

**Voter Registration  
Help America Vote Act  
Department of State**

*Performance Audit  
November 2007*

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Certified Public Accountants & Consultants

November 21, 2007

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of Voter Registration and the Help America Vote Act administered by the Department of State. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The Colorado Office of the State Auditor contracted with Clifton Gunderson LLP to conduct the audit work presented in Chapters 1 and 2, in accordance with generally accepted government auditing standards. The Office of the State Auditor conducted the management issues audit work presented in Chapter 3. The report presents the audit findings, conclusions, and recommendations, and the responses of the Department of State.

Very truly yours,

*Clifton Gunderson LLP*

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**Voter Registration  
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Performance Audit  
November 2007**

**Authority, Purpose, and Scope**

This performance audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the Office of the State Auditor to conduct performance audits of all departments, institutions, and agencies of state government. The audit work was conducted from March to October 2007 in accordance with generally accepted government auditing standards. The audit scope focused on Colorado's implementation of the federal Help America Vote Act (HAVA) and voter registration activities administered by the Department of State. The Office of the State Auditor contracted with Clifton Gunderson LLP to conduct the audit work related to these areas.

During the audit, the scope was expanded in response to a request by the Colorado Secretary of State to review issues related to allegations of misuse of state assets and violations of state law specific to personnel within the Department of State's Elections Division. Audit work relative to these issues was conducted by staff of the Office of the State Auditor. The findings of this audit work are also included in this report.

**Overview**

The Colorado Secretary of State is statutorily charged with supervising "the conduct of all primary, general, congressional vacancy, and statewide ballot issue elections in the State," as administered by the county clerks and recorders of Colorado's 64 counties. The Secretary of State also has the duty to enforce Colorado's Election Code and serves as the Executive Director of the Colorado Department of State. Within the Department of State, the Elections Division is responsible for overseeing the uniform application of the Colorado Election Code in conjunction with the county clerks and recorders. As part of this responsibility, the Elections Division maintains voter registration files, registers lobbyists, and administers campaign finance laws, among other responsibilities.

Another statutory duty of the Secretary of State is to serve as the chief state election official for coordinating Colorado's responsibilities related to the federal Help America Vote Act of 2002. The Help America Vote Act (HAVA or the Act) is intended to reform the national election process and address voting system and voter access issues raised during the 2000 presidential election. Under HAVA, states must meet many new federal requirements and HAVA imposes deadlines for the states to comply with these requirements. HAVA also authorized federal funding to help the states implement the Act's requirements. In 2003 and 2004 Colorado received a total of about \$41.6 million in federal funds for implementing HAVA. Through the federal Election Assistance Commission fund reporting year ending in 2006, the State had expended \$17.6 million. In 2003 the General Assembly, through enactment of House Bill 03-1356, created the Federal Elections Assistance Fund to receive federal HAVA grants, and appropriated \$1.37 million from the Department of State Cash Fund to meet the State's matching funds requirement under HAVA.

*For further information on this report, contact the Office of the State Auditor at 303.869.2800.*

## Key Findings

### Voter Registration List Accuracy

According to state statutes and HAVA requirements, the Secretary of State is responsible for ensuring the accuracy of voter registration lists. Our audit reviewed two types of voter registration lists to determine whether ineligible voters appeared on the lists and whether any ineligible voters have cast ballots. We found:

- **Duplicate Voter Registrations Records.** We identified 3,533 individuals with two voter registration records on the voter registration list for the November 2006 General Election. Of these individuals, seven cast two ballots in that election. We also found more than 340 individuals who had duplicate registrations in November 2006 continued to have more than one voter registration record three months later, in February 2007. Specifically, of the 2,102 duplicate registrations on the February 2007 voter master list, 343 (16 percent) had also appeared as duplicates on the November 2006 master list.
- **Felons.** We found that counties do not always remove incarcerated or paroled felons from voter registration lists as required by statutes. We identified eight felons who voted in the November 2006 election and found that 84 percent of the 401 felons listed on the November 2006 master list had not been purged from the list as of February 2007.
- **Deceased Persons.** We did not identify the names of any deceased individuals on the list of electors who cast ballots in the 2006 General Election. However, we identified the names of 380 deceased individuals who remained on the statewide voter master list for three months following the notice of death from the Department of Public Health and Environment to the Department of State. Specifically, of the 805 deceased individuals on the statewide master list in November 2006, there were 380 that had not been purged from the list as of February 2007.

### Voter Registration Drives

A voter registration drive is defined as the distribution and collection of voter registration applications by two or more persons for delivery to a county clerk and recorder. By statute, voter registration drive organizers must file a statement of intent to conduct a registration drive with the Secretary of State and register with the Secretary of State on an annual basis. In September 2007 there were a total of 86 approved voter registration drives in Colorado. We reviewed voter registration drive requirements and the documentation associated with 41 approved voter registration drives filed during 2007 to determine whether the drives have been conducted in accordance with statutes and Secretary of State election rules. We found that some voter registration drive organizers delivered voter registration applications to the county in which the drive was held instead of to the counties in which the applicants' resided as required by statute. We also identified errors and discrepancies between voter registration drive information maintained on the Department's Web site and supporting documentation provided by the voter registration drive organizers.

## Grant Management

In addition to its programmatic requirements, HAVA mandates that states apply sound accounting practices related to the receipt and use of federal HAVA funds. We evaluated the Department of State's management of HAVA funds and identified several areas of concern:

- **State Matching Funds.** We identified discrepancies related to the State's federally required HAVA matching funds that the Department needs to resolve with the appropriate federal authorities. Most significantly, we found that the Department has not yet deposited the entire State match into the State's Federal Elections Assistance Fund. We are concerned that failure to deposit the approximately \$445,000 balance of the match could result in the State having to repay HAVA monies to the federal government. Additionally, the Department needs to correct the miscalculated match amount and ensure that the sources of the matching funds are clearly documented and reported to federal and state officials.
- **Time Reporting.** We found that the Department of State is reporting federal expenditures for HAVA-funded employees without maintaining sufficient documentation. According to federal regulations, the salaries and wages for non-federal employees who conduct activities solely related to a single federal award or cost objective should be adequately supported by time keeping records and certifications.
- **Record Keeping and Reporting.** We noted instances of misreporting, miscalculation, and misapplication of HAVA requirements related to record keeping and reporting. These included an inability to completely reconcile accounting records to reporting documents, incorrect reporting of HAVA expenditures on federal reporting documents, lack of required certification for the expenditure of certain HAVA funds, and incorrectly calculated and reported interest income.

## Management Issues

In response to a request by the Secretary of State, staff from the Office of the State Auditor reviewed several issues related to management of personnel and use of state assets. The Office of the State Auditor found:

- **Conflicts of Interest.** One employee appears to have violated state statute and State Personnel Board Rules related to conflicts of interest and outside employment. We also identified four other employees of the Department who did not receive advance written approval prior to engaging in outside employment/business ownership as required by State Personnel Board Rules. The Secretary of State, as the appointing authority, shares responsibility for these apparent violations and should adopt a more proactive approach to addressing outside employment and conflicts of interest relative to Department employees.
- **Use of State Assets.** One of the allegations made regarding an employee of the Department of State was that the employee had misused state assets and used his employment with the Department for personal gain. We reviewed the private business records, personal and business emails, and other documentation related to this employee's outside business and found no evidence that the business benefitted financially from the individual's employment

with the Colorado Department of State. However, we found that the Department allowed employees to access certain information technology resources without requiring sufficient documentation to support a need for that access. We also found that the Department allowed some employees to use their personal laptops on the Department's network. Any use of personal computers to connect to Department systems increases security risks.

- **Voter Registration Database Security Levels**

Safeguarding the state voter registration database is a critical responsibility of the Department of State. One of the allegations made during the course of the audit was that an employee of the Elections Division had access to the master voter registration database and had used this access to obtain voter registration information for personal and political gain. Our review found that no employees of the Department of State, other than 17 users who were employees of the Department's Information Technology Division, had authority to access or did access the master database. We did, however, find that the Department had not reviewed the access controls for the 17 employees to ensure access levels were appropriate for their job duties. All 17 of these employees had a level of access that allowed them to change records. In addition, 6 of the 17 employees could also modify programs and change user security levels.

Audit recommendations and the responses of the Department of State can be found in the Recommendation Locator and in the body of the report.

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**RECOMMENDATION LOCATOR**  
**Agency Addressed: Department of State**

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<b>Rec. No.</b>	<b>Page No.</b>	<b>Recommendation Summary</b>	<b>Agency Response</b>	<b>Implementation Date</b>
1	21	Strengthen oversight and management of voter registration lists by working with the counties to ensure accurate and timely maintenance of the list and uniform compliance with state election rules and statutes.	Agree	March 2008
2	26	Ensure voter registration drives are conducted in the public interest and in accordance with applicable laws and rules by reevaluating election rules related to voter registration drives, as well as state and local policies and practices implementing those rules.	Agree	January 2008
3	34	Ensure compliance with the 5 percent Help America Vote Act (HAVA) match requirement and provide greater accountability for the sources and uses of the state match by: (a) working with the federal Election Assistance Commission or other appropriate federal agency to resolve whether matching funds must be deposited into the State's Federal Elections Assistance Fund, (b) correcting the calculation of the match amount, and (c) revising reports to the federal government to reflect any corrections in the amount of matching funds expended by the State, as appropriate.	Agree	March 2008
4	37	Improve documentation of staff time associated with HAVA for employees whose positions are not fully dedicated to this program and for those employees whose positions are fully dedicated to HAVA.	Agree	January 2008

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**RECOMMENDATION LOCATOR**  
**Agency Addressed: Department of State**

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<b>Rec. No.</b>	<b>Page No.</b>	<b>Recommendation Summary</b>	<b>Agency Response</b>	<b>Implementation Date</b>
5	41	Strengthen controls over HAVA fund management and reporting by ensuring reported expenditures can be reconciled to COFRS, implementing a supervisory review process designed to ensure federal HAVA expenditures are reported accurately and completely, and adopting formal written procedures documenting the processes related to HAVA funds management.	Agree	March 2008
6	46	Adopt a proactive management approach to ensuring compliance with state law and personnel rules related to employee conflicts of interest and outside employment by requiring employees to disclose outside employment annually and by ensuring employees receive ethics and other related training on an ongoing basis.	Agree	November 2007
7	50	Review employee authorizations to use personal laptop computers and the DMZ and determine whether such use is necessary for the conduct of the Department's business and consistent with state laws, rules, and policies. Establish written criteria and policies for authorizing employee access to the DMZ and for connecting personal computers to Department networks, as appropriate, and ensure authorization is limited and activities are monitored.	Agree	July 2008
8	52	Strengthen access security controls for the voter registration master list database by reviewing all access levels on an ongoing basis, making appropriate changes to ensure access is limited based on the employees' job duties and a valid need to know, and ensuring access security forms are current and accurate.	Agree	November 2007

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# Background

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## Colorado's Election System

Title 1, Section 1, of the Colorado Revised Statutes is known as the Uniform Election Code of 1992 (the Election Code). The Election Code prescribes the way in which elections will be conducted in the State. Basically, Colorado's elections are administered by the clerks and recorders of its 64 counties and, by statute, the county clerk and recorder is the chief election official for the county. The Colorado Secretary of State is statutorily charged with supervising "the conduct of all primary, general, congressional vacancy, and statewide ballot issue elections in the State," as administered by the clerks and recorders. The Secretary of State also has the duty to enforce the Election Code and to coordinate Colorado's responsibilities under the federal "National Voter Registration Act of 1993." Additionally, the Secretary of State has the statutory authority to promulgate rules for the proper administration and enforcement of the election laws and to inspect and review the practices and procedures of any county clerks and recorders in the conduct of elections and in the registration of electors. The Secretary of State's Election Rules promulgated pursuant to statute are codified at 8 CCR 1505-1. The Secretary of State also serves as the Executive Director of the Colorado Department of State (Department).

## Department of State's Elections Division

The basic mission of the Department of State is "to collect, secure, and make accessible a wide variety of public records, ensure the integrity of elections, and enhance commerce." Within the Department of State, the Elections Division is responsible for overseeing the uniform application of the Colorado Election Code in conjunction with the county clerks and recorders. As part of this responsibility, the Elections Division arranges and certifies the primary and general election ballots for the State. In addition, the Elections Division maintains voter registration files, registers lobbyists, administers campaign finance laws, and is the filing office for conflicts of interest and oaths of office for certain elected and appointed officials.

## Help America Vote Act

Another statutory duty of the Secretary of State is to serve as the chief state election official for coordinating Colorado's responsibilities related to the federal Help America Vote Act of 2002. The Help America Vote Act (HAVA or the Act) is

intended to reform the national election process and address voting system and voter access issues raised during the 2000 presidential election. According to the U.S. Department of Justice, HAVA aims to improve the administration of elections in the United States primarily through three means:

- creating a new federal agency, the Election Assistance Commission (EAC), an independent, bipartisan commission that issues guidance about HAVA, audits the use of HAVA funds, and serves as a clearinghouse for election administration information;
- providing funds to states to improve election administration and replace outdated voting systems; and
- creating minimum standards for states to follow in several key areas of election administration.

Traditionally elections have been administered at the county level with limited oversight or direction from the state and federal governments. Proponents of the election reforms represented by HAVA contended that the decentralized nature of election administration contributed to inconsistencies in voting procedures and voter access. By establishing uniform standards for elections, the goals of HAVA include increased voter participation and reduced discrimination in the electoral process.

## **HAVA Program Requirements**

Under HAVA states must meet many new federal requirements and deadlines for compliance with these requirements. HAVA also authorized federal funding to help the states implement the Act's requirements. To be eligible for federal HAVA funding, states had to adopt an implementation plan, pass enabling legislation, establish a fund for purposes of administering HAVA activities, and allocate some state funds, among other requirements.

In 2003 the Colorado General Assembly adopted House Bill 03-1356, known as the Colorado Help America Vote Act. This Act serves as the enabling legislation for the State's implementation of HAVA in accordance with HAVA mandates. The legislation designated the Colorado Secretary of State as the chief state election official and gave the Secretary of State authority for coordinating the State's implementation of HAVA including the development of the State's implementation plan.

Colorado submitted its original State of Colorado Help America Vote Act State Plan to the federal government in July 2003. In March 2007 the State submitted a revised plan. The purpose of the revised plan is primarily to provide an update of Colorado's implementation of HAVA. According to HAVA, to be eligible for Title III, Section

251 funds, (see page 11), key parts of the State Plan are to address the ways in which the HAVA mandates will be met including how the State will distribute and monitor the payments to local units of government. A copy of Colorado's State Plan, including the revised Plan, is located on the Secretary of State's Web site.

Some of the most important provisions of HAVA are those that mandate specific changes in elections laws or procedures. These programmatic mandates include:

- **Replacement of voting machines.** States are required to replace all punch card and lever voting machines with voting systems as defined by HAVA and discussed in more detail below. Colorado received \$2.2 million in HAVA funds for the replacement of punch card voting systems in 682 qualifying precincts in five counties in the State. Including interest earned, the Department of State distributed more than \$2.3 million to Boulder, Jefferson, Mesa, Montrose, and Pitkin counties. The five counties replaced all punch-card voting equipment prior to the August 2006 Primary Election thus eliminating the remaining punch-card systems in the State.
- **Voting systems.** States are required to have voting systems that: produce a permanent paper record with a manual audit capacity, notify voters of errors on ballots, provide voters an opportunity to change the ballot or correct any errors before the permanent paper record is produced, allow voters to check ballot accuracy and request replacement ballots, and comply with minimum error rate standards for voting equipment. States are also required to define what constitutes a valid vote. At the federal level, the Election Assistance Commission (EAC) has primary responsibility for ensuring that voting system designs meet the applicable EAC guidelines for voting equipment in the United States.
- **Voter information.** States are required to provide and post different types of information for voters within polling places. For example, HAVA specifies that sample ballots, instructions on how to vote, and general information on voting rights under state and federal laws be posted in all polling places.
- **Voter registration and identification.** States are required to ensure that individuals registering to vote verify their identity using driver's licenses, social security numbers, or some other valid form of identification. Under HAVA, first-time voters who register by mail are required to provide identification when they cast their ballots. The Act also requires individuals to provide a driver's license number or the last four digits of their social security number when registering to vote. If they do not have either number, they will be assigned a unique identifier. Colorado House Bill 03-1356

mirrors these HAVA requirements, and was adopted prior to the HAVA-required implementation deadline of January 1, 2004.

- **Provisional voting.** States are required to establish the right to a provisional ballot for individuals claiming legal registration but for whom registration cannot be verified at the polling place at which the ballot is cast. In 2002, prior to the passage of HAVA, the General Assembly passed House Bill 02-1307, also known as the Blue Ribbon Election Bill. The legislation requires that provisional ballots be provided to any voter who claims to be properly registered but whose qualification to vote cannot be immediately established.
- **Absentee voting.** States are required to identify a single contact point for absentee voting for military personnel and overseas citizens and compile data on absentee voting.
- **Polling place and voting system accessibility.** The Act requires each state's polling places and voting systems to be accessible to people with disabilities and the blind and visually impaired. States are to meet this requirement by having at least one voting system at each polling place that allows for this level of accessibility. Funding for states to make polling place accessibility improvements came from the federal Department of Health and Human Services (HHS). Colorado received approximately \$580,000 from HHS under four separate awards to address polling place accessibility issues. According to the State's revised HAVA Plan, polling place access modifications ranged from the purchase of ramps and the removal of barriers to making curb cuts and providing concrete access paths. At the time of the August 2006 primary election, every polling place in Colorado had at least one HAVA-compliant voting machine accessible to individuals with disabilities.

As indicated above, Colorado has implemented the majority of HAVA's programmatic requirements. The major exception is the statewide computerized voter registration database. The status of the database implementation is discussed in Chapter 1.

## **Federal HAVA Funding**

Overall Congress appropriated \$3.65 billion to help fund HAVA implementation in the states. Funding was distributed by the U.S. General Services Administration (GSA) and was based primarily on state populations and the number of polling places in each state. Various HAVA provisions provided funding for different purposes mandated under HAVA. These include:

**Title I, Section 101** funds may be used to conduct a variety of activities including: educating voters about voting procedures, voting rights, and voting technology; training election officials, poll workers, and election volunteers; developing a state plan for managing requirements payments authorized under Section 251 of HAVA; and improving the accessibility and quantity of polling places. To qualify for Section 101 funds, states had to certify to the GSA that they would use the funds consistent with the provisions of HAVA. The GSA distributed Section 101 funds to the states between April and August of 2003. Section 101 funds have no time limits within which they must be spent.

**Title I, Section 102** funds may only be used to replace punch card and lever voting systems that were in use during the November 2000 federal general election. The GSA distributed Section 102 funds to the states between April and June 2003 and the funds were distributed based on the number of precincts within an eligible state that used punch card or lever voting systems during the 2000 election. States had to replace these voting systems by November 2004 unless they filed for a waiver, which moved the replacement deadline to the first federal election to be held in the State during 2006. Colorado was one of 23 states that received such a waiver.

**Title II, Section 251** funds are to be used for complying with HAVA Title III programmatic requirements for voting system equipment and for addressing provisional voting, voting information, and statewide voter registration systems. Section 251 funds are commonly referred to as “requirements payments.” To qualify for the Section 251 funds, states had to meet several requirements. Among other requirements, these included (1) appropriating state funds 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 (state match) and (2) maintaining expenditures for certain types of HAVA-related activities at the same level as the State’s expenditures for these activities during Fiscal Year 2000 (maintenance of effort). The state match and maintenance of effort are discussed in more detail in Chapter 2. The federal Election Assistance Commission distributed Section 251 funds between June 2004 and December 2005. The funds have no deadlines by which they must be spent.

## **Colorado’s HAVA Funding**

In 2003 and 2004 Colorado received a total of about \$41.6 million in federal funds for implementing HAVA. Through the EAC fund reporting year ending in 2006, the State had expended \$17.6 million. In 2003 the General Assembly, through enactment of House Bill 03-1356, created the Federal Elections Assistance Fund to receive federal HAVA grants. The General Assembly also appropriated \$1.37 million from the Department of State Cash Fund as the State’s matching contribution. House Bill 03-1356 requires that any moneys received by the State

from the federal government pursuant to HAVA be used only for the purposes specified by the provisions of HAVA. The Act also provides for a continuous appropriation of all moneys in the fund for HAVA-related expenditures. According to the State of Colorado's March 2007 Revised State HAVA Plan, in addition to federal and state funds, "it is estimated that approximately \$5.7 million in interest will be earned over a ten-year period." Consequently, "the State estimates the use of at least \$48.8 million on HAVA-related activities for the period 2003 through 2012."

## **Audit Scope and Methodology**

This audit focused on Colorado's implementation of HAVA and on voter registration activities administered by the Department of State's Elections Division. The Office of the State Auditor contracted with Clifton Gunderson LLP to conduct the audit work related to these areas. The specific objectives of the audit work conducted by Clifton Gunderson LLP were to determine:

- The extent to which Colorado has implemented the provisions of HAVA and whether the Department of State has adopted adequate controls to ensure Federal Elections Assistance Fund monies have been distributed in accordance with and used only for the purposes specified by the provisions of HAVA.
- The adequacy of the Department of State's policies, processes, and procedures for ensuring the accuracy of statewide and county voter registration lists with regard to duplicate registrations and ineligible voters (deceased individuals and felons only).
- The adequacy of the Department of State's systems and processes for ensuring the accuracy of statewide and county registration lists with regard to eligibility, identification verification, and notification.

Audit work included review and analysis of state and federal statutes, rules, policies, regulations, voting and financial records, correspondence, and other State and county documentation and data. In addition to staff from the Department of State's Office, we interviewed county clerk and recorder staff in six counties and staff from relevant state and federal government agencies. We conducted site visits to six counties where we obtained voter registration and financial data. The six counties we visited were Boulder, Denver, El Paso, Jefferson, Mesa, and Weld. We also obtained and reviewed data from the Colorado Departments of Corrections and Public Health and Environment.

During the course of the audit, the Secretary of State requested a review of issues concerning allegations of the misuse of state assets, including such assets as the State's voter registration list, and violations of state laws and personnel rules related to conflicts of interest and outside employment specific to Elections Division personnel. Consequently the audit scope was expanded to include procedures to address these issues and the audit work relative to these issues was conducted by staff of the Office of the State Auditor. The findings that resulted from the review and analysis of these issues are included in Chapter 3 of this report.

The audit scope did not include a review of provisional balloting, absentee voting, or the conduct of recent elections. The audit scope also did not include a review of the design and implementation of the statewide computerized voter registration system currently being developed through a contract with an outside vendor or the court-ordered retesting of previously certified voting systems (*Conroy v Dennis*, Denver District Court, Case No. 06CV6072).

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# Voter Registration

## Chapter 1

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### Introduction

Colorado law [Section 1-2-101, C.R.S.] states that every person who is 18 years of age or older on the date of the next election is entitled to register to vote at all elections if:

- the person is a citizen of the United States, and
- the person has resided in this State and the precinct in which the person intends to register 30 days immediately prior to the election at which the person intends to vote.

In Fiscal Year 2006 Colorado had more than 2.8 million registered voters. Of these, approximately 1.6 million (57 percent) cast ballots in the 2006 General Election.

On a monthly basis, each county clerk and recorder provides the Secretary of State with a master list of voters for the clerk's respective county. The voter registration lists for all 64 counties are uploaded to the Department of State where the lists are combined into a single statewide master voter registration list that is maintained by the Department. After Colorado implements its Help America Vote Act-mandated central computerized voter registration database system, described later in this chapter, this practice will change. The centralized database will allow all 64 counties to directly access the statewide master voter registration list and enter or modify registration information through a single automated system.

One of the primary intents of the Help America Vote Act (HAVA) is to improve the fairness and accuracy of elections through reform of election administration and maintenance of voter information. Accurate voter information is essential for ensuring that eligible voters are able to cast ballots and ineligible voters are not. The HAVA requirement to develop a uniform centralized voter registration database is aimed at achieving more accurate and current voter registration information. In this chapter we discuss areas in which the Department of State needs to strengthen its practices related to voter registration to ensure voter registries are as accurate as possible, regardless of the system used to capture and maintain this information.

# Voter Registration List Accuracy

According to the National Voter Registration Act of 1993, states are to have a general program that makes a reasonable effort to remove the names of ineligible voters from official voter registration lists for reasons of death or change in residence of the voter. Additionally HAVA requires that, once a state has implemented its computerized statewide voter registration list, the centralized database system have functions for removing ineligible voters including duplicate entries, deceased individuals, and incarcerated or paroled felons. Furthermore, HAVA provides that the appropriate state or local election official is to perform regular maintenance of the centralized statewide voter registration list to ensure accuracy.

The statutes assign the Secretary of State with responsibility for maintenance of the statewide voter registration list and provide the Secretary broad authority to ensure the list is as current and accurate as is possible. For example, Section 1-2-302, C.R.S., states “the maintenance of the computerized statewide voter registration list by the Secretary of State . . . shall be conducted in a manner that ensures that: (1) the name of each registered elector appears in the computerized statewide voter registration list; (2) only the names of voters who are not registered or who are not eligible to vote are removed from the computerized statewide voter registration list, and (3) duplicate names are removed from the . . . list.”

To comply with state and federal laws, the Department of State matches county voter registration lists with data from the Departments of Corrections and Public Health and Environment to identify incarcerated or paroled felons and deceased persons, respectively. Additionally, the Department performs data matches for duplicate or multiple registrations for the same individual in more than one county. When the Department identifies duplicate or ineligible registrations, its policy is to contact the counties in which the ineligible voter names are present. It is then the responsibility of county election officials to remove ineligible voters from their active voter registries.

We analyzed two types of voter registration lists to determine whether ineligible voters appeared on the lists and whether any of these voters cast ballots. Specifically, we analyzed the master voter list (which is the statewide list of all registered voters in any given month) for November 2006 and February 2007 and the method of voting list (which is identical to the master voter list except that it also identifies whether the voters on the master list did or did not cast ballots in a particular election) from the 2006 General Election.

The results of our analyses showed that ineligible voters—duplicate voter registrants and felons—do appear to have cast ballots in the 2006 General Election; these results are detailed in this chapter. The errors we identified are not necessarily significant

in number given the approximately 1.6 million Coloradans who cast ballots during the 2006 election. However, some recent elections have been decided by narrow margins, and the fact that the State does not have a uniformly effective and reliable means of ensuring that all ineligible voters are removed from the active voter lists in a timely and comprehensive manner is of concern. Moreover, there are actions the Department of State can and should integrate into its general voter registration oversight function that would provide greater assurance about the integrity of voter registration lists and the uniform application of state election rules and statutes.

## **Duplicate Voter Registrations**

By statute [Section 1-2-604, C.R.S.], if the Secretary of State's master list of registered electors shows an elector to be registered in more than one precinct in the State, the Secretary of State shall notify every applicable county clerk and recorder each month the duplicate registration occurs. County clerks and recorders are to cancel the name of the elector, except where it corresponds to the elector's most recent date of registration. The county clerks and recorders of the counties of prior residence are to cancel the registration records if the name and birth date or the name and social security number of the elector match.

The Department of State generates two monthly reports to identify duplicate registrations. One report identifies any registrants with the same first name, last name, middle initial, and date of birth. The second report identifies registrants with identical social security numbers. The Department forwards hard copies of these reports to all counties with possible duplicate registered voters.

Of the more than 2.8 million registered voters on the method of voting list from the 2006 General Election, we identified 3,533 registrants with two records. Duplicate voter registrations increase the risk that individuals will cast more than one vote. In fact, of the 3,533 individuals we identified with duplicate records, seven cast two ballots in the 2006 General Election.

In terms of removing duplicate registrations, it is understandable that there will be some duplicate registrations on any given month's voter registry. People relocate and do not necessarily notify local election officials of their changes in residence. Even when voters do notify local election officials and register in a timely manner, some overlap will occur if the previous county of residence does not remove the voter from its registry before the new county of residence adds the voter to its list. Recognizing this situation, we compared the voter master list for November 2006 with the voter master list for February 2007. This three-month period should have provided sufficient time for the Department to notify the counties of duplicates and for the counties to purge these duplicates. We found, however, that more than 340 individuals who had duplicate registrations in November 2006 continued to have more than one registration three months later. Specifically, of the 2,102 duplicate

registrations on the February 2007 voter master list, 343 (16 percent) also appeared as duplicates on the November 2006 master list.

## **Felons**

According to statute [Section 1-2-103, C.R.S.], no person serving a sentence of detention or confinement in a correctional facility, jail, or other location for a felony conviction, or while serving a sentence of parole shall be eligible to register to vote or to vote in any election in Colorado. After convicted felons complete their sentences, they may again register to vote. Other state mandates related to the voting ineligibility of convicted and/or incarcerated and paroled felons are:

- Colorado Election Rule 39.1 states that the Secretary of State is to direct the cancellation of the registration of persons convicted of a felony who are serving a sentence of confinement or detention or are on parole. Election Rule 39.2 specifies that the Secretary of State is to compare felony conviction data with the voter database on the basis of last name, first name, date of birth, and social security number, if provided. A confirmed match is considered adequate cancellation criteria, and this information is to be provided to the counties.
- Colorado Election Rule 39.4 requires county clerks to solicit lists of individuals convicted of a felony from their county sheriffs at least once per month and cancel any matches from that list.
- Statute [Section 1-2-606, C.R.S.] requires the Secretary of State to forward information on any Colorado elector convicted of a felony in federal district court to the applicable county clerk and recorder of the county in which the offender resides. The clerk and recorder shall then cancel the registration and the registration shall remain canceled until the offender re-registers to vote after his or her sentence is complete.

On a monthly basis, the Colorado Department of Corrections provides a report of felons (both incarcerated and paroled) to the Department of State. The Department then generates a report of potential matches with the voter master list based on last name, first name, and date of birth and makes the report available electronically to the county clerks and recorders. The Department also receives a written notification of individuals recently convicted of felonies in federal district court from the United States Attorney's Office. According to Department staff, they receive this information from the U.S. Attorney at least once per month. Department staff report that they provide this information to counties, as appropriate, so that the clerks and recorders can remove these individuals from their voter registration lists.

We reviewed the practices used by the Department of State and the counties to ensure incarcerated and paroled felons are removed from voter registration lists and identified several problems. First, we found that counties do not always remove these individuals promptly from voter registration lists and, as a result, some incarcerated and paroled felons did cast ballots during the 2006 General Election. Specifically, we reviewed the method of voting list and identified eight felons who voted in that election. All of these felons were on the list provided by the Department of Corrections to the Department of State. Additionally, we found that 84 percent of the 401 felons listed on the November 2006 state registry had not been purged from the list as of February 2007, or three months later.

Second, we found that counties do not consistently obtain felon lists from their sheriff's offices and cancel the registrations for these felons as required by state election rules. Of six county clerk and recorder offices visited during our audit, two reported they do not solicit this information from their sheriff's offices and one of these counties reported that it has not done so since October 2004. Additionally, one county clerk and recorder office we visited reported that it does not comply with state election rules requiring the office to notify felons in writing when the office removes the felon from the voter registration list.

## **Deceased Persons**

Section 1-2-602, C.R.S., requires the State Registrar of Vital Statistics to furnish the Secretary of State with a report of all persons eighteen years of age or older who have died during the previous month. On a monthly basis, the Secretary of State is to forward to each county clerk and recorder the list of deceased persons registered to vote in their county and the clerk is to cancel the registration of any elector for whom they have received notice of death. In compliance with this statute, the Colorado Department of Public Health and Environment's Vital Records Section provides a monthly report of deceased individuals to the Department of State. Similar to the report it generates for felons, the Department generates a report of deceased persons that it provides to the counties. The counties are responsible for canceling the registrations for deceased individuals just as they are responsible for removing ineligible duplicate registrations and felons from their voter lists.

We did not identify the names of any deceased individuals on the list of electors who cast ballots in the 2006 General Election. However, we identified the names of 380 deceased individuals who remained on the statewide voter master list for three months following the notice of death from the Department of Public Health and Environment to the Department of State. Specifically, of the 805 deceased individuals on the statewide master list in November 2006, there were 380 names that had not been purged from the list as of February 2007.

## **Voter List Maintenance**

As the chief election official charged with coordinating Colorado's implementation of HAVA, the Secretary of State has a responsibility to ensure the integrity of the State's voter registration list. The failure to remove ineligible voters from voter registration lists increases the potential for fraud if, for example, an individual uses the record of a deceased voter to cast a ballot or registers in more than one county and votes multiple times in an election. In these situations, the credibility of an election result could be called into question, thus undermining the entire election process and the goals of reform put forth by HAVA.

The Department of State has procedures in place to identify ineligible voters and to notify counties of discrepancies. However, the Department does not conduct effective follow up to ensure that counties remove duplicate registrations, felons, and deceased individuals from the State's voter registration lists in a timely manner. In the case of duplicate registrations, the Department does provide counties that have duplicate registered voters with a hard copy list of these voters. It is then the responsibility of the affected counties to resolve the discrepancies. Staff from the Department of State indicated that they compile and monitor data on the number of duplicate voters, but this information is reviewed in the aggregate. That is, staff monitor changes in the total number of duplicate registrations and do not routinely focus on particular counties that have difficulty canceling duplicates promptly. Furthermore, staff report that the Department generally relies on the counties to self-police and correct the errors the Department has made known to them. We do not believe this approach is sufficient. As our analysis shows, some duplicate registrations remained on the voter registries of more than one county for at least three months.

Staff from the Department of State indicated that some of the concerns we identified with inaccurate and duplicate voter registrations may be addressed by the new SCORE II statewide voter database system, which according to the contract, must be implemented by April 2008. SCORE II will include tools that eliminate the manual procedures currently in use and provide immediate, real-time list reconciliation and updating. Although the new system may improve the accuracy of the voter registration list in the future, efforts are needed to ensure the accuracy of voter registration information until the system is in place. Moreover, implementation of the new system will not resolve issues related to consistent compliance with the election rule requiring counties to obtain information on convicted felons from county sheriffs. The Department of State needs to take proactive steps to improve the accuracy of current voter registration lists, including addressing issues of county compliance, to prevent incomplete or incorrect voter registration data from being included on the statewide list.

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## **Recommendation No. 1:**

The Department of State should strengthen its oversight and management of voter registration lists by working with the counties to ensure accurate and timely maintenance of the list and uniform compliance with state election rules and statutes. This should include:

- a. Identifying voter registration inaccuracies and working to resolve inaccuracies prior to entry or transmission into the new statewide system.
- b. Analyzing county-specific voter registration data to identify counties that are not resolving duplicate registrations, felons, and deceased individuals, and other errors in a timely manner.
- c. Identifying and addressing areas of county noncompliance with state election rules, such as failing to obtain felon lists from local sheriff's offices or notifying felons of voting ineligibility.
- d. Taking action, as appropriate, when counties do not comply with statutes and state election rules related to voter registration lists.

## **Department of State Response:**

Agree. Implementation Date: March 2008.

The Department of State provides to every county in the state lists of named individual voters who appear on the registration lists of more than one county. The counties for which there appears to be duplicate registrations then perform research to determine the actual current legal residence of the voter, to allow cancellation of active registrations in counties from which the voter moved. The Department has also compared lists of felons and lists of deceased individuals against the state master list of registered voters. These practices, while not ideal, have been somewhat effective. Several factors have hampered these practices from being completely effective:

- Aged information. The Department compares county lists of registered voters with felon and deceased lists, and provides results to counties which at the time may be 30 to 45 days old and not in synch with county information.
- Other counties. Counties, in performing research on potential duplicates, must rely on exchange of information with other election

officials to ensure that voters have truly moved. Counties, if in doubt, err on the side of retaining records as “inactive” rather than cancelling a registration.

- Current list. The current state voter registration list has shortcomings that prevent the county election officials from informing the Department concerning potential matches that are not truly matches.
- County voter lists. These are independently maintained, causing difficulties in Departmental monitoring of county activity.

In spite of these impediments, the Department believes local election officials are diligent in their activities, and that this belief is supported by the very low number of records identified as potential matches. Even the highest number cited in the audit report represents slightly more than one tenth of one percent of the total number of active and inactive registered voters in the state. The current state voter master list is not conducive to zero inaccurate registrations.

The implementation of a HAVA-compliant centralized statewide voter registration system will increase the oversight capabilities of the Department. As voter eligibility checks are performed in real-time at the point of registration and counties can take action at the moment a potential match is identified, the degree of accuracy is expected to increase significantly. The SCORE system allows counties to include felon lists from local sheriff’s offices in the comparisons, and allows the Department to verify that such felons under local control are so entered. It will also allow, for the first time, detailed analysis of individual records identified for research. The Department expects HAVA to result in increased confidence on the part of citizens and election officials in the accuracy and completeness of official Colorado voter registration lists.

While the centralized statewide voter registration system has not been fully implemented, voter registration data has already been migrated to the new system for many counties. This has allowed our office to identify potential problems and to ensure that all data migrated into the statewide voter registration system is as clean and accurate as possible. The Department will monitor duplicate, felon, and death reports received on a monthly basis so that legitimate duplicate, felon, or death records are appropriately addressed by the county clerks’ offices. Additionally, the Department will contact those counties who have not complied with statutes and state elections rules regarding voter registration lists to ensure that the appropriate action is taken.

Prior to full implementation of the statewide voter registration system, the Secretary of State will review the duplicated, felon, and deceased files on a

monthly basis and take appropriate action when necessary - November 2007. Statewide voter registration system will be fully deployed March 2008.

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## **SCORE II System Status**

One key HAVA provision—the development, maintenance, and administration of a computerized statewide voter registration list—has not yet been implemented in Colorado. According to HAVA, each state is to implement a single, uniform, official, centralized, interactive, computerized statewide voter registration system. The system is to be maintained at the state level and contain all voter registration records for all jurisdictions within the State. Colorado requested and was granted a waiver by the federal government to implement a statewide database of all registered voters by January 2006 rather than the January 2004 HAVA deadline. The January 2006 date was also statutorily adopted by the General Assembly. Specifically, Section 1-2-301, C.R.S., states that the Secretary of State shall have the statewide voter registration list in place no later than January 1, 2006. However, as of that date, Colorado was one of more than 10 states that did not have a compliant voter registration system.

In August 2004 the Secretary of State entered into a contract with Accenture LLP for the design, development, implementation, maintenance, and support of a statewide voter registration and election management system. The Statewide Colorado Registration and Election System (SCORE) was to replace existing voter registration systems located in each of Colorado's counties and was to have been completed by the January 2006 deadline. In December 2005 the Secretary of State and Accenture mutually agreed to terminate the approximately \$10.1 million contract. At that time, the State had paid Accenture about \$1.4 million. Accenture reimbursed the State \$2 million that included the amount the State had paid to them and other expenditures that had been incurred on the system.

In April 2006 the State issued another Request for Proposal for what is referred to as SCORE II. The vendor selected to develop and implement SCORE II is Saber. The State and Saber are currently under contract and April 2008 is the anticipated time for statewide implementation of SCORE II. The Colorado Department of State has been in communication with the Department of Justice (DOJ) regarding the issues with the original vendor and the subsequent steps taken to comply with this critical HAVA requirement.

The Department of Justice has filed litigation against other states that have not made sufficient progress in implementing certain HAVA provisions, including the statewide voter registration list requirement. We contacted the DOJ to determine its position on the status of Colorado's progress related to this HAVA requirement. Staff from the DOJ would not verify that they have accepted Colorado's reasons for

not complying with this HAVA mandate. However, the DOJ had not filed litigation as of the time of our audit.

Staff from the Department of State report that the current vendor has met all of the milestones and delivery deadlines to date, and that the project is on schedule to meet the April 2008 implementation. According to staff, they are working with and reporting to the Governor's Office of Information Technology on the project.

## Voter Registration Drives

Statute [Section 1-1-104, C.R.S.] defines a voter registration drive as “the distribution and collection of voter registration applications by two or more persons for delivery to a county clerk and recorder.” Section 1-2-701, C.R.S., mandates that voter registration drive organizers file a statement of intent to conduct a registration drive with the Secretary of State. Organizers must also register with the Secretary of State on an annual basis, and the authorizations to conduct the drives are valid until December 31st of the calendar year in which they were approved by the Secretary of State. In addition, organizers are required to complete a training provided by the Secretary of State prior to commencing the distribution or circulation of voter registration applications.

In September 2007 there were a total of 86 approved registration drives in Colorado. The drives' organizers include political parties, individual candidate campaigns, student associations, and special interest groups. In 2005 the Secretary of State adopted new rules governing voter registration drives in the state. The new rules were adopted in response to problems identified during the 2004 election cycle. Also in 2005 the General Assembly passed legislation that prohibits organizers from compensating circulators of voter registration drive applications based on the number of voter registration applications the circulators distribute or collect. Failure to comply with statutes related to voter registration drives can result in penalties including fines and misdemeanor charges.

We reviewed voter registration drive requirements and the documentation associated with 41 approved voter registration drives filed during 2007 to determine whether the drives are being conducted in accordance with statutes and Secretary of State election rules. We also evaluated the voter registration drive practices of the six county clerk and recorder offices we visited. We noted several areas for improvement.

**Filing of voter registration applications.** According to statute [Section 1-2-702, C.R.S.], voter registration drive organizers are to deliver voter registration applications to the clerks and recorders of the counties in which the electors reside. Staff from two of the six counties we visited told us that voter registration drive organizers do not always comply with this requirement. Rather, organizers

sometimes deliver, and county clerks and recorders accept, all of the applications collected during a voter registration drive conducted in their county, regardless of the residence addresses of the electors. The county clerks report that they then transmit the drive applications to the proper counties.

Statutory penalties exist for voter registration drive organizers who fail to deliver the applications to the proper clerk and recorder. However, the Department has never taken action to enforce the penalties. Prior to the passage of Senate Bill 07-83, the statutory penalties were primarily of a criminal nature. Senate Bill 07-83 eliminated the criminal penalty and imposes a mandatory fine. For example, Section 1-2-703 (3)(a), C.R.S., states that a voter registration drive organizer who “willfully” fails to deliver a voter registration drive application to the proper county clerk and recorder shall be punished by a fine not to exceed fifty dollars for each business day of violation. Additionally, a drive organizer that has been fined three times or more for this reason, “shall be punished by an additional fine not to exceed one thousand dollars” [Section 1-2-703 (3)(b), C.R.S.]. The Secretary of State is charged with enforcing the provisions of the State’s election code [Section 1-1-107, C.R.S.] including the provisions related to voter registration drives. As such, the Department should work with the county clerks and recorders to ensure that the Department is notified when drive organizers do not deliver the applications to the correct county so that appropriate action can be taken pursuant to statute.

**Data discrepancies and other errors.** We reviewed statements of intent, which register the drive’s organizer(s) with the Department of State and designate the counties where the drive will be held, for 41 registration drives and compared these statements with the voter registration drive information maintained on the Department’s Web site. Interested members of the public may access the Web site, which contains information on the name of the drive organization agent, the drive, and the county or counties in which the drive is authorized, to verify that a specific drive is legitimate. Our review and comparison identified discrepancies and errors related to documentation for 15 of the voter registration drives examined. For six of the filings, the Department’s Web site indicated that the drives were authorized in counties that did not match the counties listed on the corresponding statements of intent. For three filings, the statements of intent were not complete as they did not include the signatures of the drive organizers.

**Training.** Election rules require voter registration drive organizers/agents to complete the Department’s training program and provide training to all persons assisting with the registration drive. However, we found the Department’s actual training practices are not consistent with the election rules. For example, election rules do not establish any exceptions to the training program requirements for renewing registration drives; however, when an organizer applies for a registration drive renewal, the Department does not require the organizer to participate in the Department’s training program. Instead, the Department allows the organizer to

complete a short review exercise that does not address all of the training areas listed in the election rules. Of the 41 voter registration drives sampled, 28 organizers, or about two-thirds, did not participate in the required training and instead submitted the short review exercise. The Department did not review or score the review exercises submitted by these 28 organizers. All of the 28 organizers were renewing their voter registration drive applications.

## **Align Rules and Practice**

It has been approximately three years since the Secretary of State adopted new rules governing voter registration drives in the State. Since that time, practices have been adopted at both the state and local levels to implement the rules. As we have reported, these practices are not always consistent with the rules governing voter registration drives. It may be that the practices that have evolved are more appropriate or effective than what was originally intended when the rules were adopted. By contrast, it could be that administration of the rules needs to be strengthened to ensure compliance. Sufficient time has passed to assess the effectiveness of the new rules and make adjustments before inefficient or ineffective practices become de facto policy. In some cases the Secretary of State may need to amend or revise the rules. In other cases, corrective actions should be taken to ensure compliance by both the county clerks and recorders and voter registration drive organizers and agents. Additionally, the Department should implement internal quality assurance reviews to ensure that both the information related to voter registration drive statements of intent and the information posted on its public website are accurate and complete.

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### **Recommendation No. 2:**

The Department of State should ensure voter registration drives are conducted in the public interest and in accordance with applicable laws and rules by reevaluating election rules related to voter registration drives, as well as state and local policies and practices implementing those rules. The Department should then determine areas in which rules should be revised to align with practices or corrective action taken to ensure practices comply with rules. The Department should establish internal quality assurance reviews to ensure statements of intent filed with the Department and voter registration drive information posted on its public website are accurate and complete.

### **Department of State Response:**

Agree. Implementation Date: January 2008.

For the period covered by this audit, the Department did not have the statutory authority to impose sanctions on voter registration drives. However, the Department did work with and train county clerks on voter registration drive procedures to ensure we were notified when alleged violations occurred so that we could immediately notify the organizations of possible violations of state law. The Department also worked with counties to ensure that alleged violations were forwarded to the District Attorney or Attorney General's Office.

As a result of recently enacted legislation, Senate Bill 07-083, the Department now has the authority to impose fines for voter registration drives that violate state law. The Department is currently developing rules for imposing fines as well as procedures for processing voter registration drive complaints. On October 30, 2007, the Department issued a notice of a rulemaking hearing to be held on November 30, 2007 for the purpose of adopting new rules concerning voter registration drives.

The Department has begun to review voter registration drive filings to ensure appropriate procedures are in place and that our website accurately reflects the information provided on a voter registration drive statement of intent form.

Review of voter registration drive filings began November 1, 2007. A rules hearing concerning voter registration drives is scheduled for November 30, 2007.

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# Grant Management

## Chapter 2

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### Introduction

In addition to its programmatic requirements, the Help America Vote Act (HAVA or the Act) mandates that states apply sound accounting practices related to the receipt and use of federal HAVA funds. The federal Election Assistance Commission (EAC) and the U. S. General Services Administration (GSA) have provided the states with the specific administrative requirements they are to apply in overseeing and managing HAVA funds. According to the EAC and the GSA, states are to manage the funds in accordance with the following three federal Office of Management and Budget (OMB) standards:

- **Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments** describes principles for determining allowable costs, or costs that may be charged to federal programs, and the ways in which they should be supported.
- **Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations** requires grant recipients to obtain an audit of federal assistance in compliance with Circular A-133 if they spend \$500,000 or more in federal funds during a fiscal year.
- **Grants and Cooperative Agreements with State and Local Governments (the Grants Management Common Rule)** prescribes the minimum standards for administering federal funds in areas such as accounting, purchasing, and property management.

We evaluated the Department of State's management of HAVA funds in accordance with these and other basic principles of accounting and grant management. Included in this analysis was a determination of whether the Department distributed funds to the counties according to federal mandates. As part of our audit work, we reviewed federally required reporting documents, Colorado Financial Reporting System (COFRS) data, and other expenditure information, including supporting documentation such as invoices, at both the Department and the six county clerk and recorder offices we visited. We found that the Department distributed funds to the six counties in accordance with HAVA requirements. In addition, we found that, on

the basis of our testing at the counties, these six counties expended their HAVA funds for the purposes for which they were intended and that they maintained the necessary documentation to support these expenditures.

In reviewing other aspects of the Department's management of the State's HAVA grants, however, we identified several areas of concern. Although different in nature and magnitude, all of these concerns share a common element—the need for more thorough record keeping. Better record keeping is needed to fully document and demonstrate the ways in which the State has complied with HAVA grant management requirements. As we describe in the following sections, the lack of adequate record keeping to explain the rationale for certain funding decisions, to justify all expenditures, and to comprehensively reconcile reporting and accounting records could place the State in a position of having to repay federal dollars.

## **State Matching Funds**

HAVA Title II, Section 251 payments represent the largest portion—about \$34 million—of Colorado's federal HAVA funding. To qualify for Title II, Section 251 payments (also referred to as “requirements payments”) states had to file a certification with the EAC declaring that they had complied with a number of mandates. These mandates included the filing of a State HAVA Plan with the EAC and the implementation of a plan for uniform administrative complaint procedures. The states also had to certify that they had appropriated the required matching funds. According to the EAC, a matching fund requirement is a cost sharing method by which the federal government and the states share the expense of funding a particular endeavor. In the case of HAVA, a state's matching fund requirement is to equal “5 percent of the total amount to be spent for requirements payments activities, taking into account the requirements payment and the amount spent by the State.” Section 251 funds can be used to implement any of the HAVA Title II requirements including, as specified in Colorado's State HAVA Plan:

- Purchasing compliant voting systems.
- Implementing provisional voting and voting information requirements.
- Implementing a computerized statewide voter registration list.

Also pursuant to HAVA, to meet the conditions for receipt of Section 251 funds, a state's HAVA plan had to specify “how the state will establish a fund for purposes of administering the State's activities, including information on fund management.” The Act stated that a State's fund is to consist of the:

- Amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment is made to the State.
- Requirements payment made to the State (federal HAVA funds).
- Interest earned on deposits of the fund.

Colorado's Federal Elections Assistance Fund (Fund) was established by statute [Section 1-1.5-106, C.R.S.] in 2003. According to the statute, the Fund is to consist of "all moneys received by the state from the federal government pursuant to HAVA, all moneys appropriated or otherwise made available to the Fund by the General Assembly for the purpose of carrying out the activities required by HAVA, and all interest earned on deposits made to the Fund." In addition, "all moneys in the Fund are continuously appropriated to the Department for the proper administration, implementation, and enforcement of HAVA." Finally, the Fund shall be administered by the Secretary of State.

We reviewed Colorado's compliance with the federal and state HAVA mandates related to the State's matching funds. We identified two concerns requiring the attention of the Secretary of State to ensure Colorado is in compliance with HAVA requirements and thus avoid possible repayment of HAVA funds to the federal government. Additionally, we believe the Department of State should more clearly identify and report on the sources and expenditures of State matching funds to provide needed accountability.

### **Appropriation of the State Match**

In the State of Colorado's original 2003 Help America Vote Act State Plan, the Department reported that all federal funds received by the State pursuant to HAVA 2002 "will be deposited into the State's Federal Election Assistance Fund, along with state and county monies appropriated for the purpose of meeting the State's 5 percent match requirement." The Department reported the State's match to be \$1.81 million. In 2003 the General Assembly appropriated \$1.37 million from the Department of State Cash Fund as the State's matching contribution. According to staff from the Department of State, the balance of more than \$445,000 was to come from other sources, including in-kind contributions from the counties.

In the 2007 Revised State HAVA Plan, the Department reported that Colorado had matched federal HAVA funds in the amount of \$1.8 million and that "all federal funds received by the State pursuant to HAVA 2002 are deposited into the Fund, along with state monies appropriated for the purpose of meeting the State's 5 percent match requirement." In addition, "interest earned on the funds has been credited to the Fund by funding source . . . and used according to the purpose of the source." We found, however, that the balance of the State match has never been deposited into the

Fund. Consequently, in addition to the Fund being more than \$445,000 short, we estimate that it should have earned almost \$59,000 in interest between July 2003 and December 2006; this amount should also have been maintained in the Fund.

According to Department staff, HAVA does not require that a state's total match amount be deposited into its federal election fund. Rather, the Act requires only that matching funds be appropriated. In addition, according to staff, HAVA does not mandate a date by which the total matching fund amount must be deposited. Therefore, staff believe they are in compliance with HAVA requirements. We are concerned that this position is not shared by the federal government. In its audits of HAVA compliance, one of the standard areas the Election Assistance Commission reviews is the 5 percent matching requirement. Specifically, the EAC Office of Inspector General's audit program (Section G) includes steps to "**verify that state appropriations deposited into the fund are sufficient to meet the 5 percent matching requirement**" (emphasis added). In March 2007 the EAC found that the State of Illinois ". . . did not properly deposit the matching contribution in the state election fund." According to the final audit resolution in this case, the EAC stated:

The EAC believes the requirement for a 5 percent match was clearly articulated in HAVA section 253(b)(5), which requires the appropriation of "an amount equal to 5 percent of the total amount to be spent for such activities". . . and that the requirement to deposit those funds into the state election fund was clearly articulated in section 254(b)(1), which states that the election fund is to include "amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment is made."

Additionally, if a state intends to meet its match in whole or in part with funds provided by counties, the EAC will determine whether the State executed written agreements with the counties specifying the amount of the county match. Failure to meet these requirements could result in the loss or repayment of HAVA monies.

In addition to this concern, there are other issues related to Colorado's HAVA match that need to be addressed. All of these areas are discussed below:

### **Department's Cash Fund**

According to Department staff, the State has met the match requirement because Colorado's Help America Vote Act [Section 1-1.5-106, C.R.S.] authorized the Secretary of State to direct that monies in the Department of State Cash Fund be used to satisfy in whole or in part the matching requirement. Staff report that, in accordance with this authorization, from 2003 through 2006 the Secretary of State directed almost \$800,000 from the Department's Cash Fund to meet the match

requirement. However, the Department has not deposited these monies into the State's Federal Elections Assistance Fund nor has it reported these expenditures as matching funds on the required federal HAVA reporting documents. Further, this approach does not appear to be entirely in keeping with legislative intent. According to statute [Section 1-1.5-106 (3), C.R.S.]:

. . . In order to assist the state in satisfying the matching requirement of HAVA, the Secretary may assess the counties for a share of the financial requirement assessed against the state under HAVA and may establish by rule a plan to fairly and reasonably allocate the financial obligation among the counties.

To date, the Department has not assessed the counties any portion of the match requirement. We did not find any documentation explaining the Department's rationale for using its Cash Fund to fulfill the match requirement rather than assessing the counties for a share of the requirement. Also, it is unclear what portion, if any, of the approximately \$800,000 in expenditures from its Cash Fund the Department intends to be credited toward the State's match requirement.

### **State Match Calculation**

We determined that the Department miscalculated the amount of the required match. The Department calculated Colorado's 5 percent state match to be \$1,813,632. We recalculated the state match using the federally prescribed formula. We found the correct match amount to be \$1,818,177 or \$4,545 more than the amount reported to the federal government and used to satisfy the conditions for receipt of Section 251 funds. Therefore, the balance of the State match owed to the Fund, when the match is calculated correctly, is \$446,907.

### **Ensure Match Requirements Are Met**

The Department of State needs to resolve the discrepancies we identified by working with the appropriate federal authorities. The Department first needs to resolve the underlying issue of whether it is meeting the 5 percent match requirement by not depositing the total matching funds into the State's Federal Elections Assistance Fund. The Department will also need to determine whether interest income must be repaid because the entire State match has not been deposited into the Fund. Additionally, the Department needs to ensure that the sources of the matching funds are clearly documented and reported to federal and state officials. The General Assembly did authorize the Secretary of State, subject to available appropriations, to direct monies in the Department of State Cash Fund to be used to satisfy in whole or in part the federal matching requirement. We believe that such authorization does not eliminate the need for transparency related to the amount of funds that have been

used for this purpose. Further, the Department needs to ensure reports submitted to the federal government clearly identify the use of state funds for HAVA matching purposes.

The Department also needs to correct the miscalculated match amount. Finally, if it is determined that part of the match should come from the counties then the Department needs to adopt rules and execute written agreements specifying the amount of each county's portion and the date upon which the monies will be deposited into the State Federal Election Assistance Fund. Department staff have indicated that the county portion of the match could come from in-kind contributions. If that is the case, the Department will need to determine the value of the in-kind portion, document the basis for the valuation, and record and report it accordingly.

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### **Recommendation No. 3:**

The Department of State should ensure compliance with the 5 percent State match requirement and provide greater accountability for the sources and uses of the HAVA State match by:

- a. Working with the federal Election Assistance Commission or other appropriate federal agency to resolve the issue related to whether matching funds must be deposited into the State's Federal Election Assistance Fund.
- b. Correcting the calculation of the match amount.
- c. Revising reports to the federal government to reflect any corrections in the amount of matching funds expended by the State, as appropriate.

### **Department of State Response:**

Agree. Implementation Date: Prior to March 30, 2008 (required federal reporting date).

The Department agrees that the correct amount of the required 5 percent State match is \$1,818,177, according to the federal formula issued in 2006, rather than \$1,813,632 as originally calculated by the Department in 2003. The Department will revise its reports to the federal government to correct the amount of the required match.

The Department agrees that it should work with the Election Assistance Commission (EAC) to resolve whether the State has met the required State match. The Department believes that the \$1.81 million match requirement

has been more than fully satisfied by (1) The appropriation of \$1.37 million from the Department of State Cash Fund to the Federal Elections Assistance Fund, plus (2) increased expenditures of over \$800,000 for HAVA-related purposes from Department of State Cash Fund appropriations that would have otherwise reverted. Section 1-1.5-106 (3), C.R.S., expressly authorized the expenditure of such funds from the Department of State Cash Fund to meet the match requirement. The federal act does not require that such funds must first be deposited into the Federal Elections Assistance Fund prior to expenditure. Guidance issued by the EAC supports the use of such expenditures to meet the State match requirement. (See EAC “Frequently Asked Questions Regarding Appropriate Uses of HAVA Funds,” October 2006, Question 46, which allows states to count contributions from other sources, such as expenditures for employee compensation, toward the match requirement, so long as there is an overall increase in state spending.) The Department intends to provide a detailed accounting to the federal government when it files its next required report in early 2008.

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## **Time Reporting**

According to federal Office of Management and Budget (OMB) Circular A-87, the salaries and wages for non-federal employees who conduct activities solely related to a single federal award or cost objective should be supported by certifications. Certification provides authoritative support for the time employees spend on activities related to the federal program for the period covered by the certification. According to Circular A-87, certifications should be prepared at least semi-annually and should be signed by the employee or supervisor having first-hand knowledge of the work performed by the employee. For employees who work on multiple activities or cost objectives, including activities funded through federal programs, the distribution of these employees’ salaries or wages among various programs should be based on personnel activity reports or equivalent documentation such as timekeeping records. The documentation for employees for whom a portion of their time is spent on federally funded activities should:

- reflect an after-the-fact distribution of the actual activity of the employees;
- account for the total activity for which each employee is compensated;
- be prepared at least monthly and coincide with one or more pay periods; and
- be signed by the employee.

The Department of State relies on federal HAVA funding to finance the costs associated with employees' HAVA-related activities. In Fiscal Year 2005 more than \$646,000 of the Department of State's personal services costs were financed with HAVA funds. In Fiscal Year 2006 this figure increased to more than \$740,000. Since Fiscal Year 2003, a total of 24 different employees have been wholly or partially paid with HAVA funds. At the time of our audit, 13 employees were designated as having HAVA-related job responsibilities; 7 of these were entirely paid with HAVA funds and 6 were partially (50-75 percent) paid from this source.

We reviewed the documentation maintained by the Department related to individuals whose salaries have been wholly or partially charged to HAVA from Fiscal Year 2003 through Fiscal Year 2006. Overall, we concluded that the Department of State does not maintain adequate documentation to support employees' activities related to and financed through HAVA. Specifically, we found:

- **Employees whose positions were entirely HAVA-funded.** Certifications for employees who were entirely funded with HAVA dollars were not always prepared, were not always complete, and were not always based on supporting documentation. For example, the Department was unable to locate certifications for two of the eight employees who were entirely funded with HAVA dollars in Fiscal Year 2004. In 2007 the Department prepared a general certification for Fiscal Year 2005 stating that "to the best of our knowledge" employees who were paid with HAVA funds worked on HAVA-related activities. We found no backup documentation to support this statement. Finally, prior to 2006 the Department prepared certifications annually rather than on the federally prescribed semi-annual basis. The Department changed this practice in January 2006 when it began certifying these employees' HAVA-related activities on a semi-annual basis.
- **Employees whose positions were partially HAVA-funded.** The Department does not have an agency-wide timekeeping system that can track staff hours spent on HAVA-related activities. Neither does the Department have an equivalent uniform manual system for employees who divide their time among various programs and funding sources to document the time spent on HAVA-related activities. Rather, staff report that various methods of tracking or determining the time spent on HAVA activities are maintained by staff.

Time sheets for part-time HAVA employees and certifications of work performed by full-time HAVA employees are two items the U.S. Election Assistance Commission's Office of Inspector General examines during its state audits of HAVA funds. If the EAC were to find Colorado lacked adequate time keeping documentation, the State may be required to repay HAVA funds to the U.S. Treasury or to the State Federal Elections Assistance Fund. The EAC has found that other

states lacked adequate time keeping documentation, and in at least one case, has required a state to repay funds.

According to staff from the Department of State, beginning in April 2007 all employees who devote less than 100 percent of their time to HAVA-related tasks must sign monthly certifications attesting to the percentage of time spent on these tasks. Although this is a step in the right direction, we do not believe it is sufficient to satisfy the requirements of OMB Circular A-87 or the EAC audits. Monthly self-certifications of the estimated percentage of total time spent on HAVA activities does not reflect an after-the-fact distribution of the actual activity and does not provide adequate documentation for federal accounting purposes. The Department needs to do more to ensure time keeping or equivalent documentation is routinely and comprehensively prepared and recorded. This could include modifying the existing time keeping system to account for HAVA activities. A manual method for tracking the time spent on HAVA activities is also an option. Regardless the method chosen, time keeping records should be approved by the appropriate supervisor and maintained by the Department. The Department should also ensure that certifications for any employee who is assigned solely to HAVA activities are prepared at least semi-annually.

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#### **Recommendation No. 4:**

The Department of State should improve its documentation of staff time associated with HAVA. This should include:

- a. Adopting a method for tracking staff time spent on HAVA activities that is consistent with OMB Circular A-87 for employees whose positions are not fully dedicated to this program.
- b. Ensuring that certifications are prepared and properly signed at least semi-annually by those employees whose positions are fully dedicated to HAVA.

#### **Department of State Response:**

Agree. Implementation Date: By January 2008.

The Department's fully paid HAVA employees already sign semi-annual certifications as required by OMB Circular A-87. There were one or two HAVA employees in the past who did not sign such certifications, but they are no longer employed with the Department. For those staff whose positions are less than 100 percent HAVA, the Department has used a manual method of tracking time. Each of these staff manually documents his/her activities,

retains such documentation, and signs monthly certifications that they have worked the required percentage of time on HAVA-related activities. In May 2007, the Department asked the EAC for permission to use documentation that was not equal to minute-by-minute accounting of time, but the EAC has not responded to our request. The Department will have partially paid HAVA employees maintain more detailed manual documentation and will keep such documentation in a central location rather than with the employees.

By January 1, 2008, the Department will implement a system by which employees will keep more detailed documentation of time spent on HAVA and will maintain all manual documentation in a central location.

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## **Record Keeping and Reporting**

Section 902 of the Help America Vote Act states that:

. . . each recipient of a grant or other payment made under this Act shall keep such records with respect to the payment as are consistent with sound accounting principles, including records which fully disclose the amount and disposition by such recipient of funds, the total cost of the project or undertaking for which such funds are used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

Basically, this means that states should have adequate supporting documentation to substantiate all expenditures related to HAVA activities. In reviewing the Secretary of State's HAVA accounting and fund management activities we noted a number of areas in which record keeping was insufficient and records were not maintained in accordance with HAVA requirements. Consequently, we found it difficult to track and reconcile expenditures reported to the EAC to the State's accounting system.

The federal Election Assistance Commission requires the states to submit an annual report on the Office of Management and Budget's (OMB) Standard Form 269, Financial Status Report, for each HAVA funding source. The reports are to present fiscal information and the states are to annually submit the reports for as long as specific HAVA funds remain in a state's election fund. Among other information, the reports are to include detailed lists and narratives for expenditures by program, function, or task.

We reviewed the Form 269 reports submitted by the Department of State for the EAC reporting period 2003 through 2006. We also reviewed corresponding Colorado Financial Reporting System (COFRS) data and other financial documents. In addition, we tested a sample of invoices and supporting records related to HAVA expenditures reported by the Department during this period. We tested a total of 72 expenditures totaling more than \$4.2 million. Overall, we noted instances of misreporting, miscalculation, and misapplication of HAVA requirements. These included:

- **Reconciliation to accounting records.** For both 2005 and 2006 we were unable to completely reconcile the expenditures the Department reported to the EAC with the corresponding expenditures recorded in COFRS. We used the Department's documentation and spreadsheets, which are intended to serve as a crosswalk between expenditures reported to the federal government and those recorded in COFRS, to track and reconcile the figures. For 2005 the difference between the reported expenditures and the reconciled expenditures totaled \$17,214. That is, the Department reported \$17,214 more in expenditures to the EAC than was supported. In addition, the Department was unable to provide documentation to explain and resolve the discrepancy. For 2006 we found a similar discrepancy and lack of documentation for \$17,272 reported as HAVA expenditures on the Form 269.
- **Matching funds.** We identified two problems related to matching funds reported to the federal government on Form 269. First, we found that in 2003 and 2006, the Department incorrectly recorded approximately \$144,000 and \$53,000, respectively, in state match expenditures for Section 101 funds. According to the EAC, there is no state match requirement for Section 101 funds. Second, in 2006 the Department reported expenditures of almost \$234,200 in state matching funds for Section 251. According to Department staff, however, these expenditures represented state HAVA outlays made from the Department's Cash Fund and not from the state matching appropriation in the State Federal Elections Assistance Fund. While state outlays for HAVA purposes from sources other than the State's matching funds are allowed, they should be clearly and accurately reported as such.
- **Certification.** Pursuant to HAVA, states may use Section 251 funds for the "improvement of the administration of elections for federal office." Activities in this category include voter education, training of election officials, staff expenses related to development and implementation of voting equipment standards and equipment certification, and personal services and other operating expenses. Prior to the use of Section 251 funds for these purposes, HAVA requires that states certify that they have met certain requirements. In 2005 and 2006 the Department reported that it had expended almost \$97,500 and \$263,200, respectively, for these 'other activities.'

However, the Department was unable to provide evidence that it has submitted the required certification to the EAC.

- **Reporting errors and miscalculations.** The Department incorrectly calculated and reported interest earned for July 2003, which resulted in an overstatement of \$397 for Section 102 funds for that month. The Department carried this same error forward in subsequent years. Additionally, in 2006 the Department failed to record information on the state maintenance of effort spent during the State Fiscal Year and the amount appropriated for the next fiscal year in the Remarks section of the Form 269 report as required by EAC guidelines.

## **Adequate Documentation and Supervisory Review**

The Department needs to make improvements in its record keeping and documentation related to HAVA. Questionable HAVA expenses, errors in reported expenditures, and inaccurate calculation of fund activities' expenditures could result in Colorado having to repay funds to the federal government and/or the State Federal Elections Assistance Fund. Expenditures that are not supported by documentation and cannot be reconciled to accounting records could also be deemed unallowable and have to be repaid. Overall, we found that the Department's records did not detail which specific expenditures recorded in COFRS were reported on Form 269 as HAVA expenditures. Therefore, we were unable to track amounts reported on Form 269 to the accounting records or examine invoices or other documentation to support all expenditures reported to the EAC for HAVA activities. The Department needs to develop a system for tracking HAVA-related expenditures that enable Form 269 expenditures to be reconciled to COFRS.

The Department also does not have adequate supervisory review procedures to prevent errors. Supervisory review helps ensure that errors are identified and corrected before reports are sent to the federal government and that reporting is accurate, timely, and in compliance with requirements.

Finally, the Department should develop written procedures for its business processes to allow for consistency and continuity in the event staff responsible for particular functions are unavailable to perform the required tasks. Written procedures also provide formal documentation for how the Department administers and complies with HAVA fund management requirements. The Department needs to adopt such written procedures for HAVA budgeting and funds management, including the preparation of the EAC Form 269 reports and narratives and the calculation and accounting for interest and indirect costs.

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## **Recommendation No. 5:**

The Department of State should strengthen its controls over HAVA fund management and reporting by:

- a. Ensuring expenditures reported to the EAC can be reconciled to COFRS and that all adjustments are supported by adequate documentation.
- b. Implementing a supervisory review process designed to ensure federal HAVA expenditures are reported accurately and completely and EAC requirements are correctly applied and reported.
- c. Adopting formal written procedures documenting the processes related to HAVA funds management, including reporting to the EAC and submitting required certifications.

### **Department of State Response:**

Agree. Implementation Date: March 2008.

The Department requires and retains documentation to support the use of all HAVA funds, and it has internal control processes to assure that funds are expended in accordance with state fiscal rules, federal guidelines, and HAVA requirements. This includes reviews of expenditures by at least three staff before they are approved in COFRS.

The Department agrees it was difficult for auditors to track and reconcile expenditures reported to the EAC to expenditures recorded in the State's accounting system (COFRS). Reporting on the use of HAVA funds requires manual record keeping as well as COFRS information. The Department has been improving this manual documentation to make it more clear what COFRS information was used to prepare reports to the EAC. The Department is also reviewing all past reports to the EAC to assure they align with recent EAC advisories on the use of HAVA funds. If corrections are required, the Department will file adjusted reports with the EAC and will have substantial documentation to support the amended reports.

The Department agrees that it did not file a certification with the EAC regarding the expenditure of Title II funds on activities to improve the administration of federal elections. The certification will be filed with the EAC prior to December 1, 2007.

All federal funds were placed in one special fund in 2003 and 2004 and have earned interest as required by law. In 2005, the EAC requested the interest be reported by funding section of HAVA (101, 102 or Title II). In distributing the interest across these sections, the Department incorrectly allocated approximately \$400 more to Section 102 for July 2003 than it earned. The Department notified the EAC this year when it discovered this error, and it will file corrected reports to the EAC when the next reports are due in February and March 2008.

The Department will implement a supervisory review process designed to ensure that federal reporting is accurate, complete, and correct and will adopt formal written procedures documenting the processes relating to HAVA funds management in accordance with budget circulars, fiscal rules, statutes, and other guidelines and instructions.

Improvements in manual documentation to reconcile with COFRS began in July 2007; this will be completed by March 2008. The Department will file any necessary amended reports with the EAC by their reporting dates of February 29 and March 31, 2008. Written procedures documenting procedures will also be completed by March 31, 2008.

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# Management Issues

## Chapter 3

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### Conflicts of Interest

A body of statutes, rules, constitutional amendments, and other directives exist related to conflicts of interest and outside employment by state employees. These mandates generally serve one purpose, and that is to hold the respect and confidence of the people in the ethical conduct of state government. Article XXIX (Ethics in Government) of the Colorado Constitution declares that “public officers . . . and government employees shall avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated.”

Conduct of a questionable nature can include certain types of outside employment. Consequently, Section 24-50-117, C.R.S., states that “no employee shall engage in any employment or activity that creates a conflict of interest with his duties as a state employee.” Pursuant to this statute, the State Personnel Board adopted Rule 1-13:

No employee is allowed to engage in any outside employment or other activity that is directly incompatible with the duties and responsibilities of the employee’s state position, including any business transaction, private business relationship, or ownership. An employee shall give advance notice to the appointing authority and take necessary steps to avoid direct conflict between the employee’s state position and outside employment or other activity.

According to Board Rule 1-14, employees may engage in outside employment but only with advance written approval from the appointing authority. Additionally, the appointing authority shall base approval on whether the outside employment interferes with the performance of the state job or is inconsistent with the interests of the State, including raising criticism or appearance of conflict.

During the audit of Colorado’s Help America Vote Act implementation, allegations were made concerning a conflict of interest related to the outside employment of an employee of the Department of State’s Elections Division. The Secretary of State requested the Office of the State Auditor (OSA) review this issue to determine whether any state laws or personnel rules had been violated. The audit work

conducted in response to this request was performed by the OSA, and the findings and recommendations resulting from that work are reported in this chapter.

Office of the State Auditor staff reviewed the personnel and business records, emails, and other documentation related to the employee's term of employment with the Department of State. We also conducted interviews with the employee and other management and staff of the Department. To provide greater assurance about the adequacy and comprehensiveness of the policies and practices of the Department of State relative to the outside employment of its staff, we expanded our review. Specifically, we evaluated whether other Department employees were engaged in outside business activities and whether these activities were being conducted in accordance with statutes and personnel rules. We found the following:

- **The conduct of the employee for whom the initial allegations were made does appear to have violated state statute [Section 24-50-117, C.R.S.] and State Personnel Board Rules [Rules 1-13 and 1-14].** Specifically, the employee owned and operated a partisan political business while employed with the Department of State. The employee's ownership and operation of this business appears to "raise criticism and the appearance of a conflict of interest" particularly given the job responsibilities for which this individual was assigned within the Elections Division. Furthermore, the employee engaged in outside employment/business ownership without advance written approval from the appointing authority.
- **Four other employees of the Department of State did not receive advance written approval prior to engaging in outside employment/business ownership.** We compared the names and other identifying information of all individuals employed by the Department at the time of our review with the names of business owners and operators registered with the Department's Business Division. We identified four employees who had registered businesses. All four of these individuals were actively engaged in operating their respective businesses during the period of our audit but none had written approval from the Department. The private businesses of these four individuals did not appear to be incompatible with their state jobs. However, approval for outside employment/business ownership is ultimately the decision of the appointing authority. It should be noted that the Business Division data we matched only contain the names of individuals who own their own business. If there are Department of State employees who do not own their own business but have outside employment, we would not have identified these individuals in our review. Additionally, registering ownership of a business does not necessarily mean the employee is actively operating the business. Therefore, use of the Department's Business Division database is limited and serves only as a possible source of employment/business ownership information that should then be verified.

We shared these findings with the Secretary of State during our audit so the Department could take appropriate action in a timely manner.

## **Appointing Authority Responsibility**

Although some employees appear to be in violation of statutes and rules, the Secretary of State, as the appointing authority, shares responsibility for these violations. Specifically, State Personnel Board Rule 1-11 states:

All appointing authorities, managers, and supervisors are accountable for compliance with these rules and state and federal law, and for reasonable business decisions, including implementation of other policy directives and executive orders.

At the time of our audit, the Department of State was not adequately ensuring compliance with mandates related to the outside employment and possible conflicts of interest of its staff. Additionally, it appears that management was aware, in at least two of the five instances discussed above, that the employees had outside businesses. However, management did not initiate or verify proper disclosure or approval.

In addition to supervising elections, the Elections Division maintains voter registration files, registers lobbyists, and administers campaign finance laws. Given these responsibilities, it is critical that any real or perceived conflicts of interest such as outside employment or activity of a partisan political nature be restricted for employees of the Elections Division. We found that management had not adopted a sufficiently proactive approach to addressing this issue in a manner consistent with its responsibility as the appointing authority. Specifically, we found:

- **The Department does not do enough to make staff aware of State rules and laws pertaining to outside employment and conflicts of interest.** The Department provides each employee with a handbook that contains references to the relevant restrictions on outside employment and conflicts of interest. The handbook states that each employee is required to “know and adhere to the personnel rules.” Additionally, each employee is required to sign a form acknowledging that they received the handbook. However, the Department does not provide any additional training or periodic reminders about the personnel rules cited in the handbook. Staff with whom we spoke were not always aware of the requirements related to outside employment and business ownership disclosure. For example, one employee that operated a business leasing office space did not believe that this was an activity that needed to be disclosed. Other state agencies provide periodic ethics or other

training for employees to ensure that employees are up-to-date and cognizant of state personnel rules.

- **The Department relies solely on employees to disclose their outside employment.** According to the employee handbook, it is the responsibility of the employee to “obtain an outside employment approval form from his/her supervisor.” As previously indicated, we identified five employees with outside businesses for whom we could not locate any written disclosure or approval documentation. At the same time, management provided us with disclosure forms for a number of other employees who had requested and been granted or denied approval for outside employment. Management does not know, however, whether all employees with outside employment have disclosed this information. Neither does management have a process for providing reasonable assurance that staff will self-report. To provide the needed assurance, the Department could annually require all employees to complete a standard conflict of interest and outside employment disclosure form similar to that used by the Office of the State Auditor and other agencies. In addition, the Department could make use of its own Business Division database to identify employees with outside business ownership.

The Secretary of State has begun implementing changes to address the issues identified. For example, the Department has adopted a policy pertaining to the political activities of its employees. The policy was disseminated to all staff, although it only applies to employees in the Elections and Information Technology Divisions who are directly involved in election oversight and other election activities. The policy prohibits these employees from endorsing or opposing, or actively working for or against a candidate for a partisan office, a political party, or a statewide ballot initiative or referendum. Employees are also prohibited from contributing to a partisan organization, political party, or candidate; they may not hold an official position in a partisan organization or political party; and they are prohibited from being a candidate for or holding a partisan political office. This policy is a step in the right direction. However, the Department needs to continue this effort to strengthen management accountability for compliance with state personnel rules. Additional actions would include requiring staff to annually complete outside employment disclosure forms and providing periodic ethics and conflicts of interest training.

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## **Recommendation No. 6:**

The Department of State should adopt a proactive management approach to ensuring compliance with state law and personnel rules related to employee conflicts of interest and outside employment by:

- a. Requiring employees to disclose outside employment annually.
- b. Ensuring employees receive ethics and other related training on an ongoing basis.

## **Department of State Response:**

Agree. Implementation Date: November 2007.

We agree that management needs to be more proactive in assuring that the employees of the Department comply with state personnel rules regarding outside employment. A new procedure has been instituted to guarantee that all employees are not only given the outside employment and business ownership disclosure form at their “new hire orientation” on their first day of employment, but that they will also be required, along with current employees, to complete the form during subsequent interim and final performance evaluations. In November 2007 the Department implemented the procedure to have new employees complete outside employment disclosure information. In November 2007 the Department began having employees sign disclosure forms at the time of their evaluations.

We agree that the Department should take a more rigorous approach in reaching out to our employees with ethics training and other mandatory training that includes review of the state personnel rules and the Department’s handbook. We are in the process of arranging for a facilitator from the Department of Personnel and Administration to assist us with training on state personnel rules.

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## **Use of State Assets**

The current body of law intended to protect the public trust includes statutes, rules, and directives prohibiting state employees from using state assets for personal gain. These mandates cover not only the use of physical assets such as state equipment, property, and supplies, but also the information employees are privy to in the conduct of their state jobs. Personnel Board Rule 1-16 states that it is the duty of state employees to protect and conserve state property. Moreover, “no employee shall use state time, property, equipment or supplies for private use or any other purpose not in the interest of the State of Colorado.” Additionally:

Any public servant, in contemplation of official action by himself or by a governmental unit with which he is associated or in reliance on information to which he has access in his official capacity and which

has not been made public, commits a misuse of official information if he acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action. [Section 18-8-402(1), C.R.S.]

One of the allegations made regarding an employee of the Department of State was that the employee had misused state assets and used his employment with the Department for personal gain. We reviewed the private business records, personal and business emails, and other documentation related to the employee's outside business for the period from when employment began in January 2007 through May 2007. We found no evidence that the business benefitted financially from the individual's employment with the Colorado Department of State. However, we did identify two interrelated information technology issues that the Department should address.

## **Computer Network Demilitarized Zone**

In an information technology context, a demilitarized zone (DMZ) refers to a buffer zone or subnetwork that separates an organization's internal local area network (LAN) and an external network, usually the Internet. For organizations like the Department of State that require or permit users to access the state agency's web site to conduct on-line business (e.g., register a charitable organization or file monthly financial disclosures, in the case of the Department of State), the DMZ serves as a secure zone from which to host the agency's web site. That is, users can interact with the Department's web site (located within the DMZ) from the Internet but they cannot access or present risk to the Department's internal network. According to Department staff, they may also authorize individuals, such as auditors working on-site and contractors working on the SCORE II system, access to the DMZ so that they may conduct work-related activities on the Department's web site. However, other than for system maintenance or other work-related purposes, we found that there typically is no need or reason for an organization's employees to operate through the DMZ.

According to the State of Colorado's Cyber Security Policies, every state agency is to define, maintain, train to, exercise, and enforce security mechanisms and written procedures for network operations including DMZs. The Cyber Security Policies also require agencies to develop an Acceptable Use Policy (AUP) for email, remote access, and the Internet. In addition, an agency's AUP must state that the user has no right to privacy when using agency or state systems and that all electronic communications on state systems are monitored. Finally, AUPs must require that agency and state systems be used in a responsible, lawful, and ethical manner.

The Department of State has adopted an Acceptable Use Policy in accordance with the statewide Cyber Security Policies, and the Department requires every user of the

DMZ to read and sign the AUP prior to being granted access to it. We reviewed the list of individuals who were authorized access to the Department's DMZ from January 1, 2007 through August 2007. We identified three individuals within the Department of State who had been granted access to the DMZ for whom the work-related need for DMZ access was unclear. According to one of these individuals, a personal laptop computer was used to connect to the DMZ to play music and to occasionally send non-work related emails. We question whether use of this State system for personal, non-work related purposes is appropriate. Moreover, these particular communications within the Department's DMZ cannot be monitored. Although activities and communications conducted within a DMZ are capable of being monitored, the Department of State does not have the necessary computer hardware and software to do so when personal laptops are involved. According to the Department's Employee Handbook, in accordance with statute [Section 24-72-204.5, C.R.S.], any correspondence of an employee in the form of electronic mail may be a public record under the State's public record's laws. It does not appear, however, that email communications by employees operating within the DMZ on their personal laptops can currently be monitored by the Department.

## **Personal Laptop Computers**

Information technology best practices dictate that employee use of personal computers to connect to agency or organization network systems should be carefully restricted. The reason for this practice is primarily to safeguard network systems from computer viruses and unauthorized or unlawful access. According to the Department of State's Acceptable Use Policy, "all software and hardware installed on a device connected to the Department of State's network is required to have written approval from the Information Services Division and will be entered into the Department's database for tracking." The Policy further states that any hardware or software that is installed without the proper authorization and state-owned commercial license will not be supported and is subject to immediate deletion and/or removal. In addition, the Department's Employee Handbook states that information technology equipment must be compatible with existing hardware and software and must be supported by the Information Technology Division staff.

We found that those employees who were authorized to use the DMZ were also authorized to use personal computers while on the DMZ. However, the authorizations do not indicate the reasons why personal laptop use was approved and therefore we were unable to understand the purposes for granting such use. The Department of State needs to review its practices related to employee use of the DMZ and personal computers while connected to Department network systems. Criteria for authorizing such use should be formally stated and documented. Any use of personal computers to connect to Department systems increases security risks and should be limited. Finally, authorizing the use of network systems for personal, non-

work-related communications or activities is not consistent with acceptable standards of performance and conduct for state employees.

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### **Recommendation No. 7:**

The Department of State should review employee authorizations to use personal laptop computers and the DMZ and determine whether such use is necessary for the conduct of the Department's business and consistent with state laws, rules, and policies. If the Department determines that employee use of state computer network systems is appropriate and consistent with statutes, rules, and policies, it should:

- a. Establish written criteria and policies for authorizing employee access to the DMZ and for connecting personal computers to Department networks.
- b. Ensure that authorization to the DMZ is for a specified purpose and limited time and that activities are monitored, as required under State Cyber Security Policies.
- c. Delete the user's authorization and access at the end of the specified time.

### **Department of State Response:**

Agree. Implementation Date: July 2008.

The Department will comply to any degree it is not already in compliance. Written policies for use of Department computer network systems and governing use of any equipment used in the Department's DMZ are in place and have been for several years. The finding on lack of written documentation of justification for the use of personal computers in the department's DMZ is warranted, and the Department has taken and is continuing to take steps to more securely manage that potential use of state assets. Written justification of the need for DMZ access by employees will be required in the future in every case, and review of existing employees' need for and access to the DMZ has already been completed.

The Department has requested funding of activities in Fiscal Years 2008-2009 as part of its cyber security plan which will improve its capabilities for monitoring use of the DMZ as recommended in the audit report. The Department routinely and regularly reviews user accounts authorized for DMZ access, and strict adherence to this practice (for DMZ access and otherwise) will be continued and monitored.

The implementation date is November 2007 for requiring more rigorous detailed written documentation of the need for employee DMZ access. The earliest implementation for monitoring DMZ traffic would be July 1, 2008, contingent on funding of the agency's cyber security plan.

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## **Voter Registration Database Security**

Safeguarding the state voter registration database is a critical responsibility of the Department of State. The Department has adopted policies and procedures to address this charge. Among these policies are those that limit the individuals (users) who have access to the system and those that limit the level or degree of access granted to these users. For example, a particular user may be able to access the database to look up records but be prevented from editing, downloading, or modifying data. At the time of our audit, there were 17 users with authorized access to the state master voter list. All of these users were employees of the Information Technology (IT) Division.

One of the allegations made during the course of the audit was that an employee of the Elections Division had access to the master voter registration database and had used this access to obtain voter registration information for personal and political gain. Our review found that no employees of the Department of State, other than the 17 users referenced above, had authority to access the master database. In addition, we reviewed the computer access logs for every entry into the master database from January 1, 2007 through May, 2007 and found no evidence that the individual in question or any other unauthorized users had accessed the master database during this period.

Although we did not identify employees who had unauthorized access to the voter registration database, we did identify another concern with the Department's access controls. Specifically, 17 users of the voter master list had a level of access that allowed them to change records. Of these 17 users, 6 had complete administrative access, which in addition to changing records, allowed them to modify programs and change user security levels. At the time of our audit, the Department had not reviewed the level of access for these 17 employees to ensure the access levels were necessary and appropriate for their job duties. Department staff report that since our audit work was completed, they have reviewed the level of access for these individuals and have made appropriate changes.

The Department of State authorized increased access to many of these users in 2004 and 2005 as a result of large-scale problems when the Department's data center was being rebuilt. The greater than normal access was granted to IT staff to expedite the rebuilding process. However, when the project was completed, individual access

was not returned to the previous level or restricted to the level needed for current job responsibilities.

The National Institute of Standards and Technology (NIST) sets the federal standards for information system security and is generally considered to be the source for best practices related to information system security. According to the NIST, organizations should grant access to information systems based on a valid need-to-know that is determined by assigned official duties and intended system usage. The organization should enforce the most restrictive set of access rights/privileges needed by users for the performance of specified tasks. Also, the organization should: require proper identification for requests to establish information system accounts; formally approve requests before access is granted; monitor the use of accounts; and remove, disable, or otherwise secure unnecessary accounts. The Department of State needs to ensure all access into the voter registration database is reviewed and restricted to only the level required to perform the users' job responsibilities. In addition, the Department needs to fully document, in writing, each user's authorized level of access and review that access periodically to ensure the level of access is still appropriate.

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### **Recommendation No. 8:**

The Department of State should strengthen the access security controls for the voter registration master list database by reviewing all access levels on an ongoing basis, making appropriate changes to ensure access is limited based on the employees' job duties and a valid need-to-know, and ensuring access security forms are current and accurate.

### **Department of State Response:**

Agree. Implementation Date: November 2007.

The Department has instituted more stringent practices regarding access to the voter registration database since the commencement of the audit. The Department will monitor the implementation of those practices on a regular basis to ensure that access security controls are set at a high level and are maintained as such.

The SCORE system, currently in use in nine counties and scheduled for full statewide deployment in March 2008, will replace the current voter registration master list database over the next several months. This system has much more sophisticated administrative management capabilities than the current master list system and will allow the Department to manage this

critical information and access to it in a more rigorous, monitored, and secured fashion.

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