



# Allowable and Non-Allowable Expenses for HAVA Expenditures – Federal Election Activities Grant

*DE Reference Guide 0018 (Updated 1/19/2018)*

*These guidelines are for reference only. They are not to be construed as legal advice or representation. For any particular set of facts or circumstances, refer to the applicable state, federal law, and case law, and/or consult a private attorney before drawing any legal conclusions or relying upon this information.*

## MINIMUM BASIC CONSIDERATIONS FOR DETERMINING ALLOWABLE AND/OR ALLOCABLE EXPENSES USING FUNDS UNDER THE HELP AMERICA VOTE ACT (HAVA):

- Whether the expenses are allowable under HAVA, i.e., considered an activity associated with the administration of federal election activities as permitted under state and federal law,
- If so, whether the expense is reasonable, and
- Whether expense can be allocated and pro-rated appropriately between federal and non-federal election administration activities.

For questions not answerable by reference to this document and/or cited sources, please submit written requests to the Division of Elections' Director's Office at: [DivElections@DOS.MyFlorida.com](mailto:DivElections@DOS.MyFlorida.com).

## GENERAL FUND REQUIREMENTS<sup>1</sup>

- Can only be used to support election activities related to *federal* elections.
- Can only be used for expenses related to:
  - Voter education.
  - Poll worker training.
  - Standardizing election results reporting.
  - Other election administration activities, as approved by Department of State.
- Make sure expenditures are part of an approved plan.
  - Samples of voter education materials, printed documents and transcripts of audio and video recordings or clips must be provided prior to the plan being approved.
  - If you would like to spend on something not on your original plan, you must get prior approval from the Division and amend your plan.

## EXAMPLES OF ALLOWABLE EXPENSES

- Category - Voter Education:
  - Must include voter education information on voting procedures, voting rights or voting technology.
  - Must provide voter education – may not be merely “get out the vote.”
  - Must be geared to people who are “voting age.”

<sup>1</sup> See pages 4-7 of this Guide entitled **Attachment A - Policy Adopted by the U.S. Election Assistance on March 20, 2008 regarding Allowable Uses of HAVA Funds Authorized Under Titles 1 & II.**

Additional resource: U.S. Election Assistance Commission's Frequently Asked Questions under the header HAVA Section 251,101, 102 Funds <https://www.eac.gov/faq/>

- Examples:

- Mailing or publishing sample ballots, which must include additional information on voting procedures, voting rights or voting technology.
- Voter information cards which, must include additional information on voting procedures, voting rights or voting technology.
- Voter guides, which much include voter education information concerning voting procedures, voting rights, or voting technology but shall not contain elected officials' contact information other than the supervisor's contact information.
- Advertising or publications outlining voting procedures, voting rights or voting technology.
- Voting system demonstrations.

- Category - Poll Worker Training:

- Poll worker training stipends.
- Training materials for poll workers.

- Category - Election Administration Activities as Approved by Department of State.

- MOVE Act Implementation and Maintenance: Maintaining online or web-based absentee ballot request and ballot tracking and precinct-finder system as relates to use in federal elections and for the costs for upgrades and future license fees and maintenance fees for the MOVE Act and other UOCAVA expenditures.
- Software or Hardware Technology: any software or hardware technology, including but not limited to any emerging technology that enhances or facilitates the items listed below:<sup>2</sup>
  - Delivery of vote-by-mail ballots.
  - The casting and counting of valid votes.
  - Voting systems audits or recount processes.
  - The certification of accurate and complete official election results.

#### **EXAMPLES OF NON-ALLOWABLE EXPENSES**

- Paying poll workers for time worked at the polls.
- Public Notices (canvassing board meetings, L&A Testing and Qualifying).
- List of Candidates' addresses and contact information.
- Financial Reporting.

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<sup>2</sup> Such technology or any pilot program that uses such technology must first be certified or approved, whichever is applicable, by the Department of State. Before HAVA funds can be used to purchase electronic poll books, the poll books need to have been previewed and pre-approved before you can request the use of HAVA funds in your FEA plan. The memorandum of agreement with counties for receipt of Federal Election Activities funds under HAVA includes this language which is contained in annual appropriations for the distribution of funds to counties. This language conditions the allowable use of FEA funds for new technologies such as electronic pollbooks.

- Voting Statistics.
- Committee Reporting.
- Municipal Elections.
- Special elections for state or local candidates.
- Adopt-A-Precinct for poll worker recruitment (i.e. participating organizations “adopt” a precinct for an election cycle by providing staff for the Election Board. After election, checks would be mailed out payable to the club or organization.)
- Get-Out-the-Vote Programs (This activity promotes voting rather than provides voter education).
- Vote-in-Honor of a Vet (This is program promotes voting rather than provides voter education).
- School Outreach Programs (HAVA funds must be spent to educate voters or groups of people who meet state voting requirements, that is, they must be of voting age).
- Voter Registration Drives--May not (1) Print, copy, or revise State voter registration forms; (2) Conduct voter registration drives or get out the vote efforts including advertising for the event, setting up booths, and paying salaries of employees who register new voters; or (3) Encourage citizens to register to vote and get out the vote activities.
- Tee-shirts with voter education information on them including the SOE website address. (Promotional items are not allowable).
- Advertising and public relation costs. See p. 16 of [OMB Circular A-87](#) (Also codified at [25 CFR 225](#) (Code of Federal Regulations)). Examples of non-allowable would be:
  - Costs of displays, demonstrations, and exhibits.
  - Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events.
  - Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings.
  - Costs of promotional items and memorabilia, including models, gifts, and souvenirs.
  - Costs of advertising and public relations designed solely to promote the governmental unit.

# ATTACHMENT A



## **ADOPTED BY THE US ELECTION ASSISTANCE COMMISSION AT ITS PUBLIC MEETING OF MARCH 20, 2008**

### ***POLICY CLARIFICATION ON THE ALLOWABLE USES OF HELP AMERICA VOTE ACT FUNDS AUTHORIZED UNDER TITLES I AND II***

This U.S. Election Assistance Commission (EAC) policy advisory clarifies the allowable uses of payments made to states under Sections 101 and 251 of the Help America Vote Act (HAVA). The EAC has determined that it is a reasonable use of HAVA funds to purchase any HAVA-compliant voting system regardless of whether the systems replaced were originally purchased with HAVA funds, when the circumstances presented by the state demonstrate a need to replace the voting equipment.<sup>1</sup> The basis for this policy advisory is explained in the following paragraphs.

#### **Background**

The funds received by a state under Section 101 may be used for the following purposes:

- A. Complying with the requirements under title III.
- B. Improving the administration of elections for Federal office.
- C. Educating voters concerning voting procedures, voting rights, and voting technology.
- D. Training election officials, poll workers, and election volunteers.
- E. Developing the State plan for requirements payments to be submitted under part I of subtitle D of title II.
- F. Improving, acquiring, leasing modifying or replacing voting systems and technology and methods for casting and counting votes.

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<sup>1</sup> The EAC had previously determined that "while it is reasonable to fund the purchase of HAVA-compliant voting equipment one time, it is not reasonable to fund that expense twice." Letter to the State of Florida, May 2, 2007.

It has been the practice of this agency to have EAC staff make determinations that are applications of existing law and/or regulation and for the Commission to be involved in policy or discretionary interpretation of HAVA. The Commission received the Florida guidance from staff in a public meeting on May 1, 2007. If Florida had appealed the guidance, as with any other, the Commission would have become involved with the resolution as the final authority.

Since that May 2007 decision, the Congress has provided further guidance on the use of HAVA funds in the House report accompanying the Financial Services and General Government Appropriation bill for Fiscal Year 2008 (H.Rept. 110-207), as follows:

...the Committee believes that ensuring accurate, reliable, and accessible voting is more than reasonable; it is essential. The Committee notes that the technology for voting equipment has improved in recent years, and states now have more experience with different technologies. States should have options and the flexibility to acquire better equipment, including equipment that will provide a durable, accessible, voter-verified paper ballot.<sup>3</sup>

By letter dated January 23, 2008, Subcommittee on Financial Services and General Government Chairman Serrano, Vice Chair Kilpatrick and subcommittee members Hinchey, Ruppersberger, Wasserman Schultz, Visclosky and Schiff, placed the Florida guidance before the Commission by asking for a reversal of the staff opinion therein.

#### Conclusion

The EAC does not mandate, endorse or recommend one system over another. It is the spirit and intent of HAVA that the states make voting systems decisions based upon what will best serve the individual state. EAC expects states to be good stewards of the Federal funds that have been given to them and to make thoughtful purchases of voting equipment and other election resources with those funds.

By adopting this revised policy, the Commission determines that it is "reasonable" pursuant to the OMB circulars for state governing jurisdictions to use HAVA funds to replace voting systems purchased with HAVA funds, as long as such purchases comply with HAVA. States will have the flexibility and opportunity to use HAVA funds to meet the requirements of title III or to improve the administration of elections for Federal office.

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<sup>3</sup> The language was ultimately adopted as part of the Joint Explanatory Statement accompanying the Consolidated Appropriations Act of 2008 which was enacted in December 2007.



- G. Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.
- H. Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations; obtaining general election information; and accessing detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

Section 102 funds can be used ONLY for the purposes of replacing punch card and lever voting systems with voting systems that comply with section 301(a).

Section 251 funds can be used to implement any of the Title III requirements including purchasing compliant voting systems, implementing provisional voting, providing information to voters in the polling place, developing and implementing a statewide voter registration list, and identifying voters. In addition, states and local governments can use HAVA funds to improve the administration of elections for Federal office when the state certifies that one of two conditions is met: (1) the state has met the requirements of Title III; or (2) the state notifies the EAC of the intent to use an amount not to exceed the amount of the minimum payment that the state either did or could have received under the section 252 formula for that purpose.

In addition to the restriction on the uses of the funds imposed by HAVA, the General Services Administration (GSA) and EAC informed States when the funds were distributed that the funds were subject to financial management controls governed by certain circulars developed by the Office of Management and Budget (OMB).<sup>2</sup> The applicable Circulars were A-87 (the principles for determining allowable costs) and A-102 (now referred to as the common rule and which governs the administrative requirements for Federal awards such as standards for accounting and purchasing), and A-133 (the standards for the audit of Federal funds expended by state and local governments).

In May 2007, the EAC responded to an inquiry from the State of Florida concerning the use of HAVA funds. Specifically, Florida asked whether it was permissible to use HAVA funds to purchase voting systems to replace existing HAVA-compliant voting systems that were also acquired with HAVA funds. The EAC response stated that it was not reasonable for a state to purchase a HAVA-compliant voting system with HAVA funds and then replace that system using HAVA funds (the "Florida guidance"). The EAC reply was based on the cost principles contained in OMB Circular A-87.

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<sup>2</sup>GSA informed each recipient that Title I funds were subject to OMB Circulars A-87, A-102, A-133, and the Common Rule (uniform administrative requirements for grants and cooperative agreements with state and local governments). In a June 11, 2004 tally vote, EAC Commissioners approved the application of OMB Circulars A-87 and A-102 (the Common Rule), and A-133 to Title II funds.

It has been the practice of this agency to have EAC staff make determinations that are applications of existing law and/or regulation and for the Commission to be involved in policy or discretionary interpretation of HAVA. The Commission received the Florida guidance from staff in a public meeting on May 1, 2007. If Florida had appealed the guidance, as with any other, the Commission would have become involved with the resolution as the final authority.

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