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Updated June 30, 2020

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

State and local systems have been targeted as part of efforts to interfere with U.S. elections, and Congress has responded in part with funding. The Consolidated Appropriations Act, 2018 (P.L. 115-141) provided $380 million for payments to the 50 states, the District of Columbia (DC), American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands authorized under the Help America Vote Act of 2002 (HAVA; 52 U.S.C. §§20901-21145), and the Consolidated Appropriations Act, 2020 (P.L. 116-93) included $425 million for HAVA payments to those jurisdictions and the Commonwealth of the Northern Mariana Islands.

This In Focus offers an overview of spending of the FY2018 and FY2020 HAVA payments to date. It starts by summarizing how funding recipients initially proposed using the funds, how the onset of the COVID-19 pandemic has 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

Funding for the FY2018 and FY2020 payments was appropriated under provisions of HAVA that authorized a program to provide payments for general improvements to the administration of federal elections (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 systems;
- implementing post-election audits;
- updating election-related computer systems to address 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 a voter-verifiable paper audit trail (VVPAT), for example, or researching or conducting post-election audits. Many of the spending plans also included training-related spending, such as hiring election security trainers or 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 or 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 have adjusted or considered adjusting 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 higher demand for mail voting and increased difficulty recruiting poll workers for in-person voting.

Efforts to address such challenges can come with additional costs. Election officials may have 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 can 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 funds previously appropriated under HAVA—can be used to cover certain elections expenses incurred as a result of the pandemic.

Official data on updates to initial spending plans or the specifics of how funds have been spent since the pandemic began do not appear to be publicly available at this time, so

it is unclear exactly how much of the funding provided for FY2018 and FY2020 HAVA payments has been applied to COVID-19-related costs. However, at least some states reportedly have redirected or planned to redirect some of their funds. For example, according to media reports, at least one state has used FY2018 HAVA funds to purchase polling place cleaning supplies, and others planned to use funds to help meet increased demand for mail voting.

Reported Spending

After initially indicating that 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 are, however, expected to report on their spending. They are required to file Federal Financial Reports for the payments each fiscal year, and the EAC has asked them to submit unofficial interim reports on a voluntary basis.

Official spending data for the FY2020 HAVA payments were not available as of this writing because the FY2020 reporting deadline had not yet passed. However, FY2018 and FY2019 data were available for the FY2018 payments. According to Federal Financial Reports released by the EAC, recipients spent approximately $90 million of the $380 million appropriated for the FY2018 HAVA payments between the time funds became available on April 17, 2018, and the end of FY2019 on September 30, 2019.

Some recipients also reported spending from other funds, such as state matching funds or interest generated by federal funds deposited in interest-bearing accounts, on their Federal Financial Reports. 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. Twenty-one states reported supplying and spending the full 5% match for the FY2018 funds by the end of FY2019.

Unofficial interim reports provided to CRS by the EAC, which have not been independently verified by CRS and may include spending of both federal appropriations and other funds such as interest, indicate that recipients had spent about $136 million in connection with the FY2018 HAVA payments as of March 31, 2020.

Potential Considerations for Congress

Proposals have been offered in the 116th Congress to authorize or appropriate more election administration-related funding for states, territories, and DC. For example, the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act (H.R. 6800) would provide $3.6 billion for elections-related contingency planning, preparation, and resilience and authorize grants to help states, territories, and DC conduct risk-limiting audits and meet proposed new federal requirements for election administration. Other bills would authorize grant programs for general election security-related purposes or specific security measures like replacing paperless voting systems or conducting post-election audits.

The planned and reported spending of the FY2018 and FY2020 HAVA funds 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 have reportedly chosen 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 has been 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 all of their FY2018 HAVA funds by the end of FY2018, but most waited to spend some or all 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 HAVA funds to them 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 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

Federal Financial Reports for the FY2018 and FY2020 HAVA payments are due once per fiscal year in December of the corresponding calendar year. The most recent official spending data available to Members as they consider appropriations may, therefore, be for a period that ended a number of months earlier.

Congress has set different reporting schedules for some other payments, such as the elections-related payments funded by the CARES Act. Members might consider whether they would similarly want official reporting on any future elections-related payments to be more frequent or closer to elections. If so, they might consider how to balance that oversight need against other considerations, such as concerns some have voiced about possible conflicts between compliance with the CARES Act's reporting requirements and other election administration duties.

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