



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

FINAL REPORT:

**REVIEW OF THE ADMINISTRATION OF
PAYMENTS RECEIVED UNDER THE HELP
AMERICA VOTE ACT BY THE OFFICE OF
THE ATTORNEY GENERAL, NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC
SAFETY**

**Report No.
E-HP-NJ-04-06
September 2006**



U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL
1225 New York Ave. NW - Suite 1100
Washington, DC 20005

September 18, 2006

Memorandum

To: Thomas Wilkey
Executive Director

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

Subject: Review of the Administration of Payments Received Under the Help America Vote Act by the Office of the Attorney General, New Jersey Department of Law and Public Safety (Assignment No. E-HP-NJ-04-06)

This report presents the results of the subject review, which was initiated by the Office of Inspector General. The objective of the review was to assess New Jersey's administration of Help America Vote Act (HAVA) funds and compliance with certain HAVA requirements.

We found that New Jersey needs to improve its administrative procedures and/or processes for supporting salary allocations, charging fringe benefits, recovering indirect costs, and accounting for property. Also, we determined that the state complied with HAVA requirements for establishing an election fund, for appropriating sufficient state funds to qualify for its allocation of requirements payments, and for maintaining expenditures for elections by the New Jersey Office of Attorney General at least equal to amounts spent in fiscal year 2000. However, the State needs to obtain support from its counties, which according to the State Plan bear the "bulk of fiscal responsibilities" for elections, to ensure that they are also keeping up their rates of spending.

In a May 8, 2006, response to a draft of this report (Attachment 1), the State agreed with our findings and indicated that corrective action had already taken place or was underway.

The report also presents information, in the other matters section, on New Jersey voter outreach efforts pertaining to two Hip-Hop events that were funded with HAVA Title I funds. These events were brought to our attention by the Election Assistance Commission prior to our review and we present this information for your use in determining appropriate uses of HAVA funds.

Since the Commission did not respond to the draft of this report, the recommendations are considered unresolved. Please provide us with your written comments to the report findings by October 25, 2006. Specifically, your comments should indicate whether you agree or disagree with the results of the review. Your response should also indicate the basis and support for any disagreement

Section 5(a) of the Inspector General Act (5 U.S.C. § App. 1) requires the Office of Inspector General (OIG) to list this report in its semiannual report to Congress.

If you have any questions regarding this report, please call me (202) 566-3121.

BACKGROUND

HELP AMERICA VOTE ACT

The Help America Vote Act of 2002 (HAVA) created the U.S. Election Assistance Commission (EAC or Commission) to assist states and insular areas¹ with 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 HAVA requirements for uniform and nondiscriminatory election technology and administration requirements (Title III), improving the administration of elections for Federal office, educating voters, training election officials and poll workers, and developing a state plan for requirements payments authorized by Title II.
- ✓ Title I, Section 102 payments are available only for the replacement of punchcard and lever action voting systems.
- ✓ Title II, Section 251 requirements payments are for complying with Title III requirements for voting system standards; and 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 “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)).

¹ The Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

**FUNDING FOR
NEW JERSEY**

HAVA funds received and expended by New Jersey are as follows:

<i><u>TYPE OF PAYMENT</u></i>	<i><u>AMOUNT RECEIVED</u></i>	<i><u>OUTLAYS</u></i>	
		<i><u>AMOUNT</u></i>	<i><u>AS OF</u></i>
101	\$8,141,208	\$2,856,979	12/31/05
102	\$8,695,609	\$8,695,609	12/31/05
251	\$68,067,586	\$5,218,518	09/30/05
Totals	\$84,904,403	\$16,771,106	

**FINANCIAL
MANAGEMENT
REQUIREMENTS**

In New Jersey, HAVA payments are administered by the Office of the Attorney General (OAG). To account for the payments, HAVA requires states to maintain records that are consistent with sound accounting principles, that fully disclose the amount and disposition of the payments, that identifies project costs financed with the payments and with other sources, and that will facilitate an effective audit.

In addition, the Commission notified states of other management requirements. Specifically, that states must:

- ✓ Comply with the Uniform Administrative Requirements for grants and cooperative agreements with state and local governments (also known as the “Common Rule” and published in 41CFR105-71).
- ✓ Expend payments in accordance with cost principles for establishing the allowability or unallowability of certain items of cost for federal participation issued by the Office of Management and Budget in Circular A-87.
- ✓ Follow the requirements of the Federal Cash Management and Improvement Act.
- ✓ Submit annual financial reports on the use of Title I and Title II payments.

OBJECTIVE

The objective of our review was to assess New Jersey’s administration of HAVA funds and compliance with certain HAVA requirements. Specifically, we focused on fiscal year 2005 and reviewed controls to assess their adequacy over the expenditure of HAVA funds and compliance with certain HAVA requirements for the following activities:

- ✓ Accumulating financial information reported to EAC on the Financial Status Reports (Standard Forms number 269).
- ✓ Accounting for property.

- ✓ Purchasing goods and services.
- ✓ Accounting for salaries.
- ✓ Charging indirect costs.
- ✓ Spending by counties.

We also determined whether New Jersey had complied with the requirements in HAVA for:

- ✓ Establishing and maintaining the election fund.
- ✓ Appropriating funds equal to five percent of the amount necessary for carrying out activities financed with Section 251 requirements payments.
- ✓ Sustaining the State's level of expenditures for elections.

RESULTS OF REVIEW

SUMMARY

We found that the OAG needs to improve its procedures and/or processes for supporting salary allocations, charging fringe benefits, recovering indirect costs, accounting for property, and tracking county election expenditures. In addition, we found that the state complied with HAVA requirements for the election fund and for appropriating sufficient state funds to qualify for its allocation of requirements payments. Finally, we noted that improvements are also needed to document that counties, which according to the State Plan bear the "bulk of fiscal responsibilities" for elections, are spending an amount for elections at least equal to the amounts spent in fiscal year 2000.

SALARIES

OAG paid all or a portion of certain employee salaries with state funds appropriated to match its allocation of requirements payments. However, the OAG did not keep records adequate to substantiate the amount of time these employees worked on HAVA-related activities. In fiscal year 2005, salaries of \$ 405,890 were paid with state matching funds.

Office of Management and Budget Circular A-87 states that salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as those claimed as allowable costs under Federal awards (Attachment B 8.h.(7)). Circular A-87 requires salaries and wages to be supported in the following manner.

Where employees are expected to work solely on a single Federal award or cost objective [100 percent], 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 semiannually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee. (Attachment B 8.h.(3)).

Where employees work on multiple activities or cost objectives [less than 100 percent], a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation . . . (Attachment B 8.h.(4)).

The HAVA administrator agreed to implement, as soon as reasonably possible, the following recommendations:

1. Require staff who are assigned fulltime to HAVA projects to complete semiannual certifications that they worked only on HAVA activities.
2. Require staff who work on multiple projects during any pay period and who will be funded with HAVA or state matching funds to complete a personnel activity report that identifies to the nearest hour the projects on which he/she worked. The time sheet should account for all hours in the pay period, separately identify HAVA-related hours, and be signed by the employee and the supervisor.

***FRINGE
BENEFITS***

OAG under charged for fringe benefits. The state recorded fringe benefit costs of \$8,623 to its matching funds in fiscal year 2005. In comparison, application of the approved benefit rate of 33.25 percent² to fiscal year 2005 salary charges of \$405,890 results in fringe benefit costs of \$134,958.

Salary costs were first recorded elsewhere in the accounting records and then charged to the state matching funds through several salary adjustments to the accounting records. However, the adjustments did not include the proper charges for associated fringe benefits.

In response to our recommendations, the HAVA Administrator agreed to ensure that:

1. Fringe benefits are charged on the basis of the approved fringe benefit rates.

² The New Jersey Department of the Treasury negotiated with the U.S. Department of Health and Human Services a fringe benefit rate of 25.60 percent plus a rate of 7.65 percent for FICA and Medicare for a total of 33.25 percent. The rates are applicable to fiscal year 2005 base salaries.

2. The accounting records for prior periods are adjusted to properly record the fringe benefits associated with the HAVA program.

INDIRECT COSTS OAG incorrectly charged a portion of the salaries of certain staff in its Division of Administration and Support Services to its state matching funds. This was incorrect because the costs of the Division of Fiscal Services are contained in the indirect cost pool which the OAG used to compute its approved indirect cost rates.³ Thus, based on how the rate was computed, we concluded that the OAG intended to recover the costs of the Division of Administration and Support Services through application of the approved indirect cost rate and not as a direct charge to the HAVA programs.

OAG did not charge indirect costs to the state matching funds or to the HAVA funds. Had it done so, it would have recovered its share of the cost of the Division twice - once as a direct charge and again as an indirect charge.

The HAVA Administrator told us that to recover the cost of administrative support provided by the Division, he conservatively estimated the Division's support to the HAVA program.

We believe that indirect costs should be recovered in accordance with the approved indirect cost rate. Management agreed, and based on our recommendations planned to:

1. Remove the salaries of Division of Fiscal Services staff from the direct charges to the states matching fund. (The state, however, decided not to charge indirect costs to its matching funds, which is its prerogative.)
2. Charge to the HAVA 101 and 251 funds the appropriate indirect costs based on the approved indirect cost rates.

PROPERTY Inventories of equipment purchased with HAVA funds did not contain all the elements required by Federal and State requirements for the management of property. The elements required by the Common Rule (41CFR 105-71.132 (d)(1)) and New Jersey Office of Management and Budget Circular 91-32 are as follows:

³ The Department has negotiated indirect cost rates with the U.S. Department of Justice of 3.84 percent for fiscal year 2003, 4.69 percent for fiscal year 2004, 2.95 percent for fiscal year 2005, and 2.44 percent for fiscal year 2006. The rates are applicable to total direct costs of the HAVA program, less funds passed through to counties.

<i>DESCRIPTION</i>	<i>REQUIREMENTS</i>	
	<i>FEDERAL</i>	<i>STATE</i>
Description of the property	✓	✓
Serial or other identification number	✓	✓
Source of the property	✓	
Source of the monies used to acquire property		✓
Percentage of Federal participation	✓	
Who holds title	✓	
Acquisition date	✓	✓
Cost of the property	✓	✓
Location	✓	✓
Use and condition	✓	
Organizational unit charged with custody		✓
Ultimate disposition data	✓	

The State maintained several inventories of HAVA property. For example, one inventory lists voting machines located in counties; there also is a statewide voter registration system inventory of computer software, hardware, and peripheral equipment such as label writers, barcode readers, and scanners, located in counties, the contractor’s hosting and backup facilities, and the OAG’s Division of Elections; and another inventory identifies information technology equipment such as computers and computers and printers. Generally, all the inventories identified the name, serial number, and location of each item, but not the other required elements.

In response to our recommendations, management agreed to ensure that all inventory data bases, including inventories that will be maintained by counties after the State transfers title of property to them, will include the information required by the Common Rule and the New Jersey Circular.

***COUNTY
ELECTION
EXPENDITURES***

New Jersey lacks a mechanism to determine whether counties, in using Section 251 requirements payments, were maintaining a level of expenditure of county funds at least equal to the level they expended in fiscal year 2000.

HAVA requires (Section 254 (a)(7)) that the State Plan explain “How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior November 2000.” Section Seven of New Jersey’s State Plan says that to satisfy this requirement, “all counties and the State must maintain at a minimum the level of operating expenses for elections that was incurred in fiscal year 2000, in addition to any federal funding received.”

We found that the state was meeting this requirement but that it did not have information on county expenditures for elections. During our exit conference, New Jersey officials advised that they believed counties were more than satisfying this requirement and that they planned to execute written agreements with the counties that would include provisions for documenting county compliance.

OTHER MATTERS

VOTER OUTREACH

The New Jersey “Be Powerful, Be Heard” voter outreach and education initiative included two hip-hop summits primarily for high school and college students. Prior to the start of our review, EAC provided us with a newspaper article which suggested that the use of Federal funds to finance the events may not have been appropriate.

Based on information produced by New Jersey, we learned that it worked in conjunction with the Hip-Hop Summit Action Network to convene a summit in September 2004 prior to the November general election and in September 2005 before the November Gubernatorial election. The summits were interactive panel discussions between artists such as Reverend Run and Doug E. Fresh and community and voter activists about the importance of voting and issues of concern to young voters. The summits included questions and answers from the audience which consisted principally of high school students. The events were also available to high schools and colleges throughout the state via web casts. The summits may be viewed online by visiting the Office of the Attorney General’s New Jersey HAVA home page at www.state.nj.us/lps/elections/hava_intro.html.

According to New Jersey, about 2,000 students attended the first summit and voter registration forms and educational materials were mailed to the schools before the event. New Jersey estimated that approximately 4,000 students attended the second event and voter registration packets and educational materials were provided to the schools at the event for later classroom use. According to an Office of Attorney General official, voter registration tables were set up at the summits and that “several hundred” registrations were taken, excluding those mailed to the county commissioners of registration. In New Jersey, you can register to vote at the age of 17 as long as you will be 18 years old by the next election.

Based on financial records maintained by the OAG HAVA unit, New Jersey used Section 101 funds of \$131,924 to pay for the summits. A breakdown of the costs between the two summits follows:

<i>DESCRIPTION</i>	<i>COSTS</i>		
	<i>SUMMIT I</i>	<i>SUMMIT II</i>	<i>TOTAL</i>
Busing Students	\$6,155	\$19,430	\$25,585
Meals/Refreshments	12,515	26,414	38,929
Production*	25,143	42,267	67,410
Totals	43,813	88,111	131,924

*Production covers the cost of activities such as event production, facilities rental, web casting, and sign language.

According to HAVA (Section 101 (b)(1)(B) and (C), activities for which Section 101 funds may be used for include:

“Improving the administration of elections for Federal office”
and

“Educating voters [which EAC has concluded⁴ includes those eligible to vote] concerning voting procedures, voting rights, and voting technology.”

This information is presented for your use in determining the appropriate use of HAVA funds.

RECOMMENDATIONS

We recommend that the Executive Director, EAC:

1. Ensure that New Jersey implements the agreed-upon recommendations and incorporates into agreements with counties an appropriate provision for verifying county compliance with the base level expenditure requirement.
2. Determine whether the voter outreach activities and costs associated with the Hip-Hop summits meet the use of funds criteria under Section 101 (b) of HAVA.

⁴ Letter of March 15, 2006, from the Deputy General Counsel, EAC, to the HAVA Coordinator for the State of Washington regarding “Use of HAVA 101 Funds.”

SCOPE AND METHODOLOGY

To accomplish our objective, we reviewed

- ✓ The prior single audit report and other reviews related to the Department's financial management systems and the HAVA program for the last 2 years.
- ✓ Policies, procedures and regulations for New Jersey's management and accounting systems as they relate to the administration of HAVA programs.
- ✓ An organizational chart of the Division and a list of all full and part-time employees of the Division indicating those employees whose salary is financed with HAVA funds.
- ✓ Inventory lists of all equipment purchased with HAVA funds.
- ✓ Major purchases.
- ✓ Supporting documents maintained in the accounting system for payments made with HAVA funds.
- ✓ Support for reimbursements to counties.
- ✓ Certain New Jersey laws that impact the election fund.
- ✓ Appropriations and expenditure reports for State funds used to maintain the level of expenses for elections at least equal to the amount expended in fiscal year 2000 and to meet the five percent matching requirement for section 251 requirements payments.
- ✓ Information regarding source/supporting documents kept for maintenance of effort and matching contributions.

We also interviewed appropriate New Jersey employees about the organization and operation of the HAVA program.

We conducted our review in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. As such, we included tests and procedures as considered necessary under the circumstances to evaluate the Department's controls over the administration of HAVA payments. 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.



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May 8, 2006

Roger LaRouche, Acting Inspector General
United States Election Assistance Commission
1225 New York Avenue N.W. - Suite 1100
Washington, D.C. 20005

Re: Response to New Jersey HAVA Review Report No. E-HP-NJ-04-06

Dear Mr. LaRouche:

This letter is in response to your invitation to comment upon the draft report of a review conducted by your office assessing New Jersey's administration of Help America Vote Act (HAVA) funds and compliance with certain HAVA requirements. The New Jersey Office of the Attorney General (OAG) understands that this response will be included in your final report to the U.S. Election Assistance Commission. The following response addresses the report findings in the order that they appear in the report.

Finding: Salaries - OAG did not substantiate the time spent on HAVA related activities by employees paid with HAVA funds in accordance with the procedures required under the Office of Management and Budget Circular Letter A-87.

Recommendations:

1. Require staff who are assigned full-time to HAVA projects to complete semiannual certifications that they work only on HAVA activities.
2. Require staff who work on multiple projects during any pay period and who will be funded with HAVA or state matching funds to complete a personnel activity report that identifies to the nearest hour the projects on which he/she worked. The time sheet should account for all hours in the pay period, separately identify HAVA related hours and be signed by the employee and the supervisor.



May 8, 2006

Response: OAG agrees with the findings and the recommendations. HAVA management has created a grant activity log. The activity log captures daily activity by cost objective categories over a bi-weekly pay period. All employees paid with HAVA funds, including employees working exclusively on HAVA-related activities, will complete the activity log. Employees who are not on the HAVA payroll, are not paid under another federal program and are not included in the indirect cost pool who perform HAVA-related tasks will complete the activity log for the pay periods during which they performed HAVA-specific tasks. All hours recorded for a given day must add up to seven. All entries of hours must represent an after the fact determination of hours actually worked in a HAVA related or other activity. The log is signed by the employee and the HAVA Administrator. The log was implemented in Pay Period 8 beginning Saturday April 1, 2006, which means, as a practical matter, that use of the log began on April 3, 2006.

Finding: Fringe Benefits - OAG undercharged for fringe benefits.

Recommendations:

1. Fringe benefits be charged on the basis of the approved fringe benefit rates.
2. The accounting records for prior periods be adjusted to properly record the fringe benefits associated with the HAVA program.

Response: OAG agrees with the finding and the recommendations. OAG will charge the approved benefit rate to salary costs of the HAVA program and is in the process of making prior periods adjustments for fringe benefits.

Finding: OAG incorrectly charged a portion of the salaries of certain staff included in the indirect cost pool as direct costs. OAG did not charge indirect costs to the State matching funds or to the HAVA funds.

Recommendations:

1. Remove the salaries of Division of Fiscal Services staff from the direct charges to the state's matching fund. (The state, however, decided not to charge indirect costs to its matching funds, which is its prerogative).
2. Charge to the HAVA 101 and 251 funds the appropriate indirect costs based on the approved indirect cost rates.

Response: OAG agrees that a portion of salaries of some employees in the indirect cost pool were charged as direct salary costs which would have had a minuscule effect on the indirect cost rate had such salary amounts been excluded from the indirect cost pool. OAG cannot agree that the indirect cost rate should be applied to State matching funds. When this recommendation was first set forth, OAG conferred with the New Jersey Treasury Department which advised that applying the indirect cost rate to State matching funds for federal grants was not a practice anywhere in the State government.

OAG will reverse salary charges for any employee whose salary was included in the indirect cost rate and will apply the indirect cost rate to the HAVA funds.

Finding: Property - Inventories of equipment purchased with HAVA funds did not contain all the elements of information required by Federal and State requirements for the management of property.

Response: OAG agrees with this finding. HAVA management is updating equipment inventories to include all required information.

Finding: County Election Expenditures - New Jersey lacks a mechanism to determine whether counties were maintaining a level of expenditure of county funds at least equal to the level they expended in fiscal year 2000.

Response: OAG agrees with this finding. In order to insure county compliance with the fiscal year 2000 spending requirements, HAVA management intends to communicate with the counties regarding this specific requirement. A directive will be issued to the counties advising them of this HAVA mandate and requiring each county to submit a certification of the amount of election-related expenditures for 2000 through 2005. The counties will also be informed that such certification will be required for each year thereafter and that any future grant award will be partly conditioned on compliance with this federal mandate.

Thank you for the opportunity to comment upon your report.

Very truly yours,



Thomas J. O'Reilly
Administrator

TJO:CAW:cja
c Zulima V. Farber, Attorney General

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Office of Inspector General
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