EAC MANAGEMENT DECISION:

Resolution of the OIG Audit Report on the Administration of Payments Received Under the Help America Vote Act by the West Virginia Secretary of State for the Period April 28, 2003 Through August 31, 2009 Report No. E-HP-WV-04-09

May 5, 2011

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. 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 West Virginia Secretary of State (SOS) on March 7, 2011. The audit concluded that for the period from April 28, 2003 through August 31, 2009:

- The state did not contribute its matching funds requirement to the Section 251 HAVA fund on a timely basis.
- The state did not transfer interest earned from the state general fund to the HAVA revolving fund on loan repayments received from counties prior to April 2007.
- The seven counties visited did not maintain equipment inventory records that included all of the information required by federal regulations.
- The SOS did not complete semi-annual certifications for personnel working full-time on HAVA activities.
- The state did not deposit in the election fund program income from the sale of voter registration lists funded with HAVA proceeds or reported the totals to EAC.
- The SOS had not reconciled the Election Fund and Revolving Loan Fund balances with the records maintained by the State Treasurer's Office to ensure accurate reporting of data on the Financial Status Report (FSR) for Sections 101 and 251.

Finding 1 – Interest on State Match

West Virginia established an election fund to hold HAVA funds in accordance with the requirements of HAVA Section 254(b)(1). In addition to federal funds received by West Virginia, HAVA requires that the election fund also hold the five percent state matching funds that enabled West Virginia to qualify for the federal HAVA Section 251 funds. Furthermore, interest earned from the investment of the monies must also be deposited into the election fund. The timely deposit of interest earnings produces a compounding effect that adds additional funds to the program.

West Virginia received $15,303,569 in Section 251 funds on June 28, 2004. West Virginia's matching requirement was $805,451 which also should have been deposited on June 28, 2004. However, the state did not deposit the matching funds until May 17, 2007. Because the matching funds were not deposited until almost three years after West Virginia received its federal HAVA Section 251 funds, interest earnings of $91,230 were not deposited into the election fund. Furthermore, until the state transfers the interest into the election fund, the balance of the interest due the fund is increasing because the State Treasurer invests any unexpended HAVA funds and they are continuing to earn additional interest. The auditors calculated an additional $5,601 in such interest should be deposited into the election fund as of August 31, 2009.

Recommendation:

1. The auditors recommended that West Virginia transfer the $91,230 of interest owed on $805,451 to the election fund for the period from June 2004 through August 2009, plus the additional compounded interest of $5,601 as of August 31, 2009 and any additional compounded interest owed through the date of the transfer.

SOS Response:

The matching funds were deposited by the state on June 12, 2003. However, the matching funds were not placed in an account which credited interest back to the HAVA funds until May 17, 2007.

The Secretary does not dispute the lost interest, and compounded interest amounts calculated by the auditors. Nor does the Secretary contest the conclusion that the interest should have been credited to the HAVA funds.

The Secretary does object to the corrective action recommended and proposes using unclaimed qualifying state matching funds of $2,683,383 to offset the $91,230 in lost interest, the $5,601 in lost compounded interest, plus any additional compounded interest lost since August 31, 2009.

EAC Response:

EAC will work with the SOS to determine any additional compounded interest and ensure appropriate corrective action.

Finding 2 – Interest on the Revolving Loan Fund

West Virginia election officials offered to use HAVA funds to pay for the full costs of certain voting equipment provided to its counties. For those counties that accepted the state's approved voting equipment, the state paid the full price. Some counties decided to purchase additional equipment. These counties could use a combination of county funds and a loan from the HAVA election fund to finance any cost over what the state had offered to pay. The counties that exercised this option had to repay the loans from the HAVA funds into a revolving loan fund over a five year period. This revolving loan fund will be used to provide additional loans to counties to support future election activities including the purchase of voting equipment. The state made loans from the HAVA election fund of approximately $3,310,056. Loan repayments as of August 31, 2009 totaled $1,274,185. County repayments of these loans have been deposited into the state fund. On December 3, 2008 EAC approved the state's use of the Revolving Loan Fund (RLF), but advised the state that program income, including loan repayments and interest on repayments be reserved for uses authorized by HAVA.

The state began receiving loan repayments from counties in May 2006. The loan repayments were recorded in the RLF, a HAVA election fund account. The repayments were pooled with other state monies and interest earned and were deposited to the state's general fund. However, the state's general fund did not transfer to the RLF interest earned by the pooled monies from May 17, 2006 to April 23, 2007 applicable to the RLF. The state began transferring interest earned on April 24, 2007. The auditors determined that this resulted in an interest shortfall in the RLF of approximately $12,246 from May 17, 2006 through April 23, 2007. There is also an additional estimated interest earned of $775 from the compounding effect on this amount for the period May 2007 through August 31, 2009. The SOS should also calculate and request the transfer to the RLF of any additional compounded interest owed through the date of transfer.

Recommendation:

2. The auditors recommended that SOS officials transfer from the state's general fund to the RLF the interest shortfall estimated to be $13,021 ($12,246 plus $775) through August 31, 2009, plus any additional interest, including compounded interest owed through the date of transfer.

SOS Response:

The SOS agreed that the interest earned by the RLF from May 17, 2006 through April 23, 2007 was not transferred to the RLF.

EAC Response:

The EAC will work with the SOS to ensure corrective action that includes appropriate transfers from the state's general fund to the RLF.

Finding 3 – Property Management

The equipment inventory listings provided to the auditors by the SOS, and each of the seven counties visited by the auditors, did not conform to the requirements of 41 C.F.R. 105-71.132 (d)(1) (the Common Rule), for tracking equipment with federal funds.

Recommendation:

3. The auditors recommended that the SOS ensure that its property management records and those of the counties have at least the minimum information required by the Common Rule. The SOS should emphasize to the counties any changes to the equipment listing, including SVRS equipment, should be reported to the SOS.

SOS Response:

The Secretary concurs with the findings and the recommended corrective action designed to remedy a situation that has existed since 2004.

Once the matter was brought to her attention in August 2009, the Secretary immediately adopted and implemented property inventory controls and reporting requirements for the counties. In January 2010 and each year thereafter, the counties will be sent a survey by the Secretary of State to update all the required information.

EAC Response:

EAC has been working with the SOS to ensure appropriate corrective action. In February 2011, the SOS forwarded its inventory tracking sheet for review and asked for feedback. On March 22, 2011, the SOS hosted a training session for the 55 county clerks. The equipment inventory portion covered the equipment tracking sheet, inventory controls, maintenance, reconciliation and other elements contained in the Common Rule. The SOS continues to refine its system to ensure consistency across the state.

EAC considers this matter closed.

Finding 4 – Personnel Certifications

The SOS did not complete semi-annual certifications for an employee who worked full-time or solely on HAVA activities. The state charged this person's entire salary and benefits to the HAVA election fund. During the period July 1, 2007 through August 31, 2009, the SOS did not require the employee to prepare semi-annual certifications that 100 percent of their time had been spent on HAVA related activities. Election officials provided semi-annual certifications for the period March 7, 2005 through June 30, 2009; however each of these certifications was signed October 8, 2009. Between July 1, 2007 and August 31, 2009, the state charged the HAVA election fund $124,276 for the salary and benefits of the full-time employee.

Recommendation:

4. The auditors recommended that the SOS resolve with the EAC the appropriate corrective action regarding lack of periodic certifications.

SOS Response:

The Secretary concurs with the findings of the auditor. Personnel and policy actions have taken place to correct the misunderstanding about when the certifications should be filed. Future certifications will be filed in a timely fashion.

However, the Secretary urges EAC to determine that certifications were accurate, although untimely filed, and that the payroll reflects actual HAVA related work performed and the state should not be required to transfer any part of the total claimed payroll expense.

Should it be determined that some, or all, of the payroll should be reimbursed, the Secretary, for the reasons given in response to NFR reference 2400.05, urges that the state be allowed to credit the $2,683,383 in unclaimed matching funds against the total due.

EAC Response:

EAC has been working with the SOS to ensure appropriate corrective action. The SOS has adopted a Standard Operating Procedure (SOP) for the certification of work performed by HAVA employees. The HAVA Coordinator is responsible for obtaining and reviewing personnel certifications from each employee and maintaining the records.

EAC has determined that past certifications were accurate and reflected actual work related to HAVA activities. Current procedures will facilitate the timely submission of future certifications.

EAC considers this matter closed.

Finding 5 – Program Income

The SOS has not deposited program income, generated by the SOS and the counties from the sale of voter registration lists that was in excess of the costs associated with preparing the lists, into the HAVA election fund. Both the SOS and each of the seven counties visited prepared these lists from the SOS's HAVA funded voter registration system. The program income has also not been reported to EAC as required.

The SOS received a total of $219,410 in income, net of production costs, from the sale of voter registration lists. Of this total, $157,595 was transferred to the counties and $61,815 was retained by the state. The counties visited also sold voter registration lists. Except for one county, none of these counties maintained records of the amounts of income they generated. The one county that maintained records received approximately $45,691 from the sale of voter registration lists. The county spent $11,500 of this amount on election related expenses, including the replacement of state-provided voter registration equipment which had become inoperable.

According to SOS election officials the state income was deposited in an account to support the state's voter registration program. Under state law, counties are required to deposit the income into the counties' general funds.

Recommendations:

The auditors recommended that the SOS:

5. Work with EAC to resolve the conflict between federal and state law which requires that program income be deposited in non-HAVA funds at the state and county levels.
6. Provide guidance to the counties on how to properly record and report program income received from the sale of voter registration lists generated from the state's voter registration database. The SOS should also report such income to EAC.

SOS Response:

As the auditors have reported, W.VA. State Code 3-2-30 requires, in conflict with EAC [HAVA], that part of the state-generated monies be paid to the counties. The remainder of the state-generated excess funds is to be placed in a residual fund. County-generated excess funds are to be placed in the county's general revenue fund.

The auditors recommend that the conflict between state and federal code requirements be resolved by EAC and the Secretary. The Secretary believes that conflicts in code requirements of other states have been resolved, on some occasions, in the favor of the state by EAC. The Secretary requests that, given the relatively small amount involved, EAC concede on the matter.

However, should EAC determine not to grant the exemption, the Secretary asks, for the reasons given in response to NFR reference No. 2400.05, [urges] that the state be allowed to credit the $2,800,000 in state expenditures against the total due.

EAC Response:

EAC will work with the SOS to resolve the conflict between federal and state law and ensure appropriate corrective action.

Finding 6 – Accounting and Reporting

The SOS HAVA-related accounting records do not agree with the records maintained by the West Virginia State Treasurer's Office (STO). Moreover, the SOS does not reconcile the revolving loan fund and the election fund balances to the STO fund balances.

Recommendations:

The auditors recommended that the SOS:

7. Perform monthly reconciliations of the revolving loan fund and the election fund to ensure that all program income and disbursements are properly recorded and accounted for in the state's accounting records.
8. Resolve the differences that have not been reconciled.
9. Coordinate with EAC the filing of corrected Section 101 and 251 SF269s.

SOS Response:

The Secretary has diligently worked to identify and correct a situation that has apparently existed since 2003. Data entry error has been identified as the source for most of the account differences. The data on the past reports is being corrected and amendments will be filed with the EAC. The Secretary's review has also identified a lack of formal written policy for accounting for each transaction. Responsibility for data entry was divided among multiple persons and each designed their own spreadsheets and systems. The current staff has inherited the systems. The following procedural changes have been made to address the concerns raised by the Findings and Recommendations:

a) Account reconciliation will be done monthly;
b) Account entry responsibility will now be performed by the Financial Division rather than by Elections Division Personnel;
c) Written S.O.P.'s have been, or are being, developed to formalize processes in order to ensure consistency and for the benefit of successor employees;
d) Prior to audit, some amounts of funds were withheld from interest bearing accounts for coverage of day-to-day expenses including HAVA payroll. Henceforth, all funds will be deposited in interest bearing accounts upon receipt and withdrawn as needed. The average monthly cost for payroll and other usual expenditures is $10,000.00. Our accounting process requires approximately eight business days to process the bi-monthly payroll and benefits for the employees responsible for the activities under HAVA. Therefore, we must draw down a minimum amount of money each month to cover these expenses.

EAC Response:

EAC will work with the SOS to ensure implementation of procedural changes that will result in appropriate corrective action.