

SEMIANNUAL REPORT TO CONGRESS

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



***For the Period:
April 1, 2013 through
September 30, 2013***

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



1335 East West Highway – Suite 4300
Silver Spring, MD 20910

October 31, 2013

To: Acting Executive Director, U.S. Election Assistance Commission

The Inspector General Act of 1978 (Public Law 95-452), as amended, calls for the preparation of semiannual reports to the Congress summarizing the activities of the Office of Inspector General (OIG) for the six-month periods ending each March 31st and September 30th. I am pleased to enclose the report for the period from April 1, 2013 to September 30, 2013.

The Act requires that you transmit the report to the appropriate committees of the Congress within 30 days of receipt, together with any comments you may wish to make. Comments that you might offer should be included in your management report that is required to be submitted along with the Inspector General's report.

Working together, I believe we have taken positive steps to improve Commission programs and operations.

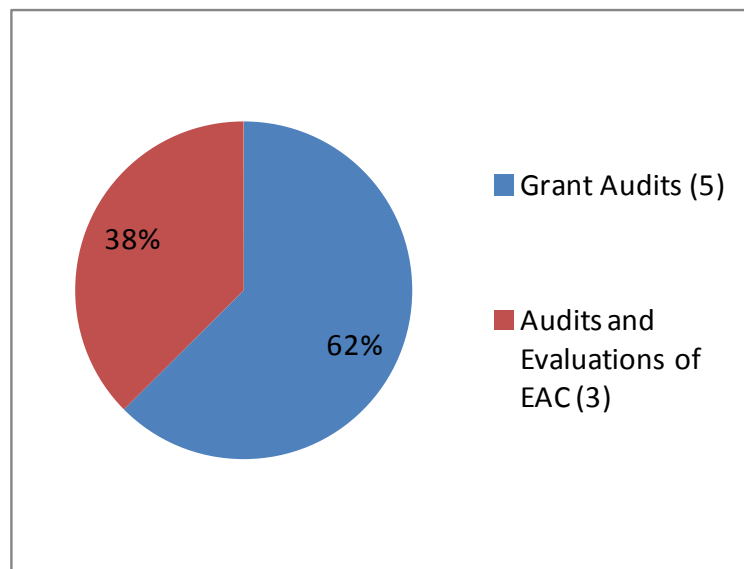
Sincerely,

A handwritten signature in blue ink that reads "Curtis W. Crider".

Curtis W. Crider
Inspector General

Profile of Performance

Audit, Evaluation and Investigation Reports Issued for the Period April 1, 2013, through September 30, 2013



Profile of Performance for the Period O April 1, 2013, through September 30, 2013

Results	
Questioned Costs	\$ 229,185
Potential Additional Program Funds	\$ 0
Funds to be Put to Better Use	\$ 0

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Election Assistance Commission Profile

The U.S. Election Assistance Commission (EAC or Commission) is a bipartisan, independent commission consisting of four members. The Help America Vote Act of 2002 specifies that commissioners be nominated by the President on recommendations from the majority and minority leadership in the U.S. House and U.S. Senate. Once confirmed by the full Senate, commissioners may serve two consecutive terms and no more than two commissioners may belong to the same political party. There are four vacancies on the commission.

The EAC mission is to assist states with improving the administration of elections for Federal office. The EAC accomplishes this mission by providing funding, innovation, guidance and information to be used by the states to purchase voting equipment, train election personnel, and implement new election programs. The EAC has awarded over \$3 billion in funding to the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa (hereinafter referred to as “states”). With those funds, the states have purchased voting equipment, established statewide voter registration lists, implemented provisional voting, educated voters, trained officials and poll workers, improved polling places, and recruited poll workers.

HAVA made EAC responsible for the federally run testing and certification program for voting systems. Through this program, the EAC develops standards for voting equipment, accredits laboratories, and reviews and certifies voting equipment based upon the tests performed by the accredited laboratories.

The EAC is responsible for administering the National Voter Registration Act (NVRA) by promulgating regulations for the content and use of the National Mail Voter Registration form.

Office of Inspector General Profile

HAVA required the appointment of an inspector general for the EAC and amended the Inspector General Act (IG Act) of 1978 (5 U.S.C.A. App. 3) to identify the EAC as a designated Federal entity (DFE).

The OIG has always been a very small office. Other agencies have provided assistance by detailing employees; we have contracted independent CPA firms to conduct audits, and, finally, hiring permanent staff. The OIG currently has one employee the inspector general.

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

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

When conducting an investigation, we work with other Federal agencies to detail investigators or contract for investigative services.

The OIG's program to ensure economy, efficiency and integrity in the use of funds does not exclusively translate into audits of the EAC or of its grant recipients. The OIG also investigates allegations of waste, fraud, abuse and mismanagement in EAC programs and operations. The OIG operates a hotline to receive complaints regarding EAC, its programs, and its funding recipients.

EAC Audits

FISMA Compliance

The Office of Inspector General (OIG) engaged Leon Snead & Co. P.C. (LSC), an independent certified public accounting firm, to conduct an audit of the EAC's compliance with the OMB Circular A-130 and the Federal Information Security Management Act (FISMA) requirements. FISMA requires federal agencies, including EAC, to perform annual independent evaluations of their information security programs and practices and report the results to the Office of Management and Budget (OMB). The objective of this audit was to assess whether the EAC had developed, documented, and implemented an agency-wide information security program, as required by OMB Circular A-130 and FISMA.

LSC concluded that EAC was in substantial compliance with FISMA requirements, OMB policy and guidelines, and applicable NIST standards and guidelines for the security control areas that were evaluated. LSC determined that EAC had developed an agency-wide information technology security program based upon assessed risk, and the security program provided reasonable assurance that the agency's information and information systems were appropriately protected.

Privacy Act

The objective of the audit was to evaluate and report on whether the EAC had established adequate privacy and data protection policies and procedures governing the collection, use, disclosure, transfer, storage and security of information relating to agency employees and the public. OIG contracted with CliftonLarsonAllen LLP to perform the audit.

The audit found that the EAC had made improvements to strengthen controls over the security of Personally Identifiable Information (PII) including conducting Privacy Impact Assessments (PIA), appointed a senior agency official

for privacy and privacy officer, and developed formalized policies and procedures for PII; however, more work needed to be accomplished.

Specifically, EAC was not fully compliant with Section 522 of the Consolidated Appropriations Act 2005 requirements, including:

- Effective encryption mechanisms to appropriately protect agency information, including PII had not implemented;
- Formalized PII usage reports were not submitted to the Office of Inspector General (OIG); and
- EAC Records Management Processes and Procedures Standard Operating Procedures were not formally documented.

The EAC has implemented or is in the process of implementing the recommendations contained in the report.

Procurement

We contracted with the independent certified public accounting firm of CliftonLarsonAllen LLP (CLA) to audit the U.S. Election Assistance Commission's acquisition and procurement of goods and services. The objective of the audit was to determine if EAC had policies and procedures to allow them to be compliant and maintain compliance with specific laws and regulations that govern the Federal acquisition process, and to test EAC's level of compliance with these laws and regulations. The audit included a review of sample procurement documents (contracts, purchase orders, blanket purchase agreements, and inter-agency agreements) generated between October 1, 2008 and September 30, 2012. The review also included awards made prior to October 1, 2008 that were outstanding or closed during the audit period.

CLA found that the EAC had policies and procedures; however, EAC did not always adhere to the policies and procedures relative to the procurement of goods and services. The report also reports internal control weaknesses during

the implementation, summarization and reporting of the procurement activities. The report also indicated that EAC's continued decline in its annual appropriation; the uncertainty of its continuing existence as an agency; its loss of employees and inability to replace them; and the absence of sustained strong leadership greatly contributed to the causes of the findings.

The EAC generally agreed with the report's recommendations and indicated that corrective has already been taken or will be taken to implement the recommendations.

State Audits

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

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

The OIG contracted with the professional auditing firm of McBride, Lock & Associates to conduct the HAVA funds audits. One report was issued during this reporting period.

Nebraska: The audit concluded that the Nebraska Secretary of State (SOS) generally accounted for and expended the HAVA funds in accordance with applicable requirements for the period from April 22, 2003 through September 30, 2012. However, the following exceptions were identified;

- The SOS submitted financial reports that could not be supported by underlying accounting records.
- The SOS did not accurately charge payroll costs to the grant based on percentage of effort for each of the State employees.
- The SOS property records were not adequate per 41 CFR 105-71.132.
- The SOS expended \$10,000 of HAVA funds for purposes that are not allowable under the award's terms and conditions or HAVA regulations.
- The SOS did not have established procurement policies for soliciting services.

In its August 29, 2013 response to the draft report, the SOS provided comments to the findings and corrective actions, as applicable, to address the recommendations. The SOS did not agree with the questioned costs of \$38,617 related to unsupported payroll costs or that it spent grant funds for unallowable purposes. The EAC indicated that it would work with the SOS to ensure corrective action.

Data Collection Grant Audits

The EAC OIG contracted with the professional auditing firm of McBride, Lock & Associates to conduct four audits of recipients of EAC data collection grants (Illinois, Minnesota, Ohio and Pennsylvania). The objective of the audit was to determine whether the grant recipient used the funds in accordance with applicable federal requirements. Below are summaries of the audits:

Pennsylvania: The Secretary of the Commonwealth accounted for and expended the 2008 Election Data Collection Grant funds in accordance with applicable requirements for the period from May 27, 2008 through June 30, 2011.

Ohio: The Ohio Secretary of State (SOS) generally accounted for and expended the Election Data Collection grant funds in accordance with applicable requirements for the period from May 27, 2008 through June 30, 2010. However, the following exceptions were identified;

- The SOS did not credit interest earnings to the grant fund in a timely manner.
- The SOS paid invoices which did not have adequate detail of hours and hourly rates to support contractor billings as outlined in the agreed-upon contract provisions.

The SOS agreed with the report's finding and recommendations, and provided corrective actions. The EAC indicated that it would work with the SOS to ensure corrective action.

Minnesota; The Minnesota Secretary of State (SOS) generally accounted for and expended the Election Data Collection grant funds in accordance with applicable requirements for the period from May 27, 2008 through June 30, 2010. However, the following exceptions were identified;

- The SOS's inventory listings did not conform to the requirements of 41 C.F.R. 105-71.132 (d) (1), (the Common Rule). Various categories of required information were missing from the listings, including location and use and condition of property.
- The SOS charged \$31,415 in personnel expenses to the Grant that were not supported by adequate documentation.

- The SOS lacked complete, documented departmental internal control policies.

In its August 26, 2013 response to the draft report the SOS provided comments to the findings and corrective actions, as applicable, to address the recommendations. The SOS did not agree with the finding related to unsupported payroll costs or the related questioned costs of \$31,145. The EAC indicated that it would work with the SOS to ensure corrective action.

Illinois: The Illinois Board of Elections (Board) generally accounted for and expended the Election Data Collection grant funds in accordance with applicable requirements for the period from May 27, 2008 through June 30, 2010. However, the following exceptions were identified;

- The Board lacked complete, documented policies with respect to award administration, accounting and financial reporting.
- The Board's internal control processes were not adequate to prevent or detect the payment of invoices lacking adequate approvals and detail of hours and hourly rates as outlined in the agreed-upon contract provisions.

In its August 28, 2013 response to the draft report, the Board provided comments to the findings and corrective actions, as applicable, to address the recommendations. The Board did not agree with the questioned costs of \$119,595 related to the finding concerning contract monitoring. The EAC indicated that it would work with the SOS to ensure corrective action.

Consultants Sentenced

In 2007, the OIG conducted an audit of the New Mexico Secretary of State's (NMSOS) use of federal HAVA funds. The audit identified a number of significant problems with a contract awarded by the NMSOS to A. Gutierrez and Associates, Inc. (AGA) for a public education campaign. The Office of the

Secretary of State used HAVA funds to award the contract. The Office of the Secretary of State paid AGA \$6,271,810 on the basis of an understanding reached with the contractor that was not incorporated into the contract and which was different than the basis upon which the contract was awarded. AGA substantiated net costs of only \$2,618,496.

Subsequent to our audit, the IRS-Criminal Investigation and the Albuquerque Field Office of the FBI, with assistance from the New Mexico Attorney General's Office conducted a separate investigation. The investigation found that AGA received a total of \$6,271,810 in federal HAVA funds from the State of New Mexico but AGA submitted documentation supporting only \$3,385,151 in services and costs, resulting in an overpayment of \$2,500,993 to which AGA was not entitled.

On January 31, 2013, a federal jury found Armando C. Gutierrez, and Joseph C. Kupfer, guilty of conspiracy and theft of government property. The jury also convicted Gutierrez on obstruction of justice and money laundering charges.

The evidence established Gutierrez and Kupfer conspired together to defraud the United States by stealing federal HAVA funds and converting the funds for their own use. Specifically, the two men unlawfully obtained federal HAVA funds for work they did not perform and services they did not provide by: (1) submitting false invoices for services that AGA and KC never provided; (2) attempting to obstruct an audit by the Election Assistance Commission (EAC); and (3) attempting to conceal the federal HAVA funds that they stole.

Gutierrez was sentenced on August 19, 2013, to 10 years in federal prison, followed by three years of supervised release, for his convictions for conspiracy, theft of government property, obstruction of justice, and money laundering. Gutierrez also was ordered to pay \$2,500,483 in restitution to the state of New Mexico, including \$746,375 that is to be paid jointly with Kupfer. He also was ordered to forfeit \$2,500,483, including his interest in his Corpus Christi residence, to the United States.

On September 11, 2013, Kupfer was sentenced, to 10 years in federal prison, followed by three years of supervised release, for his convictions for conspiracy, theft of government property, and tax evasion. Kupfer also was ordered to pay \$746,375 in restitution to the state of New Mexico and \$288,339 in restitution to the IRS. Kupfer is to pay the restitution payment to the state of New Mexico jointly with co-defendant Armando C. Gutierrez, 65, of Corpus Christi, and the restitution payment to the IRS jointly with his wife and co-defendant Elizabeth D. Kupfer. Kupfer also was ordered to forfeit \$746,375 to the United States.

Other Activities

Reviews of Legislation, Rules, Regulations and Other Issuances

The OIG conducts regular monitoring of EAC program activities and policy-making efforts. We provide comment to significant policy statements, rulemaking and legislation that affects the EAC. During this reporting period, the EAC did not have any Commissioners and did not issue any policy determinations. The Administration issued several pieces of guidance and Executive Orders during the reporting period, which we reviewed. Last, we participated in surveys and data calls issued by the Council of Inspectors General on Integrity and Efficiency.

Matters Referred to Prosecuting Authorities

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

Denial of Access to Records

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

Peer Review Activity

Section 989C of the Dodd–Frank Act contains additional semiannual reporting requirements pertaining to peer review reports. Federal Inspectors General are required to engage in peer review processes related to both their audit and investigative operations. In keeping with Section 989C, the EAC OIG is reporting the following information related to its audit peer review activities. These activities cover our role as both the reviewed and the reviewing OIG.

Audit Peer Reviews

On a 3–year cycle, peer reviews are conducted of an OIG’s audit organization’s system of quality control in accordance with the *CIGIE Guide for Conducting External Peer Reviews of the Audit Organizations of Federal Offices of Inspector General*, based on requirements in the *Government Auditing Standards*.

During this semiannual reporting period, no peer reviews were conducted by another OIG organization on the EAC OIG and EAC OIG did not conduct a peer review on other OIGs. Listed below is information concerning peer review activities during prior reporting periods

Peer Review of EAC OIG Audit: In a prior reporting period, the EAC OIG was subject to a peer review. The Federal Labor Relations Authority, Office of Inspector General (FLRA OIG) conducted the review and issued its system report on July 31, 2012. In the FLRA OIG’s opinion, the system of quality control for the EAC OIG audit organization in effect for the year–ended March 31, 2012, had been suitably designed and complied with to provide EAC OIG with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The EAC OIG received a peer review rating of *pass*.

EAC OIG Peer Review of Federal Trade Commission: During a prior reporting period, the EAC OIG completed a peer review of the audit operations of the Federal Trade Commission, Office of Inspector General (FTC OIG). We reported

that in our opinion the system of quality control for the audit organization of FTC OIG in effect for the year-ended March 31, 2012, had been suitably designed and complied with to provide FTC OIG with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The FTC OIG has received a peer review rating of *pass*. The report was issued on September 7, 2012.

Reports Issued

EAC Audits

U.S. Election Assistance Commission's Compliance with the Requirements of the Federal Information Security Management Act (Assignment No. I-PA-EAC-02-13), September 2013

U.S. Election Assistance Commission's Acquisition and Procurement of Goods and Services (Assignment Number I-PA-EAC-03-12), September 2013

Review of the U.S. Election Assistance Commission Compliance with Section 522 of the Consolidated Appropriations Act 2005, (Assignment No. I-PA-EAC-04-12), April 2013

State Audits

Administration of Payments Received Under the Help America Vote Act by the Nebraska Secretary of State (Assignment No. E-HP-NE-07-12), September 2013

Other Grant Audits

2008 Election Data Collection Grant Program Award Number: 08-EDC-800166, State of Minnesota (Assignment No. E-GR-MN-04-12), September 2013

2008 Election Data Collection Grant Program Award Number: 08-EDC-800176, State of Illinois (Assignment No. E-GR-IL-01-12), September 2013

2008 Election Data Collection Grant Program
Award Number: 08-EDC-800168, State of
Ohio (Assignment No. E-GR-OH-02-12),
September 2013

2008 Election Data Collection Grant Program
Award Number: 08-EDC-800165
Commonwealth of Pennsylvania
(Assignment No. E-GR-PA-03-12), September
2013

Monetary Impact of Audit Activities

Questioned Costs*	\$229,185
Potential Additional Program Funds	\$ 0
Funds to Be Put to Better Use	\$ 0
Total	<hr/> <hr/> <u>\$229,185</u>

*Unsupported costs are included in questioned costs.

Reports With Questioned Costs

<u>Category</u>	<u>Number</u>	<u>Questioned Costs</u>	<u>Unsupported Costs</u>
A. For which no management decision had been made by the beginning of the reporting period.	0	\$ 0	\$ 0
B. Which were issued during the reporting period.	3	\$ 229,185	\$ 0
Subtotals (A + B)	3	\$ 229,185	\$ 0
C. For which a management decision was made during the reporting period.	0	\$ 0	\$ 0
(i) Dollar value of recommendations that were agreed to by management.		\$ 0	\$ 0
(ii) Dollar value of recommendations not agreed to by management.		\$ 0	\$ 0
D. For which no management decision has been made by the end of the reporting period.	3	\$ 229,185	\$ 0

Reports With Potential Additional Program Funds

<u>Category</u>	<u>Number</u>	<u>Dollar Value</u>
A. For which no management decision had been made by the beginning of the reporting period.	0	\$ 0
B. Which were issued during the reporting period.	0	\$ 0
Subtotals (A+B)	0	\$ 0
C. For which a management decision was made during the reporting period.	0	\$ 0
(i) Dollar value of recommendations that were agreed to by management.		\$ 0
(ii) Dollar value of recommendations that were not agreed to by management.		\$ 0
D. For which no management decision has been made by the end of the reporting period.	0	\$ 0

Summary of Reports More Than Six Months Old Pending Corrective Action at September 30, 2013

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

I-EV-EAC-01-07B	Assessment of the U.S. Election Assistance Commission's Program and Financial Operations, February 2008, 4 Recommendations
I-PA-EAC-01-12	Independent Auditor's Reports on the U.S. Election Assistance Commission's Financial Statements for Fiscal Year 2012, November 2012, 4 Recommendations

Summary of Reports More Than Six Months Old Pending Management Decision at September 30, 2013

This listing includes a summary of audit and evaluation reports that were more than 6 months old on September 30, 2013 and still pending a management decision. It provides report number, title, and number of unresolved recommendations.

None.

Reporting Requirements of the IG Act

<u>Section of Act</u>	<u>Requirement</u>	<u>Page</u>
Section 4(a)(2)	Review of Legislation and Regulations	10
Section 5(a)(1)	Significant Problems, Abuses, and Deficiencies	None
Section 5(a)(2)	Recommendations for Corrective Action With Respect to Significant Problems, Abuses, and Deficiencies	None
Section 5(a)(3)	Significant Recommendations From Agency's Previous Report on Which Corrective Action Has Not Been Completed	18
Section 5(a)(4)	Matters Referred to Prosecuting Authorities and Resulting Convictions	None
Section 5(a)(5)	Matters Reported to the Head of the Agency	None
Section 5(a)(6)	List of Reports Issued During the Reporting Period	13
Section 5(a)(7)	Summary of Significant Reports	3
Section 5(a)(8)	Statistical Table – Questioned Costs	16
Section 5(a)(9)	Statistical Table – Recommendations That Funds Be Put to Better Use	None
Section 5(a)(10)	Summary of Audit Reports Issued Before the Commencement of the Reporting Period for Which No Management Decision Has Been Made	None
Section 5(a)(11)	Significant Revised Management Decisions Made During the Reporting Period	None
Section 5(a)(12)	Significant Management Decisions With Which the Inspector General Is in Disagreement	None
Section 5(a)(13)	Information Described Under Section 804(b) of the Federal Financial Management Improvement Act of 1996	None
Section 5(a)(14)(A)	Peer Review Reports Conducted on U.S. Election Assistance Commission Office of Inspector General during the Reporting Period	None

<u>Section of Act</u>	<u>Requirement</u>	<u>Page</u>
Section 5(a)(14)(B)	Statement of Peer Review Conducted on the U.S. Election Assistance Commission Office of Inspector General during a Prior Reporting Period	<u>11</u>
Section 5(a)(15)	Outstanding Recommendations from a Peer Review Report on the U.S. Election Assistance Commission Office of Inspector General	None
Section 5(a)(16)	Peer Review Reports Conducted by the U.S. Election Assistance Commission Office of Inspector General	<u>11</u>

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Office of Inspector General
1335 East West Highway – Suite 4300
Silver Spring, MD 20910

To order by phone: Voice: (301) 734-3104
Fax: (301) 734-3115

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

By Mail: U.S. Election Assistance Commission
Office of Inspector General
1335 East West Highway – Suite 4300
Silver Spring, MD 20910

E-mail: eacoig@eac.gov

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

On-Line Complaint Form: www.eac.gov/inspector_general/
FAX: (301) 734-3115





Inspector General

U.S. Election Assistance Commission

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