



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

FINAL REPORT:

**Administration of Payments Received
Under the Help America Vote Act by the
New York State Board of Elections**

MAY 1, 2003 THROUGH APRIL 30, 2010

**Report No.
E-HP-NY-08-10
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 New York State Board of Elections
(Assignment Number E-HP-NY-08-10)

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 New York State Board of Elections (BOE). 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 BOE, Clifton Gunderson concluded that, except for (a) the failure to provide state matching funds on a timely basis, resulting in a shortfall in the matching requirement and lost interest earnings on the delayed funding, (b) the lack of time cards and semi-annual certifications in support of HAVA funded payroll charges, and (c) the failure to maintain adequate property records to properly account for HAVA funded equipment, our audit concluded that the BOE generally accounted for and expended HAVA funds in accordance with the HAVA requirements and complied with the financial management requirements established by the U.S. Election Assistance Commission. The BOE also complied with section 251 requirements.

In its December 28, 2010 response to the draft report (Appendix A-1), the BOE agreed with the report's finding and recommendations, and agreed to implement appropriate corrective action.

On January 4, 2011, the U.S. Election Assistance Commission provided us with a written response to the recommendations (Appendix A-2), which indicated general agreement. 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
NEW YORK STATE

May 1, 2003 Through April 30, 2010

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 New York State**

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 New York State Board of Elections (BOE) for the period May 1, 2003 through April 30, 2010 to determine whether the BOE used payments authorized by Sections 101, 102, and 251 of the Help America Vote Act of 2002 (HAVA or the Act) in accordance with HAVA and applicable requirements; accurately and properly accounted for property purchased with HAVA payments and for program income, and met HAVA requirements for Section 251 funds for an election fund and for a matching contribution. We did not include a determination of whether the BOE and its subgrantees met the requirements for maintenance of a base level of state outlays because the Commission was reviewing its guidance on the applicability of the maintenance of a base level of state outlays to the BOE's subgrantees. Since there was no definitive guidance during the audit period, Maintenance of Effort was not included in the scope of our audit procedures. On June 28, 2010, the Commission issued its revised guidance on the Maintenance of Expenditures (MOE) requirement, which includes a provision that the states will have 12 months from the date of the policy to submit an MOE plan to the EAC.

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, *Cost Principles for State, Local, and Indian Tribal Governments*.
- Submit detailed annual financial reports on the use of Title I and Title II payments.
- We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives. Because of inherent limitations, a study and evaluation made for the limited purposes of our review would not necessarily disclose all weaknesses in administering HAVA payments.

Except for (a) the failure to provide state matching funds on a timely basis, resulting in a shortfall in the matching requirement and lost interest earnings on the delayed funding, (b) the lack of time cards and semi-annual certifications in support of HAVA funded payroll charges, and (c) the failure to maintain adequate property records to properly account for HAVA funded

equipment, as discussed below, our audit concluded that the BOE generally accounted for and expended HAVA funds in accordance with the requirements mentioned above for the period from May 1, 2003 through April 30, 2010. The exceptions needing BOE's management attention are summarized below:

- The state was required to deposit a total of \$9,052,509 in matching funds into the election fund when it received its Section 251 requirements payments. Instead of depositing cash into the fund, the state required counties to pay for 5 percent of the cost of voting equipment and considered these payments as state matching funds. In addition, New York counted state funded election expenditures as part of its match requirement. As of April 30, 2010, the state and counties had expended only \$8,462,457 towards the state match leaving a shortfall of \$590,052. In addition, because the funds were spent after the state received its requirements payments, there was lost interest of \$1,017,958, which would have accrued had the state made its matching payments timely.
- From May 4, 2006 to December 26, 2007, the BOE charged the HAVA fund for payroll expenses totaling \$495,602. These charges were not supported by semi-annual certifications or other documentation, such as time sheets, that showed that employees worked on HAVA related activities.
- Inventory listings of HAVA-funded State Voter Registration System equipment did not conform to the requirements of 41 C.F.R. 105-71.132 (d) (1), (the Common Rule). The listings did not include required elements such as source of the property, who holds title, the percentage of federal participation, and condition.

In an email response to the draft audit report dated December 28, 2010, BOE officials stated that they took no exception to the findings and would work with the EAC to ensure that the appropriate corrective actions are implemented. The BOE's official response is included as Appendix A-1.

The draft report, including the BOE responses, was provided to the Executive Director of the EAC for review and comment. The EAC responded on January 4, 2011, and generally agreed with the report's review and recommendations. The response indicated that the EAC would work with the BOE to ensure appropriate corrective action. The EAC's complete response is included as Appendix A-2.

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 BOE:

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 BOE met the requirement for maintenance of a base level of state outlays, because the Commission was reviewing its guidance on the applicability of the maintenance of a base level of state outlays to subgrantees of the BOE. Since there was no definitive guidance during the audit period, Maintenance of Effort was not included in the scope of our audit procedures. On June 28, 2010, the Commission issued its revised guidance on the Maintenance of Expenditures (MOE) requirement, which includes a provision that the states will have 12 months from the date of the policy to submit a MOE plan to the EAC

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

SCOPE AND METHODOLOGY

We audited the HAVA funds received and disbursed by the BOE from May 1, 2003 through April 30, 2010 (84-month period) as shown in the following table:

| TYPE OF PAYMENT | FUNDS RECEIVED | | | | | TOTAL AVAILABLE | FUNDS DISBURSED | DATA AS OF |
|-----------------|----------------------|----------------|----------------|---------------------|--|----------------------|----------------------|------------|
| | EAC PAYMENT | PROGRAM INCOME | STATE MATCH | INTEREST EARNED | | | | |
| Section 101 | \$ 16,494,325 | \$ 0 | \$ 0 | \$ 3,046,308 | | \$ 19,540,633 | \$ 13,335,690 | 4/30/2010 |
| Section 102 | 49,603,917 | 0 | 0 | 9,138,649 | | 58,742,566 | 31,295,705 | 4/30/2010 |
| Section 251 | 171,997,692 | 0 | 0 ² | 23,588,772 | | 195,586,464 | 96,091,531 | 4/30/2010 |
| Total | <u>\$238,095,934</u> | <u>\$ 0</u> | <u>\$0</u> | <u>\$35,773,729</u> | | <u>\$273,869,663</u> | <u>\$140,722,926</u> | 4/30/2010 |

Our audit methodology is set forth in Appendix B.

AUDIT RESULTS

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives. Because of inherent limitations, a study and evaluation made for the limited purposes of our review would not necessarily disclose all weaknesses in administering HAVA payments.

Except for (a) the failure to provide state matching funds on a timely basis, resulting in a shortfall in the matching requirement and lost earnings on the delayed funding, (b) the lack of time cards and semi-annual certifications in support of HAVA funded payroll charges, and (c) the failure to maintain adequate property records to properly account for HAVA funded equipment, as discussed below, our audit concluded that the BOE generally accounted for and expended HAVA funds in accordance with the requirements mentioned above for the period from May 1, 2003 through April 30, 2010. The determination of whether the BOE and its subgrantees met the requirement for maintenance of a base level of state outlays was not included in our scope of work as explained above. In an email response to the draft audit report dated December 28, 2010, BOE officials stated that they took no exception to the findings and would work with the EAC to ensure that the appropriate corrective actions are implemented. The

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

² New York did not deposit its state match into the election fund at the time it received its requirements payments. Instead, it considered counties' payments of 5 percent of the cost of voting equipment as meeting the state match.

BOE's official response is included as Appendix A-1.

I. HAVA Section 251 State Match

The BOE established an election fund to hold HAVA funds in accordance with the requirements of HAVA Section 254. The HAVA also requires that the election fund hold the five percent state matching funds that enabled New York to qualify for federal HAVA Section 251 funds. Furthermore interest earned from the investment of the money in the election fund must also be deposited into the election fund. The timely deposit of the state match and of monthly interest earnings increases the election fund balance upon which each subsequent month's interest earnings is based, resulting in a compounding effect that adds additional funds to the program.

BOE determined that the state had a requirement to provide matching funds totaling \$9,052,509 to be eligible to receive Section 251 funds. However, the state did not deposit the matching funds into its election fund. The matching funds were appropriated by the state, but remained in the general fund until expended. The state partially met its match by requiring counties to contribute 5 percent of the cost of voting equipment purchased by the state on behalf of the counties as well as through state funded HAVA related expenditures. New York's Office of General Services (OGS), the office that tracks HAVA financial activity, calculated that, as of April 30, 2010, the state and its counties had only expended \$8,462,457 against the state matching requirement, resulting in a shortfall of \$590,052. Further, the state did not transfer any interest earned on the balances in the general funds into the HAVA election fund as required. The state estimated that the lost interest was \$1,017,958 as of April 30, 2010.

HAVA Sec. 253(b)(5) states that:

as a condition for receipt of funds (Requirements Payments), the state has appropriated funds for carrying out the activities for which the requirements payment is made in an amount equal to 5 percent of the total amount to be spent for such activities (taking into account the requirements payment and the amount spent by the state) and, in the case of a state that uses a requirements payment as a reimbursement under section 251(c)(2), an additional amount equal to the amount of such reimbursement.

HAVA Section 254(b)(1) of the HAVA requires that the following monies be deposited into its election fund:

- A. Amounts appropriated or otherwise made available by the state for carrying out the activities for which the requirements payment is made to the state under this part (*the state five percent match of HAVA Section 251 funds*).
- B. The requirements payment made to the state under this part.
- C. Such other amounts as may be appropriated under law.
- D. Interest earned on deposits of the fund.

BOE officials agreed that the state had not deposited or expended its matching funds timely and that as a result there is a shortfall in the state match and that interest that would have accrued on that match has been lost. They also stated that they had notified EAC of the state's plan to meet its matching requirement but had not been advised that this approach was inappropriate.

Recommendations:

We recommend that the BOE:

1. Deposit into the election fund the state match shortfall of \$590,052, or such other amount as determined at the date of the transfer.
2. Transfer the lost interest earnings of \$1,017,958 into the election fund along with any additional interest that may accrue until the date of the transfer.

BOE's Response:

BOE said that they take no exception to this finding and will work with EAC to ensure that appropriate corrective action is taken.

II. Personnel Certifications

The BOE used HAVA funds to pay salaries for employees during the periods from May 4, 2006 through December 26, 2007 and July 23, 2009 through April 30, 2010. Between May 4, 2006 and December 26, 2007, the BOE charged the HAVA fund \$495,602 for the full salaries for personnel who worked on HAVA activities. These charges were not supported by semi-annual certifications that the employees worked only on HAVA-related activities or by other documentation such as timecards that showed that the employees worked on HAVA related activities. Beginning in 2009, BOE required HAVA funded employees to prepare timesheets that included information supporting that the staff worked solely on HAVA projects. BOE officials said that they were not aware of the requirement to prepare semi-annual certifications. After we advised BOE of this requirement they prepared semi-annual certifications dated June 10 and 11, 2010, for the employees who were paid with HAVA funds between May 4, 2006 and December 26, 2007.

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:

3. We recommend that the EAC resolve with the BOE the appropriate corrective action regarding the untimely completion of the semi-annual certifications and the lack of other documentation, such as time cards for the 2006 to 2007 period personnel costs were paid with HAVA funds.

BOE's Response:

BOE said that they take no exception to this finding and will work with EAC to ensure that appropriate corrective action is taken.

III. Property Records

The inventory records for the BOE HAVA funded State voter Registration System (SVRS) equipment did not contain all of the elements required by the Common Rule as explained below. The records did not list the source of the property, who holds the title, the percentage of federal participation, and the condition.

The *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* 41 CFR § 105-71.132(d)(1) (the "Common Rule") 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, and costs of the property, percentage of Federal participation in the cost of the property, the locations, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

BOE election officials informed us that they were not aware of the detailed recordkeeping requirements of the Common Rule.

Recommendation:

- 4. We recommend that the BOE ensure that the property management records for HAVA funded equipment list the source of the property, who holds the title, the percentage of federal participation, and the condition.

BOE's Response:

BOE said that they take no exception to this finding and will work with EAC to ensure that appropriate corrective action is taken.

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

The draft report, including the BOE response, was provided to the Executive Director of the EAC for review and comment. The EAC responded on January 4, 2011, and generally agreed with the report's review and recommendations. The response indicated that the EAC would work with the BOE to ensure appropriate corrective action. The EAC's complete response is included as Appendix A-2

CG performed its work between May 10, 2010 and May 28, 2010.

Clifton Henderson LLP

Calverton, Maryland
June 29, 2010

New York State Board of Elections Email Response to Draft Report

The New York State Board of Elections has reviewed the Notification of Findings and Recommendations that were prepared by Clifton Gunderson for its audit of the State of New York's use of HAVA funds. We take no exception to the findings and will work with you to ensure that the appropriate corrective actions are implemented.

Thank you,

Thomas A. Jarose
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EAC RESPONSE TO THE DRAFT AUDIT:

Original Performance Audit Report on the Administration of Payments Received Under the Help America Vote Act by the State of New York, for the Period May 1, 2003 Through April 30, 2010.

January 4, 2011

MEMORANDUM

To: Curtis Crider
Inspector General

From: Mark A. Robbins
General Counsel

A handwritten signature in black ink that reads "Mark A. Robbins". The signature is written in a cursive style and is positioned to the right of the printed name "Mark A. Robbins".

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

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

The Election Assistance Commission (EAC) generally concurs with the results of the review and recommendations. The EAC will work with the New York State Board of Elections to ensure appropriate corrective action.

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

- Conducted site visits of selected counties/towns to perform the following:
 - Observe equipment purchased with HAVA funds for proper accounting and safeguarding
 - Ensure compliance with HAVA Act.

MONETARY IMPACT AS OF APRIL 30, 2010

| <i>Description</i> | <i>Questioned Costs</i> | <i>Additional Funds for Program</i> |
|------------------------------|------------------------------------|--|
| State match shortfall | \$0 | \$ 590,052 |
| Lost interest on State match | 0 | 1,017,958 |
| Payroll charges | 495,602 | 0 |
| Totals | <u>\$495,602</u> | <u>\$1,608,010</u> |

Note: There are also additional funds for the program from interest earnings on undisbursed HAVA funds held by the counties; however, the total amount due has not been determined.

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