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**EAC MANAGEMENT DECISION:**

*Resolution of the OIG Audit Report on the Administration of Payments Received Under the Help America Vote Act by the State of Florida, for the Period April 25, 2003, Through September 30, 2007, Report No. E-HP-FL-02-08*

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September 30, 2010

**BACKGROUND**

The EAC is an independent, bipartisan agency created by the Help America Vote Act (HAVA). EAC assists and guides state and local election officials in improving the administration of elections for Federal office, and supports the distribution of HAVA funds to States for the acquisition of voting systems, 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](http://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.

**AUDIT HISTORY**

The OIG issued an audit report on the Florida Department of State's (Department) administration of payments received under HAVA on November 17, 2008. The report

presented eight findings pertaining to deficiencies in the administration of HAVA funds by Florida counties that had received subgrants of HAVA funds from the Department. The report contained one overall recommendation that the Department strengthen its monitoring of county use of HAVA funds. The OIG Assignment Number used to track this audit is E-HP-FL-02-08.

In preparing the audit report, the auditors issued nine Notices of Findings and Recommendations (NFRs) to the Department which presented 21 individual recommendations. The Inspector General subsequently withdrew NFR 8 on Maintenance of Effort, which presented three recommendations, because the EAC Commissioners had suspended the current MOE policy while a revised policy was being developed. The Department summarized its responses to the NFRs and the associated 18 recommendations as a response to the audit report. As the NFRs contain the details on the findings and the recommendations, and not the audit report, this EAC Management Decision is presented on the basis of the eight NFRs, the Department's comments on the NFRs, a January 21, 2009 response from the Department to an EAC letter requesting additional information on the findings, an October 14, 2009 letter from the Department and follow-up correspondence. All corrective actions required in this audit are to be completed before December 17, 2010.

## **AUDIT RESOLUTION**

Based on visits to 8 counties and questionnaires sent to 59 other counties to obtain information, the auditors found shortcomings in county administration of subgrants of HAVA funds from the Department. The NFRs, which describe the shortcomings and recommended corrections, the Department's responses to the NFRs, and the EAC decisions for resolving the findings are as follows:

### **1. Program Income**

According to the Common Rule<sup>1</sup>, program income includes revenue generated from the use of Federally-funded equipment and grantees must reserve the income for program-related activities. The Common Rule also allows grantees to offset costs incurred to generate the income to determine net program income.

In Florida, some counties generated program income from the use of HAVA-funded voting equipment in local non-Federal elections. For example, Manatee County charged \$2,500 per precinct for the use of voting equipment and assistance in managing elections. Other counties responded to an audit questionnaire that they also realized income from the use of HAVA-funded equipment. Counties, however, did not determine whether they incurred sufficient costs in generating the income to offset the program income.

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<sup>1</sup> 41 CFR 105-71, *Uniform Administrative Requirements For Grants And Cooperative Agreements With State And Local Governments*, Part 125.

The auditors recommended that the Department require counties to (1) to track program income, determine whether there is any net program income, and then calculate the amount of net program income applicable to HAVA and (2) deposit net program income into a county election fund for the benefit of the HAVA program.

The Department agreed with the finding and recommendations.

### **EAC Management Decision**

EAC agrees with the finding and recommendations. The Department requested information from all 67 Supervisors of Elections regarding program income. Each county was required to calculate whether or not it had received income and to provide a certification to the Department. Certifications were received from all 67 counties. Only one county reported receiving program income in the amount of \$1,711.25. The Supervisor of Elections certified that this amount was deposited back into the county account holding HAVA funds. EAC considers this matter closed.

## **2. Equipment Control**

The audit reported that three of eight counties visited did not keep track of HAVA-funded equipment in accordance with the Common Rule.<sup>2</sup> For example, equipment was not listed in the inventory or not identified as being purchased with Federal funds.

The auditors recommended that Florida ensure that the counties (1) identify the specific equipment items as purchased with HAVA funds and (2) establish procedures to ensure HAVA equipment is physically inventoried at least every 2 years and maintain a complete inventory list of all HAVA equipment.

In its response to the audit, the Department agreed with the finding and recommendations. Further, the Department said that “a memo [May 2007] was provided to all Supervisors of Elections instructing counties to maintain detailed records of items purchased with HAVA funds” that includes the information required by the Common Rule. The Department also said a follow-up memorandum would be issued.

### **EAC Management Decision**

EAC agrees with the finding and recommendations. EAC will confirm corrective action and the issuance of the follow-up memorandum.

## **3. Questionable Disbursements**

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<sup>2</sup> 41 CFR 105-71, Part 132.

The auditors found that four of eight counties visited used HAVA funds totalling \$89,668 for activities/materials that were outside the purview of HAVA. Examples of the purchases follow:

| DESCRIPTION  | AMOUNT   |
|--|----------|
| “Newspapers in Education Program” to educate students under voting age about the electoral process | \$17,000 |
| Candy wrapped in American Flag paper that does not reference voting                                | \$2,731  |
| Jar openers  | \$3,698  |
| Coloring and activity books for children under 18  | \$40,450 |
| “Vote in Honor of a Vet” lapel pins  | \$2,395  |
| Post election night voter recognition luncheon   | \$2,200  |

The auditors recommended that the Department (1) require counties to reimburse \$89,668 to the HAVA program, (2) review the allowability of other expenses of similar nature to ensure that funds determined to be unallowable costs are reimbursed to the HAVA program, and (3) monitor and educate county Supervisors of Elections Departments on the appropriate uses of HAVA funds.

In its response to the NFR, the Department agreed that Supervisors of Elections should be educated on the proper use of HAVA funds, but disagreed that reimbursement should be provided for all questionable expenditures. In that regard, the Department said:

Before the State provides funds to the counties for voter education purposes, the county must submit a voter education plan outlining the proposed uses for the funds. . . . The Division of Elections made every effort to scrutinize the submitted plans to assure that the items approved were indeed voter education. However, not until the EAC published its Frequently Asked Questions in July 2006 had the EAC published any guidelines with respect to the proper uses of HAVA funds, specifically with respect to voter education. Therefore, we would challenge those items which were in plans submitted by the Supervisors of Election and approved by the Division of Elections prior to the EAC publishing its Frequently Asked Questions.

The Department also said that it agreed that items purchased by Supervisors of Elections which did not have prior approval of the State and which are unallowable should be reimbursed to the HAVA account.

In its January 21, 2009 letter to EAC, the Department reported the counties had been informed of the applicable requirements and that it will examine the expenditures from all 67 counties and identify unallowable expenditures.

**EAC Management Decision**

EAC agrees with the finding and the actions taken by the Department. EAC does not, however, agree with the Department's position that expenditures covered by County plans approved by the Department prior to EAC publishing its Frequently Asked Questions be allowed. EAC's conclusion is based on the language of HAVA pertaining to the use of Section 101 funds. Specifically, Section 101(b)(1)(C), which says that HAVA funds may be used for activities that involve "Educating voters concerning voting procedures, voting rights, and voting technology." HAVA funds, therefore, should not be used for activities directed at individuals who are not voting age, for activities that are promotional and not educational, or for items or services that recognize employee/volunteer service. EAC's Frequently Asked Questions regarding educational activities augment this position by presenting some examples of items that would not qualify for HAVA funding, such as children's coloring books, "voting is cool bracelets," and "Top Ramen" soup.

EAC has determined that the \$89,668 must be returned to the State Election Fund or offset with other costs allowable under HAVA.

To resolve this finding, the Department must:

- (1) Provide evidence to EAC that the following counties have been notified that they must either identify offsets or return the questioned amounts to the State Election fund, or some combination of the two strategies in the following amounts: Palm Beach County (\$48,384), Citrus County (\$12,524), Hillsborough County (\$6,181), and Pinellas County (\$22,579).
- (2) Examine other County expenditures of HAVA funds for education, identify any other unallowable costs, and, if applicable, require that funds be remitted to the State Election Fund or offset with other expenditures allowable under HAVA.

The Department was requested to examine expenditures from the counties and quantify unallowable costs. In order to complete the review in a timely manner, the Department used a risk-based approach to identify the greatest potential for unallowable expenditures throughout the State. A spreadsheet was developed for each of the three fiscal years covered by the audit. Using the annual financial reports provided by the counties, each county's expenditures were listed by category. The Department identified the categories that were most likely to include expenditures which were unallowable. The counties with significant expenditures in the identified categories compared to the overall expenditures were selected for further review. The Department requested invoices and backup documentation from 19 counties with the highest assessed risks. Based on the documentation provided by the counties, the Department identified those expenditures that were unallowable and those expenditures for which there was insufficient documentation to make a determination. Each of the counties that had unallowable expenditures was then asked to provide documentation on allowable items that were purchased using county funds that could

be used as offsets to the expenditures identified as unallowable. EAC will review the actions taken by the Department to determine whether steps taken are sufficient to resolve the finding.

#### **4. Unsupported Disbursements**

The auditors found that Palm Beach County could not furnish documentation to support the use of HAVA funds totaling \$33,082.50 (note: the recommendation contained in the appendix of the final report erroneously says \$33,092.50) for the following two items:

- Document No. 0421050000000000086 - \$23,082.50; the general ledger describes the expense as a reversing entry for an erroneous accrual for precinct clerk bags FY 04 (JVA-200-040405\*826).
- Document No. AD0524060000005615 - \$10,000.00; the general ledger description describes the expense as Diamond package; Haitian Roots Connection Festival.

The auditors recommended that the Department require Palm Beach County to provide support for the purchases or return the funds to the HAVA grant.

In response to the NFR, the Department agreed with the recommendation. The Department provided a copy of its letter to Palm Beach County requesting information to support the \$33,082.50 by February 15, 2009.

#### **EAC Management Decision**

EAC agrees with the finding. To close this matter, the Department should furnish to EAC documentation substantiating its evaluation of the information provided by the County and actions taken to repay funds, if applicable.

If the County furnishes no further documentation, Palm Beach County must remit \$33,082.50 to the State Election Fund. If the County supplies documentation that the transactions were for eligible HAVA activities, the matter will be closed. In addition, if the County cannot provide supporting documentation but can otherwise demonstrate to the Department that the expenditures furthered the interests of HAVA, the funds do not have to be repaid. Finally, any combination of the above conditions may occur and should be handled accordingly.

After Palm Beach County provided documentation for the two expenditures totaling \$33,082.50, the Department determined that these expenditures were unallowable. Palm Beach County provided an invoice to offset the amount of unallowable expenditures. EAC has reviewed the invoice to offset unallowable expenditures and considers this matter closed.

## **5. Unsupported Personnel Costs**

The auditors found that Pinellas County did not have records to substantiate that the total salary (\$31,503) for one employee that was financed with HAVA funds qualified for HAVA funding. For employees who are supported 100 percent with Federal funds, Office of Management and Budget Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, requires semiannual certifications that the employee worked on the program. The certifications must be signed by the employee or supervisor having first hand knowledge of the work performed.

The auditors recommended that the Department (1) provide guidance to all Florida counties on the requirements for documenting salary charges and (2) instruct the Pinellas County Supervisor of Elections that without the certifications, the employee's salary is not eligible for HAVA funding.

In its response to the NFR, the Department said, "We agree and will provide the necessary guidance to the counties, along with a certification form for their employees." The Department provided a copy of its January 20, 2009 letter to Pinellas County requesting supporting documentation by February 15, 2009. Additionally, the SOS provided a copy of the signed certification in the October 14, 2009 letter (Attachment D). The letter also stated that counties were advised of the applicable requirements at a December 2008 meeting.

## **EAC Management Decision**

EAC agrees with the finding. During the December 2008 Florida State Association of Supervisors of Elections' Conference, the Department provided to the Supervisors guidance regarding requirements for documenting employee salaries financed with Federal funds, along with a sample salary certification form for their use.

To close this matter, the Department should furnish to the EAC documentation substantiating its evaluation of the information provided by the County. If salary costs are not substantiated, then the Department should identify actions taken to repay the amount to the State Election Fund or offset the questioned costs, if applicable.

## **6. Voter Registration Drives**

The auditors found that Pinellas County financed with HAVA funds the salary of poll workers whose activities also included voter registration. The Finance Department for the Pinellas County provided the auditors with the following summary of wages allocated to voter registration activities.

| <b>DESCRIPTION</b>             |                    |             |             |              |
|--------------------------------|--------------------|-------------|-------------|--------------|
| <b>Activity</b>                | <b>Fiscal Year</b> |             |             | <b>Total</b> |
|                                | <b>2004</b>        | <b>2005</b> | <b>2006</b> |              |
| High School Elections/Demos    | \$3,385            | \$4,366     | \$5,619     | 13,370       |
| College Registration           | 314                | 1,937       | 858         | 3,109        |
| Voter Registration Drives/NVRA | 5,308              | 5,245       | 7,659       | 18,212       |
| Demos/Registration             | 12,063             | 29,000      | 52,685      | 93,748       |
| Fringe Benefits                | 1,612              | 3,470       | 5,535       | 10,617       |
| Totals                         | 22,682             | 44,018      | 72,356      | 139,056      |

The auditors recommended that the Department: (1) inform counties of the prohibition on the use of HAVA funds for activities to register voters and (2) require Pinellas County to analyze the time charges in order to separate the charges between voter registration and other activities..

In its response to the NFR, the Department responded that Florida:

became aware that voter registration drives were not eligible for HAVA funding when the EAC published its Frequently Asked Questions in July 2006. Since that time, the Division has only approved expenditures for voter registration drives in which voter education activities were also occurring. We will provide further clarification to the counties on this issue and will notify Pinellas County to analyze the voter registration drives in question with regard to charges which are solely for voter registration drives.

The January 20, 2009 letter confirmed that the Department requested Pinellas County to analyze the charges for the voter registration drives and to provide the Department with information on which charges were for voter registration versus voter education by February 15, 2009.

Responding to the request by the Florida Department of State, Pinellas County through the office of the Pinellas County Supervisor of Elections provided a response to the Florida Department of Elections for an analysis of percentage of time spent on voter registration activities. While the activities were sometimes characterized in the audit as voter registration drives, Pinellas County asserted that all the activities were essentially voter education in nature conducted by trained individuals referred to as "Election Ambassadors" on behalf of the Voter Education Department. It was not possible to break-out or distinguish between the extensive education activities and peripheral activities labeled voter registration. In conversations with EAC, the County further stated in discussion that these events were not third party voter registration drives simply focused on signing up voters but rather were focused on:



educating voters on the voting terms and meanings and the voter registration process; eligibility requirements; the primary system; providing information on Braille and other technologies available for voters with disabilities both for voting and registration; information on early voting; election dates and deadlines; becoming a poll-worker, etc. Events also included equipment demonstrations showing the proper way to vote an optical scan ballot and its use; demonstrating ADA accessible voting systems and options available for persons with disabilities (audio headsets, touch screen, two-switch paddles, sip-n-puff device, stylus and options available).

The salaries and wages in question were for Election Ambassadors, temporary employees supporting the Voting Education staff in presentations at public and private school on voting matters.

While the Ambassadors along with the Education staff addressed the voter registration process and requirements and explained and provided voter registration forms which could be filled out and left at the event much like poll-workers on voting day, a voter registration drive was neither the purpose nor the content of the event. Voting equipments and other technologies and voter education about processes and qualifications were the goal of the Voter Education Department. The Ambassadors and staff of the Voter Education were well-trained and received continuing education concerning election laws and new voting procedures.

Finally, while disagreeing with classifying some part of the activities as unallowable voter registration, the office of the Pinellas County Supervisor also had staff of the Department of Voter Outreach participating in all of the voter education public events along with the Election Ambassadors and were not paid from HAVA funds but the County incurred extensive other costs for these events which could offset any de minimis determination of 'unallowable' costs for voter registration

### **Management Decision**

The primary tasks performed by the Election Ambassadors and the events in which they participated were not 'get out the vote or voter registration drive' activities. The voter registration element was educational in nature and not a "get out the vote" activity. The availability of voter registration materials at the event was necessary for detailed explanation of how to fill out forms, transferring voting places, and acceptance of any completed registration. These educational events were not typical third party voter registration drives despite the availability of voter registration materials. As determined previously in EAC advisories (FAO-08-005), "educating voters on voting procedures" and "how to cast a vote" would also include providing instruction on how to register to vote as one could not vote if not registered. This would include print, radio, and television advertisements informing individuals about the need to register to cast a vote, where to register to vote, how to obtain registration forms, and how to complete the forms and would also include training to register voters.

Further, any time directly involved in voter registration appears to have been minuscule but not determinable seven (7) years after the fact. In addition, staff from the Department of Voter Outreach also participating in the training events with the Election Ambassadors, were not paid from HAVA funds although the costs were eligible and thus could be used to offset any 'voter registration' activities which could be divined as unallowable.

Thus, the EAC accepts the information provided by the Pinellas County Supervisor of Elections that these events were educational and not voter registration drives. EAC accepts the partially questioned salary or wage costs for these staff.

## **7. Interest Calculations**

## **9. Cash Management**

As these two finding are related, EAC discusses their resolution in one section.

In NFR 9, the auditors found that the Department began advancing \$70.4 million of HAVA funds to 67 counties in fiscal year 2004 and that as of September 2007, 48 counties reported fund balances totaling \$15.9 million. Advancing funds before the counties need the money to cover expenses unnecessarily reduces the interest that the State would have earned had it delayed disbursement until funds were needed by the counties to cover immediate disbursement needs. In NFR 7, the auditors found that counties did not initially deposit the advanced funds into interest-bearing accounts. Had the counties initially put the funds into interest-bearing accounts, the interest earned, theoretically, would have offset the interest lost by the State.

The result of these conditions is that the State/counties lost interest that would have been available for additional HAVA purposes. In that regard, Section 254 (b)(1) of HAVA says that States should establish an election fund that consists of State appropriations for carrying out HAVA, requirements payments, other appropriated amounts, and interest earned on the deposits. Section 254(b)(2) of HAVA says that States shall use amounts in the fund "to carry out the activities for which the requirements payment is made to the State. . ." Also, the Common Rule<sup>3</sup> requires States to ensure that every subgrant includes any clauses required by Federal statute and that subgrantees are aware of requirements imposed upon them by the Federal statute.

Pertaining to the disbursement of HAVA funds to counties, the auditors recommended that the Department:

- (1) Calculate the interest earned on the idle funds and reimburse the HAVA election funds for the lost interest.

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<sup>3</sup> 41 C.F.R. 105-71, Part 137 (a).

- (2) Develop policies and procedures for minimizing the time elapsing between the transfer of funds from the Florida Treasury and disbursement by the grantees whenever advance payment procedures are used.
- (3) Inform the counties receiving HAVA funds of the need for minimizing the time elapsing between the funds transfer and disbursement of funds by the grantee.

In response to these recommendations, the Department said:

We disagree with this finding [that the Department disbursed funds to counties that exceed the counties' immediate cash needs and thus reduced the interest earned by the State election fund]. From the very first workshop on HAVA in December 2002, states were told that the HAVA funding was like no other federal funding that the states receive. For example, generally, interest earned on any federal funds is returned to the Federal Government; however, states are allowed to keep interest earned on these HAVA funds. The states were never told that the HAVA funding was to be treated, for example, like the funds provided through the Act by Health and Human Services. Those funds are not drawn down by the State until we are ready to expend them. This recommendation seems to be counter to the recommendation that the funds not expended be placed in an interest bearing account. If funds are earning interest, there appears to be no need to expend the funds immediately upon receipt.

In regard to the counties, the auditors recommended that the Department ensure that all counties: (1) implement procedures to correctly compute and post interest to HAVA accounts and (2) deposit into county HAVA accounts amounts equal to interest that should have been earned had the counties deposited the HAVA funds advanced by the Department into interest-bearing accounts upon their receipt.

The Department agreed with these recommendations and said that it would work with the counties to calculate the interest and that in May 2007 it provided each county with a "memo outlining the requirement to keep all unexpended funds in an interest bearing account."

### **Management Decision**

In regard to Department disbursement of funds, we generally agree that HAVA authorizes the Federal government to disburse to the States their entire allotment of funds authorized by Sections 101, 102, and 251, in advance of states incurring costs. We also agree with the Department response that any interest earned on the funds received would not be returned to the Federal government but would be reserved by the grantee for purposes authorized by HAVA. EAC disagrees, however, with the statements that EAC seems to be treating these funds like HHS funds or that the

“recommendation seems to be counter to the recommendation that the funds not expended be placed in an interest bearing account.”

The HAVA Statute is clear that payments to States under Sections 101, 102 and 251 are to be made in advance and that these are not reimbursable programs like the HHS grant. The focus of the finding and the audit recommendations is to maximize the amount of interest earned on HAVA funds received by the State.

To close these findings, the Department should take or complete the following steps:

- (1) Provide to EAC policies and procedures for ensuring minimal loss of potential interest by the transfer of funds to the Counties.
- (2) Develop and provide to EAC a timeline for implementing procedures to ensure that correct interest is posted to counties' HAVA accounts.

### **Additional Issue**

In the final audit report, the OIG presented an overall recommendation that was not included in the NFRs. The report recommended that the Department of the Secretary of State “strengthen its program for monitoring the counties’ use of HAVA funds on a risk-based approach.”

In its January 21, 2009 letter to the EAC, the Department said that it would “enhance our oversight to review actual expenditures against approved plans.” Rather than using a risk-based approach, the Department has instituted a program to review all expenditures by all counties. The Department provided additional guidance to Supervisors of Elections on August 27, 2009 (Attachment F of the October 14 letter). The guidance included a list of items that could be funded through the grant. The Department will not approve the use of funds for any other purpose. In addition, along with each financial report, the counties are required to provide copies of invoices and actual samples of items purchased so the Department can be assured that the funds were properly spent. Each county’s expenditures are reviewed for compliance with both HAVA and State law. The Department’s action is sufficient to address the Other Matter.

### **STATE RIGHTS OF APPEAL**

If the Department 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.