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## Election Security: States' Spending of FY2018 and FY2020 HAVA Payments

Congress has provided funding in response to efforts to interfere with U.S. elections. The Consolidated Appropriations Act, 2018 (P.L. 115-141) included \$380 million for payments to the 50 states, the District of Columbia (DC), American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands under the Help America Vote Act of 2002 (HAVA; 52 U.S.C. §§20901-21145), for example, and the Consolidated Appropriations Act, 2020 (P.L. 116-93) and Consolidated Appropriations Act, 2022 (P.L. 117-103) provided \$425 million and \$75 million, respectively, for HAVA payments to those jurisdictions and the Commonwealth of the Northern Mariana Islands.

Spending data for FY2022 funding was not yet available as of this writing, but this In Focus offers an overview of recipients' spending of the HAVA funding provided by the FY2018 and FY2020 consolidated appropriations acts (generally referred to hereinafter as the "FY2018 HAVA payments" and "FY2020 HAVA payments"). The In Focus starts by summarizing how recipients initially proposed using the funds, how the onset of the Coronavirus Disease 2019 (COVID-19) pandemic affected some of those plans, and how much of the funding recipients have reported spending to date. It then introduces some issues related to the availability of funds and the timing of spending and reporting.

Information about spending of the FY2018 and FY2020 HAVA payments may be relevant both to Members who are interested in oversight of the FY2018 and FY2020 funds and to Members who are considering further funding for similar purposes. It might help inform decisions about whether to provide additional funding, for example, and, if so, whether or how to specify conditions for its use.

### Initial Spending Plans

Funds for the FY2018 and FY2020 payments were appropriated under provisions of HAVA that authorized funding for certain general improvements to election administration (52 U.S.C. §§20901, 20903-20904). The explanatory statements accompanying the FY2018 and FY2020 spending bills highlighted five specific election security-related uses to which recipients may apply the funds:

- replacing paperless voting equipment;
- implementing postelection audits;
- addressing cyber vulnerabilities;
- providing election officials with cybersecurity training; and
- instituting election cybersecurity best practices.

Funding recipients were asked to submit plans for use of the payments to the agency charged with administering the funds, the U.S. Election Assistance Commission (EAC). Much of the planned spending they reported in those initial submissions was on the specific election security measures highlighted by the FY2018 and FY2020 explanatory statements. Some of the proposed spending included transitioning to voting systems that produce voter-verifiable paper records, for example, or researching or conducting postelection audits. Many of the spending plans also included training-related spending, such as hiring election security trainers and running tabletop exercises that simulate real-world security incidents, or spending on cybersecurity upgrades or best practices, such as conducting penetration tests of state election systems and acquiring tools to protect those systems against distributed denial-of-service (DDoS) or ransomware attacks.

Other spending proposals included plans to fund other types of election security measures, such as improvements to the physical security of election board facilities or grants to county election officials to address physical vulnerabilities. Some states also proposed spending on activities that may not be focused specifically on securing elections, such as conducting general voter outreach, improving polling place accessibility, or implementing automatic or online voter registration policies.

### Adjustments in Response to COVID-19

Some states adjusted their spending plans in response to COVID-19. The onset of the COVID-19 pandemic introduced challenges for the administration of elections in the 2020 election cycle, such as increased demand for mail voting and greater difficulty recruiting poll workers for in-person voting.

Efforts to address such challenges can come with additional costs. Some election officials had to purchase new equipment to process the increased volume of mail ballots, for example, or upgrade their databases to enable voters to request ballots online; hire more temporary workers to process mail ballots and ballot requests; buy cleaning supplies and protective equipment for polling places; or offer additional poll worker training and voter education.

Congress provided \$400 million specifically for COVID-19-related election expenses in the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), but the FY2018 and FY2020 HAVA payments could also be applied to some of the new costs. According to guidance from the EAC, the FY2018 and FY2020 HAVA funds—as well as some other funding previously appropriated under HAVA—could be used to cover certain elections expenses incurred as a result of the pandemic.

At least some states reported redirecting some of their FY2018 and FY2020 HAVA funds to COVID-19-related costs. For example, according to state spending reports available on the EAC's website, states used some of the funding to obtain ballot boxes, purchase polling place cleaning supplies and personal protective equipment, expand access to early voting, hire additional staff to handle the increased demand for mail voting, and educate voters about changes to election procedures in response to the pandemic.

## Reported Spending

After initially indicating that the FY2018 and FY2020 HAVA payments had to be spent within five years, the EAC issued updated guidance that there is no deadline by which recipients must spend the funds. Recipients do, however, have to report on their spending. They are expected to file federal financial reports for the payments each fiscal year, as well as regular reports to the EAC with more detailed information about how funds were spent.

According to data released by the EAC, as of March 31, 2022, recipients had reported spending close to \$425 million of the approximately \$821 million available in FY2018 and FY2020 federal HAVA payments and interest. Recipients have also reported spending from state matching funds. The 50 states, DC, and Puerto Rico are each required to provide a 5% match for the FY2018 HAVA funds and a 20% match for the FY2020 payments, and most had reported supplying or spending at least some of the required match by the end of FY2021.

The most recent annual grants expenditure report available from the EAC as of this writing, which the agency released in July 2022, identified various themes in states' spending of the FY2018 and FY2020 HAVA payments. Those themes included spending on conducting postelection audits, offering cybersecurity training, hiring dedicated cybersecurity staff, scanning election systems for potential vulnerabilities, and replacing or enhancing voting equipment or voter registration systems.

## Potential Considerations for Congress

The Consolidated Appropriations Act, 2022, provided \$75 million under the same provisions of HAVA as the FY2018 and FY2020 consolidated appropriations acts, and proposals have been offered in the 117<sup>th</sup> Congress to authorize or appropriate more elections funding for states, territories, and DC. The For the People Act of 2021 (H.R. 1/S. 1/S. 2093) would authorize grant funding for replacing paperless voting systems and making certain other improvements to voting system security, for example, and the Financial Services and General Government Appropriations Act, 2023 (H.R. 8254) would provide \$400 million for general improvements to the administration of federal elections.

The planned and reported spending of the FY2018 and FY2020 HAVA payments suggests some issues that may be of interest to Members as they assess the need for further funding, evaluate pending funding proposals, or develop new proposals.

## Availability of Funds to Address Interference

Congress appropriated the funding for the FY2018 and FY2020 HAVA payments following attempts to interfere with the 2016 elections, and recipients initially planned to use most of the funding to address related threats. With the onset of the COVID-19 pandemic, however, some recipients chose to apply some of their funds to COVID-19-related costs.

One issue of potential interest to Congress might be how much of the funding provided for FY2018 and FY2020 HAVA payments was redirected to COVID-19 preparedness and response and whether the remaining funding is sufficient to meet previously identified election interference-related needs.

## Timing of Spending

Some recipients reported using almost all of their FY2018 and FY2020 HAVA funds by the end of March 2022, but many have waited to spend most of their shares. The spending plans they submitted to the EAC suggest at least three factors that may have influenced the timing of later spending: (1) some of the costs associated with securing elections are ongoing, and some recipients planned to apply FY2018 and FY2020 HAVA funds to such costs in multiple fiscal years; (2) prior conditions, such as state legislative approval, had to be met before recipients could engage in some of their planned spending; and (3) some proposed spending involved processes like equipment procurement that can take months or years to complete.

Accounts of why recipients spend when they do might help inform assessments of funding needs and, if further funding is proposed, decisions about how to structure such funding. They might help Members identify trade-offs involved in providing funding on a one-time versus an ongoing basis, for example, and determine whether or how to set conditions on how funding is used.

## Timing of Reporting

As noted above, recipients of FY2018 and FY2020 HAVA payments are subject to some general and EAC reporting requirements. However, the appropriations acts that provided the funding themselves did not require any particular reporting or report timing.

Congress has chosen to mandate specific reporting schedules for HAVA payments in other cases. The CARES Act required recipients of its HAVA funds to report on their spending within 20 days of each election in the 2020 federal election cycle, for example, and the Consolidated Appropriations Act, 2022, requires quarterly and annual reports. Members might consider whether they would want to specify reporting requirements for any future elections-related payments. If so, they might consider how to balance oversight needs against other considerations, such as the concerns some voiced in the 2020 election cycle about possible conflicts for election officials between complying with the CARES Act's reporting requirements and fulfilling their other postelection responsibilities.

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