

SEMIANNUAL REPORT TO CONGRESS

U.S. ELECTION ASSISTANCE
COMMISSION
OFFICE OF INSPECTOR GENERAL



*For the Period:
April 1, 2010, through
September 30, 2010*

A Message from the Inspector General

This report is submitted to Congress pursuant to the Inspector General Act of 1978, as amended. It summarizes the activities of the Office of Inspector General (OIG) for the six-month period ending September 30, 2010.

During this semiannual reporting period, we issued five reports on audits and evaluations conducted relating to U.S. Election Assistance Commission (EAC) programs and operations. Four reports were audits of the states' uses of Help America Vote Act (HAVA) funds. One report summarized an evaluation of EAC's use of appropriated funds to settle a claim of a prohibited personnel practice brought by a candidate for employment with EAC.

We found that audited states are generally using HAVA funds properly. The states continue to have issues complying with the provisions of HAVA and applicable Office of Management and Budget circulars that prescribe the documentation of personnel costs, maintenance of inventories of equipment purchased with Federal funds, competition for procurements, and deposit of HAVA funds in an interest-bearing election fund. The four audit reports resulted in \$3,139,543 in questioned costs. The reports included 12 recommendations to the states to improve their administration of HAVA funds and those recommendations were referred to the EAC for resolution.

Based on comments provided by the EAC, the OIG made technical corrections to Appendix C. The OIG provided the revised report to the EAC on November 15, 2010.

We are pleased to see progress made by EAC in developing internal policies and procedures to support its programs. However, the EAC still has a significant amount of work to do in order to complete these

necessary policies. We will continue to work with EAC as they develop and implement policies and procedures to support and strengthen their programs.

Submitted October 29, 2010

Reissued on November 15, 2010

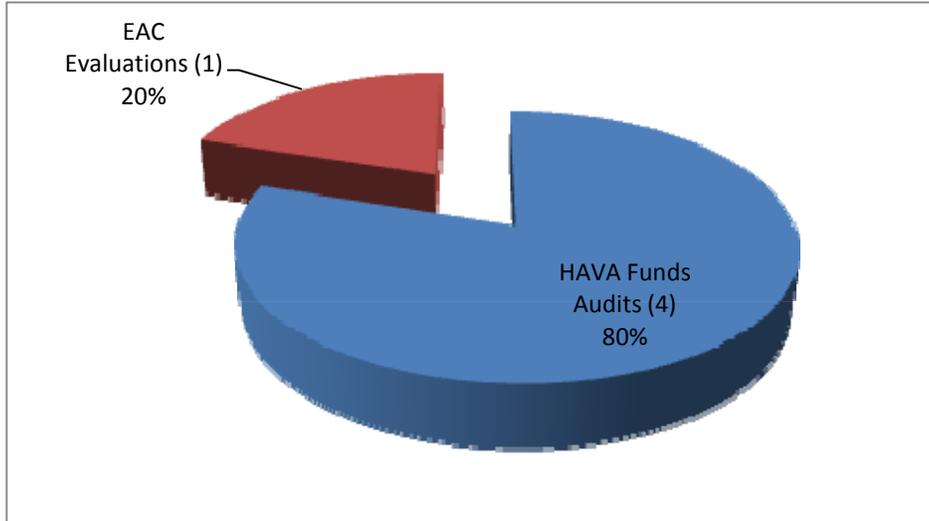


Curtis W. Crider

Inspector General

Profile of Performance

Audit and Evaluation Reports Issued for the Period April 1, 2010, through September 30, 2010



Profile of Performance for the Period April 1, 2010, through September 30, 2010

| Results | |
|------------------------------------|--------------|
| Questioned Costs | \$ 3,139,543 |
| Potential Additional Program Funds | \$ 403,820 |
| Funds to be Put to Better Use | \$ 0 |

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Election Assistance Commission Profile

The U.S. Election Assistance Commission (EAC or Commission) is a bipartisan, independent commission consisting of four members: Donetta Davidson, Chair; Gineen Bresso; and Gracia Hillman. There is one vacancy on the Commission due to the resignation of a Commissioner in February 2009. Several of the Commissioners are serving expired terms and are holding over pending either reappointment or nomination and confirmation of a replacement.¹

The EAC was created by the Help America Vote Act of 2002 (HAVA) to assist states with improving the administration of elections for Federal office. The EAC accomplishes this mission by providing funding, innovation, guidance and information to be used by the states to purchase voting equipment, train election personnel, and implement new election programs. The EAC has distributed approximately \$3.1 billion in grant funding to the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa (hereinafter referred to as “states”). With those funds, the states have purchased voting equipment, established statewide voter registration lists, implemented provisional voting, provided informational material to voters at the polling place, and implemented a program to verify the identity of voters using the statewide voter registration list in combination with other state and Federal databases.

The EAC also administers six other grant programs aimed at improving pre- and post-election testing of voting equipment, recruiting and training college-aged poll workers, conducting mock elections for school-aged children, improving the collection of data related to elections, and developing assistive technologies for voting equipment used by disabled voters. The EAC has awarded nearly \$14.5 million under three of these programs. An additional, \$9 million is available for

¹ Mr. Thomas Hicks has been nominated by the President to serve as an EAC Commissioner and is awaiting confirmation by the United States Senate.

award under the Accessible Voting Technology Initiative and Pre-Election Logic and Accuracy Testing and Post-Election Audit Initiative.

HAVA made EAC responsible for the first Federally-run testing and certification program for voting systems. The testing and certification program was begun in 2006. Through this program, the EAC develops standards for voting equipment, accredits laboratories, and reviews and certifies voting equipment based upon the tests performed by the accredited laboratories.

The EAC is responsible for administering the National Voter Registration Act (NVRA) by promulgating regulations for the content and use of the National Mail Voter Registration form. The EAC has published proposed changes to the NVRA regulations. Public comments are due on November 23, 2010.

Office of Inspector General Profile

HAVA required the appointment of an inspector general for the EAC and amended the Inspector General Act (IG Act) of 1978 (5 U.S.C.A. App. 3) to identify the EAC as a designated Federal entity (DFE). The Commission appointed its first inspector general in August 2006 and the EAC's Office of Inspector General (OIG) was created.

The OIG has always been a very small office. At many times over the past four years, the only employee of the OIG has been the inspector general. Assistance has been provided by detailing employees from other agencies, contracting for audits to be conducted by independent CPA firms, and, finally, by hiring permanent staff to the OIG. In 2008, the OIG hired two additional full-time employees. The OIG continues to be supported by these three positions: inspector general, assistant inspector general for audits and general counsel.

Despite our small size, we perform all of the duties required of the inspector general under the IG Act, including:

- Conducting and supervising audits, investigations, and other services (e.g., evaluations) relating to the programs and operations of the EAC;
- Providing leadership and coordination and recommending actions to management, which (1) promote economy, efficiency, and effectiveness in agency programs and operations; and (2) prevent and detect fraud, waste, abuse, and mismanagement of government resources; and
- Keeping the Commission, management, and Congress fully informed regarding problems and deficiencies, and the progress of corrective actions.

We have used detailees and contract auditors to augment our staff and to conduct many of the state and agency audits. In addition, when conducting an investigation, we work with other Federal government agencies to detail or contract for investigative services. In keeping with the President's directives on contracting and in-sourcing, we have made plans to reduce our reliance on outside contractors and to move some of the audit work back in-house. As such, in FY 2010 and 2011, the President's budget requests reflected an increase in personnel from the three current staff to a staff of seven full-time employees, including three additional auditors and one in-house investigator. This will allow the OIG to operate two audit teams that will conduct both internal and external audits, evaluations and reviews in tandem with contracted audit firms. Bringing some of the work back in-house will maintain our expertise on EAC programs and operations.

Since the inception of the audit program, the OIG has completed 28 audits of states - with 10 additional audits under way. These audits focus on the HAVA funding provided to and used by the states. Current

audits also cover funds distributed by the EAC under other, smaller grant programs such as the data collection grant program. Below is a listing of states that have received HAVA funding from the EAC, the amount of funding received, as well as how much of those funds have been subject to audit by the OIG.

| State | HAVA Funds Received | Required State Match on HAVA Funds Received | Total HAVA Funds Available Excluding Interest | Total HAVA Funds Audited | Unaudited HAVA Fund Balance |
|----------------|---------------------|---|---|--------------------------|-----------------------------|
| Alabama* | \$40,907,194 | \$1,887,711 | \$42,794,905 | \$0 | \$42,794,905 |
| Alaska | \$18,021,803 | \$685,358 | \$18,707,161 | \$0 | \$18,707,161 |
| American Samoa | \$3,319,361 | \$0 | \$3,319,361 | \$0 | \$3,319,361 |
| Arizona^ | \$52,532,244 | \$2,395,616 | \$54,927,860 | \$0 | \$54,927,860 |
| Arkansas | \$30,396,569 | \$1,275,456 | \$31,672,025 | \$28,205,912 | \$3,466,113 |
| California | \$348,900,661 | \$13,907,217 | \$362,807,878 | \$213,941,386 | \$148,866,492 |
| Colorado^ | \$44,752,318 | \$1,984,996 | \$46,737,314 | \$0 | \$46,737,314 |
| Connecticut | \$34,081,608 | \$1,530,611 | \$35,612,219 | \$34,168,003 | \$1,444,216 |
| Delaware | \$16,596,803 | \$610,358 | \$17,207,161 | \$0 | \$17,207,161 |
| D.C. | \$16,596,803 | \$610,358 | \$17,207,161 | \$0 | \$17,207,161 |
| Florida | \$165,008,621 | \$7,314,719 | \$172,323,340 | \$110,187,888 | \$62,135,452 |
| Georgia | \$83,231,168 | \$3,719,705 | \$86,950,873 | \$63,562,054 | \$23,388,819 |
| Guam | \$3,319,361 | \$0 | \$3,319,361 | \$0 | \$3,319,361 |
| Hawaii* | \$17,671,803 | \$666,937 | \$18,338,740 | \$0 | \$18,338,740 |
| Idaho^ | \$18,021,803 | \$685,358 | \$18,707,161 | \$0 | \$18,707,161 |
| Illinois ♦ | \$155,480,687 | \$5,818,214 | \$161,298,901 | \$29,025,846 | \$132,273,055 |
| Indiana | \$70,193,158 | \$2,865,279 | \$73,058,437 | \$61,430,159 | \$11,628,278 |
| Iowa | \$31,633,492 | \$1,401,763 | \$33,035,255 | \$28,834,907 | \$4,200,348 |
| Kansas^ | \$29,022,045 | \$1,264,318 | \$30,286,363 | \$0 | \$30,286,363 |
| Kentucky | \$42,070,094 | \$1,942,192 | \$44,012,286 | \$20,349,296 | \$23,662,990 |
| Louisiana* | \$49,051,620 | \$1,936,238 | \$50,987,858 | \$0 | \$50,987,858 |
| Maine | \$16,596,803 | \$610,358 | \$17,207,161 | \$0 | \$17,207,161 |
| Maryland | \$53,646,392 | \$2,440,634 | \$56,087,026 | \$27,683,205 | \$28,403,821 |
| Massachusetts^ | \$65,115,060 | \$3,000,273 | \$68,115,333 | \$0 | \$68,115,333 |
| Michigan | \$94,699,081 | \$4,155,814 | \$98,854,895 | \$69,309,457 | \$29,545,438 |
| Minnesota | \$49,254,670 | \$2,312,678 | \$51,567,348 | \$42,303,899 | \$9,263,449 |
| Mississippi | \$30,603,916 | \$1,323,814 | \$31,927,730 | \$0 | \$31,927,730 |
| Missouri | \$62,262,661 | \$2,363,929 | \$64,626,590 | \$52,632,344 | \$11,994,246 |
| Montana | \$18,021,803 | \$685,358 | \$18,707,161 | \$15,380,563 | \$3,326,598 |
| Nebraska^ | \$20,021,034 | \$790,581 | \$20,811,615 | \$0 | \$20,811,615 |
| Nevada^ | \$23,144,727 | \$954,987 | \$24,099,714 | \$0 | \$24,099,714 |
| New Hampshire | \$16,596,803 | \$610,358 | \$17,207,161 | \$0 | \$17,207,161 |

| State | HAVA Funds Received | Required State Match on HAVA Funds Received | Total HAVA Funds Available Excluding Interest | Total HAVA Funds Audited | Unaudited HAVA Fund Balance |
|--|------------------------|---|---|--------------------------|-----------------------------|
| New Jersey ♦ | \$84,904,403 | \$3,582,505 | \$88,486,908 | \$16,771,106 | \$71,715,802 |
| New Mexico | \$20,599,671 | \$821,035 | \$21,420,706 | \$14,123,471 | \$7,297,235 |
| New York* | \$238,095,934 | \$9,052,512 | \$247,148,446 | \$0 | \$247,148,446 |
| North Carolina | \$82,203,337 | \$3,864,305 | \$86,067,642 | \$59,042,030 | \$27,025,612 |
| North Dakota | \$18,021,803 | \$685,358 | \$18,707,161 | \$0 | \$18,707,161 |
| Ohio | \$136,496,196 | \$5,023,347 | \$141,519,543 | \$114,741,683 | \$26,777,860 |
| Oklahoma | \$35,200,723 | \$1,589,512 | \$36,790,235 | \$0 | \$36,790,235 |
| Oregon | \$36,421,250 | \$1,599,722 | \$38,020,972 | \$19,937,966 | \$18,083,006 |
| Pennsylvania ♦ | \$147,009,727 | \$5,935,244 | \$152,944,971 | \$17,459,399 | \$135,485,572 |
| Puerto Rico | \$5,470,505 | \$122,072 | \$5,592,577 | \$0 | \$5,592,577 |
| Rhode Island | \$18,021,803 | \$685,358 | \$18,707,161 | \$17,078,956 | \$1,628,205 |
| South Carolina | \$43,185,727 | \$1,913,989 | \$45,099,716 | \$35,165,678 | \$9,934,038 |
| South Dakota | \$18,021,803 | \$685,358 | \$18,707,161 | \$0 | \$18,707,161 |
| Tennessee | \$54,714,608 | \$2,433,481 | \$57,148,089 | \$27,601,101 | \$29,546,988 |
| Texas^ | \$203,631,823 | \$9,481,882 | \$213,113,705 | \$29,912,682 | \$183,201,023 |
| Utah* | \$26,804,496 | \$946,669 | \$27,751,165 | \$0 | \$27,751,165 |
| Vermont | \$16,596,803 | \$610,358 | \$17,207,161 | \$0 | \$17,207,161 |
| Virginia | \$69,121,820 | \$3,025,756 | \$72,147,576 | \$33,270,545 | \$38,877,031 |
| Virgin Islands | \$3,319,361 | \$0 | \$3,319,361 | \$0 | \$3,319,361 |
| Washington | \$65,825,930 | \$2,785,688 | \$68,611,618 | \$42,474,187 | \$26,137,431 |
| West Virginia* | \$22,043,424 | \$879,837 | \$22,923,261 | \$0 | \$22,923,261 |
| Wisconsin* | \$54,013,843 | \$2,474,263 | \$56,488,106 | \$0 | \$56,488,106 |
| Wyoming | \$17,671,803 | \$666,937 | \$18,338,740 | \$7,967,787 | \$10,370,953 |
| Total | \$3,138,168,959 | \$130,616,378 | \$3,268,785,337 | \$1,232,561,510 | \$2,036,223,827 |
| * Audit in progress ♦ Second audit in progress ^ Audit planned for FY 2011 | | | | | |

The OIG's program to ensure economy, efficiency and integrity in the use of funds is not exclusively translated into audits of the EAC and its grant recipients. The OIG also investigates allegations of waste, fraud, abuse and mismanagement in EAC programs and operations. Over the past year, the OIG has made a concerted effort to improve the information and education of EAC personnel, grant recipients, and the general public about our role in protecting the public's investment in EAC programs and our nation's elections. We conducted training sessions, began issuing a newsletter and retooled our web site content, all with the goal of educating our constituents on our role and efforts to investigate

allegations of waste, fraud, abuse, and mismanagement. These efforts have paid off. We have noticed a marked improvement in the information received in hotline complaints and a reduction in complaints that have to be referred to other entities for investigation.

State Audits

HAVA funds have been distributed by the EAC to states for use to improve the administration of Federal elections by purchasing new equipment, establishing and operating statewide voter lists, implementing provisional voting, and verifying the identity of persons who wish to register to vote. The OIG conducts audits of the states' use of HAVA funds. Through those audits, the OIG examines:

- whether the recipient used HAVA funds in accordance with HAVA and other applicable Federal requirements;
- whether the recipient has properly accounted for purchases made with HAVA funds and any income derived from those purchases;
- whether grant funding was maintained and accounted for in keeping with HAVA; and
- whether the recipient provided sufficient matching funds and maintained Federal monies in a separate, interest-bearing election fund.

During the reporting period, the OIG contracted with the professional auditing firm, Clifton Gunderson LLP, to conduct the HAVA funds audits. Four reports were issued based upon those audits. Below are summaries of those audits:

Connecticut: The audit of the Connecticut Secretary of State (SOS) revealed 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 EAC. The SOS also complied with section 251 requirements. However, the SOS did not

maintain a comprehensive inventory of property purchased with HAVA funds as required by the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments*, 41 C.F.R. § 105-71.132. Likewise, the audit found that the election jurisdictions did not maintain adequate security over election equipment.

In its response to the draft report, the SOS generally agreed with the report's findings and recommendations and provided corrective actions including ensuring that the election jurisdictions understand and adhere to Federal security requirements.

The audit was referred to the EAC to resolve findings and recommendations made in the report. The EAC indicated as a part of its audit resolution that it would provide the Connecticut Secretary of State's Office with sample inventory sheets.

Montana: This audit of the Montana Secretary of State (SOS) disclosed 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 EAC. The SOS also complied with Section 251 requirements. There were some exceptions to this general finding:

- Failure to maintain adequate property records;
- Errors on financial reports submitted to the EAC;
- Failure to obtain prior approval for capital expenditures; and
- Failure of certain counties to accrue interest on idle HAVA funds.

In its responses to the findings and recommendations, the SOS generally agreed with the findings and provided remedial measures to address the findings. The EAC, through the audit resolution process, indicated that it would work with the state of Montana to resolve the issues identified in the report.

Michigan: This audit of the Michigan Secretary of State (SOS) disclosed 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 (EAC). The SOS also complied with Section 251 requirements. The audit did identify an exception to this general finding in that the SOS did not deposit a sufficient amount of matching funds into the HAVA fund and therefore had a principle and interest deficit in the HAVA election fund.

In its responses to the findings and recommendations, the SOS generally agreed with the findings and stated that it would deposit the principle amount into the HAVA fund on or before October 1, 2009. The SOS further proposed that it would offset the interest owed to the HAVA fund against excess payments made by the SOS toward its maintenance of effort requirement. The resolution of whether this is a sufficient or acceptable remedy for the interest shortfall was referred to the EAC. The EAC allowed Michigan to offset the shortfall in the HAVA fund with other allowable expenditures.

Tennessee: The audit of the Tennessee Secretary of State's Division of Elections (SOS-DOE) revealed that the SOS-DOE failed to adequately document payroll charges and that certain counties failed to properly compete procurements. With the above noted exceptions, the audit determined that the SOS-DOE generally accounted for and expended HAVA funds in accordance with the HAVA requirements and complied with the financial management requirements established by the EAC. The SOS also complied with section 251 requirements.

The SOS-DOE generally agreed with the findings contained in the report, namely that competitive procurement processes were not used and that the SOS-DOE did not comply with OMB Circular A-87 in documenting payroll charges to the HAVA grant. However, the SOS-DOE did not believe that there was any harm associated with the lack of competition on the voting system purchases as purchases made by other counties

under a competitive process resulted in the same purchase price as those that were not competitively bid. The EAC agreed with SOS–DOE.

Reviews of EAC Operations

Over the past six months, the OIG issued one evaluation of EAC operations. The evaluation was requested by a member of Congress and involved the EAC’s use of its fiscal year 2010 appropriation to settle a claim. Details of the evaluation follow:

Use of Appropriated Funds to Settle a Claim

In 2009, a candidate for the position of EAC general counsel filed a complaint with the Office of Special Counsel (OSC) alleging that the EAC failed or refused to place him in the position due to his political affiliation. The candidate alleged that he was offered the position, accepted it, and that the employment offer was subsequently rescinded by the Commission. An investigation by the OSC ensued. In December 2009, the EAC entered into a settlement agreement with the candidate in which the EAC did not admit liability but agreed to pay the candidate an undisclosed amount to resolve his claim with OSC and in exchange for him withdrawing a similar complaint filed with the EAC Office of Inspector General.

The OIG received a request from a member of Congress to review the settlement agreement and to determine whether EAC had authority to enter into the agreement, used appropriate fiscal year funds and followed appropriate protocols in entering into the agreement. Our review found that the EAC had the authority to settle this claim, used the appropriate fiscal year funds, and that they sought and obtained the advice of other government agencies in the absence of an established agency protocol for handling such matters.

Other Activities

Reviews of Legislation, Rules, Regulations and Other Issuances

The OIG conducts regular monitoring of EAC program activities and policy-making efforts. We provide comment to significant policy statements, rulemaking and legislation that affects the EAC. During the reporting period, we reviewed six proposed policy statements or proposed regulatory actions by the EAC:

- Proposed Notice and Comment Policy Version 2
- Proposed Privacy Policy Statement
- Proposed Rule of Agency Procedure No. 1: Procedures or Voting by Circulation Version 2.0
- Proposed Rulemaking: Nonprocurement Debarment and Suspension
- Proposed Rulemaking: National Voter Registration Act Regulations
- Maintenance of Expenditure Proposed Policy as Amended on 2-19-10

The OIG provided written comments and testimony for an EAC public meeting with regard to the EAC's maintenance of expenditure policy. The OIG takes exception to the final policy statement adopted by the EAC. For more information regarding this, see [Significant Revised Management Decisions](#) and [Significant Management Decisions with Which the Inspector General Disagrees](#).

In addition to these items, the OIG reviewed various advisory opinions issued by the EAC regarding the use of HAVA funds. The OIG also reviewed proposals and issuances distributed by the administration such as the administration's proposed policy on the definition of "inherently governmental." Last, the OIG participated in and provided comments to issues circulated by the Council of Inspectors General for Integrity and

Efficiency, including commenting on several pieces of legislation aimed at altering the authorities and responsibilities of inspectors general.

Non-Federal Audits

OMB Circular A-133 establishes audit requirements for State and local governments, receiving Federal awards. Covered entities that expend \$500,000 or more a year in Federal awards are required to obtain an annual organization-wide audit “single audit”. The audits are conducted by non-Federal auditors, such as public accounting firms and State auditors. OIG reviews the resulting audit reports, findings and questioned costs related to EAC awards.

During this reporting period, the OIG referred the following single audits to the EAC:

- **West Virginia Single Audit for the Year Ended June 30, 2009 (Assignment No. E-SA-WV-53-10)**
The single audit report identified one instance of non-compliance applicable to the West Virginia Secretary of State’s (SOS) administration of HAVA funds. The audit reported that the SOS did not complete the required semi-annual certification for one employee that worked full time on HAVA for the period July 1, 2007 through August 31, 2009. The SOS provided semi-annual certifications for the period March 7, 2005 through June 30, 2009; the certifications were signed on October 8, 2009. The audit questioned \$124,276 in salary costs.
- **Illinois Statewide Single Audit for the Year Ended June 30, 2009 (Assignment No. E-SA-IL-16-10(A))**
The single audit report contained two material weaknesses applicable to the Illinois State Board of Elections’ administration of HAVA funds. Both of the material weaknesses were also considered noncompliance findings. The audit found that the State Board did not perform on-site reviews of sub recipients that received HAVA

funds. The SBOE passed through approximately \$5.7 million to sub-recipients in fiscal year 2009. This finding was issued in prior years. see finding codes 08-91, 07-81 and 06-89. The audit also found that the State Board did not review OMB A-133 reports for sub-recipients, had not performed desk reviews for any of its sub-recipients, and has not implemented procedures to follow-up on missing reports.

Investigations

The OIG operates a hotline for the receipt of complaints from employees and members of the public. The OIG received 12 complaints during the reporting period. Four of those complaints did not warrant an investigation given the nature of the complaint. Two of the complainants were referred to the EAC as the appropriate place to make the complaint and seek remedial action. Five complaints were referred to other government agencies for response. One complaint was investigated and closed following determination that the allegations were not within the jurisdiction of the EAC OIG. One complaint has been referred to the OIG's audit division for further audit and investigation.

Audits and Evaluations In Progress

During the reporting period, the OIG began or continued work on ten audits of states' use of HAVA funds. These audits were not completed by the end of the reporting period.

The OIG also continued work on one audit that was requested by members of Congress and the EAC Chair. The audit covers grants distributed by the EAC to Project Vote, an affiliate of the Association of Community Organizations for Reform Now (ACORN). The EAC made grants to Project Vote for work in two states under the EAC's College Poll Worker Program. The grants were for \$16,876 each and were awarded in 2006. The OIG issued the draft report to the EAC for comment on

September 15, 2010 and anticipates issuing a final report in November 2010.

Significant Revised Management Decisions

In 2007, the EAC issued a policy statement with regard to the maintenance of effort requirement imposed on states that receive requirements payments funding under HAVA. HAVA requires that states show:

How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

HAVA, Section 254(a)(7); 42 U.S.C. § 15404(a)(7). The maintenance of effort policy previously issued by the EAC was contained in two advisories, EAC 2007-003 and EAC 2007-003-A. Those advisories indicated that the maintenance of effort requirement contained in HAVA was a cost sharing method and that the requirement applied to the use of HAVA funds by states and subrecipients, including counties, municipalities, and other local governments that received HAVA funds.

On April 16, 2008, the EAC suspended the application of these two advisories pending a subsequent determination by the Commission regarding its interpretation of the maintenance of effort requirement. The EAC debated this issue for nearly two years. On February 19, 2010, the EAC adopted a proposed policy regarding HAVA's maintenance of expenditure/effort (MOE) requirement.² The proposed policy would exempt, with limited exceptions, subrecipients, including counties, municipalities and other local governments, from the requirement of maintaining their pre-HAVA election expenditures while using Federally-

² With the adoption of the proposed MOE policy on February 19, 2010, the EAC changed terminology from "maintenance of effort" to "maintenance of expenditure."

provided funding to support their election activities. A number of other changes were made from the initial advisories on maintenance of effort including:

- Suggesting that states submit a maintenance of expenditure plan for approval to the EAC;
- Allowing states to identify what documents they would use to support their maintenance of expenditure costs;
- Allowing states to aggregate maintenance of expenditure costs amongst the state and local jurisdictions (where applicable) to demonstrate satisfaction of the requirement;
- Intimating that if the EAC accepted a state's maintenance of expenditure plan that no findings would be issued in subsequent audits; and
- Permitting depreciation of capital assets not allowed by HAVA.

The EAC sought comments from the public for a period of 30 days.³ The EAC received comments from seven different groups or individuals. The OIG was amongst the seven groups that submitted formal comments during the public comment period. The inspector general was asked to testify at the EAC's public meeting on June 28, 2010, regarding his comments on the proposed maintenance of expenditure policy. The OIG provided written testimony in lieu of traveling to Chicago for the meeting. In those comments and testimony, the OIG took exception to the proposed MOE policy. For more information regarding the OIG's objections to the proposed and final policy, see [Significant Management Decisions with Which the Inspector General Disagrees](#).

On June 28, 2010, the EAC issued a final MOE policy that replaced EAC Advisories 2007-003 and 2007-003-A. The EAC's new policy does not apply HAVA's MOE requirement to subrecipients unless those subrecipients received funding appropriated by the state in the base year,

³ The EAC published a notice seeking public comments in the Federal Register on March 19, 2010. See 75 FR 13265.

the fiscal year preceding November 2000. The new policy further suggests but does not require that states submit an MOE plan. The policy continues to allow states to specify the documentation that it will use to support MOE costs. The policy was amended to require that states consider the entire cost of capital expenditures when calculating their MOE requirements as opposed to allowing them to depreciate the cost of those capital expenditures.

Significant Management Decisions with Which the Inspector General Disagrees

The OIG takes exception to the MOE policy⁴ adopted by the EAC. The OIG believes that EAC policies should conform to the letter and spirit of HAVA as well as other applicable federal statutes, regulations and guidelines concerning the administration of grants. The OIG identified several areas in which the MOE policy and applicable law do not align.

The first instance is the applicability of the MOE policy to subgrants or subawards made by states (EAC's primary grantee) to units of local government such as counties, parishes, and municipalities. The EAC's policy exempts all but a few counties, municipalities and other local governments from the MOE requirement despite their past, current and future involvement in funding and conducting elections and in implementing HAVA's election reforms.

EAC makes grants to states. Many of those states have subsequently made subawards to counties, municipalities, and other local governments that have responsibilities for conducting elections and implementing HAVA. According to the EAC's policy, only those local governments that were appropriated funds from the state treasury during the base year (the fiscal year preceding November 2000) are subject to the MOE requirement. All other subrecipients of HAVA funds are exempted from the requirement to maintain their local expenditures on elections.

⁴ See [Significant Revised Management Decisions](#) for more information about the MOE policy.

A framework of federal guidance on the administration of grants by states and units of local government is already in place. However, EAC's policy deviates from that guidance.⁵ Office of Management and Budget Circular A-102, also known as the Common Rule, provides that requirements placed on the grant flow through to subawardees. A link is created between the receipt of funds under the grant or subgrant and the requirements that affect the grant. The EAC's policy breaks that link and makes only those local governments who received funds by appropriation from the state legislatures during the base year subject to the MOE requirement.

As stated more fully in our [written comments](#) to the proposed maintenance of expenditure policy, we believe that the application of the policy neither comports with the letter of applicable federal law nor Congress' intention in passing HAVA. HAVA was intended to improve, not maintain the process and procedure for conducting Federal elections. Congress used the MOE provision to ensure that the Federal investment in the election process would increase, rather than maintain, spending by states and local governments as they prepare for and conduct elections. The impact of limiting the application of this policy to local governments that received appropriations from the state legislatures is to allow those local governments to supplant their local expenditure on elections with the available Federal funds. This treatment does not protect the investment made by the American public in elections and does not honor the spirit of HAVA.⁶

The second area of concern relates to the aggregation of MOE costs permitted by the proposed policy. Simply stated, one unit of local government's expenditure on elections cannot be used to satisfy a deficit

⁵ To our knowledge, the EAC has not received approval from OMB to deviate from the requirements of OMB Circular A-102, the Common Rule.

⁶ This is the same position taken by the Congressional Research Service in an opinion provided to Representative Charles Gonzales in June 2008. The EAC and OIG were provided with copies of this opinion.

in spending by another or even by the state. Section 254(a)(2) of HAVA requires the states to monitor each of the local jurisdictions' efforts at compliance, including the distribution and use of HAVA funds to local governments for their use in meeting the HAVA requirements. Each unit of government that receives HAVA funds should be accountable for meeting the grant requirements and demonstrating that they have met the MOE requirement.⁷

The third concern is that the MOE policy impinges on the authority of the Office of Inspector General and the independence of its audits. The policy allows states to propose what are acceptable forms of documentation of expenses. The OIG conducts audits and issues findings based upon its assessment of state's compliance with HAVA, allowable use of HAVA funds, and the existence of appropriate supporting documentation for those expenses. EAC's action to approve a state's plan will not insulate a state from an audit finding if the state fails to provide adequate documentation.

Matters Referred to Prosecuting Authorities

We are reporting no activities in this category during the reporting period.

Denial of Access to Records

We are reporting no activities in this category during the reporting period.

Peer Review Reports

The EAC OIG was subject to a peer review in 2009. The review was conducted by the Federal Maritime Commission Office of Inspector

⁷ The Office of Management and Budget provided the same information to the EAC in May 2008. The OIG encouraged the EAC to discuss this matter with OMB.

General (FMC OIG). The report detailing that review was issued on June 10, 2009. The FMC OIG gave the EAC OIG a “pass” rating. No material deficiencies were noted. However, the FMC OIG did address four issues in its letter of comment:

- Complete independent statements in keeping with audit policy;
- Monitor continuing professional education requirements of auditors detailed from other OIGs;
- Use work paper check list to ensure that work papers have sufficient support for audit documentation and supervisory review; and
- Ensure technical checklist for monitoring audits performed by independent public accountants is used for each such audit.

Each of these recommendations has been implemented. There are no outstanding recommendations.

The EAC OIG conducted a peer review of the Consumer Product Safety Commission Office of Inspector General (CPSC OIG) in 2008. The report noted that the CPSC OIG had designed and implemented a system of quality control that complied with applicable standards. The report identified five issues on which recommendations were made. According to the CPSC OIG, all recommendations have been implemented.

Reports Issued

State Audits

1. Administration of Payments Received Under the Help America Vote Act by the Connecticut Secretary of State's Election Division (Assignment Number E-HP-CT-07-10), September 2010

2. Administration of Payments Received Under the Help America Vote Act by the Montana Secretary of State (Assignment Number E-HP-MT-02-10), September 2010

3. Administration of Payments Received Under the Help America Vote Act by the Michigan Department of State (Assignment Number E-HP-MI-01-08), April 2010

4. Administration of Payments Received Under the Help America Vote Act by the Tennessee Secretary of State's Election Division (Assignment Number E-HP-TN-02-09), April 2010

EAC Audits and Evaluations

1. Use of Appropriated Funds to Settle a Claim (Evaluation Report No. I-EV-EAC-01-10), September 2010

Investigations

None

Monetary Impact of Audit Activities

| | |
|------------------------------------|--------------|
| Questioned Costs* | \$ 3,139,543 |
| Potential Additional Program Funds | \$ 403,820 |
| Funds to Be Put to Better Use | \$ 0 |
| Total | \$3,543,363 |

*Unsupported costs are included in questioned costs.

Reports With Questioned Costs

| Category | Number | Questioned Costs | Unsupported Costs |
|---|--------|------------------|-------------------|
| A. For which no management decision had been made by the beginning of the reporting period. | 4 | \$ 3,088,308 | \$ 0 |
| B. Which were issued during the reporting period. | 1 | \$ 3,139,543 | \$ 0 |
| Subtotals (A + B) | 5 | \$ 6,227,851 | \$ 0 |
| C. For which a management decision was made during the reporting period. | 3 | \$ 5,956,625 | \$ 0 |
| (i) Dollar value of recommendations that were agreed to by management. | | \$ 698,479 | \$ 0 |
| (ii) Dollar value of recommendations not agreed to by management. | | \$5,258,146 | \$ 0 |
| D. For which no management decision has been made by the end of the reporting period. | 2 | \$ 271,226 | \$ 0 |

Reports With Potential Additional Program Funds

| <u>Category</u> | <u>Number</u> | <u>Dollar Value</u> |
|---|---------------|---------------------|
| A. For which no management decision had been made by the beginning of the reporting period. | 3 | \$ 873,404 |
| B. Which were issued during the reporting period. | 2 | \$ 403,820 |
| Subtotals (A+B) | 5 | \$ 1,277,224 |
| C. For which a management decision was made during the reporting period. | 5 | \$ 1,277,224 |
| (i) Dollar value of recommendations that were agreed to by management. | | \$ 1,219,138 |
| (ii) Dollar value of recommendations that were not agreed to by management. | | \$ 58,086 |
| D. For which no management decision has been made by the end of the reporting period. | 0 | \$ 0 |

Summary of Reports More Than Six Months Old Pending Corrective Action at September 30, 2010

The following is a list of audit and evaluation reports that are more than six months with management decisions for which corrective action has not been completed. It provides report number, title, issue date, and the number of recommendations without final corrective action.

| | |
|-----------------|--|
| I-EV-EAC-01-07B | Assessment of the U.S. Election Assistance Commission's Program and Financial Operations, February 2008, 8 Recommendations |
| I-EV-EAC-01-08 | United States Election Assistance Commission Federal Information Security Management Act 2008 Independent Evaluation Report, October 2008, 2 Recommendations |
| I-PA-EAC-01-08 | Audit of the U.S. Election Assistance Commission's Fiscal Year 2008 Financial Statements, November 2008, 1 Recommendations |
| I-PA-EAC-02-08 | Audit of U.S. Election Assistance Commission's Compliance with Section 522 of the 2005 Consolidated Appropriations Act, March 2009, 2 Recommendations |
| I-PA-EAC-02-09 | Evaluation of Compliance with the Requirements of the Federal Information Security Management Act, October 2009, 2 Recommendations |
| E-HP-FL-02-08 | Administration of Payments Received Under the Help America Vote Act by the State of Florida, November 2008, 1 Recommendation |

- E-HP-IA-06-08 Administration of Payments Received Under the Help America Vote Act by Iowa's Secretary of State, September 2009, 9 Recommendations
- E-HP-RI-05-07 Administration of Payments Received Under the Help America Vote Act by The Rhode Island and Providence Plantations Secretary of State's Election Division, September 2009, 6 Recommendations
- E-HP-CA-01-09 Administration of Payments Received Under the Help America Vote Act by the California Secretary of State, December 2009, 3 Recommendations
- E-HP-AR-03-09 Administration of Payments Received Under the Help America Vote Act by the Arkansas Secretary of State, February 2010, 4 Recommendations

Summary of Reports More Than Six Months Old Pending Management Decision at September 30, 2010

There no reports more than six months old pending a determination by management as of the end of this reporting period.

Reporting Requirements of the IG Act

| Section of Act | Requirement | Page |
|---------------------|--|------|
| Section 4(a)(2) | Review of Legislation and Regulations | 10 |
| Section 5(a)(1) | Significant Problems, Abuses, and Deficiencies | None |
| Section 5(a)(2) | Recommendations for Corrective Action With Respect to Significant Problems, Abuses, and Deficiencies | None |
| Section 5(a)(3) | Significant Recommendations From Agency's Previous Report on Which Corrective Action Has Not Been Completed | 23 |
| Section 5(a)(4) | Matters Referred to Prosecuting Authorities and Resulting Convictions | None |
| Section 5(a)(5) | Matters Reported to the Head of the Agency | None |
| Section 5(a)(6) | List of Reports Issued During the Reporting Period | 19 |
| Section 5(a)(7) | Summary of Significant Reports | 6 |
| Section 5(a)(8) | Statistical Table – Questioned Costs | 21 |
| Section 5(a)(9) | Statistical Table – Recommendations That Funds Be Put to Better Use | None |
| Section 5(a)(10) | Summary of Audit Reports Issued Before the Commencement of the Reporting Period for Which No Management Decision Has Been Made | None |
| Section 5(a)(11) | Significant Revised Management Decisions Made During the Reporting Period | 13 |
| Section 5(a)(12) | Significant Management Decisions With Which the Inspector General Is in Disagreement | 15 |
| Section 5(a)(13) | Information Described Under Section 804(b) of the Federal Financial Management Improvement Act of 1996 | None |
| Section 5(a)(14)(A) | Peer Review Reports Conducted on U.S. Election Assistance Commission Office of Inspector General during the Reporting Period | None |

| <u>Section of Act</u> | <u>Requirement</u> | <u>Page</u> |
|-----------------------|---|-------------|
| Section 5(a)(14)(B) | Statement of Peer Review Conducted on the U.S. Election Assistance Commission Office of Inspector General during a Prior Reporting Period | <u>17</u> |
| Section 5(a)(15) | Outstanding Recommendations from a Peer Review Report on the U.S. Election Assistance Commission Office of Inspector General | None |
| Section 5(a)(16) | Peer Review Reports Conducted by the U.S. Election Assistance Commission Office of Inspector General | None |

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

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Inspector General

U.S. Election Assistance Commission

This report, as well as other OIG reports and testimony, are available on the internet at: www.eac.gov/inspector_general