U.S. ELECTION ASSISTANCE COMMISSION OFFICE OF INSPECTOR GENERAL

REDACTED REPORT OF INVESTIGATION: *MISCONDUCT - ELECTION ASSISTANCE COMMISSION*

August 2015
I-IV-EAC-01-15

This report contained information that has been redacted pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (b)(7)(c)

U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL
1335 East-West Highway - Suite 4300
Silver Spring, MD 20910

Digest

The United States Postal Service, Office of Inspector General, prepared this investigative report under an interagency agreement with the Office of Inspector General (OIG), U.S. Election Assistance Commission (EAC). We requested the assistance of the Postal Service because the EAC OIG has no investigators.

The purpose of the investigation was to examine an Antideficiency Act (ADA) violation by the EAC. The investigation determined that EAC officials violated the ADA when they approved a disbursement of about $2.2 million from an expired 2008 appropriations account. The Department of Justice declined to open a criminal investigation of the matter.

The Postal Service OIG redacted text from this report pursuant to the Freedom of Information Act exemption 7(c).

UNITED STATES POSTAL SERVICE
OFFICE OF INSPECTOR GENERAL
1735 NORTH LYNN STREET
ARLINGTON, VA 22209-2020

CASE #: 15UIHQ0067GC26SI **CROSS REFERENCE #:**

TITLE: MISCONDUCT - ELECTION ASSISTANCE COMMISSION (EAC) - SILVER SPRING, MD

CASE AGENT (if different from prepared by):

REPORT OF INVESTIGATION

PERIOD COVERED: FROM July 2, 2015 **TO** July 28, 2015

STATUS OF CASE: Referred to Other Agency

JOINT AGENCIES: Election Assistance Commission (EAC)

DISTRIBUTION:

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PREPARED BY: SA (b)(7)(C)	**DATE: 7/28/15**

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I. PREDICATION

On June 25, 2015, the Election Assistance Commission (EAC) Inspector General Curtis Crider requested the assistance of the U.S. Postal Service Office of Inspector General in investigating a violation of the Antideficiency Act (ADA). Crider explained that in October 2013, the EAC directed the Bureau of the Fiscal Service (BFS) to disburse a grant for just over $2.2 million to Tennessee under the Consolidated Appropriations Act of 2008. The 2008 funds were appropriated as one-year funds and were no longer available as of September 30, 2013. Due to the disbursement of expired funds, EAC officials violated the ADA.

On June 30, 2015, a Memorandum of Understanding (MOU) was executed between the Postal Service OIG and the EAC OIG, under the authority of the Inspector General Act, 5 USC App. 3, Section 6(a)(3).

II. SYNOPSIS

The investigation determined that EAC officials violated the ADA when they approved disbursement of funds from an expired 2008 appropriations account. Pursuant to the Consolidated Appropriations Act of 2008, the EAC received $115 million to carry out programs under the Help America Vote Act (HAVA). The HAVA mandates the EAC to allocate funding to states on the basis of a statutory formula. The funds are obligated during the year of the appropriation; however, states must meet several statutory preconditions before funds are disbursed. HAVA authorizes payments to the states for certain enumerated purposes; these payments are called "requirements payments."

In September 2013, state of Tennessee officials provided the necessary documentation to meet the HAVA preconditions to receive their requirements payments. Prior to submitting their documentation, Tennessee officials asked the EAC if there was a deadline of September 30, 2013, to request the funding. EAC officials responded that there was no timeframe for submitting the request. Tennessee's certifying documentation was received by the EAC on September 11, 2013. On September 30, 2013, a Notice of Grant Award to Tennessee was approved by EAC officials. Prior to disbursement of the funds, Tennessee had to return two additional forms to the EAC. The two additional forms were completed by Tennessee officials and returned to the EAC on October 1, 2013. Congress ordered a government shut down and all EAC personnel were furloughed from October 1, 2013, through October 16, 2013. On October 17, 2013, EAC personnel returned to work and transmitted the request for disbursement to Tennessee. On October 25, 2013, just over $2.2 million was disbursed to the state of Tennessee.

The investigation determined that the 2008 appropriation was a one-year fund, meaning that the funds had to be obligated within one year and expended within five years of the appropriation. Previous and subsequent appropriations for HAVA were no-year appropriations, meaning that they were available for obligation without fiscal year limitation and there were no time limits as to when the funds had to be expended. The EAC's Acting Executive Director and Chief Operating Officer (COO) Alice Miller, Chief Financial Officer (CFO) Annette Lafferty, Director [redacted] and [redacted] Director [redacted] all signed the approval for disbursement on October 17, 2013, which indicated that the documentation was vetted and the funds were available for disbursement.

The investigation revealed that Miller did not know whether the funds disbursed to Tennessee were no-year or one-year funds. Miller explained to OIG investigators that by the time she received the disbursement approval for her signature, all of the documentation had been thoroughly reviewed by Lafferty, [redacted] and that she "trusted" [redacted] recommendation for approval of the disbursement. [redacted] told OIG investigators that they did not know the 2008 appropriation was an annual fund. [redacted] confirmed [redacted] told Tennessee officials that there was no timeframe for submitting their request to receive the funds. Lafferty explained to OIG investigators that she knew the funds were one-year funds and she knew they would expire on September 30, 2013. However, Lafferty thought she had until the afternoon of the first day of the fiscal year to complete the disbursement request. Due to the government shutdown, she treated October 17, 2013, as the first day of the fiscal year.

The investigation determined that EAC officials told BFS officials to keep the 2008 appropriation account open despite BFS officials telling them that the account was set to expire. EAC officials and BFS officials explained that there are distinct treasury symbols which differentiate the accounting codes for one-year appropriations and no-year appropriations. EAC officials and BFS officials confirmed that the 2008 accounting code was clearly different from the codes for subsequent no-year funds and the disbursement approving officials should have recognized this fact prior to authorizing disbursement to Tennessee.

III. BACKGROUND/SUBJECT IDENTIFICATION

Alice Miller, Acting Executive Director and Chief Operating Officer, EAC (Exhibit 1)

Miller began her employment with the EAC in May 2008 as the COO and has held the position of Acting Executive Director since May 2012. As COO, Miller oversees the day-to-day operations of the EAC in all program areas. As Acting Executive Director, Miller manages an $11.5 million budget.

Annette Lafferty, Chief Financial Officer (CFO), EAC (Exhibit 2)

Lafferty began her career with the EAC in November 2008, as the Budget Officer. In February 2009, she was promoted to CFO. Lafferty has also been acting as the Budget Director since 2009, and is the only funds certifier for the EAC. Lafferty reports directly to Miller. She assists Miller in overseeing critical management and core mission activities of the EAC. Lafferty advises Miller on matters relating to all financial management functions, including strategic planning, business performance measures, accounting, contracting and budgeting.

[redacted] Director, EAC (Exhibit 3)

[redacted] began [redacted] employment with the EAC in [redacted] as Director [redacted] serves as the principal point of contact concerning EAC grant funds management. [redacted] manages and supervises the overall operations of the HAVA Payments and Grants Unit. [redacted] works in a cooperative manner with EAC officials, state officials and other recipients to encourage sound program administration and to enforce program and financial compliance with HAVA, Office of Management and Budget (OMB) guidance, EAC policies, and recipient agreements and plans. [redacted] reports directly to Lafferty.

[redacted] Director, EAC (Exhibit 4)

[redacted] began her employment with the EAC in [redacted] Director. [redacted] is responsible for the management of the EAC's financial operations, including the promulgation of agency policies, procedures and directives pertaining to those programs falling within [redacted] area of responsibility. [redacted] is also responsible for producing the EAC's audited financial statements, and ensuring that they comply with all federal accounting standards and requirements. [redacted] leads the implementation, enhancement, and maintenance of the agency's automated accounting system and is responsible for the supervision of division staff. [redacted] reports directly to Lafferty.

Help America Vote Act (HAVA) (Exhibit 5)

The HAVA was passed by the U.S. Congress in 2002 to make extensive reforms to the nation's voting process. The HAVA addressed improvements to voting systems and voter access issues identified following the 2000 election. HAVA mandated that EAC test and certify voting equipment, maintain the National Voter Registration form and administer a national clearinghouse on elections that included shared practices, information for voters and other resources to improve elections.

HAVA created new mandatory minimum standards for states to follow in several key areas of election administration. The law provided funding to help states meet these new standards, replace voting systems and improve election administration. HAVA also established the EAC to assist the states regarding HAVA compliance and to distribute HAVA funds to the states. HAVA authorizes payments to the states for certain enumerated purposes, including meeting the requirements of Title III of HAVA. These payments are called "requirements payments."

Consolidated Appropriations Act of 2008 (Exhibit 6)

Under the Consolidated Appropriations Act of 2008, the EAC received $115 million to carry out programs under the HAVA. The HAVA mandates the EAC to allocate funding to states on the basis of a statutory formula. States must meet several statutory preconditions before funds are disbursed. Prior and subsequent appropriations specified that amounts appropriated remain available without fiscal limitations until expended; however, the 2008 appropriations bill contained no such language. Without such language, all appropriations are presumed to be annual appropriations. Therefore, the 2008 funds, which needed to be obligated within one year and expended within five years, expired on September 30, 2013.

EAC Instruction to States (Exhibit 7)

On June 8, 2009, former EAC Executive Director Thomas Wilkey instructed the states that:

> "Congress appropriated the FY 2008 requirements payments as 'one-year funds,' which means that the appropriation is available for disbursement by EAC for only five years (until FY 2013) after which time it expires and must be returned to the U.S. Treasury. For States, this means that you must apply for your full allotment of FY 2008 requirements payments before September, 30, 2013. Once the funds are in your election account they will remain there until expended."

Interagency Agreement between the EAC and the Bureau of Public Debt (Exhibit 8)

On August 18, 2013, Miller signed an interagency agreement with the Bureau of Public Debt (BPD) for financial management services. The agreement period covered October 1, 2013, to September 30, 2014. Financial management services to be provided by BPD included: budget, vendor maintenance, accounts payable, and accounts receivable etc. [AGENT NOTE: Since the date of this agreement, the BPD was consolidated and is now the Bureau of the Fiscal Service (BFS).]

U.S. Code Title 31 – Money and Finance (Exhibit 9)

31 U.S.C. § 1301 (Application)

(c) An appropriation in a regular, annual appropriation law may be construed to be permanent or available continuously only if the appropriation…
    (2) expressly provides that it is available after the fiscal year covered by the law in which it appears.

31 U.S.C. § 1552 (Procedure for appropriation accounts available for definite periods)

(a) On September 30th of the 5th fiscal year after the period of availability for obligation of a fixed appropriation account ends, the account shall be closed and any remaining balance (whether obligated or unobligated) in the account shall be canceled and thereafter shall not be available for obligation or expenditure for any purpose.

The Antideficiency Act (Exhibit 10)

31 U.S.C. § 1341 (Limitations on expending and obligating amounts)

(a)(1) An officer or employee of the United States Government or the District of Columbia government may not…
    (A) Make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.

31 U.S.C. § 1350 (Criminal penalty)

An officer or employee of the United States Government or the District of Columbia government knowingly and willfully violating section 1341(a)…of this title shall be fined not more than $5,000, imprisoned for not more than 2 years, or both…

Federal employees who violate the Antideficiency Act are subject to two types of sanctions: administrative and penal. Employees may be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office.

IV. DETAILS

<u>Allegation:</u> EAC officials violated the ADA when they approved disbursement of funds from an expired account.

<u>Allegation Findings:</u>

<u>Interview of HAVA Attorney [redacted] (Exhibit 11)</u>

During an OIG interview, HAVA Attorney [redacted] explained that in September 2013, [redacted] submitted a request [redacted] for the 2008, 2009, 2010, and 2011 HAVA appropriations. Prior to submitting the request, [redacted] sent [redacted] an email inquiring about the timeframe for the 2008 funds. [redacted] explained that [redacted] knew there was a deadline for requesting the 2008 funds because upon receipt of the original notification letter, [redacted] noted that the funds had to be requested by September 30, 2013. Language in the 2008 letter stated they were one-year funds. [redacted] explained that the one-year language was removed for the 2009 through 2011 appropriations. [redacted] responded to [redacted] email and stated there was no timeframe for submitting the request. [redacted] sent a second email to [redacted] to confirm there was no September 30, 2013, deadline. However, [redacted] did not respond to [redacted] second email. [redacted] did not discuss the possible deadline with any other EAC personnel. [redacted] indicated that [redacted] submitted the request for funds on September 10, 2013, and received the award letter by the September 30, 2013, deadline.

<u>Interview of Election's Coordinator Mark Goins (Exhibit 11)</u>

During an OIG interview, Tennessee Election's Coordinator Mark Goins explained that earlier in 2013, he attended a meeting with Miller [redacted] where he inquired about the timeframe for the 2008 funds. He was also told there was no timeframe for submitting the request for funds.

Goins explained that Tennessee completed all of their requirements and received notification of award by September 30, 2013, so the state should have been entitled to the funds. Goins stated that they waited until September 2013 to submit the request for funds due to the 5% state matching requirement. At that time, Tennessee had the money to meet the requirement.

Interview of BFS Accounting Operations [redacted] (Exhibit 12)

During an OIG Interview, BFS Accounting Operations [redacted] explained that each year the administrative accounting section looks at annual funds that are close to expiration and then notifies agencies of the obligations that must be de-obligated or disbursed. [redacted] stated that in September 2013, [redacted] sent a list of accruals to BFS [redacted] explained that accruals are funds expended, but not yet disbursed. The list sent by [redacted] contained the 2008 requirements payments. In [redacted] email, [redacted] requested the [redacted] fund to remain open. [redacted] clarified to OIG investigators that the [redacted] fund is exclusively for requirements payments.

[redacted] explained that grants payments are processed differently from other payments as they are pre-approved by the agency and accounting has already been applied. That means the payments "skip the review process." The request for disbursement of the 2008 funds came in the day after the government re-opened.

During a routine audit, an accrual amount was identified in an account "that shouldn't have one [an accrual amount]." [redacted] opined that a one-year account is "easily" differentiated from a no-year account due to the treasury symbol in the account number. When [redacted] asked [redacted] about the accrual, [redacted] indicated that the account was left open at the request of EAC officials.

Interview of BFS [redacted] (Exhibit 13)

During an OIG interview, [redacted] explained that in April 2013, [redacted] conducted a site visit at the EAC office where they met with [redacted] During the visit, the 2008 HAVA appropriation was discussed. [redacted] mentioned that the obligation had been "sitting out there" for a significant amount of time. [redacted] then explained that the 2008 fund was a no-year fund, so it did not have to be canceled. [redacted] indicated that [redacted] were "confused," but did not want to question their client, the EAC.

[redacted] explained that in August or September 2013, [redacted] contacted [redacted] and indicated that the 2008 fund had an open obligation that needed to be canceled by the end of the fiscal year. [redacted] told [redacted] that the 2008 appropriation was a no-year fund. [redacted] opined that [redacted] clients should be more familiar with their appropriations than [redacted] and [redacted] trusted that [redacted] was correct.

(b)(7)(C) indicated that on October 17, 2013, the EAC sent the request for disbursement containing all of the approvals to the BFS inbox designated for the EAC. The request was received by Technician (b)(7)(C) who entered it into the system.

(b)(7)(C) explained that while completing (b) end of the year reporting requirements, the disbursement to Tennessee was "kicked back" with a notification that the fund was canceled. (b)(7)(C) contacted (b)(7)(C) and told (b) that the fund was canceled. (b)(7)(C) then emailed (b)(7)(C) the HAVA provision that indicated requirement payments were no-year fund and could remain open. [AGENT NOTE: the HAVA provision concerning requirements payments indicated that funds should remain available to the states without fiscal year limitation (Exhibit 5).]

(b)(7)(C) referred to the 2008 appropriation and then requested their legal department provide an opinion on the situation. The legal department indicated that the 2008 appropriation was a one-year fund and that an ADA violation had occurred. (b)(7)(C) contacted (b)(7)(C) and advised them that the fund had to be canceled. (b)(7)(C) opined that (b)(7)(C) seemed unaware that it was a one-year fund during their initial telephone conversation. (b)(7)(C) also referred to a November 1, 2013, email wherein (b)(7)(C) stated, "I just realized this was the year the funds were appropriated as one year funds." (b) indicated that (b)(7)(C) email led him to believe that (b)(7) was not previously aware that they were one-year funds.

Interview of BFS Technician (b)(7)(C) (Exhibit 14)

During an OIG interview, (b)(7)(C) explained that at the time of the ADA violation in 2013, (b)(7) was an Accounting Technician for BFS. (b)(7) reviewed disbursal documentation and entered it into their automated system, Oracle. (b)(7) verified that the information submitted on the disbursal documentation matched the purchase order information previously entered into Oracle. (b)(7) then created an invoice and ensured that the account numbers on the disbursal documentation and the purchasing order matched. (b)(7)(C) indicated that (b)(7) did not know how the account numbers related to different funds. (b)(7) stated that (b)(7) knew the difference between no-year funds and one-year funds, but did not know how the different funds were represented in the account numbers.

Concerning the EAC's disbursement documentation for Tennessee, (b)(7)(C) stated (b)(7)(C) retrieved the documentation from the EAC's inbox and followed (b)(7) typical procedure for verifying the documentation. (b)(7) confirmed that the account numbers on the documentation matched with the EAC's purchase order entered into the system in August 2012. (b)(7)(C) verified that the grant award amount and the year were correct. Once (b)(7) entered all of the information into the system, it was forwarded to a second

Account Technician for validation and then entered into the "payment batch" for disbursal. (b)(7)(C) explained that (b)(7)(C) typically enters information into the system immediately upon receipt, but the EAC's disbursal took longer because of the government shutdown.

Review of emails and documentation provided by EAC officials (Exhibits 15 to 17)

OIG investigators reviewed emails and documentation provided by EAC officials. The review disclosed the following timeline of events surrounding the ADA violation:

- On September 3, 2015, (b)(7)(C) emailed (b)(7)(C) and asked (b)(7)(C) to clarify the timeframe in which the requirements payments request needed to be submitted in order for it to be processed.

- On September 4, 2015, (b)(7)(C) responded that there was "no timeframe to request the money."

- On September 12, 2013, (b)(7)(C) emailed (b)(7)(C) and asked if (b)(7)(C) had received Tennessee's certification letter for the remaining requirements payments. (b)(7)(C) then confirmed receipt of the letter.

- On September 27, 2013, (b)(7)(C) compiled, reviewed, and routed the Transmission of Notice of Grant Award to (b)(7)(C) also emailed (b)(7)(C) and explained that (b)(7)(C) had to separate the 2008 to 2011 payments into two awards.

- On September 30, 2013, Miller signed a letter to Tennessee approving approximately $2.2 million in 2008, $1.9 million in 2009, $1.3 million in 2010, and $25,000 in 2011.The EAC letter further indicated Tennessee must submit the signed EAC certification and assurance forms prior to the disbursement of funds.

- On October 1, 2013, Tennessee returned the signed forms to the EAC.

- From October 1, 2013, through October 16, 2013, all EAC personnel were furloughed.

- On October 17, 2013, Miller, Lafferty, (b)(7)(C) signed the internal routing slip for recommendation for disbursement to Tennessee, which was then forwarded to BPD. BPD confirmed receipt of the recommendation for disbursement.

- On November 1, 2013, [redacted] emailed the HAVA provision concerning requirements payments [redacted] explained that requirements payments "do not expire." [redacted] then emailed [redacted] Lafferty and Miller and explained that "there is an automatic sweep of cash by Treasury on 9/30 of all funds and therefore raises a potential anti deficiency issue for the payment made in October." Lafferty replied, "Just realized this was the year the funds were inadvertently appropriated as one year funds instead of no year." [redacted] responded, "If funds were appropriated differently this year, shouldn't we have notified the states?"

- On November 6, 2013, [redacted] sent [redacted] an email which stated that it was the "intention" of the EAC to process the payment before the end of FY 2013. [redacted] then inquired if emails between [redacted] "prompted the accrual to be put into the system."

- On November 8, 2013, various emails indicated that EAC officials consulted with BPD to de-obligate the payment of $2.2 million made to Tennessee as a result of the ADA violation.

[redacted] also provided OIG investigators with a copy of the EAC's ADA Report to the OMB, the President, and Congressional leaders, and a list of U.S. Government and state employees who [redacted] believed were involved in the ADA violation.

Interview of EAC [redacted] Director [redacted] (Exhibit 18)

During an OIG interview, [redacted] explained that upon commencement of [redacted] employment with the EAC [redacted] the fiscal year 2008 requirements payments were already appropriated. [redacted] "assumed" that the 2008 requirements payments were no-year funds as other appropriations were in prior years. [redacted] indicated [redacted] was never told that the 2008 funds were one-year funds. [redacted] stated that because of [redacted] training and experience, [redacted] knew the difference between one-year funds and no-year funds.

[redacted] reviewed emails between [redacted] that occurred in September 2013. [redacted] acknowledged that [redacted] told [redacted] there was "no timeframe" to request the funds. [redacted] indicated that [redacted] never went back and reviewed the provisions from the 2008 appropriation to confirm there was no timeframe because [redacted] was still acting under the assumption they were no-year funds. [redacted] could recall no further interaction with [redacted] other than the emails exchanged.

[redacted] indicated that Tennessee was awarded the funds on September 30, 2013. Tennessee returned the additional forms that had to be completed prior to disbursement of the funds on October 1, 2013, or October 2, 2013. EAC personnel were furloughed from October 1, 2013, to October 16, 2013, because of the government shutdown. On October 17, 2013, the internal routing slip for disbursement of the funds to Tennessee was approved and signed. (b)(7)(C) explained that nobody in the approval chain seemed to know that the funds had expired.

On November 1, 2013, (b)(7)(C) learned that the funds were one-year funds after receiving an email from Lafferty which stated, "just realized this was the year the funds were inadvertently appropriated as one year funds instead of no year" (Exhibit 15).

(b)(7)(C) explained that (b)(7)(C) initially felt responsible for the disbursement of the expired funds because (b)(7)(C) had informed (b)(7)(C) there was no timeframe to complete the request for funds. However, (b)(7)(C) opined that Lafferty was the certifying official; she knew that the funds were one-year funds and she should have noticed that the funds were expired prior to approving the disbursement.

Interview of EAC (b)(7)(C) Director (b)(7)(C) (Exhibit 19)

During an OIG interview, (b)(7)(C) explained that she reviewed the payment information forms for the disbursement of the 2008 appropriated funds. On September 27, 2013, (b)(7)(C) signed the recommendation for acceptance of certification from Tennessee for the 2008 and 2009 requirements payments and transmission of Notice of Grant Award. On October 17, 2013, (b)(7)(C) signed the recommendation for disbursement of 2008 and 2009 requirements payments to Tennessee. (b)(7)(C) said that (b)(7)(C) did not review the account information because (b)(7)(C) does not have access to the accounts. (b)(7)(C) explained that Lafferty certifies cash balances and account information. (b)(7)(C) opined that any issues with account numbers must be addressed by Lafferty or BFS.

On November 1, 2013, (b)(7)(C) was contacted by (b)(7)(C) concerning de-obligation of the 2008 requirements payments for Tennessee and four other states. (b)(7)(C) provided (b)(7)(C) with the HAVA provision that stated the funding for requirements payments did not expire. (b)(7)(C) informed (b)(7)(C) that the funds expired on September 30, 2013. (b)(7)(C) said that (b)(7)(C) was never told the 2008 appropriation was a one-year fund. (b)(7)(C) was told by Lafferty that grant funds are no-year funds. (b)(7)(C) thought that the funds needed to be requested by September 30, 2013, but did not know the funds had to be disbursed by that date.

(b)(7)(C) opined that it was Lafferty's responsibility to identify that the funds had expired prior to disbursement, because Lafferty is "in charge" of the budget and she knew that they were one-year funds. Lafferty did not attempt to have the appropriation changed from one-year to no-year. [AGENT NOTE: After the interview, (b)(7)(C) provided OIG investigators with a copy of emails between (b)(7)(C) from September 2013 concerning FY 2013 accruals and open obligations (Exhibit 19).]

Interview of EAC Executive Director Alice Miller (Exhibit 20)

During an OIG interview, Miller indicated she was unaware of the circumstances surrounding the ADA violation until after the funds were disbursed. She understood the disbursement of funds was delayed because Tennessee needed to return two additional documents to the EAC prior to disbursement. Miller was unaware that the funds were appropriated as one-year funds until after the disbursement to Tennessee. Miller opined that the government shutdown combined with the EAC's office relocation were factors that contributed to the improper payment.

Miller indicated that by the time she received the disbursement approval for her signature, all of the documentation had been thoroughly reviewed by Lafferty, (b)(7)(C) (b)(7)(C) Miller stated that Lafferty completes an "intense review" of all disbursements prior to her signing any approvals. Prior to Miller approving this disbursement, (b)(7)(C) explained the forms to her and verified that Tennessee had met the certification requirements. Miller trusted (b)(7)(C) "recommendation" for approval, so she "signed off" on the disbursement.

Miller indicated that Lafferty knew that the funds were one-year funds, but (b)(7)(C) was not aware. She opined that (b)(7)(C) "probably should have known." Miller described the improper payment as a "one time situation" and indicated that there was "no intent to cause harm."

Interview of EAC Chief Financial Officer Annette Lafferty (Exhibit 21)

During an OIG interview, Lafferty explained that "it was the intent of Congress for them [states] to use the funds faster than they had used the money that was appropriated in 2003 and 2004." Lafferty indicated that the states were advised during conferences and through email notifications that "this was a one-year fund." She estimated that the states were reminded "three out of the five years" (Exhibit 21, lines 149-152, 158-165).

When asked if she knew that the 2008 appropriation was a one-year fund, Lafferty replied, "Uh-huh. And it was coded 2008. There was no doubt in my mind that it was annual funds." When asked to explain the account coding, Lafferty responded, "So for the election reform grant programs that we've had every year except for 2008...it would've been coded (b)(7)(C) which is the small -- the small independent agencies. X for no year, and the election reform program appropriation is, uh (b)(7)(C) So that's like the treasury account symbol and it -- and the OMB codes are based on that." Lafferty further stated, "But for this one year of that, uh, requirements payment, the code was [redacted]. So when you look at the grant award documents for the states who were drawing more than one year of funds, you'll see down at the bottom right on the award document, that the coding is completely different." When asked what the [redacted] stood for, Lafferty replied, "it's just the code for small, independent agencies...but then the [redacted] identifies that it would be our agency and our appropriation" (Exhibit 21, lines 218-221, 235-263).

When asked if those account numbers were on the award that the EAC signed, Lafferty replied, "Right. That Alice Miller would've signed off on. Right. So to me, there's absolutely no way that, uh, anybody could say that that's the same as the no-year." When asked if she also signed the award, Lafferty stated that Alice Miller was the only one to sign the award but further stated, "but I -- I, um, signed off on the -- approval, the route slip...and that's something that I got from the Corporation for National Service. We always had a, you know, documentation that everybody had looked at it and -- Right. So I did sign off on that." When asked if she had reviewed all of the documentation prior to signing, Lafferty replied, "Yes. Uh-huh." When asked if any of that documentation contained the account numbers, she stated, "Yes" (Exhibit 21, lines 274-286).

When asked to explain why the transaction moved forward considering her knowledge that it was an annual appropriation, Lafferty explained, "And my thinking was, because of the shutdown, I would've considered October 17th to be October 1st, and that, you know -- I was told the practice is that on closing accounts, you kinda have until the afternoon of the first day back at work to record a valid transaction. And I considered it valid because the award document had been signed -- on September 30th. So, you know, I subsequently found out that because of the closing act, the money should've been in the bank account of Tennessee by midnight of September 30th. So I -- in all my years of experience, I was not aware that there was a hard close on that cancelled -- year" (Exhibit 21, lines 328-343).

When asked if [redacted] thought the funds were no-year funds, Lafferty replied, "uh-huh. And -- as far as I remember, [redacted] neither one had -- had ever asked me about it -- even though I'm the funds disperser -- or certifier." When asked if she had spoken to [redacted] about what transpired between [redacted] and BFS, Lafferty stated, [redacted] never talked to me about it. Um, and I was advised not to talk to [redacted] about it." [AGENT NOTE: [redacted] reports directly to Lafferty.] When asked who instructed her not to talk to [redacted] Lafferty replied, "It was just a suggestion from office of management and budget..." When asked again who suggested that she not speak to [redacted] Lafferty stated, "do I have to -- do I have to like, discuss this? I -- it was our OMB examiner who I reported the violation to." When asked if there was any reason she did not want to discuss it, Lafferty stated, "it's [redacted] And this was like, you know -- it was more of a personal suggestion, I think, than a professional one. It was a telephone call on a Sunday afternoon" (Exhibit 21, lines, 771-780, 888-890, 1062-1095).

When asked what led her to believe she had additional time after September 30, 2013, to process the disbursement, Lafferty replied, "Just, um, as my, um certifier role...I've just been told that if you have a valid award document signed by September 30th, and it doesn't get into the financial system maybe because the accounting staff have -- has gone home for the day -- it's still a valid award." When asked to clarify how much time she thought she had, Lafferty stated, "um, well, I -- in my experience -- I'm not saying with BPD, but in the past -- it's been 10 days." When asked whether she knew if that instruction was in writing, Lafferty replied, "I don't, um -- and that's something else I could've looked into is -- but I think that usually when you see the year end close -- instructions, it'll tell you when the -- the windows closed" (Exhibit 21, lines 1534-1569).

Accounting Code Review (Exhibit 22)

(b)(7)(C) [redacted] provided OIG investigators with a copy of the EAC's treasury symbols, the Oracle Financials Accounting Code Structure, and a list of organization codes and descriptions. [AGENT NOTE: A review of the documents by OIG investigators revealed a clear distinction between the four digit funding codes used for the 2008 one-year appropriation and the 2009 no-year appropriation (b)(7)(C) [redacted] However, except for the first four digits, the account numbers were identical and did not contain the (b)(7)(C) [redacted] small agency code or the (b)(7)(C) [redacted] identifier.]

V. EXHIBITS

1. Copy of position description for Alice Miller
2. Copy of position description for Annette Lafferty
3. Copy of position description for (b)(7)(C) [redacted]
4. Copy of position description for [redacted]
5. Help America Vote Act, Pub. L. No. 107-252., 116 Stat. 1692
6. Consolidated Appropriations Act of 2008, Pub. L. 110-161, 121 Stat. 1996
7. Email containing the EAC's letter to states
8. Interagency agreement between EAC and BPD
9. 31 U.S.C § 1301 and 1552
10. 31 U.S.C § 1341 and 1350
11. Memorandum of Interview of (b)(7)(C) [redacted] Mark Goins, July 14, 2015
12. Memorandum of Interview of (b)(7)(C) [redacted] July 16, 2015
13. Memorandum of Interview of (b)(7)(C) [redacted] July 21, 2015
14. Memorandum of Interview of (b)(7)(C) [redacted] July 23, 2015

15. Memorandum of Activity, email and document review, July 8, 2015
16. Memorandum of Activity, email review, July 10, 2015
17. Memorandum of Activity, document review, July 10, 2015 (without attachments 2, 4-6)
18. Memorandum of Interview of (b)(7)(C) [redacted], July 7, 2015
19. Memorandum of Interview of (b)(7)(C) [redacted] July 7, 2015
20. Memorandum of Interview of Alice Miller, July 17, 2015
21. Transcript of recorded interview of Annette Lafferty, July 17, 2015
22. Copies of EAC Treasury symbols and accounting codes