U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL

FINAL REPORT:

Administration of Payments Received Under the Help America Vote Act by the Nevada Secretary of State

APRIL 30, 2003 THROUGH DECEMBER 31, 2010

Report No.
E-HP-NV-02-11
September 2011

U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL
1201 New York Ave. NW - Suite 300
Washington, DC 20005

September 30, 2011

Memorandum

To: Thomas Wilkey
Executive Director

From: Curtis W. Crider
Inspector General

Subject: Final Audit Report - Administration of Payments Received Under the Help America Vote Act by the Nevada Secretary of State (Assignment Number E-HP-NV-02-11)

We contracted with the independent certified public accounting firm of Clifton Gunderson LLP (Clifton Gunderson) to audit the administration of payments received under the Help America Vote Act (HAVA) by the Nevada Secretary of State (SOS). The contract required that the audit be done in accordance with U.S. generally accepted government auditing standards. Clifton Gunderson is responsible for the attached auditor's report and the conclusions expressed therein.

In its audit of the SOS, Clifton Gunderson concluded that, except for the lack of personnel certifications, the inadequate property records maintenance, the non-transfer of interest earnings to the election fund, the use of computer equipment for non-HAVA related purposes and the questionable use of HAVA funds for promotional activities, our audit concluded that the SOS generally accounted for and expended HAVA funds in accordance with the HAVA requirements and complied with the financial management requirements established by the U.S. Election Assistance Commission. The SOS also complied with section 251 requirements.

In his August 29, 2011 response to the draft report (Appendix A-1), the SOS generally agreed with the report's findings and recommendations, and provided corrective action; however, the SOS took exception to the questioned costs related to the promotional activities, but has taken action on or is working to resolve the other exceptions.

Also, we have included in the report the EAC response to the draft report (Appendix A-2), dated September 8, 2011, which stated the action proposed to assist the SOS in resolving the findings and recommendations. We would appreciate being kept informed of the actions taken on our recommendations as we will track the status of their implementation. Please respond in writing to the finding and recommendation included in this report by November 30, 2011. Your response should include information on actions taken or planned, targeted completion dates, and titles of officials responsible for implementation.

The legislation, as amended, creating the Office of Inspector General (5 U.S.C. § App.3) requires semiannual reporting to Congress on all audit reports issued, actions taken to implement audit recommendations, and recommendations that have not been implemented. Therefore, this report will be included in our next semiannual report to Congress.

If you have any questions regarding this report, please call me at (202) 566-3125.

PERFORMANCE AUDIT REPORT

ADMINISTRATION OF PAYMENTS RECEIVED UNDER THE HELP AMERICA VOTE ACT BY THE STATE OF NEVADA

April 30, 2003 Through December 31, 2010

UNITED STATES
ELECTION ASSISTANCE COMMISSION

Clifton Gunderson LLP
Certified Public Accountants & Consultants

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U.S. Election Assistance Commission
Performance Audit of the Administration of Payments Received Under the Help America Vote Act by the State of Nevada

EXECUTIVE SUMMARY

Clifton Gunderson LLP was engaged by the U.S. Election Assistance Commission (EAC or the Commission) Office of Inspector General to conduct a performance audit of the Nevada Secretary of State (SOS) for the period April 30, 2003 through December 31, 2010 to determine whether the SOS used payments authorized by Sections 101, 102, and 251 of the Help America Vote Act of 2002 (HAVA or the Act) in accordance with HAVA and applicable requirements; accurately and properly accounted for program income and property purchased with HAVA payments, and met HAVA requirements for Section 251 funds for an election fund and for a matching contribution.

Our audit did not include a determination that the SOS and its sub grantees met the requirements for maintenance of a base level of state outlays, commonly referred to as Maintenance of Expenditures (MOE). On June 28, 2010, the Commission issued a revised definitive policy on the requirements for the MOE. The policy included a provision that the states will have 12 months from the date of the revised policy to voluntarily submit a revised MOE plan to the EAC. Accordingly, our scope of audit did not include a determination of whether the SOS and its subgrantees met the requirements for MOE.

In addition, the Commission requires states to comply with certain financial management requirements, specifically:

- Comply with the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* (also known as the "Common Rule") as published in the Code of Federal Regulations 41 CFR 105-71.

- Expend payments in accordance with cost principles for establishing the allowance or disallowance of certain items of cost for federal participation issued by the Office of Management and Budget (OMB) in Circular A-87.

- Submit detailed annual financial reports on the use of Title I and Title II payments.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives. 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.

Except for the issues discussed below, our audit concluded that the SOS generally accounted for and expended HAVA funds in accordance with the requirements mentioned above for the period from April 30, 2003 through December 31, 2010. The exceptions needing SOS's management attention are as follows:

1. The State of Nevada's SOS charged $744,894 in payroll expenses to the HAVA election account prior to July 1, 2010 which were not supported by documentation to verify that the employees worked full-time on HAVA activities

2. The state's inventory listings of voting equipment located at the counties did not conform to the requirements of 41 C.F.R. 105-71.132 (d)(1), (the Common Rule). Various required information were missing from the listings, including source of property, who holds title, location, acquisition date, condition of property, cost, and percentage of federal participation in the cost. At two locations we visited to test equipment for existence, there was equipment listed in the wrong location or not located.

3. The state treasurer did not transfer interest earnings totaling $16,777 to the HAVA election account for May and June 2003. The HAVA election account is also missing the interest that would have accumulated as a result of the compounding effect had the interest been deposited timely.

4. One of the five counties we visited was using the HAVA funded computer equipment acquired for the Statewide Voter Registration System (SVRS), costing $16,434, primarily for daily operations rather than restricting its use to HAVA related activities.

5. Unallowable SOS HAVA expenses of $20,000 used to support the National Women's Suffrage Day activities in 2007.

6. Unallowable SOS HAVA expenses of $25,000 used to produce videos to promote voting participation and to conduct other events and programs to encourage registration and participation in upcoming elections in 2008.

We have included in this report as Appendix A-1 the SOS management's formal response on August 29, 2011 to our draft report. Although we have included management's written responses to the draft report, such responses have not been subjected to the audit procedures and, accordingly, we do not provide any form of assurance on the appropriateness of the responses or the effectiveness of the corrective actions described therein.

BACKGROUND

HAVA created the Commission to assist states and insular areas with the improvement of 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 Title III of HAVA for uniform and nondiscriminatory election technology and administration requirements, improving the administration of elections for federal office, educating voters, training election officials and poll workers, and developing a state plan for requirements payments.

- Title I, Section 102 payments are available only for the replacement of punch card and lever action voting systems.

- Title II, Section 251 requirements payments are for complying with Title III requirements for voting system equipment; and for 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 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)].

AUDIT OBJECTIVES

The objectives of our audit were to determine whether the Nevada SOS:

1. Used payments authorized by Sections 101, 102, and 251 of HAVA in accordance with HAVA and applicable requirements;
2. Accurately and properly accounted for property purchased with HAVA payments and for program income;
3. Met HAVA requirements for Section 251 funds for an election fund and for a matching contribution except for the requirements for maintenance of a base level of state outlays, commonly referred to as Maintenance of Expenditures (MOE). On June 28, 2010, the Commission issued a revised definitive policy on the requirements for the MOE. The policy included a provision that the states will have 12 months from the date of the revised policy to voluntarily submit a revised MOE plan to the EAC. Accordingly, our scope of audit did not include a determination of whether the SOS and its subgrantees met the requirements for MOE.

In addition to accounting for HAVA payments, the Act requires states to maintain records that are consistent with sound accounting principles that fully disclose the amount and disposition of the payments, that identify the project costs financed with the payments and other sources, and that will facilitate an effective audit. The Commission requires states receiving HAVA funds to comply with certain financial management requirements, specifically:

1. Comply with the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* (also known as the "Common Rule") as published in the Code of Federal Regulations at 41 CFR 105-71.
2. Expend payments in accordance with cost principles for establishing the allowance or disallowance of certain items of cost for federal participation issued by the OMB.
3. Submit detailed annual financial reports on the use of Title I and Title II payments.[1]

[1] EAC requires states to submit annual reports on the expenditure of HAVA Sections 101, 102, and 251 funds. Through December 31, 2008, for Sections 101 and 102, reports were due on February 28 for the activities of the previous calendar year, and, for Section 251, reports were due by March 30 for the activities of the previous fiscal year ending on September 30. Beginning in calendar year 2009, all reports will be effective as of September 30, 20XX for the fiscal year ended that date and will be due by December 31, 20XX.

SCOPE AND METHODOLOGY

We audited the HAVA funds received and disbursed by the SOS from April 30, 2003 through December 31, 2010 (92-month period) as shown in the following table:

	FUNDS RECEIVED						
TYPE OF PAYMENT	EAC PAYMENT	PROGRAM INCOME	STATE MATCH	INTEREST EARNED	TOTAL AVAILABLE	FUNDS DISBURSED	DATA AS OF
Section 101	$ 5,000,000	$ 0	$ 0	$ 432,449	$ 5,432,449	$ 4,321,407	12/31/2010
Section 102	0	0	0	0	0	0	12/31/2010
Section 251	18,144,727	0	954,986	1,225,063	20,324,776	15,265,280	12/31/2010
Total	$23,144,727	$ 0	$954,986	$1,657,512	$25,757,225	$19,586,687	12/31/2010

Our audit methodology is set forth in Appendix C.

AUDIT RESULTS

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives. 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.

Except for the lack of personnel certifications, the inadequate property records maintenance, the non-transfer of interest earnings to the election fund, the use of computer equipment for non-HAVA related purposes and the questionable use of HAVA funds for promotional activities, our audit concluded that the SOS generally accounted for and expended HAVA funds in accordance with the requirements mentioned above. The SOS took exception to the questioned costs related to the promotional activities, but has taken action on or is working to resolve the other exceptions described below as set forth in Appendix A:

I. Lack of Personnel Certifications

The State of Nevada's Office of the Secretary of State (SOS) charged a total of $894,306 in payroll expenses to the Help America Vote Act (HAVA) election fund between May 2003 and December 31, 2010. The total was comprised of $794,331 paid to SOS staff working full-time on HAVA activities and $99,975 paid to information technology (IT) staff working part-time on the statewide voter registration system (SVRS).

We selected a sample of six (6) full-time staff pay periods for testing with total payroll charges of $32,191. We question $28,180 of the total payroll charges tested because of lack of documentation to support the salaries as required by OMB Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*. The questioned payroll charges were for the SOS full-time staff that 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 for HAVA related activities. The

SOS began requiring the semi-annual certifications for the six months period ended December 31, 2010, which provided support for the $49,437 full-time payroll charges.

Based on the internal control weaknesses and exceptions explained above, we question all full-time staff's payroll charges from inception to June 30, 2010 for lack of appropriate documentation. These charges amounted to $744,894 ($794,331, less $49,437 total supported charges).

OMB Circular A-87, in Attachment B Section 8(h)(3) requires that:

> (3) Where employees are expected to work solely on a single federal award or cost objective, 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 semi-annually and will be signed by the employee or supervisory official having firsthand knowledge of the work performed by the employee.

Recommendation:

1. We recommend that the EAC resolve with the SOS the appropriate corrective action regarding the completion of the semi-annual certifications.

SOS Response:

The SOS official stated that the personnel costs were paid from a legislatively approved special revenue budget account, Election Fund, established for the specific purpose of segregating funds from other state accounts or general funds. The salaries for the full-time HAVA staff were paid solely from this account, and only work on HAVA related activities qualified for these expenditures. The SOS official confirmed that the full-time HAVA employees only performed on HAVA related activities. They stated that since notification of the missing certifications, the documentation had been completed for the last six months of 2010 and the first six months of 2011, and a calendaring system had been implemented to ensure semi-annual certifications are completed. They also indicated the SOS office was open to suggestions from the Inspector General or EAC regarding providing assurances for salaries for past HAVA-related work.

II. Property Management

Our review of the statewide master inventory records disclosed that the records for the different locations do not contain all information in varying degrees as required in 41 CFR § 105-71.132(d)(1), referred to as the Common Rule. The following discrepancies were noted:

- One county - Records are missing source, title, acquisition date, unit price, and use and condition.
- Ten counties – Records are missing acquisition date and unit price.
- One county – Records are missing source, title, acquisition date, unit price, federal percentage, location, and use and condition.
- Two counties – Records are missing acquisition date, unit price, and location.
- One county – Records are missing unit price.

- Las Vegas Secretary of State Storage – Three (3) inventory items listed and selected for testing had been transferred to another location, and were improperly reported as being held in the Las Vegas storage location.

Also, in our site visits to five counties, we identified the following discrepancies in two location's equipment records:

- Las Vegas Secretary of State Storage – One (1) F-5 DNS Controller 520 was not located.
- One county – One (1) Sequoia Audio Headset was not located.

The *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* 41 CFR § 105-71.132 (the "Common Rule") states that:

> (d)(1) Property records must be maintained that include a description of the property, serial number or other identification number, the source of property, who holds the title, the acquisition date, and costs of the property, percentage of Federal participation in the cost of the property, the locations, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

The *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* 41 CFR § 105-71.132 (f) states that:

> (f) In the event a grantee or subgrantee is provided federally-owned equipment:
>
> (2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

Recommendations:

We recommend that the SOS:

2. Ensure that the counties document at least the minimum information in the property records in accordance with 41 CFR § 105-71.132(d)(1).

3. Require counties to conduct a physical inventory of all HAVA funded equipment in their possession and provide these results to the state for reconciliation with and updating of the statewide master inventory list.

SOS Response:

The SOS official stated that county property records have been formatted to capture the required Common Rule information, and will be distributed to the counties to conduct a physical inventory of all HAVA funded equipment in their possession. County officials will be required to sign an acknowledgement annually regarding the accuracy of the list, date it, and provide the results for the state to use to update the statewide master inventory list.

III. Interest Earnings

Nevada established an election account to hold Help America Vote Act (HAVA) funds in accordance with the requirements of HAVA Section 254(b)(1). HAVA also requires the interest earned from the investment of the monies be deposited into the election account. The timely deposit of interest earnings produces a compounding effect that adds additional funds to the program.

Nevada received a Section 101 installment payment of $5,000,000 on April 30, 2003; however, the state treasurer did not begin transferring interest earned on these funds into the election account until July 2003. Based on rates provided us by the state treasurer, we determined that there is a total of $16,777 of interest that should be transferred to the election account for May and June 2003, plus the compounded interest on these funds until the date of the transfer.

HAVA Section 254 (b) (1) requires that the following monies be deposited into the state's election account:

D. Interest earned on deposits of the fund.

Recommendation:

4. We recommend that the EAC work with Nevada officials to verify and transfer the amount of interest owed to the election account for the period from May 1, 2003 through June 30, 2003, plus the additional compounded interest as of June 30, 2003, and any additional compounded interest owed through the date of the transfer.

SOS Response:

The SOS' office determined that the election fund is eligible for the interest, and sent a letter to the treasurer's office asking that correct deposits be made to the HAVA account, including the compounding interest, and requested that the calculations used to determine the interest shortfall be provided to ensure the correct amount is transferred.

The Treasurer's office has transferred $20,838.37 to the HAVA account covering the period from May 1, 2003 through June 30, 2003 plus the compounded interest through the date of the transfer.

IV. Property Usage

During our observation and testing of property and equipment in one of the counties' municipal offices, we noted that the state's inventory listing included HAVA funded computer equipment, totaling $16,434 that was acquired for the Statewide Voter Registration System (SVRS) access. However, these computers are used primarily for daily operations, and are not restricted to HAVA related activities. A determination could not be made as to what portion of these costs is an appropriate use of HAVA funds.

The *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments,* 41 CFR § 105-71.132 (the "Common Rule") states that:

> (c)(1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a federal agency.

EAC Guidelines on DeMinimis Uses of Equipment

> May HAVA funds be used to support deminimus uses of equipment by the state for non-HAVA related purposes?
>
> No. The state can allocate only that portion of the equipment purchase cost that will go to benefit the state's HAVA program. Alternatively, the expenses may qualify as an indirect cost in which case the state may submit an indirect cost rate proposal in which it identifies and supplies information regarding direct and indirect costs of operation.

Recommendation:

5. We recommend that the EAC work with the state to determine the allowability of the equipment costs noted above.

SOS Response:

The SOS' office responded that they understood the requirement that the HAVA funded equipment could only be used to benefit state's HAVA program, and noted that they sent correspondence to the counties on December 19, 2006 and May 12, 2009 stating that the federally funded equipment was restricted in its use, and "…its non-HAVA use, even de minimis use, will not be allowed." They further stated that, since the state had consistently advised counties as to the limitations of HAVA purchased equipment, they requested the state not be held accountable for the de minimus use contrary to direct instructions from their office.

V. Unallowable Expenses

On August 25, 2006, the Nevada SOS awarded a grant for $20,000 of HAVA Section 101 funds to be used to support National Women's Suffrage Day (NWSD) activities in 2007. The funds were used for promoting the NWSD activities through paid advertising, and providing funds to youth theater groups for planned rehearsals and necessary stage props for performances of a play to tell the history of women's struggles to get the right to vote. The grant application stated that the "target audiences are elementary school-age children and their parents residing in Clark County in July 2007." Our review of the grant related activities concluded that, although there were some aspects of the NWSD program that encouraged parents to register to vote, many of the events and activities were directed at non-voting age children and did not meet the HAVA definition of educating voters on voting procedures, voting rights, and voting technology.

The proposed uses of the funds were for:

• Advertising (Radio)	$ 6,000
• Travel	500
• Administrative costs	1,000
• Print materials	4,000
• Other related costs (Note)	8,500
Total	$20,000

Note: Contract with a teen theater group included a stipend for the adult coordinator.

HAVA Section 101 funds can be used to improve the administration of elections. HAVA Section 101(b)(1)(C) requires that:

> (b) USE OF PAYMENT.—
>
> > (1) IN GENERAL.—A state shall use the funds provided under a payment made under this section to carry out one or more of the following activities:
> >
> > > (C) Educating voters concerning voting procedures, voting rights, and voting technology.

The EAC Funding Advisory Opinion (FAO) 08-005 states:

> The EAC has concluded that HAVA authorizes the use of HAVA funds for voter registration activities as follows:
>
> - Section 101(b)(1)(C) allows Section 101 funds to be used for educating voters concerning voting procedures.
>
> In the opinion of EAC, the phrases "educating voters on voting procedures" and "how to cast a vote" would include providing instruction on how to register to vote as one could not vote if not registered. However, voter registration activities do not qualify for funding under the umbrella of improvements to the administration of elections for Federal office because the activities do not directly contribute to the administration of a Federal election.

Recommendation:

6. We recommend that the EAC resolve the issue with the SOS whether the costs associated with NWSD, as set forth above, qualify for HAVA funding.

SOS Response:

The SOS' office considers the costs an allowable expenditure of HAVA funds and provides their rationale in the response in Appendix A, citing various aspects of the program as justification, including the diverse audience to which it was directed.

Auditor's Response:

EAC has determined in FAQ-08-005 that the use of HAVA funds to educate non-voters and to increase voter turnout is not allowed under HAVA.

VI. Unallowable Expenses

The SOS used Section 101 HAVA funds totaling $25,000 for video segments that may not be allowable, since not all of the content of the programs was directed at voter education. Some of the videos were designed to encourage voter registration, which is allowable as determined by the EAC; however, the videos also included get out the vote messages. The programs ended with references to two websites labeled Silverstate08.com and RaiseYourVoice.org.

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>
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> In the opinion of EAC, the phrases "educating voters on voting procedures" and "how to cast a vote" would include providing instruction on how to register to vote as one could not vote if not registered. However, voter registration activities do not qualify for funding under the umbrella of improvements to the administration of elections for Federal office because the activities do not directly contribute to the administration of a Federal election.

Recommendation:

7. We recommend that the EAC resolve the issue with the SOS whether the costs associated with this grant, as set forth above, qualify for HAVA funding.

SOS Response:

The SOS' office considers the costs an allowable expenditure of HAVA funds and provides their rationale in the response in Appendix A, citing the educational aspects of the websites to which the videos direct the viewer.

Auditor's Response:

We agree that the archived website we viewed offers educational material regarding voting that might be allowed by HAVA. However, the EAC has determined in FAQ-08-005 that the use of HAVA funds to increase voter turnout, which was the focus of the videos, is not allowed under HAVA, and we stand by our recommendation.

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We provided a draft of our report to the appropriate individuals of the Nevada SOS and the Commission. We considered any comments received prior to finalizing this report.

The EAC responded on September 8, 2011 and generally agreed with the report's findings and recommendations. The EAC stated that they would work with the SOS to resolve the issues associated with voter education and ensure appropriate corrective action. The EAC's complete response is included as Appendix A-2

CG performed its work between January 10, 2011 and January 28, 2011.

Clifton Gunderson LLP

Calverton, Maryland
May 3, 2011

ROSS MILLER
Secretary of State

NICOLE J. LAMBOLEY
Chief Deputy Secretary of State

ROBERT E. WALSH
Deputy Secretary
for Southern Nevada

STATE OF NEVADA

OFFICE OF THE
SECRETARY OF STATE

SCOTT W. ANDERSON
Deputy Secretary
for Commercial Recordings

SCOTT F. GILLES
Deputy Secretary for Elections

KATE L. THOMAS
Deputy Secretary
for Operations

The Attachments referred to in the response are not included in the report, but are available to the EAC upon request.

August 29, 2011

Curtis Crider
Inspector General
U.S. Election Assistance Commission
1201 New York Ave, NW – Suite 300
Washington, DC 20005

Re: State of Nevada's Response to NFRs

Dear Mr. Crider:

Thank you for your email dated July 22, 2011 regarding the Notification of Findings and Recommendations that were prepared by Clifton Gunderson for its audit of the State of Nevada's use of HAVA funds. Please consider this letter the State's response as prepared by the Nevada Secretary of State. For your convenience, a listing of Findings and justifications are noted below.

NFR 1 - Personnel Certifications

Upon the initial disbursement of the HAVA funding in 2003, the Nevada Secretary of State's Office established a legislatively approved special revenue budget account known as the Election Fund under Nevada Revised Statute ("NRS") 293.442. Federal election funds are deliberately held separately here are not commingled with general funds. Salaries for full-time HAVA staff, including the HAVA Administrator, and HAVA Program Officer, are paid solely out of this budget account. For a salary to be paid out of this account, only work performed for HAVA related activities can be performed. While Secretary of State HAVA staff was not aware of the technical OMB A-97 rule regarding the need for biannual personnel certifications, please be assured that full-time HAVA employees only performed HAVA related activities.

NEVADA STATE CAPITOL
101 N. Carson Street, SUITE 3
Carson City, Nevada 89701-4786
Telephone: (775) 684-5708
Fax: (775) 684-5725

COMMERCIAL RECORDINGS
MEYER'S ANNEX OFFICE
202 N. Carson Street
Carson City, Nevada 89701-4201
Telephone: (775) 684-5708
Fax: (775) 684-5725

LAS VEGAS OFFICE
555 E. Washington Avenue Ste. 5200
Las Vegas, Nevada 89101-1090
SECURITIES
Telephone: (702) 486-2440
Fax: (702) 486-2452
CORPORATIONS
Telephone: (702) 486-2880
Fax: (702) 486-2888

RENO OFFICE
500 Damonte Ranch Pkwy, Suite 657-A
Reno, Nevada 89521
Telephone: (775) 687-9950
Fax: (775) 853-7961

Since notification of the missing certifications, the HAVA Administrator coordinated with the Secretary of State's personnel technician to complete a certification for the last six months of 2010, as well as the for the first six months of 2011. Future and reoccurring semi-annual certifications have been scheduled through the office's internal Outlook calendar system. If the Inspector General, or the EAC, has further corrective action to ensure the completion of semi-annual certifications, the Secretary of State's Office is open to suggestions.

NFR 2 – Property Records

County property records that were not formatted to capture the required Common Rule information have since been amended. Following the Recommendation in NFR 2, these records will be distributed to county staff who will conduct a physical inventory of all HAVA funded equipment in their possession, sign a Secretary of State acknowledgement regarding the accuracy of the list, date it, and provide these results for the State to use to update the statewide master inventory list.

NFR 3 – Interest Earnings

After a review of the timing of deposits by the previous administration of initial HAVA 101 funds and notification to the Treasurer's Office of the eligibility of these funds to earn interest, a letter had been sent to the Treasurer's Office asking that correct deposits be made to the HAVA account, including the compounding interest, for two months worth of interest in May and June of 2003.

UPDATE - The Treasurer's Office has deposited the amount owed to the HAVA account, depositing $20,838.37 into the account. This amount includes interest owed to the election account for the period from May 1, 2003 through June 30, 2003, plus the additional compounded interest as of June 30, 2003, and any additional compounded interest owed through the date of the transfer. Please see Attachment "A" as verification of the transfer.

NFR 4 – Property/Usage

The Secretary of State's Office understands that the State can allocate only that portion of the equipment purchase costs that will go to benefit the State's HAVA program. Both the prior administration, and this administration, has consistently advised the counties that were recipients of HAVA purchased equipment that those purchases were for federal election purposes only. In an email dated December 19, 2006, concerning this very SVRS equipment noted in the Finding, HAVA Administrator Raji Rai-Nielsen wrote to clerks, including Carson City, *"For the time being, as long as you are using the left over inventory ONLY for election related purposes, you can continue to use it"* (emphasis in original). Then again, in a faxed letter dated May 12, 2009, Deputy for Elections Matt Griffin provided counties three options for replacement of equipment, highlighting that *"the Secretary of State's office will still purchase equipment for federal election use with the State paying 100% of the cost for equipment that is used 100% of the time for federal elections. The equipment purchased under this arrangement will require a signed acknowledgement from your office as to the limitations of use for this type of equipment. Under this type of purchasing, non-HAVA use, even de minimis use, will not be allowed."* Both correspondences are included as Attachment "B" to this letter. Since the State has consistently

advised the counties as to the limitations of HAVA purchased equipment, it should not be held responsible for de minimis use contrary to direct instructions from this office. The Secretary of State's Office welcomes the opportunity to work with the EAC to determine the allowability of the equipment costs noted above.

NFR 5 – Sub-grant – Woman's Suffrage Day

The Secretary of State's Office, upon recommendation from the Advisory Committee on Participatory Democracy, which was authorized to recommend grant awards pursuant to HAVA eligible activities, provided a $20,000 grant in 2006 to the League of Women Voters ("LWV") Women's Suffrage Program, which focused its activities on a broad and diverse audience. This broad and diverse audience has resulted in a finding during this audit based on ages of some of the audience. Because Women's Suffrage has a wide demographic reach, this program is distinguishable to other HAVA activities found to be unrelated to voter education based on their direct and singular focus on non-voting age recipients. For instance, HAVA funds targeting non-voting age audiences through coloring books can be distinguished from our program in that a coloring book audience is obviously a child audience; whereas the Women's Suffrage program was targeted to audiences of all ages, including P-17 (pre-18 year olds) and voting age individuals. Please note the message on the poster as Attachment "C," "Show your kids the Importance of Voting. They Will be More Likely to Vote as Adults" as an example that this program targeted voting age audiences. Also, unlike the singular audience of a coloring book program, highlighting Women's Suffrage to educate voters on constitutional voting rights cannot be limited to an age group because Women's Suffrage impacts all voter demographics. Educating voters concerning voting procedures, voting rights and voting technology are expressly stated allowable Section 101 expenses. This program provided fundamental education to a specific voting right, the Nineteenth Amendment to the U.S. Constitution. As such, the Secretary of State's Office believes this program was an allowable expense. The expenses of this program should not be questioned if elementary school age children – who were not the sole target - benefited as being part of a larger mixed and indiscriminate audience. The Secretary of State's Office will provide any further material upon request to defend its position and help resolve with the EAC that these costs were allowable.

NFR 6 – Sub-grant – College of Southern Nevada Foundation

The College of Southern Nevada used Section 101 funds to produce 6 videos (1. Voting is Your Right, 2. Voting Isn't Hard, 3. Vote Early, 4. ESL (in English), 5. Absentee Ballots, 6. ESL (in Spanish)) concentrating on, and educating voters about, voting procedures, voting rights, and voting technology. While each video concludes with the phrase "This November Raise Your Voice, Get Out and Vote," these videos are more than your typical prohibited Get Out the Vote ("GOTV") messages.

Video 1, Voting is Your Right, emphasizes qualifications for registering to vote, including citizenship and age requirements, and the need to register before voting. Pursuant to EAC FAO 08-005, *Section 101 funds may be used at any time to instruct individuals on how to register to vote. 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 (emphasis added). Since this video instructs individuals about the requirement to register to vote before being able to cast a ballot and vote as noted in FAO 08-005, it cannot be characterized as just a GOTV message, and should be an allowable expense.

Video 2, Voting Isn't Hard, educates voters about Nevada's DRE voting technology and how you operate a touchscreen voting machine. Instructing viewers as to voting technology educates beyond a simple GOTV message. As such, this video should also be considered an allowable Section 101 expense.

Videos 3 and 5 educate viewers on Early Voting and Absentee Voting, two voting procedures in Nevada. The Early Voting video provides specific dates for early voting, as well as the requirement to be registered before voting. The Absentee Video also emphasizes early voting, as well as educates viewers that to request an absent ballot, they just need to contact their local election official. References to two websites are provided at the end of the video for more information. One of the websites, silverstate08.com, not only has a link to a listing of local election official contact information for which a viewer could use to request an absent ballot, but a link to the actual absent ballot request form. The wealth of early and absentee voting procedure information provided in these two videos should justify an allowable Section 101 expense and not be considered just a GOTV message.

Videos 4 and 6 educate voters with limited English language proficiency as to understanding the voting process in Nevada by requesting a sample ballot in either English or Spanish print. Providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language is an expressly allowable use of Section 101 funds. Furthermore, Section 302 voting information requirements define a sample version of the ballot that will be used for that election as component of voting information. As such, educating voters to request a sample ballot in either English or Spanish so that they may learn about voting procedures, voting rights, and voting technology goes beyond just a GOTV message. Therefore, this video, too, should be an allowable expense.

Each of these videos concludes with references to visit raiseyourvoice.org and silverstate08.com for more information. While not currently active as a URL, a silverstate08.com link has been archived on the Secretary of State's website, and may be found at http://www.nvsos.gov/silverstate008gen/. It should be noted that in addition to raiseyourvoice.org, silverstate08.com was an active link at the time of this grant during the 2008 election cycle. Silverstate08.com not only provides election results (which is an acceptable component and expenditure of a HAVA voting system pursuant to 301(b)(1)(c)), but the site also provides links to voting procedures (early voting times and locations, absent ballot procedures and forms, and Election Day voting), voting rights (Voter's Bill of Rights), and voting technology (Voting Machine Demo video). By concluding each voting procedure video with references to more information at silverstate08.com, these videos educate voters in-depth as to voting procedures, voting rights, and voting technology.

For all the aforementioned reasons, the Secretary of State's Office believes that this subgrant, and the videos produced therein, are allowable expenses as illustrated in FAO 08-005.

EAC RESPONSE TO THE DRAFT AUDIT:

OIG Performance Audit Report on the Administration of Payments Received Under the Help America Vote Act by the State of Nevada, for the Period April 30, 2003 Through December 31, 2010.

September 8, 2011

MEMORANDUM

To: Curtis W. Crider
Inspector General

From: Thomas R. Wilkey
Executive Director

Subject: Draft Performance Audit Report – "Administration of Payments Received Under the Help America Vote Act by the State of Nevada".

Thank you for this opportunity to review and respond to the draft audit report for Nevada.

The Election Assistance Commission (EAC) generally concurs with the results of the review and recommendations. The EAC will work with the Nevada Secretary of State (SOS) to resolve the issues associated with voter education and ensure appropriate corrective action.

Appendix B

AUDIT METHODOLOGY

Our audit methodology included:

- Assessing audit risk and significance within the context of the audit objectives.
- Obtaining an understanding of internal control that is significant to the administration of the HAVA funds and of relevant information systems controls as applicable.
- Identifying sources of evidence and the amount and type of evidence required.
- Determining whether other auditors have conducted, or are conducting, audits of the program that could be relevant to the audit objectives.

To implement our audit methodology, below are some of the audit procedures we performed:

- Interviewed appropriate SOS employees about the organization and operations of the HAVA program.
- Reviewed prior single audit report and other reviews related to the state's financial management systems and the HAVA program for the last 2 years.
- Reviewed policies, procedures and regulations for the SOS's management and accounting systems as they relate to the administration of HAVA programs.
- Analyzed the inventory lists of equipment purchased with HAVA funds.
- Tested major purchases and supporting documentation.
- Tested randomly sampled payments made with the HAVA funds.
- Verified support for reimbursements to local governments (counties, cities, and municipalities).
- Reviewed certain state laws that impacted the election fund.
- Examined appropriations and expenditure reports for state funds used to meet the five percent matching requirement for section 251 requirements payments.
- Evaluated compliance with the requirements for accumulating financial information reported to the Commission on the financial status reports, Form SF-269 and 425, accounting for property, purchasing HAVA related goods and services, and accounting for salaries.
- Verified the establishment and maintenance of an election fund.
- Conducted site visits of selected counties to observe physical security/safeguard of equipment purchased with HAVA funds and to test for proper accounting and documentation.

Appendix C

MONETARY IMPACT AS OF DECEMBER 31, 2010

Description	*Questioned Costs*	*Additional Funds for Program*
Semi-annual certifications of full-time employment on HAVA activities not filed	$744,824	$0
Interest earnings not transferred to HAVA election account		$20,838
Non-HAVA related use of SVRS computer equipment	$16,434	
National Women's Suffrage Day	$20,000	
Video promotional program	$25,000	$0
Totals	$806,258	$20,838

OIG's Mission

The OIG audit mission is to provide timely, high-quality professional products and services that are useful to OIG's clients. OIG seeks to provide value through its work, which is designed to enhance the economy, efficiency, and effectiveness in EAC operations so they work better and cost less in the context of today's declining resources. OIG also seeks to detect and prevent fraud, waste, abuse, and mismanagement in these programs and operations. Products and services include traditional financial and performance audits, contract and grant audits, information systems audits, and evaluations.

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To order by phone: Voice: (202) 566-3100
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Office of Inspector General
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Washington, DC 20005

E-mail: eacoig@eac.gov

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FAX: 202-566-0957