved. Because the condition appears to have continued after the Commission instituted new procedures, EAC has decided that the Commission must submit to EAC a copy of its procedures for approving vouchers and the instructions to Commission staff for implementing the new procedures so that the Commission's corrective action may be adequately assessed.

### **2. Finding No. 07-COE-02: Procurement, Suspension and Debarment (Repeat Finding)**

The audit reported that the Commission did not follow the Federal requirement to ensure that the firms which received contracts for voting systems were not on the Federal list of debarred and suspended contractors. The report recommended that the Commission "implement internal control policies and procedures to ensure that all procurements with federal funds are in compliance with federal procurement, suspension, and debarment requirements." The Commission responded that it had been advised by EAC that "following the state procurement law exempted us from the federal procurement requirement."

### **EAC Management Decision**

EAC agrees with the finding and recommendation. Also, the Commission is correct in that EAC did advise the Commission that it should follow state procurement requirements. This advice is consistent with the procurement provisions contained

in the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* (also referred to as the Common Rule). The Common Rule says that “When procuring property and services under a grant, a State will allow the same policies and procedures it uses for procurements from its non-Federal funds.” Thus, states should follow their own procurement procedures.

However, the Commission response is incorrect in believing that following state procedures exempts it from Government-wide provisions regarding the use of Federal funds. In particular, Executive Order 12549 says that “Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits.” The Order also says that activities covered include grants, cooperative agreements, and contracts of assistance, loans, and loan guarantees. Based on this Order, the Office of Management and Budget assigned to the General Services Administration the responsibility for maintaining the list of debarred and suspended contractors (the Excluded Parties List System) which may be accessed at [www.epls.gov](http://www.epls.gov).

Also, the Common Rule provides further guidance on this requirement. Specifically, 41CFR105-71.135 states that: Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 . . .”

Therefore, the Commission must ensure that its procurement procedures includes a step to make sure that it does not use Federal funds to award a contract or a grant to a party that is on the Excluded Parties List.

### **3. Finding No. 07-COE-03: Reporting (Repeat Finding)**

The audit reported that the Commission did not properly prepare the annual financial reports (SF 269s) submitted to EAC. The report recommended that the Commission implement internal controls, such as reconciling its internal cost calculations to the State’s accounting system, prior to submitting the reports to EAC, and that the Commission submits revised reports to EAC. The Commission replied that it had implemented internal controls to make sure any errors are identified prior to report submission to EAC.

#### **EAC Management Decision**

EAC agrees with the finding and recommendation. Furthermore, EAC has been working with the Commission to resolve errors which EAC identified in during its

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recent review of the SF 269s reports covering 2007. Through its work with the Commission, EAC has obtained corrected SF 269s that cover reporting periods through 2007. On the basis of the corrected forms, ongoing work with the Commission, and the Commission's stated new internal controls, we consider this finding closed.

### **STATE RIGHTS OF APPEAL**

If the Office of Secretary of State believes that anything in this final management decision is an adverse action and the state does not agree, the state shall have 30 days to appeal EAC's management decision. The appeal must be made in writing to the Chairman of the EAC. Within 30 days of receiving the appeal, the EAC may hold a hearing to consider the appeal, take evidence or testimony related to the appeal, and render a decision on the appeal, if appropriate at that time. The EAC will render a final and binding decision on the appeal no later than 60 days following the receipt of the appeal or the receipt of any requested additional information. If the state does not file an appeal, this decision will become final and binding at the expiration of the appeal period.