



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

FINAL REPORT:

**ADMINISTRATION OF PAYMENTS
RECEIVED UNDER THE HELP
AMERICA VOTE ACT BY
CALIFORNIA'S SECRETARY OF STATE**

JANUARY 1, 2005 THROUGH DECEMBER 31, 2008

**Report No.
E-HP-CA-01-09
December 2009**



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

December 14, 2009

Memorandum

To: Thomas Wilkey
Executive Director

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

Subject: Final Audit Report - Administration of Payments Received under the Help America Vote Act by California's Secretary of State (Assignment Number E-HP-CA-01-09)

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 California's 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 issues discussed below, 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 (EAC). The SOS also complied with Section 251 requirements. The exceptions noted in the audit were:

- There were errors in Financial Status Reports (SF 269) submitted to the EAC during the audit period for Section 101 funds.
- Section 102 funds were transferred to Los Angeles County that were not spent timely because of a delay in the state's voting system certification process, and the interest earned on the idle funds was not deposited into the HAVA election fund.
- Property records at six of the seven counties the auditors visited were not adequate, because they did not contain all of the information required by the Common Rule, and two of the counties were unable to locate some of the equipment selected for physical observation.
- The state spent \$81,374 to print voter registration cards to be sent to each high school and university student in the state, which are questioned costs.

In its November 12, 2009 response to the draft report, the SOS provided comments to the findings and corrective actions, as applicable, to address most of the recommendations; however, they did not agree that the printing of voter registration cards was an inappropriate use of HAVA funds.

Please provide us with your written response to the recommendations included in this report by February 15, 2010. Your response should contain information on actions taken or planned, including target dates and titles of EAC officials responsible for implementing the recommendation.

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 CALIFORNIA

January 1, 2005 Through December 31, 2008

UNITED STATES ELECTION
ASSISTANCE COMMISSION

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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 California**

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 California Secretary of State (SOS) for the period January 1, 2005 through December 31, 2008 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 property purchased with HAVA payments and for program income, and met HAVA requirements for Section 251 funds for an election fund and for a matching contribution. Although the audit period begin date is designated as January 1, 2005, since the EAC had contracted for and issued an audit report on a review of expenditures for the period from inception of the HAVA program through December 31, 2004, our audit also included a review of election fund receipts from April 2003 through December 31, 2008. We did not include a determination of whether the SOS and its subgrantees met the requirements for maintenance of a base level of state outlays because the Commission is reviewing its guidance on the applicability of the maintenance of a base level of state outlays to the SOS's subgrantees.

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 SOS generally accounted for and expended HAVA funds in accordance with the requirements mentioned above for the period from January 1, 2005 through December 31, 2008 for expenses, and from May 1, 2003 through December 31, 2008 for receipts. The exceptions needing SOS's management attention are as follows:

- The state did not accurately report total cumulative outlays on its Financial Status Reports, SF 269s. For the period ended December 31, 2008 total outlays were over reported by \$141,204 compared to the amounts listed in the state's accounting system. The state also misreported outlays in prior years. Outlays were over reported in some years and underreported in other years.
- The state advanced \$15.8 million in Section 102 funds to the County of Los Angeles before the County was prepared to spend the money. The County deposited the advance in its general fund where it accumulated interest which was not deposited into the County's HAVA fund. As of June 30, 2007 the County earned \$858,000 in interest on the Section 102 funds.
- Six of the seven counties we visited did not maintain voting equipment inventory records which conformed to federal regulations. Generally, the records did not include cost, acquisition date, percent of federal funding, or condition. In addition, at two of the counties, we were unable to locate all of the equipment we sampled for verification.
- The state spent \$81,374 to print voter registration cards to be sent to each high school and university student in the State as required by State law. HAVA funds may not be used to print, copy, or revise State voter registration forms.

We have included in this report the SOS management's formal response to our draft report dated November 12, 2009, as Appendix A. Although we have included the SOS written responses to our findings and recommendations, such responses have not been subjected to an audit, and, accordingly, we do not provide any form of assurance on the appropriateness of the responses or the effectiveness of any corrective actions described therein.

The SOS, while in general agreement with our findings, took exception to the questioned cost for printing voter registration forms. We stand by the conclusions reached in our report. The SOS also proposed corrective actions to our findings.

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 California Secretary of State:

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. We did not determine whether the SOS met the requirement for maintenance of a base level of state outlays, because the Commission is reviewing its guidance on the applicability of the maintenance of a base level of state outlays to subgrantees of the SOS.

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. For Sections 101 and 102, reports are due on February 28 for the activities of the previous calendar year. For Section 251, reports are due by March 30 for the activities of the previous fiscal year ending on September 30.

SCOPE AND METHODOLOGY

We audited the HAVA funds received from May 1, 2003 through December 31, 2008, and disbursed from January 1, 2005 through December 31, 2008.

Funds received and disbursed from May 1, 2003 (program initiation date) to December 31, 2008 (68-month period) are shown below:

TYPE OF PAYMENT	FUNDS RECEIVED					TOTAL AVAILABLE	FUNDS DISBURSED	DATA AS OF
	EAC PAYMENT	PROGRAM INCOME	STATE MATCH	INTEREST EARNED				
Section 101	\$ 27,340,830	\$ 0	\$ 0	\$ 2,373,123		\$ 29,177,831 ¹	\$ 21,506,753	12/31/2008
Section 102	57,322,707	0	0	1,133,995		58,456,702	57,322,707	12/31/2008
Section 251	264,237,124	0	0 ²	34,288,024		298,525,148	120,189,059	12/31/2008
	<u>\$348,900,661</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$37,795,142</u>		<u>\$386,159,681</u>	<u>\$199,018,519</u>	12/31/2008

- Notes: 1) Includes a refund from the SOS to the U.S. Treasury for disallowed expenditures in the amount of \$536,122. Payment was made by SOS on March 21, 2007.
 2) California met its matching requirement with in-kind payments to counties for reimbursement of purchases of HAVA Sec. 301 qualifying equipment that was acquired prior to the receipt of Sec. 251 requirements payment.

Our audit methodology is set forth in Appendix B.

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 accounting and reporting errors, and the questionable use of HAVA funds for the printing of voter registration cards, at the state level, and the failure of one county to deposit interest on advanced Section 102 funds into its HAVA account and property management issues at the county level, our audit concluded that SOS generally accounted for and expended HAVA funds in accordance with the requirements mentioned above. This includes compliance with section 251 requirements for an election fund. The SOS has taken action on or is working to resolve the exceptions described below as set forth in Appendix A:

ACCOUNTING AND REPORTING ERRORS

The SOS submitted incorrect Financial Status Reports (SF-269s) for Section 101 funds from 2004 through 2008. The amounts reported did not match amounts shown in the State’s financial accounting system. In its most recent SF-269 submitted on February 27, 2009 Cumulative Total Outlays were overstated by \$141,204. Previous year’s SF-269’s were understated by

\$1,265,894.49 in 2004 and by \$5,285,407.69 in 2005. They were overstated by \$391,106.26 in 2006 and by \$141,204 in 2007.

We also noted the following:

- The Section 101 SF-269 for the last period of 2006 contained no dates in box 9.
- The Section 101 SF-269 for 2007 was not signed.
- The Section 101 SF 269s for 2003, 2005, and 2008 failed to include information on interest earned in the Remarks box #12.

SOS did not have procedures to ensure that periodic reconciliations were performed to confirm that the disbursements listed on spreadsheets of expenditures used as a basis for the SF 269s agreed with amounts listed in the state's accounting system for the election fund.

HAVA Section 902. AUDITS AND REPAYMENT OF FUNDS, Part (a) – Recordkeeping Requirement states that each recipient of a grant or other payment made under this Act shall keep such records with respect to the payment as are consistent with sound accounting principles, including records which fully disclose the amount and disposition by such recipient of funds, the total cost of the project or undertaking for which such funds are used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

Where the grantee receives federal assistance for HAVA Section 101 and 251 program activities, HAVA and the EAC require that SF-269s be filed annually with the EAC for each type of funding. HAVA also requires that an election fund be set up in the treasury of the State government to receive HAVA program deposits from which HAVA program expenses can be paid. The SF-269 for HAVA Section 101 funds is due at the end of February each year for the prior calendar year.

In addition, the EAC has provided guidance on the preparation of the annual reports on its website at

http://www.eac.gov/election/HAVA%20Funds/docs/modelreportingform1.pdf/attachment_download/file.

Recommendation:

The SOS should coordinate with the EAC regarding the filing of amended forms SF 269. to report the correct information and ensure that future Sec. 101 financial reports reconcile to the election fund as of the date of the report.

SOS's Response:

The SOS disagreed with some elements of the finding, contending that the various differences cited were the result of timing and miscoding of expenditures, and the reporting thereof, and not the result of inappropriate use of HAVA funds, as set forth in Appendix A. The SOS also stated that they have internal controls regarding the appropriate review of financial reports prior to filing. However, they did agree that the cumulative reporting error needed to be corrected and filed a revised report with the EAC on September 22, 2009.

Auditors' Response:

We commend the SOS for implementing internal control procedures through segregation of duties to comply with the financial requirements of the HAVA, and encourage the SOS to

implement reconciliation procedures that will ensure financial reports filed with the EAC reflect accurate amounts for appropriate assessment of the HAVA program in California.

FINANCIAL MANAGEMENT SYSTEM – INTEREST

The SOS transferred \$15.8 million in Section 102 funds to Los Angeles County in May 2004. The County was required to use these funds to replace its punch card voting system. However, because of a delay in the state's voting systems certification process, the County did not completely spend these advanced funds until fiscal year 2007. The County's single audit for the fiscal year ended June 30, 2007 found that during that period, the advanced funds and the related cumulative interest of about \$858,000 was retained by the County in its general fund.

The County requested guidance from the California Secretary of State's office as to the disposition of the interest income. The Secretary of State responded to this request on August 27, 2008. The SOS advised the county that under HAVA it could retain the interest earned and use the funds for Section 102 HAVA related expenses. As of March 18, 2009 the County had not deposited the accumulated interest in a HAVA account. County election officials told us they were working with the County's Auditor-Comptroller's office to have the funds transferred.

The Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments, 41 CFR 105-71, also known as the Common Rule states in 41 CFR 105-71.120(b)(7) that "procedures for minimizing the time elapsing between the transfer of funds from the U. S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency."

Further, 41 CFR 105-71.121(b) states that "methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205."

Recommendation:

The SOS should direct the County of Los Angeles to determine the interest income which has accrued in the County's general fund because of the delay in disbursing Section 102 funds and to deposit this amount in the County's HAVA fund to be used for expenses related to the replacement of punch card voting machines. The SOS should also verify the interest calculations made by the County to assure the correct amount is returned to the HAVA fund. We also recommend that in the future the SOS provide funds to counties only to reimburse prior county expenditures or when it is clear that the counties will be able to spend the funds on a timely basis.

SOS's Response:

The SOS agreed that there is accumulated interest on the undisbursed Sec. 102 funds advanced to the county, and that it needs to be transferred to the credit of HAVA funds. However, the SOS took exception to our characterization that potential interest income had been lost.

The SOS worked with Los Angeles county officials to ensure that all interest earned on the advanced HAVA funds was transferred to the county's HAVA election fund. The county will also be required to submit an annual financial report of the beginning and ending balances in the election fund, including support that all expenditures during the period comply with Section 102 requirements for voting machine replacement.

PROPERTY MANAGEMENT

Six of the seven counties we visited did not maintain adequate records of equipment purchased with HAVA funds in compliance with the Common Rule. Part 41 CFR 105-71.132 states that property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property. The Common Rule also requires that a physical inventory of the property must be taken and the results reconciled with the property records at least once every two years. Further, the Common Rule requires that a control system must be developed to ensure adequate safeguards to prevent loss, damage or theft of the property. Any loss, damage, or theft shall be investigated.

At each of the seven counties we visited we selected a random sample of the voting machines and traced the machines to the warehouse. At two counties we were unable to find all of the machines in our sample. At one of the counties, the specific location within the warehouse of each machine in the inventory was not identified in the inventory listings maintained by the county. The county stored over two thousand voting machines in the warehouse. Warehouse staff did have informal records of the specific locations of some of the machines. However, only two of the 30 items in our sample were listed on the informal records. As a result, we were able to find only two of the thirty items in our sample.

At another county, we were unable to find five of the 20 Vera Vote printers in our sample. According to the county election office staff, the printers had been transferred from the Registrar's office to a remote warehouse. During the move, labels identifying containers in which the printers were stored may have fallen off and been put back on the wrong containers or not replaced at all. As a result, five of the printers in our sample were not in the containers indicated on the county's inventory records. County staff told us that they did not expect to use the voting equipment located at the remote warehouse in the near future and had no plans to conduct a physical inventory to assure that all transferred equipment was accounted for.

The *Uniform Administrative Requirements For Grants And Cooperative Agreements With State And Local Governments* 41 CFR § 105-71.132(d)(2) states that a physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

The Federal Management Regulation (FMR), the successor regulation to the Federal Property Management Regulations (FPMR), requires agencies to maintain property records and conduct physical inventory of sensitive property (regardless of costs). Assets that do not meet the capitalization threshold but are defined as sensitive are required to be accounted for. Each agency usually defines what it considers as sensitive property. Examples of sensitive property definitions are as follows:

- *Sensitive property, regardless of its acquisition cost, requires special accountability and is subject to more stringent rules because it is considered to be susceptible to theft, loss, misuse, or conversion to personal use.*

Recommendation:

The SOS should insure that property management records of the counties have the information required by the Common Rule. The SOS should require Riverside and Sacramento counties to conduct a physical inventory of all HAVA-funded equipment in their possession and use the results to correct their property records. The SOS should also verify that other counties in the state are in compliance with federal regulations.

SOS's Response:

Although the SOS took exception with certain elements of the finding regarding the applicability of the "Common Rule" and other guidance to the counties, and the determination of the dollar values to be included in the inventory records, they agreed to work with the counties to ensure that HAVA property inventories reflect the standards as set forth in the guidance.

PROCUREMENT

The state improperly spent \$81,374 to print voter registration forms to be sent to every college and high school student in the state. California's *Student Voter Registration Act of 2003*, (AB 593, ch819, Stats 2003) requires that the Secretary of State annually provide every high school, community college, California State University and University of California campus with voter registration forms. The act requires that the number of forms shall be consistent with the number of students enrolled at each school.

EAC Advisory Opinion FAO-08-005 states that neither Section 101 nor 251 funds may be used to print, copy, or revise State voter registration forms. Providing forms is an activity that States have been carrying out for years, is not a requirement imposed by HAVA, is not educational (even if there are instructions on the form), is not an improvement to the administration of elections for Federal office and must continue to be funded by the State.

SOS officials told us that they consider the provision of voter registration cards to students to be part of their voter education efforts. In the event that EAC should determine that these costs are in fact related to voter education, that portion of the cost related to students not yet eligible to vote should be determined and returned to the United States Treasury.

Recommendation:

The SOS should resolve with EAC the issue of whether the costs associated with the printing of voter registration forms sent to state high schools and colleges are allowable HAVA expenditures. EAC should also require the state to determine if additional HAVA funds beyond the \$81,374 we identified have been used to print voter registration forms for the same purpose.

SOS's Response:

The SOS disagreed that the payment for the registration forms should not be allowed stating that the cost was incurred two years before definitive guidance in the form of frequently asked questions (FAQ) was issued by the EAC regarding the appropriate use of HAVA funds, and that

the FAQs did not address the specific issue using HAVA funds for registration forms until August 2008. They also state that the printed forms contain customized information directed at high school and college graduating seniors on how to register to vote, that is allowable based on the EAC's FAQ 08-005. This FAQ also disallows the cost of printing voter registration forms.

Auditors' Response:

The SOS is correct in that the voter registration forms provide information instructing individuals on how to register to vote; however, the EAC guidance is clear that the cost of printing voter registration forms is not allowed. We encourage the SOS to work with the EAC to evaluate the \$81,374 payment to determine if all or a part of the expense is an appropriate use of HAVA funds.

We provided a draft of our report to the appropriate individuals of the California Secretary of State, and the United States Election Assistance Commission. We considered any comments received prior to finalizing this report.

CG performed its work between February 2, 2009 and March 19, 2009.

Clifton Anderson LLP

Calverton, Maryland
July 31, 2009



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November 12, 2009

Mr. Curtis Crider
Office of Inspector General
U.S. Election Assistance Commission
1225 New York Avenue, NW – Suite 1100
Washington, DC 20005

Dear Mr. Crider:

The Secretary of State's office (SOS) has reviewed the U.S. Election Assistance Commission's (EAC) draft Notice of Findings and Recommendations (NFR) prepared by Clifton Gunderson, LLP (CG) regarding the SOS's administration of the Help America Vote Act of 2002 (HAVA) program. The objective of the review was to determine whether California spent HAVA funds in accordance with the Act and related administrative requirements from January 1, 2005, through December 31, 2008. The Secretary of State would like to thank CG for the professionalism demonstrated while performing this important oversight function on behalf of the EAC's Office of Inspector General (OIG).

Secretary of State Debra Bowen was elected in November 2006 and took office in January 2007. Although the audit covers HAVA spending between 2005 through 2008, we note that virtually all of the concerns brought forward by CG relate to activities carried out entirely or initiated under prior SOS Administrations. However, there is no question that the current Administration is dedicated to resolving any concerns set forth in order to comply with HAVA's statutory and administrative requirements.

EAC Audit Finding: Accounting and Reporting Errors

The OIG asserts that the SOS did not comply with HAVA Section 902, Audits and Repayment of Funds, Part (a) between 2003 and 2007. The SOS disputes that there was any failure to comply with the restrictions on the use of HAVA funding. However, the SOS agrees that an amended Financial Status Report is needed to clarify an accounting anomaly. That Financial Status Report was filed with the EAC on September 22, 2009.

The SOS submits timely Financial Status Reports known as SF-269s. As a part of the audit, in comparing data from the SOS's published financial reports and the SF-269s that had been submitted, it became clear that due to timing differences in when reports were submitted, expenditures inadvertently credited to the incorrect HAVA account, and a 2006 accounting system conversion, it appeared as though \$141,203.82 in spending had not been accounted for correctly.

Mr. Curtis Crider
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The OIG's assertion does not call into question the validity or propriety of the expenditures, and no repayment of funds is suggested or recommended as a result of this finding. Rather, it is a bookkeeping error that must be – and has been – corrected.

Related to this finding, the SOS notes there is no internal control deficiency between the SF-269 preparer and signer. Since California first began receiving HAVA funds, the SOS has employed an Accounting Officer who maintains HAVA financial records. This person is also responsible for HAVA reconciliations and reporting. Based on CG corrective action recommendation No. 1, CG staff has the mistaken impression that Linda Arviso-Hunt both prepares and signs SF-269 reports. In fact, Ms. Arviso-Hunt is the SOS Fiscal Manager and the second-line supervisor over the SF-269 preparer (HAVA Accounting Officer). SF 269 reports are prepared by the Accounting Officer and reviewed and approved by the Fiscal Manager. This separation of duties demonstrates that no internal control deficiency exists in the current environment.

The SOS agrees an amended SF-269 should be submitted to reduce the cumulative expenditure amount by \$141,203.82. That amended SF-269 was filed with the EAC on September 22, 2009.

EAC Audit Finding: Financial Management System - Interest

The EAC Office of Inspector General has determined that in 2004, a previous SOS Administration "advanced Section 102 funds to the County of Los Angeles before the county was able to utilize the funds on a timely basis, resulting in lost interest earnings to the HAVA program."

The SOS disputes the characterization of this finding as a loss of potential interest because of the prior Administration's actions. The audit itself makes clear that the HAVA program did not lose the opportunity to earn interest because the funds were advanced to Los Angeles County. As the finding states: "[T]he advanced funds were maintained in a trust fund and the related cumulative interest of about \$858,000 was retained by the County in its general fund." Advance payment to the County in 2004 appears to have been motivated primarily by the fact that in a December 2004 performance audit conducted by the California Bureau of State Audits, the prior Administration was criticized for not disbursing funds to counties in a timely manner in the face of looming federal deadlines to replace voting equipment.

The SOS worked with Los Angeles County to ensure the County transferred all interest earned on the advanced HAVA funds to a County HAVA election fund. The SOS verified the methodology used to calculate the interest to ensure the correct amount was deposited in the County HAVA election fund. Furthermore, to increase oversight and internal controls over HAVA funds, the SOS requires the Los Angeles County Registrar of Voters to submit an annual financial data report, verifying the establishment of the beginning and ending balances of the interest earned in that fund. In addition, the SOS requires Los Angeles County to submit a summary cover sheet, including paid vendor invoices, as evidence that expenditures from the interest earned strictly comply with Section 102 and are spent only for replacing its punch card

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voting system. These actions and conditions were certified via written correspondence by Los Angeles County on November 3, 2009.

EAC Audit Finding: Property Management

The EAC Office of Inspector General determined that in December 2005, when contracts for HAVA reimbursement to California counties were initiated, the Secretary of State's office did not require certain counties to comply with the Common Rule (41 CFR 105-71.132) regarding inventory controls for voting equipment. As noted previously, the general rules regarding disbursement and accounting of funds are not explicitly stated in HAVA. It was not until July 17, 2006, more than three years after the enactment of HAVA, when states were provided notice via e-mail of available information regarding the use of HAVA funds. That information, which was posted on the EAC's website in the form of a "Frequently Asked Questions" (FAQ) document, includes the admonishment that states should consult Office of Management and Budget Circulars A-87, A-102 (the Common Rule), A-122 and A-133, which establish general rules on the use of federal funds. In contrast to this information, HAVA itself includes language that makes it a somewhat unique federal program by explicitly prohibiting the EAC from enacting regulations or rules (Section 209) and language making states responsible for determining the methods of complying with HAVA (Sections 253(c) and 305). It appears the prior SOS Administration, facing looming compliance deadlines on January 1, 2006, controversy over voting systems and demands to conduct statewide elections annually, was unaware or did not focus on inventory control requirements for counties to monitor voting equipment after its purchase.

It is also not clear that voting equipment falls under the provisions of the Common Rule with respect to inventory controls. The OMB circulars cited by the EAC in its FAQ document do not specifically address the issue of inventory control, but circular A-87 defines equipment subject to these requirements as property with a per unit purchase price (capitalization cost) of \$5,000 or more. The direct recording electronic (DRE) voting units purchased by counties cited in the NFR cost less than \$5,000. In fact, the NFR suggests that the SOS contact the EAC to inquire whether voting equipment below the \$5,000 threshold is considered "sensitive equipment" that would be subject to these type of inventory controls. As suggested in the NFR, the SOS sought EAC guidance on this question by providing a draft copy of a statewide policy on inventory controls for HAVA equipment for counties to the EAC director of grants on September 29, 2009. This situation further illustrates the difficulty in understanding when or whether requirements such as these apply to HAVA programs.

Nonetheless, the SOS supports the need to provide assistance and oversight to ensure counties comply with applicable rules, laws, and regulations. Although the SOS's contracts with the counties specifically require county adherence to federal requirements such as these, the SOS, in advance of submitting the draft inventory control to the EAC, notified all 58 counties on June 4,

2009, of requirements for inventory controls as stated in the Common Rule (41 CFR 105-71.132), which includes the following:

- Description of property;
- Serial number or other identification number;
- Source of property;
- Titleholder of property;
- Date of acquisition;
- Property cost;
- Percentage of Federal participation in the cost of the property;
- Location of property;
- Use and condition of property; and
- Disposition data and sale price of the property.

Once the statewide policy has been reviewed by the EAC grants director, and any comments from the grants director have been taken into account, the SOS will work with the counties identified by auditors on the deficiencies in inventory control systems cited, and will follow-up with all counties to ensure that controls are in place that satisfy these federal regulatory requirements. These counties each received a letter on June 4, 2009, informing the county of the need to address inventory control issues identified in the audit and several have contacted the SOS to indicate they were taking remedial action.

EAC Audit Finding: Procurement

The EAC Office of Inspector General states a former SOS Administration improperly spent \$81,374 in HAVA funds in 2004 to print voter registration cards for graduating high school and college seniors. The SOS disputes this finding.

The invoice in question is from the Office of State Printing, dated July 29, 2004. At the time this program was initiated, the EAC had not provided any guidance or advisories that would have precluded the use of HAVA Section 101 funds for this purpose.

Explicit language of HAVA Title III permits this type of expenditure. Pursuant to HAVA Section 101(b), funds granted to states under this section can be used for educating voters concerning voting procedures and voting rights. HAVA Title III, Section 303(a)(4) specifies the requirements for mail-in registration forms; Section 303(d)(2) requires a state to make these materials available to voters by 2004. At the time that these voter registration cards were requested and printed by the Office of State Printing, California's voter registration cards did not conform to these Title III requirements, meaning already printed blank voter registration affidavits had to be replaced with these new, HAVA-compliant voter registration affidavits.

States were first provided EAC guidance on the appropriate use of HAVA funds via e-mail on July 17, 2006; nearly two years after the expenditure in question was made. The guidance was a

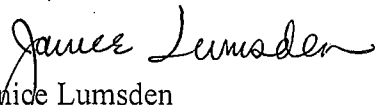
Mr. Curtis Crider
November 12, 2009
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frequently asked questions (FAQ) document and nothing in the FAQ precluded the use of HAVA funds for printing voter registration cards to comply with HAVA requirements. However, in the preamble to specific questions, the FAQ restates the purposes for which Section 101 funds may be used, which include complying with Title III requirements and educating voters about voting procedures.

The first EAC guidance on the specific question of using HAVA funds to print voter registration cards was issued in August 2008, four years after the expenditure in question was made. Although FAO 08-005 says that Section 101 funds may not be used to print voter registration forms, it also states: “[E]ducating voters on voting procedures would include providing instructions on how to register to vote...” It further states: “Section 101 funds may be used at any time to instruct individuals on how to register to vote.” The particular voter registration affidavits in question, which include instructions on how to register to vote, were customized for distribution to high school and college graduating seniors, the groups most likely to be impacted by new HAVA identification requirements for first-time voters who register by mail. HAVA itself attempts to foster participation of this demographic in the electoral process by authorizing outreach programs under Title V and Title VI of the Act, which seek to encourage college and high school students to become poll workers. The voter outreach effort undertaken by a prior Administration was in the spirit of encouraging participation from this group.

We appreciate the opportunity to review and comment on the draft NFRs. Please contact Daniel Abbott, the Secretary of State’s Internal Auditor, at (916) 651-9482 if there is a need to discuss this response.

Sincerely,


Janice Lumsden
Deputy Secretary of State, Operations

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.
- Understanding 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 maintain the level of expenses for elections at least equal to the amount expended in fiscal year 2000 and to meet the five percent matching requirement for section 251 requirements payments.
- Evaluated compliance with the requirements for accumulating financial information reported to the Commission on the Financial Status Reports, Form SF-269, 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 perform the following:
 - Observe equipment purchased with HAVA funds for proper accounting and safeguarding
 - Test disbursement of HAVA funds for allowability and compliance
 - Test cash receipts from SOS to ensure proper cash management
 - Test procurement of voting equipment for competitive bid process
 - Ensure compliance with HAVA Act.

MONETARY IMPACT AS OF DECEMBER 31, 2008

<i>Description</i>	<i>Questioned Costs</i>	<i>Additional Funds for Program</i>
Interest Income at the County Level		\$858,000
Cost of Voter Registration Forms	\$81,374	
Totals	<u>\$81,370</u>	<u>\$858,000</u>

Note: The interest income amount was based on the estimated amount at the date of audit fieldwork. The exact amount will be determined to the date the funds are transferred to the HAVA account.

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.

Obtaining Copies of OIG Reports

Copies of OIG reports can be requested by e-mail.
(eacoig@eac.gov).

Mail orders should be sent to:

U.S. Election Assistance Commission
Office of Inspector General
1225 New York Ave. NW - Suite 1100
Washington, DC 20005

To order by phone: Voice: (202) 566-3100
Fax: (202) 566-0957

To Report Fraud, Waste and Abuse Involving the U.S. Election Assistance Commission or Help America Vote Act Funds

By Mail: U.S. Election Assistance Commission
Office of Inspector General
1225 New York Ave. NW - Suite 1100
Washington, DC 20005

E-mail: eacoig@eac.gov

OIG Hotline: 866-552-0004 (toll free)

FAX: 202-566-0957

