



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

FINAL REPORT:

**Administration of Payments Received
Under the Help America Vote Act by the
West Virginia Secretary of State**

APRIL 28, 2003 THROUGH AUGUST 31, 2009

**Report No.
E-HP-WV-04-09
March 2011**



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

March 7, 2011

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 the State of West Virginia (Assignment Number E-HP-WV-04-09)

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 the West Virginia 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 found that the state (a) did not contribute its matching funds requirement to the Section 251 HAVA fund on a timely basis, resulting in lost interest earnings, (b) did not transfer interest earned from the state general fund to the HAVA revolving fund on loan repayments received from counties prior to April 2007, (c) did not require the seven counties visited to maintain equipment inventory records that included all of the information required by federal regulations, (d) did not complete semi-annual certifications for SOS personnel working full-time on HAVA activities, (e) and the counties had not deposited in the election fund program income from the sale of voter registration lists, and (f) SOS had not reconciled the Election Fund and Revolving Loan Fund balances with the records maintained by the State Treasurer's Office.

In its responses (Appendix A-1, A-2 and A-3), the SOS generally agreed with the report's findings and proposed corrective actions, but disputed the finding regarding interest due on the revolving fund.

On September 17, 2010 the U.S. Election Assistance Commission provided us with a written response to the recommendations (Appendix A-4), which indicated that the U.S. Election Assistance Commission would work with the state to resolve the issues in the report. 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 May 7, 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 WEST VIRGINIA

April 28, 2003 Through August 31, 2009

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 West Virginia**

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 West Virginia Secretary of State (SOS) for the period April 28, 2003 through August 31, 2009 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. 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.

Our audit concluded that the SOS did not account for and expend HAVA funds in accordance with the requirements mentioned above for the period from April 28, 2003 through August 31, 2009. We noted exceptions needing SOS's management attention as follows:

- The state did not contribute its matching funds requirement to the Section 251 HAVA fund on a timely basis, resulting in lost interest earnings, estimated to be \$96,831 through August 31, 2009.
- The state did not transfer interest earned from the state general fund to the HAVA revolving fund on loan repayments received from counties prior to April 2007, estimated to be \$13,021 through August 31, 2009.

- The seven counties we visited did not maintain equipment inventory records that included all of the information required by federal regulations, such as cost, acquisition date, per cent of federal funding, or condition, and were not updated when State Voter Registration System (SVRS) equipment had been disposed of and replaced.
- The SOS did not complete semi-annual certifications for personnel working full-time on HAVA activities.
- The state and the counties have not deposited in the election fund program income from the sale of voter registration lists funded with HAVA proceeds or reported the totals to the EAC. Through August 31, 2009 the SOS had received net program income of \$219,410 from this activity. Only one of the seven counties we visited had maintained records of the net sales amounting to \$34,191.
- The SOS had not reconciled the Election Fund and Revolving Loan Fund balances with the records maintained by the State Treasurer's Office to ensure accurate reporting of data on the Financial Status Report (FSR) for Sections 101 and 251.

We have included in this report as Appendices A-1, A-2 and A-3 the SOS management's formal responses to the findings and recommendations dated December 29, 2009, February 11, 2010 and August 12, 2010, respectively. Although we have included management's written responses to our findings and recommendations, 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 West Virginia 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. 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 and disbursed by the SOS from April 28, 2003 through August 31, 2009 (75-month period) as shown in the following table.

TYPE OF PAYMENT	FUNDS RECEIVED					FUNDS DISBURSED	DATA AS OF
	EAC PAYMENT	PROGRAM INCOME	STATE MATCH	INTEREST EARNED	TOTAL AVAILABLE		
Section 101	\$ 2,977,057	\$ -	\$ -	\$ 102,558	\$ 3,079,615	\$ 2,869,626	8/31/2009
Section 102	2,349,474	-	-	111,131	2,460,605	2,460,605	8/31/2009
Section 251	15,303,569	2,048,206	805,451	1,149,890	19,307,116	16,010,563	8/31/2009
Total	\$ 20,630,100	\$ 2,048,206	\$ 805,451	\$ 1,363,579	\$ 24,847,336	\$ 21,340,794	8/31/2009

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.

We concluded that the SOS did not account for and expend HAVA funds in accordance with the requirements mentioned above. Exceptions identified include the state's failure to timely deposit the required five percent state matching funds and the applicable interest to the election fund; failure to timely transfer interest earnings from the state general fund to the HAVA revolving loan fund; failure to properly account for equipment purchased with federal funds; failure to maintain semi-annual personnel certifications; failure to deposit program income earned from the sale of voter registration lists to the election fund; failure to reconcile the SOS's fund balance for the revolving loan fund and the election fund to the West Virginia State Treasurer's Office (STO) fund balances, and the determination of whether the SOS and its subgrantees met the requirement for maintenance of a base level of state outlays which was specifically omitted from our scope of work as explained above. The SOS generally agreed with the findings and recommendations and has taken action on or is working to resolve the exceptions described below as set forth in Appendices A1, A2 and A3. However, the SOS disputed the finding regarding interest due on the revolving fund, and detailed their objection in Appendix A-2.

I. Interest on State Match

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

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

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

D. Interest earned on deposits of the fund.

Recommendation:

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

SOS Response:

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

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

The Secretary does object to the proposed corrective action recommended and provided further explanation below:

Some Counties in West Virginia spent \$2,683,383 of their own, non-HAVA monies – which has been recognized by EAC as qualifying for matching funds (see Mr. Edgardo Cortes' letter to Mr. Jason Williams dated October 24, 2007) to upgrade their voting systems as required by HAVA. Had those counties not spent the non-HAVA monies, the state would have been required to spend HAVA monies to upgrade the counties' systems. Had the state spent the \$2,683,383 from HAVA monies to upgrade the counties' systems, then, during the entire timeline from June 28, 2004 through the present, the balance of the election fund would have been much less than the actual balance plus the missing interest amounts.

Rather than requiring the state to transfer an amount equal to the \$91,230 in initially lost interest, plus \$5,601 in lost compounded interest, plus any additional compound interest lost since August 31, 2009, the Secretary proposes crediting the total lost interest against the \$2,683,383 in unclaimed matching funds.

II. Interest on the Revolving Loan Fund

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

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

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

- D. Interest earned on deposits of the fund.

Recommendation:

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

SOS Response:

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

III. Property Management

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

the equipment, serial number and the location. Moreover, the listings were not updated for State Voter Registration System (SVRS) equipment that had been disposed of and replaced.

The *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments*, 41 CFR 105-71.132 *Equipment* states that

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, 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.

Recommendation:

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

SOS Response:

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

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

IV. Personnel Certifications

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

We tested the period July 1, 2007 to August 31, 2009 since the state's single audits for the fiscal years ended June 30, 2006 and 2007 had addressed this issue. The Single Audit Reports of the State of West Virginia for the fiscal years ended June 30, 2006 and 2007 disclosed that the SOS did not have records to support employee salaries and benefits charged to the HAVA election fund.

In response to the findings reported in the Single Audit Reports, the EAC notified the state that the salaries and benefits charged to HAVA were disallowed and the funds should be returned to the HAVA election fund. The findings included salaries and benefits for full-time and part-time employees.

The SOS subsequently appealed the EAC decision with regard to full-time employees and provided affidavits certifying that the full-time employees worked only on HAVA related activities during the fiscal years ended June 30, 2006 and 2007. The SOS also stated that new procedures had been implemented to assure that full-time employees complete the required certifications on a timely basis.

Based on the appeal filed by the SOS, the EAC determined that only the salaries and benefits charged to the HAVA election fund for the part-time employees were disallowed and should be returned to the fund.

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:

4. We recommend that the SOS resolve with the EAC the appropriate corrective action regarding the lack of periodic certifications.

SOS Response:

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

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

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

V. Program Income

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

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

The *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments*, 41CFR § 105-71.125, states that:

program income means gross income received by the subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. EAC has authorized states to add program income to the HAVA grant and use the income for purposes and under conditions of the grant.

The *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments*, 41CFR § 105-71.141 states that:

each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency.

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

Recommendations:

We recommend that the SOS:

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

SOS Response:

As the auditors have reported, W.Va. State Code 3-2-30 requires, in conflict with EAC code, that part of the state generated monies be paid to the counties. The remainder of the state generated excess funds is to be placed in a residual fund. County-generated excess funds are to be placed in the county's general revenue fund. Relevant portions of the Code read as follows:

3-2-30. Public inspection of voter registration records in the office of the clerk of the county commission; providing voter lists for noncommercial use; prohibition against resale of voter lists for commercial use or profit.

(e) The fees received by the clerk of the county commission shall be kept in a separate fund under the supervision of the clerk for the purpose of defraying the cost of the preparation of the voter lists. Any unexpended balance in the fund shall be transferred to the general fund of the county commission.

(f) The Secretary of State may make voter lists available for sale subject to the limitations as provided in this section for counties. The cost for a partial list shall be one and one-half cents per name plus ten dollars for each disk required; the cost for a complete statewide list shall be one-half cent per name and a flat fee of one thousand dollars. One cent per name for each voter from a particular county on each partial list and one-half cent per name for each voter from a particular county on each statewide list sold shall be reimbursed to the appropriate county. The disk fee and one-half cent per name associated with a partial list and the flat fee of one thousand dollars associated with a complete statewide list shall be deposited to a special revenue account for purpose of defraying the cost of preparing the lists.

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

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

VI. Accounting and Reporting

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

Revolving Loan Fund:

We noted differences between the SOS's records as reported on the detailed summary of activity and the STO fund balance on the Statement of Account. As of August 31, 2009, the STO's fund balance was \$1,101,767 compared to the \$1,555,061 fund balance as reported on the detailed summary of activity by the SOS, resulting in a difference of \$453,295. Also, as of September 30, 2008 the program income (loan payments from the counties) reported on the Financial Status Report (FSR) for Section 251 was \$1,804,233, and the SOS's program income as reported on the detailed summary of activity was \$1,441,195 resulting in a difference of \$363,038.

Election Fund:

We noted differences between the SOS's records as reported on the detailed summary of activity and the STO fund balance on the Statement of Account. As of August 31, 2009, the STO's fund balance was \$1,846,633 compared to the \$1,951,172 fund balance as reported on the detailed summary of activity by the SOS, resulting in a difference of \$104,539 for the election fund.

As of December 31, 2008 the fund balance reported on the FSR for Section 101 was \$348,159, and the SOS's fund balance as reported on the detailed summary of activity was \$388,747, resulting in a difference of \$40,588.

Also, as of September 30, 2008 the fund balance reported on the FSR for Section 251 was \$1,950,563, and the SOS's fund balance as reported on the detailed summary of activity was \$1,751,261 resulting in a difference of \$199,302.

In preparing the Section 101 and 251 Financial Status Reports, SF 269, it was necessary for the SOS to evaluate the entries in the accounting records, utilizing Excel worksheets for each fund to accumulate the revolving loan fund and the election fund data for tracking purposes. However, as of August 31, 2009 the accounting data utilized by the SOS to account for HAVA financial activity did not reconcile to the revolving loan fund and the election fund balances provided by the STO. Thus, the accuracy of the Section 101 and 251 Financial Status Reports, SF 269s, filed with the EAC is in question.

HAVA Section 902. AUDITS AND REPAYMENT OF FUNDS, Part (a) – Recordkeeping Requirement.

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.

Recommendations:

We recommend that the SOS:

7. perform monthly reconciliations of the revolving loan fund and the election fund to ensure that all program income and disbursements are properly recorded and accounted for in the state's accounting records.
8. resolve the differences that have not been reconciled.
9. coordinate with EAC the filing of corrected Section 101 and 251 SF 269s.

SOS Response:

This is a new issue and was not identified to the Secretary of State at the exit conference with the auditors. The Secretary first became aware of the concerns raised only upon receipt of this NFR. The Secretary has diligently worked to identify and correct a situation that has apparently existed since 2003.

Data entry error has been identified as the source for most of the account differences. The data on the past reports is being corrected and amendments will be filed with the EAC. The Secretary's review has also identified a lack of formal written policy for accounting for each transaction. Responsibility for data entry was divided among multiple persons and each designed their own spreadsheets and systems. The current staff has inherited the systems

The following procedural changes have been made to address the concerns raised by the Findings and Recommendations:

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

Auditor's Response:

The Secretary of State was not made aware of this finding at the exit conference because the auditors had not finished the analysis of the information provided by the Secretary of State's staff prior to leaving the site. Also, the information was not provided to the auditor until the last week of our on-site visit. After analyzing the data, the auditor requested more detailed information from the SOS and determined that as of August 31, 2009 the accounting data utilized by the SOS to account for the HAVA financial activity did not reconcile to the revolving loan fund and the election fund balances provided by the STO. The auditor requested a reconciliation from the SOS to reconcile the differences noted but they could not reconcile the balances.

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

The draft report was provided to the Executive Director of the EAC for review and comment. The EAC generally agreed with the report's reviews and recommendations as well as the West Virginia officials initial responses. The EAC's complete response is included as Appendix A-4.

CG performed its work between September 21, 2009 and January 15, 2010.

Clifton Henderson LLP

Calverton, Maryland
March 3, 2010



Natalie E. Tennant

Secretary of State
State of West Virginia

Office of the Secretary of State
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December 14, 2009

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

Re: **RESPONSES OF W.VA. SECRETARY
OF STATE TO NFR**

Dear Mr. Crider:

Thank you for the four Notification of Finding and Recommendation supplied to us on December 4, 2009. We appreciate the opportunity to respond and we thank the audit process for bringing missteps to our attention so that we may immediately correct any errors committed in the past.

Our response to each of the four NFRs follows. I have identified each response by NFR reference number.

0800.01

NFR # _1_

AUDIT AREA: Interest on State Match

SOURCE/WORKPAPER REFERENCE NO.: **2400.05**

Date: September 30 2009

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

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

The Secretary does object to the proposed corrective action recommended.

Some Counties in West Virginia spent \$2,683,383 of their own, non-HAVA monies - which has been recognized by EAC as qualifying for matching funds (see Mr. Edgardo Cortés' letter to Mr. Jason Williams dated October 24, 2007) to upgrade their voting systems as required by HAVA. Had those counties not spent the non-HAVA monies, the State would have been required to spend HAVA monies to upgrade the voting systems. Had the State spent the \$2,683,383 from HAVA monies to upgrade the counties' systems, then, during the entire timeline from June, 28, 2004 through the present, the balance of the election fund would have been much less than the actual balance plus the missing interest amounts.

Rather than requiring the State to transfer an amount equal to the \$91,230 in initially lost interest, plus \$5,601 in lost compounded interest, plus any additional compound interest lost since August 31, 2009, the Secretary proposes crediting the total lost interest against the \$2,683,383 in unclaimed matching funds.

0800.03

NFR # 3

AUDIT AREA: Property Management

SOURCE/WORKPAPER REFERENCE NO.: **4000.01**

Date: October 5, 2009

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

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

NFR# 4 AUDIT AREA: Personnel Certifications SOURCE/WORKPAPER REFERENCE NO.: 2200.01, 2200.16 Date: October 8, 2009

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

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

Should it be determined that some, or all, of the payroll should be reimbursed, the Secretary, for the reasons given in response to NFR reference No. 2400.05, urges that the state be allowed to credit the \$2,683,383 in unclaimed matching funds against the total due.

NFR # 6 AUDIT AREA: Financial Management System - Program Income SOURCE/WORKPAPER REFERENCE NO.: 2500.01 Date: October 15, 2009

As the auditors have reported, W.Va. State Code §3-2-30 requires, in conflict with EAC code, that part of the state generated monies be paid to the counties. The remainder of the state-generated excess funds is to be placed in a special fund. County-generated excess funds are to be placed in the county's general revenue fund. Relevant portions of the Code read as follows:

§3-2-30. Public inspection of voter registration records in the office of the clerk of the county commission; providing voter lists for

noncommercial use; prohibition against resale of voter lists for commercial use or profit.

(e) The fees received by the clerk of the county commission shall be kept in a separate fund under the supervision of the clerk for the purpose of defraying the cost of the preparation of the voter lists. Any unexpended balance in the fund shall be transferred to the general fund of the county commission.

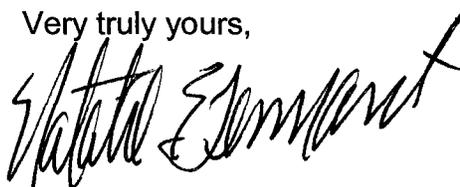
(f) The Secretary of State may make voter lists available for sale subject to the limitations as provided in this section for counties. The cost for a partial list shall be one and one-half cents per name plus ten dollars for each disk required; the cost for a complete statewide list shall be one-half cent per name and a flat fee of one thousand dollars. One cent per name for each voter from a particular county on each partial list and one-half cent per name for each voter from a particular county on each statewide list sold shall be reimbursed to the appropriate county. The disk fee and one-half cent per name associated with a partial list and the flat fee of one thousand dollars associated with a complete statewide list shall be deposited to a special revenue account for purpose of defraying the cost of preparing the lists.

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

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

This concludes my formal response to the NFRs. Our staff stands ready to supply any additionally required information or explanation.

Very truly yours,



Natalie D. Tennant
W.Va. Secretary of State

**US EAC HAVA Audit
West Virginia SOS
SOS Response NFR 2 & 8
Inception (April 2003) – August 31, 2009**

February 11, 2010

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

Re: **RESPONSES OF WV SECRETARY
OF STATE TO NFR**

Dear Mr. Crider:

Thank you for the two additional Notifications of Finding and Recommendation supplied to us on January 27, 2010. We appreciate the opportunity to respond and we value the opportunity to correct any errors committed in the past.

Our response to each of the two additional NFRs follows. I have identified each response by NFR reference number.

NFR # 2

AUDIT AREA: Interest on Revolving Loan Fund

SOURCE/WORKPAPER REFERENCE NO.: [7020.40](#) [7020.41](#) [7020.42](#) [7020.43](#)

Date: January 6, 2010

According to the Finding, the West Virginia Secretary of State failed to deposit into an interest bearing account certain repayments by counties of loans made to the counties to assist in the purchase of HAVA required election equipment. The Finding states that the State owes interest to the HAVA fund from February, 2006, through August 31, 2009.

The Secretary **DISPUTES** this finding. The loan repayment amounts were deposited into an interest bearing account beginning April, 2007. Beginning with that date, interest

was credited to the HAVA funds. However, Interest could not have been earned from February, 2006, as alleged in the findings, because the first loan repayment was not received until June, 2006.

NFR # 8

AUDIT AREA: Financial Accounting and Reporting

SOURCE/WORKPAPER REFERENCE NO.: [3000.034 2120.03](#)

Date: January 25, 2010

This is a new issue and was not identified to the Secretary of State at the exit conference with the auditors. The Secretary first became aware of the concerns raised only upon receipt of this NFR. The Secretary has diligently worked to identify and correct a situation that has apparently existed since 2003.

Data entry error has been identified as the source for most of the account differences. The data on the past reports is being corrected and amendments will be filed with the EAC. The Secretary's review has also identified a lack of formal written policy for accounting for each transaction. Responsibility for data entry was divided among multiple persons and each designed their own spreadsheets and systems. The current staff has inherited the systems designed by employees of previous Secretaries of State which created difficulties in reconciling accounts and understanding responsibilities.

The following procedural changes have been made to address the concerns raised by the Findings and Recommendations:

- (a) Account reconciliation will be done monthly;
- (b) Account entry responsibility will now be performed by the Financial Division rather than by Elections Division personnel;
- (c) Written S.O.P.s have been, or are being, developed to formalize all processes in order ensure consistency and for the benefit of successor employees;
- (d) Prior to the audit, some amounts of funds were withheld from interest bearing accounts for coverage of day-to-day expenses including HAVA payroll. Henceforth, no monies will be withheld for day-to-day expenses and all funds will be deposited in interest bearing accounts upon receipt and withdrawn only as actually needed.

This concludes my formal response to the two additional NFRs. Our staff stands ready to supply any additionally required information or explanation.

Very truly yours,

Natalie E. Tennant
WV Secretary of State



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State of West Virginia

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August 12, 2010

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

RE: Comments to Performance Audit Report Draft

Dear Mr. Crider:

We would like to amend our response on page 11, Section VI Accounting and Reporting. Under the SOS Response section we had previously provided procedural changes; however, based upon a recommendation by our Chief Financial Officer, we have found that one of these changes is not feasible for our accounting process.

We would like to strike the last sentence under subsection (d) which reads, "Henceforth, no monies will be withheld for day-to-day expenses and all funds will be deposited in interest bearing accounts upon receipt and withdrawn only as actually needed".

We would like to replace it with the following language:

"Henceforth, all funds will be deposited in interest bearing accounts upon receipt and withdrawn as needed. The average monthly cost for payroll and other usual expenditures is \$10,000.00. Our accounting process requires approximately eight business days to process the bi-monthly payroll and benefits for the employees responsible for the activities under HAVA. Therefore, we must draw down a minimal amount of money each month to cover these expenses."

Your assistance with process is appreciated. Please let us know if further information is needed.

Very truly yours,

Natalie E. Tennant
West Virginia Secretary of State



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 West Virginia , for the Period April 28, 2003 Through August 31, 2009

September 17, 2010

MEMORANDUM

To: Curtis Crider
Inspector General

From: Thomas Wilkey
Executive Director

Subject: Draft Report Performance Audit Report – “Administration of Payments Received Under the Help America Vote Act by the State of West Virginia”.

The Election Assistance Commission (EAC) has had an opportunity to conduct a preliminary review of the Draft Performance Audit Report for West Virginia. We generally agree with the findings and will work with the West Virginia Secretary of State (SOS) to resolve the issues identified. We specifically provide the following comments.

I. Interest on State Match

Audit Recommendation:

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

EAC Response:

In the past, EAC has recognized non-HAVA monies expended by states as qualifying for matching Section 251 funds. West Virginia requests the use of unclaimed matching funds to credit the total lost interest. We will consider the appropriateness of the SOS’s proposed offsets of questioned costs with other incurred expenditures allowable under HAVA.

II. Interest on the Revolving Loan Fund

Audit Recommendation:

We recommend that SOS officials transfer from the state's general fund to the Revolving Loan Fund the interest shortfall estimated to be \$13,021 (\$12,246 plus \$775) through August 31, 2009, plus any additional interest, including compounded interest owed through the date of transfer.

EAC Response:

As stated by the draft audit report, the EAC approved the state's use of the Revolving Loan Fund but advised that program income including loan repayments and interest on the repayments be reserved for uses authorized by HAVA. The EAC will consider appropriate resolution of cost findings related to interest earned.

IV. Personnel Certifications

Audit Recommendation:

We recommend that the SOS resolve with the EAC the appropriate corrective action regarding the lack of periodic certifications.

EAC Response:

The EAC agrees with the recommendation to examine corrective action regarding lack of six-month prior periodic certifications to determine resolution.

V. Program Income

Audit Recommendation:

We recommend that the SOS:

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

EAC Response:

As recommended, the EAC will analyze, with General Counsel input, the differences in state law and HAVA and consider appropriate resolution of this issues and any related questioned costs.

VI. Accounting and Reporting

Audit Recommendation:

We recommend that the SOS:

1. Perform monthly reconciliations of the Revolving Loan Fund and the election fund to ensure that all program income and disbursements are properly recorded and accounted for in the state's accounting records.
2. Resolve the differences that have not been reconciled.
3. Coordinate with EAC the filing of corrected Section 101 and 251 SF 269s.

EAC Response:

The EAC will work with the SOS to resolve differences in the Revolving Loan Fund and the state treasurer's account. Further, we will look at the current practice of defining loan repayments as program income.

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 reports and other reviews related to the state's financial management systems and the HAVA program for the last six 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.
- 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
 - Ensure compliance with HAVA Act.

MONETARY IMPACT AS OF AUGUST 31, 2009

<i>Description</i>	<i>Questioned Costs</i>	<i>Additional Funds for Program</i>
Timely deposit of interest earned on state matching funds.	\$0	\$96,831
Timely deposit of interest earned on the Revolving Loan Fund	\$0	\$13,021
Semi-annual certifications of full-time employment on HAVA activities not filed	\$124,276	\$0
Program income not deposited to HAVA election fund	\$0	\$265,101
Total	<u>\$124,276</u>	<u>\$374,953</u>

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Washington, DC 20005

E-mail: eacoig@eac.gov

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