



## Using HAVA Funds to Ensure Voters Can Safely Vote

### INTRODUCTION

In the midst of the COVID-19 pandemic, for many people, voting may seem like a choice between exercising their constitutional right and protecting their own health and safety. Vote-by-mail early voting, safe polling place procedures, and other protections must be expanded to make sure no one has to make that choice.

Making sure our elections are not only highly accessible, but reliable, will take significant resources. Election officials must purchase new equipment, hire additional staff, and rent extra space—all of which cost money that they may not have budgeted for this year. To meet these needs, the Federal Government has approved some additional funding—HAVA Funds—that local and state public officials can use to ensure everyone can vote safely this year. There is still a need for additional appropriations of federal funds to support state and local election administration in 2020.

### WHAT ARE HAVA FUNDS?

The Help America Vote Act (HAVA) was established to help states reform and bolster their election processes. States can generally request HAVA funding to protect poll workers, staff, and voters. Beyond protection, expenditures can include training and recruitment of workers. Additionally, as a result of COVID-19, funds can be requested to support vote by mail costs, temporary staff, and equipment, as well as other costs.

As of March 27, 2020, a combined \$825,000,000 has been appropriated to HAVA via the Consolidated Appropriations Act of 2020 and the Coronavirus Aid, Relief, and Economic Security (CARES) Act.<sup>1</sup> Each state (and D.C.) receives an amount of funding based on voter population, as explained in the “How Much is Allocated Via HAVA Funds?” section.

For example, Florida has approximately \$50,000,000 in HAVA Funds to be used in the 2020-2021 fiscal year, split between \$25,807,687 (with \$21,506,406 federally appropriated and \$4,301,281 contributed by state matching) from the Consolidated Appropriations Act<sup>2</sup> and \$24,304,624 (with \$20,253,853 federally appropriated and \$4,050,771 contributed by state matching) from the CARES Act as of May 15, 2020.<sup>3</sup>

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<sup>1</sup> U.S. Election Assistance Commission, 2020 Cares Act Grants (2020), <https://www.eac.gov/payments-and-grants/2020-cares-act-grants>

<sup>2</sup> U.S. Election Assistance Commission, 2020 HAVA State Allocation Chart (2020), [https://www.eac.gov/sites/default/files/news/documents/2020HAVA\\_State\\_Allocation\\_Chart\\_with\\_Match.pdf](https://www.eac.gov/sites/default/files/news/documents/2020HAVA_State_Allocation_Chart_with_Match.pdf)

<sup>3</sup> U.S. Election Assistance Commission *supra n. 1*; Disbursement Request Letter from Laura M. Lee, Sec’y of State of Fla., to Mona Harrington, Acting Exec. Director, U.S. Election Assistance Commission (May 15, 2020) (on file with U.S. Election Assistance Commission)

## WHAT ARE ALLOWABLE USES FOR HAVA FUNDS?

HAVA Funds can be used for many things. A non-exhaustive list includes:

- Replacing voting equipment
- Implementing post-election audit systems
- Upgrading election-related computer systems for cybersecurity related reasons
- Training elections officials
- Funding activities that will improve the security of elections<sup>4</sup>

HAVA Funds generally cannot be used for actions such as paying poll workers for working polls, providing public notices, GOTV programs, state and local special elections, and municipal elections by themselves.

<sup>5</sup> This suggests that, to use HAVA Funds for locally geared elections, the use must include reforms that would apply to the next federal election as well.<sup>6</sup>

The additional HAVA funding appropriated through the CARES Act provides another set of guidelines to be followed. A non-exhaustive list of reasons CARES Act HAVA Funding can be used includes:

- Supporting vote-by-mail
  - Printing additional ballots and envelopes to prepare for higher levels of absentee voting and voting-by-mail
  - Allowing for online absentee and mail-in ballot requests and changes of address
  - Covering additional mailing and postage costs, including ballot tracking software
  - Installing and securing drop boxes for absentee and mail-in ballots
- Staffing
  - Temporary elections office staffing
  - Providing cleaning supplies, various forms of PPE, and training on their uses to staff and poll workers
  - Providing overtime pay to staff and poll workers
- Acquiring new equipment
  - Providing high speed or central count tabulators and hardware and software associated with signature comparison of returned absentee or mail ballots

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<sup>4</sup> U.S. Election Assistance Commission, 2020 HAVA Funds FAQs (2020), <https://www.eac.gov/payments-and-grants/2020-hava-funds-faqs>. Funding the security of elections is generally broad enough that several states have made general administrative improvements. For example, Florida guidance on HAVA Fund use includes 1) mailing and publishing sample ballots; 2) voting system demonstrations; 3) paying poll workers during training periods; and 4) purchasing software and hardware that facilitates vote-by-mail delivery, recounts, and more among other things. Fla. Div. of Elections, DE Reference Guide 0018 - Allowable and Non-Allowable Expenditures for HAVA Expenditures - Federal Election Activities Grant (2018), <https://soe.dos.state.fl.us/pdf/DE%20Guide%200018%20-%20Allowable%20and%20Non-Allowable%20Expenses%20for%20HAVA%20Expenditur.pdf>

<sup>5</sup> Id.

<sup>6</sup> See *Am. Ass'n of People with Disabilities v. Harris*, 647 F.3d 1093, 1098 n. 9 (11th Cir. 2011) (suggesting that adherence to other provisions of the act is legitimate use of funding); *Fla. State Conference of NAACP v. Browning*, 522 F.3d 1153, 1168 (11th Cir. 2008) (holding that as long as HAVA's purpose was not impeded, laws established by legislature were not violative)

- Additional laptops and mobile IT equipment
- Additional automated letter opening equipment<sup>7</sup>

Any other uses for the HAVA Funding simply must “fit within the parameter[s]” of the act.<sup>8</sup> That means if you can think of a use for the grant that involves the administration of an election; the education of voters; or the protection of poll workers, staff, or voters from COVID-19, you are likely capable of using HAVA Funding. State authorities for elections will also often either create guidelines or list past or planned uses for the funding in reports that could also guide your thinking of how to effectively and efficiently use HAVA Funding.

## HOW MUCH IS ALLOCATED VIA HAVA?

HAVA funding for a state (or D.C.) is determined by statute as either 0.5% of the total amount allocated (currently \$3,000,000) or the difference between the total amount appropriated and the minimum amount for each state and territory multiplied by the state’s voting age population as determined by the last census divided by the U.S. voting age population as of the last census, whichever is higher.<sup>9,10</sup> Additional funds may be appropriated for HAVA Funding purposes by passage of bills by Congress.

## AS A LOCAL ELECTED OFFICIAL, DO I HAVE ACCESS TO HAVA FUNDS? HOW DO I GET THEM?

Different states may have slightly different processes for disbursing these to municipalities. For example, in Florida, HAVA Funds are distributed to each county based on the population of registered voters at the time of the previous general election. In Pennsylvania, some portion of the grant money is kept by the state before the rest is disbursed to each county. And in Louisiana, the state handles the use of all funds regarding voting machines while parishes may individually receive funds given adequate documentation.<sup>11</sup> It could be the countywide elections coordinator who applies directly to the state’s department of state or state level electoral authority, such as is the case in Florida.<sup>12</sup>

However, even if you do not have the ability to apply directly to the state, you may still be able to affect how HAVA Funds are used. If you exercise budgeting authority, you may be able to apply pressure on whoever in your municipality applies for funding from your state authority. This could be anyone from a

<sup>7</sup> Memorandum from Mona Harrington, Acting Exec. Director, U.S. Election Assistance Comm’n, 2020 HAVA Coronavirus Aid, Relief and Economic Security (CARES) Act Grants (April 6, 2020), <https://www.eac.gov/sites/default/files/paymentgrants/cares/CARESAwardInstructions.pdf>

<sup>8</sup> Id.

<sup>9</sup> 52 U.S.C. § 20901(d)(2)-(4)

<sup>10</sup> As the next census is being conducted, it could not be clearer how important it is that we encourage as many people as possible to fill it out. Not only does it have a dramatic effect on the shape of our districts and who will hold power, but it could greatly hobble the access to funding localities have. This is especially true of HAVA Funding, where an inaccurate census count could perpetuate and calcify problems in our electoral system.

<sup>11</sup> Preliminary Amended State Plan Amendment #3, La. Dep’t of State (Sept. 27, 2010), <https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/AmendmentLouisianaStatePlan.pdf>.

<sup>12</sup> Memorandum from Michelle Ripp, Manatee Supervisor of Elections Office (January 29, 2016), <https://www.mymanatee.org/published/February%2023,%202016%20-%20Regular%20Meeting%20on%20Tuesday,%20February%2023,%202016/D3D52EC5-8A7D-4E62-B2B6-9F30DB11CF55.pdf>

Supervisor of Elections to a County Clerk. In that situation, you could condition the approval of the budget on the use of appropriated HAVA Funds on election reforms.

## HOW LONG WOULD IT TAKE HAVA FUNDS TO ARRIVE?

This depends on the state you are in and how it deals with its HAVA Funding. For example, in Texas, counties could begin applying for HAVA Funds on March 28, 2020 and had to complete their applications by June 15, 2020.<sup>13</sup> As of June 3, 2020 the state had already disbursed funds to fifty different counties.<sup>14</sup> In contrast, Florida's disbursements are entirely through the budgeting process and so grants are typically issued at the start of the fiscal year on July 1.<sup>15</sup> These grants are meant to last through June 30 of the following year. Regardless of where you live, current HAVA funds will be portioned from whatever remains of the grant funds appropriated via the Consolidated Appropriations Act from the FY 2019—2020 grant combined with any funding from your state that was allocated in CARES Act HAVA appropriations.

## HAVE OTHER LOCALITIES USED HAVA FUNDS?

Other cities have historically used HAVA Funds to improve their election capability. In the past, Milwaukee has used its funding to open more accessible voting sites.<sup>16</sup> Currently, Milwaukee County has been allocated approximately \$15.4 Million by the state of Wisconsin in CARES related funding to address multiple COVID-19 related issues such as shoring up its elections.<sup>17,18</sup>

## CONCLUSION

HAVA Funds are a useful tool that you can use to make election reforms that will help keep our voters safe and our elections robust not only during the COVID-19 pandemic, but going forward as well. Though reforms can be expensive, HAVA Funds provide you and other local elected leaders a way to finance the necessary changes that need to be made to make sure everyone can exercise the right to vote.

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<sup>13</sup> Help America Vote Act (HAVA) 2018 - 2020 Grant Funding Update, 6/3/2020, Tx. Sec'y of State (June 3, 2020), <https://www.sos.state.tx.us/elections/forms/hava/hava-grant-presentation-632020-update.pdf>

<sup>14</sup> Id.

<sup>15</sup> Fla. Div. of Elections, Help America Vote Act (HAVA), <https://dos.myflorida.com/elections/laws-rules/help-america-vote-act/> (last visited June 4, 2020)

<sup>16</sup> City of Milwaukee Election Task Force Official Report, June 27, 2005, [https://docs.legis.wisconsin.gov/misc/lc/study/2004/special\\_committee\\_on\\_election\\_law\\_review/080\\_august\\_4\\_2005\\_meeting/milwreport](https://docs.legis.wisconsin.gov/misc/lc/study/2004/special_committee_on_election_law_review/080_august_4_2005_meeting/milwreport)

<sup>17</sup> Alison Dirr, *Coronavirus in Wisconsin: Evers directs \$200M to local governments*, Milwaukee Journal Sentinel, May 27, 2020, <https://www.jsonline.com/story/news/politics/2020/05/27/coronavirus-wisconsin-evers-directs-200-m-local-governments-from-cares-act/5267900002/>.

<sup>18</sup> Note that though CARES Act funding was initially distributed to localities with populations greater than 500,000 people, states are able to distribute that funding to localities with populations lower than that as well. In contrast, HAVA Funds have never had any such limitation. See Toni Nelson, *Cities, Towns, Counties to Receive CARES Act Funds*, Municipal Research and Services Center, May 27, 2020, <http://mrsc.org/Home/Stay-Informed/MRSC-Insight/May-2020/Cities-Towns-Counties-to-Receive-CARES-Act-Funds.aspx>.