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Election Security: States' Spending of FY2018 HAVA Payments

State and local systems have been targeted as part of efforts to interfere with U.S. elections, according to the U.S. Intelligence Community. Congress has responded to such threats, in part, with funding. The Consolidated Appropriations Act, 2018 (P.L. 115-141) included \$380 million for payments to the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands (referred to herein as “states”) under the Help America Vote Act of 2002 (HAVA; 52 U.S.C. §§20901-21145).

This In Focus provides an overview of states' spending of the FY2018 HAVA payments. It starts by summarizing how states have proposed and reported using the funds and then introduces some issues related to the timing of state spending and reporting.

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

Proposed Spending

The FY2018 payments were appropriated under provisions of HAVA that authorize funding for general improvements to the administration of federal elections (52 U.S.C. §§20901, 20903-20904). The explanatory statement accompanying the FY2018 appropriations bill highlighted five specific election security-related uses of the funds.

States were asked to submit plans for the FY2018 HAVA funding to the agency charged with administering the payments, the U.S. Election Assistance Commission (EAC). The following subsections provide examples—drawn from the states' plans—of proposed spending on (1) the specific election security measures highlighted by the explanatory statement for the FY2018 spending bill, (2) other election security measures, and (3) non-security-specific activities. Congressional clients may contact CRS for state-specific information about spending proposals.

Highlighted Election Security Measures

Some of the election security measures highlighted by the FY2018 explanatory statement focus on risks to vote capture and counting processes. Electronic devices, which are used by many jurisdictions to capture votes and most jurisdictions to count them, are potentially susceptible to hacking and errors. Mistakes may also be made when hand-counting ballots.

One proposed way to help check—and reassure voters—that votes have been captured and counted accurately is to ensure that there are voter-verifiable paper records of the votes cast and to audit the paper records. That proposal, versions of which have appeared in bills such as S. 2593 in the 115th Congress and H.R. 2722 in the 116th Congress, is reflected in the first two measures on the explanatory statement list: replacing paperless voting systems and implementing post-election audits.

Vote capture and counting processes are part of larger election systems that also include components such as voter registration databases and election office email accounts. Foreign actors reportedly exploited human and technological vulnerabilities in some of the other parts of those systems in the 2016 election cycle. According to a July 2019 report from the Senate Select Committee on Intelligence (SSCI), for example, Russian actors used spear phishing attacks to access county systems in one state and a technique known as SQL injection to extract data from the state voter registration database in another.

The remaining three specific election security measures on the explanatory statement list—updating election-related computer systems to address cyber vulnerabilities, providing election officials with cybersecurity training, and instituting election cybersecurity best practices—focus on risks to election systems presented by human and technological vulnerabilities. Training election officials to recognize and report spear phishing may help reduce the likelihood that they will click on malicious links or attachments, for example, and validating user inputs to online voter registration websites may help thwart some SQL injection attempts.

Much of the planned spending of FY2018 HAVA funds is on the highlighted measures from the explanatory statement list. Proposed spending includes transitioning to voting systems that produce a voter-verifiable paper audit trail (VVPAT) and advancing or enhancing the implementation of post-election audits. Some states reported planning to use funds to research best practices for post-election audits, for example, or to conduct audits or audit pilot programs.

States have also proposed spending on updating their election systems to address cyber vulnerabilities, providing election officials with cybersecurity training, and implementing election cybersecurity best practices. Many of the states' plans include training-related spending, such as hiring an election security trainer, tailoring trainings to counties' security needs, or running tabletop exercises that simulate real-world security incidents. Other planned uses of funds include conducting penetration tests of the state election management system, performing forensic audits of

election vendors, and acquiring tools to detect intrusions into election systems or protect against distributed denial-of-service (DDoS) or ransomware attacks.

Other Election Security Measures

The types of risk described in the previous subsection are not the only security risks election systems face. Election officials must also prepare, for example, for physical threats such as natural disasters or attempts to tamper with ballot boxes.

Some states have chosen to use some of their FY2018 HAVA funds to address such other election security threats. One state reported planning to use funds to improve the physical security of state election board facilities, for example, and another proposed providing grants to county election officials to address physical vulnerabilities.

Non-Security-Specific Activities

The FY2018 appropriations bill stated that the HAVA payments were “for activities to improve the administration of elections for Federal office, including to enhance election technology and make election security improvements.”

Some states have proposed spending FY2018 HAVA funds on activities that may not be focused specifically on securing elections. A number of states reported planning to use some of their funding for voter outreach, for example, or to ensure that polling places are accessible to individuals with disabilities. States have also proposed spending to implement state elections policies, such as automatic or online voter registration.

Reported Spending

Each state has five years to spend its share of the FY2018 HAVA funds, according to the EAC, and must file a Federal Financial Report (FFR) on its spending each year.

According to the FY2018 FFRs that had been released by the EAC as of this writing, states spent approximately \$31 million of the appropriated \$380 million between the time funds became available on April 17, 2018, and the end of the fiscal year on September 30, 2018. Some states also reported spending from state matching funds—which all but American Samoa, Guam, and the U.S. Virgin Islands are required to provide—or from other funds, such as interest on federal funds deposited in interest-bearing accounts. For example, two states reported supplying and spending 100% of the required 5% state match in FY2018.

Examples of projects states funded with this early spending, according to the EAC, include implementing multi-factor authentication for county access to election systems and setting up cost-sharing arrangements with counties to replace voting machines. States reportedly also used funds in FY2018 for activities such as hiring security personnel and conducting security assessments and trainings.

Official FY2019 spending data were not available as of this writing because FY2019 FFRs were not yet due from the states, but EAC staff partnered with states to collect unofficial numbers. According to those unofficial data—

which were provided to the EAC by the states on a voluntary basis, do not include responses from all states, and have not been independently verified by CRS—states spent at least \$128 million by the end of August 2019.

Timing of Spending and Reporting

Funding like the FY2018 HAVA payments has also been proposed in subsequent appropriations cycles. Proposed amendments to FY2019 appropriations measures would have provided similar funding for payments to states, for example, as would the FY2020 Financial Services and General Government (FSGG) appropriations bills that were pending as of this writing (H.R. 3351; S. 2524).

This section introduces some issues related to the timing of state spending and reporting that may be of interest to Members as they assess the need for further funding, evaluate pending funding proposals, or develop new proposals.

Timing of Spending

Some states reported using all of their FY2018 HAVA funds by the end of FY2018, but most have waited to spend some or all of their shares. The spending plans states submitted to the EAC suggest at least three factors that may have influenced the timing of the latter states' spending: (1) some of the costs associated with securing elections are ongoing, and some states plan to apply FY2018 HAVA funds to them in multiple fiscal years; (2) prior conditions, such as state legislative approval or implementation of prerequisite policies, must be met before states can engage in some of their planned spending; and (3) some states' proposed spending involves processes like procurement that may take months or years to complete.

Accounts of why states spend when they do might help inform assessments of funding needs. They also might help identify some of the tradeoffs involved in providing funding on a one-time versus an ongoing basis or in setting specific conditions on how or when funds are used. Responses to such tradeoffs might depend on the goals for funding. Different choices might be made about funding if it is intended to be spent in time for an upcoming election, for example, than if it is intended to fund an ongoing activity like identifying emerging security threats.

Timing of Reporting

State spending reports for the FY2018 HAVA payments are due once per fiscal year, in December of the corresponding calendar year. Committee consideration of appropriations measures typically starts in the spring, and Congress may continue to deliberate through the fall or winter. The most recent official spending data available to Members when they are considering elections-related funding proposals may, therefore, be for a period that ended a number of months earlier.

Unofficial interim data of the kind collected by the EAC for FY2019 might be sufficient for congressional needs. If Members determine that they want or need official spending data that are more closely aligned with the appropriations cycle, however, they might consider

encouraging or prescribing a corresponding reporting schedule for future elections-related funding.

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