

## **Guidance on Use of HAVA Funds for Expenses Related to COVID-19**

State and local election officials are concerned about the COVID-19 pandemic and its impact on upcoming primaries and the November general election. The EAC has received several requests for guidance on the allowability of using HAVA funds to cover costs they are incurring as a result of the pandemic. This guidance and the FAQs address the use of HAVA funds for such expenditures, including those necessary to protect the health and safety of poll workers, voters, and staff. In addition, the Office of Management and Budget issued guidance on administrative relief for grantees impacted by the pandemic. EAC has incorporated relevant elements of that guidance below.

This guidance applies to all HAVA funds granted to the state, including recent HAVA section 101 funds awarded with 2018 and 2020 appropriations. The guidance will be posted on the EAC website, and we will add FAQs as we receive additional questions. There are already extensive FAQs on the website related to the allowability of costs under HAVA grants which are also relevant to the current pandemic. The EAC wants to provide flexibility to the states to meet unexpected needs related to the pandemic and will work with you to determine if adjustments you want to make to your budgets and plans will require EAC prior approval.

HAVA neither expressly authorizes nor prohibits the use of section 101 or section 251 funds for expenditures necessary to protect against and respond to a pandemic. Both sections provide payments for the purposes of improving the administration of elections for federal office, which can include expenditures that would protect staff and poll workers, secure physical locations, and address unexpected expenses due to the COVID-19 pandemic during a federal election. The costs must still meet standards set in general federal grants regulations as described below.

### **Allowable, Allocable, and Reasonable Costs**

Guidelines and requirements governing allowable costs under grants are found in 2 CFR 200.400, Subpart E, Cost Principles. To be allowable under a grant, costs must be necessary, reasonable and allocable to the grant. This is an assessment each state makes, but the EAC is of the opinion that expenditures related to the protection of the health and safety of poll workers, staff, and voters during federal elections as well as those resulting from unanticipated increased demand for vote by mail costs (e.g. printing ballots, postage, etc.), equipment, temporary staff, and similar costs due to COVID-19 would satisfy these elements.

#### *Allowable Costs*

An allowable cost is one that is necessary and reasonable for the proper and efficient performance and administration of the activities funded under the grant. Examples of allowable costs in this context could include cleaning supplies and protective masks for staff and poll workers, resources to meet an unanticipated increased demand for mail ballots due to self-isolation and quarantine in response to COVID-19, and temporary staff to process the increased absentee ballot demand. Allowable costs would not include those that are currently paid with state or local election jurisdiction funds, such as the regularly anticipated demand for mail ballots. *See* 2 CFR 200.403.

#### *Allocable Costs*

An allocable expense is one that is directly related to the objectives and activities planned under the grant and included in the approved budget for the grant. This can include providing increased physical security for federal elections. *See* 2 CFR 200.404. If a state thinks that its approved budget does not include a line item that covers such expenses, staff may request approval from EAC for a budget amendment. Grantees can re-allocate funds to other line items up to 10% of the budget without approval from EAC.

Costs that would not be allocable would be costs incurred for state or administrative staff that are not working on activities supported under the grant. In some cases, a cost might only be partially allocable to the grant, e.g. In addition and for example, if the approved grant budget currently only includes costs associated with post-election auditing, you cannot allocate costs related to printing additional ballots to the grant. However, you can request a budget amendment from EAC to include costs related to voting systems and, thus, printing ballots. The EAC will work to approve such budget amendments within 48 hours.

### *Reasonable Costs*

Finally, the cost is considered reasonable if, by its nature and amount, it does not exceed what a prudent person would pay under the circumstances. It can be based on frequency of use, actual cost for the products, and other relevant factors. Any expenditures in response to COVID-19 would require the same analysis as other costs. *See* 2 CFR 200.405.

### **OMB Guidance**

The guidance provided by OMB allowed federal agencies additional flexibility related to grant application deadlines, approval to allow non-competitive continuations, publication of grant application instructions and no-cost extensions on expiring grants that don't apply to EAC grantees at this time. This section describes the areas that EAC determined apply to all its grantees.

#### **1. OMB Guidance: Allowability of salaries and other project activities.** (2 CFR § 200.403, 2 CFR § 200.404, 2 CFR § 200.405)

Awarding agencies may allow recipients to continue to charge salaries and benefits to currently active federal awards consistent with the recipients' policy of paying salaries (under unexpected or extraordinary circumstances) from all funding sources, federal and non-federal.

*Applicability to EAC Grants:* EAC does not anticipate a situation in which the activities supported under current HAVA grants could not continue during the pandemic. Grant funds can be spent on activities that improve the physical as well as cyber security of elections which include activities related to the pandemic. However, states may continue to pay staff supported with HAVA funds if they must stop working on grant-funded activities to focus on other areas. You must notify EAC in these situations and maintain appropriate records and cost documentation to substantiate the charging of salaries related to interruption of grant operations or services.

#### **2. Allowability of Costs not Normally Chargeable to Awards.** (2 CFR § 200.403, 2 CFR § 200.404, 2 CFR § 200.405)

Awarding agencies may allow recipients who incur costs related to the cancellation of events, travel, or other activities necessary and reasonable for the performance of the award, or the pausing and restarting of grant funded activities due to the public health emergency, to charge these costs to their award without regard to 2 CFR § 200.403, *Factors affecting allowability of costs*, 2 CFR § 200.404, *Reasonable costs*, and 2 CFR § 200.405, *Allocable costs* an agency program official.

*Applicability to EAC Grants* Under normal circumstances, costs related to cancellation fees for meetings, training, or travel might not meet the reasonable or necessary standard under a grant. As authorized by OMB guidance for administrative relief at this time, EAC will allow states to claim such costs under the grant without prior approval as well as costs incurred for pausing and restarting activities. In addition, given the importance of ensuring elections go forward with as little disruption as possible, additional costs states incur to conduct virtual trainings and other activities vital to improving the administration of federal elections, can be claimed under the grant. The standard requirements to maintain appropriate records and cost documentation still apply. See 2 CFR § 200.302 - Financial management and 2 CFR § 200.333 - Retention requirement of records, to substantiate the charging of any cancellation or other fees related to interruption of operations or services.

### **3. Exemption of certain procurement requirements.** (2 CFR § 200.319(b), 2 CFR § 200.321)

Awarding agencies may waive the procurement requirements contained in 2 CFR § 200.319(b) regarding geographical preferences and 2 CFR § 200.321 regarding contracting small and minority businesses, women's business enterprises, and labor surplus area firms.

*Applicability to EAC Grants:* OMB has eased procurement restrictions on geographic preference (2 CFR § 200.319(b) and procurement requirements regarding contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (2 CFR § 200.321). States are required to follow their state procurement processes under the EAC grants and these sections of 2 CFR don't apply to states. However, your state may have similar requirements they are easing.

## **Frequently Asked Questions**

**Q: My state is about to adopt rules that will allow mail ballots in more circumstances than are currently allowed in both our upcoming primary and general elections. As a result, we will incur expenses for a second printing of primary ballots and a larger printing of general election ballots. Can we use HAVA funds to cover these costs?**

**A:** Increased costs you incur related to all aspects of voting by mail are allowable to the extent that they represent expenditures you are incurring as a result of the pandemic and you are not supplanting funds already allocated under your state budget authority to cover the costs. For example, you may have funds for mail ballots in the general election in your current state budget, but not for a second printing of primary ballots. For the general election ballots, HAVA funds can be used to cover the costs of the increase in absentee ballots you need due to the pandemic that are not already covered by state funds. For the primary ballots, you could use HAVA funds to cover the total cost of the second printing. One caution, these costs may become an ongoing expense. Covering them with a one-time funding source such as HAVA funds solves an immediate problem, but the costs will inevitably be assumed by the state or local government upon the exhaustion of federal funds.

**Q: We have not submitted our program narrative and budget yet for our 2020 Election Security grant. Can we spend those funds or must we use our remaining 251 or 101 funds awarded in 2018?**

A: You may use any of the funds. However, you cannot use remaining 251 funds for this purpose unless you have already met all the requirements in Title III or the amount will be minimal as defined in Section 251(b)2 of HAVA. The EAC has already awarded your 2020 funds and the project period in the Notice of Grant Award you received began on December 21, 2019. Any expenditures you incur after that date can be claimed against the grant. When you submit your narrative and budget you can describe how you have used or plan to use the funds to secure federal elections during this pandemic.

**Q: My state will incur new costs to communicate changes in mail ballot rules that will result from the pandemic. Can we use HAVA funds to cover those costs?**

A: Yes, costs to communicate changes in voting processes due to the pandemic are allowable costs. Keep in mind that HAVA funds can be used to provide information on voting procedures, rights or technology. Items intended to “get out the vote” or merely encourage voting do not meet this requirement.

**Q: We need to move polling places from assisted living facilities to other sites associated with senior citizens and may need to lease the new space. Can we use HAVA funds to cover those costs?**

A: Yes, unanticipated costs to lease polling facilities are allowable costs.

**Q: Some local election offices do not have laptops for all staff so they can work remotely during this pandemic office shutdown. Can we use HAVA funds to buy laptops for those employees?**

A: Yes, those would be allowable costs. However, please be aware that you must also ensure you have appropriate security measures in place (tokens, VPN access only, etc.) if they will be accessing your shared system.

**Q: We expect to receive a much higher percentage of absentee ballots and need to purchase more automated letter opening equipment and scanners. Can we use HAVA funds to purchase more equipment? Can we lease the equipment?**

A: Yes, those would be allowable costs, with the caveat that you need to ensure the costs are allocated to the grant in appropriate proportions. If you decide to lease the equipment, you must also follow requirements in Section 200.465 of 2 CFR which outline circumstances you should consider in determining whether to lease or buy the equipment.

**Q: We expect to receive a much higher percentage of absentee ballots and need to hire temporary staff to prepare ballots for mailing. Can we use HAVA funds for this purpose?**

A: Yes, you may hire temporary staff under these circumstances and to provide additional temporary help to process returned ballots.

**Q: We expect to experience an increase in personnel costs for the Absentee Election Managers due to the COVID-19 pandemic. Our run off was postponed from 03/31/20 to 07/14/20 which greatly extends the required work time for the AEMs. Would it be permissible to use a portion of the 2020 HAVA funds to help cover this increased personnel cost?**

**A: Yes, this is an allowable cost directly related to the pandemic.**