

**UNITED STATES
ELECTION ASSISTANCE
COMMISSION**

**REPORT TO CONGRESS ON
STATE GOVERNMENTS'
EXPENDITURES OF HELP
AMERICA VOTE ACT FUNDS**

**COVERAGE DATES:
SECTIONS 101 AND 102 FUNDS
APRIL 2003 -- DECEMBER 2006**

**SECTION 251 FUNDS
JUNE 2004 -- SEPTEMBER 2006**



**July
2007**

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FOREWARD

The Help America Vote Act of 2002 (HAVA or the Act) provided funds for States to improve the Federal voting process with new technologies and increased information and access for voters, election officials, and poll workers.

To help finance these improvements, HAVA authorized election reform payments of more than \$3 billion to State governments and required each State to provide matching contributions totaling approximately \$122 million nationwide. Before the formation of the United States Election Assistance Commission (EAC or the Commission), the U.S. General Services Administration (GSA) distributed payments under HAVA Title I, Sections 101 and 102 totaling \$649.5 million to states between April 2003 and August 2003. EAC distributed additional payments under HAVA Title II, Section 251 totaling more than \$2.3 billion between June 2004 and December 2005. All funds appropriated under these provisions of HAVA have been distributed to States.

GSA and EAC allocated funds to States on the basis of criteria contained in HAVA, such as the proportion of total voting age population of a State to the total voting age population of all States or the number of precincts in a State. As of December 31, 2006 for Title I, Sections 101 and 102 and September 30, 2006 for Title II, Section 251, States reported that they had spent HAVA funds of \$1,781,943,111 and had a balance of unspent funds of \$1,339,389,395. The balance includes interest earned on HAVA funds deposited in State election fund accounts. EAC estimates that States have earned approximately \$152 million of interest on HAVA funds.

This report presents details on election reform payments received and spent by each State and related information.

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INTRODUCTION

PURPOSE AND SCOPE

This report provides information to the Congress, States, and the public about States' use of HAVA funds from April 2003 through December 2006. The funds covered by this report were authorized under Sections 101, 102, and 251 of HAVA. States also received funds under Section 261 of HAVA to address the accessibility of polling places by individuals with disabilities. The Commission did not include Section 261 funds in this report because they are administered by the U.S. Department of Health and Human Services.

BACKGROUND

Congress passed HAVA¹ in part² to provide funds to States to make election administration improvements and to establish the EAC to help in the administration of Federal elections. HAVA authorized \$3.86 billion for distribution to the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa (hereinafter referred to as States). Congress appropriated about \$3 billion in election reform payments under Sections 101, 102, and 251 of HAVA. All funds appropriated under these HAVA provisions have been distributed to States.

Title I, Section 101 Funds

States may use Title I, Section 101 funds to perform the following activities:

- Comply with the requirements of Title III for uniform and nondiscriminatory election technology and administration requirements.
- Improve the administration of elections for Federal office.
- Educate voters about voting procedures, voting rights, and voting technology.
- Train election officials, poll workers, and election volunteers.
- Develop a State plan for managing requirements payments authorized under Section 251 of the Act.

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- Improve, acquire, lease, modify, or replace voting systems and technology and methods for casting and counting votes.
- Improve the accessibility and quantity of polling places.
- Establish toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations; to obtain general election information; and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

To qualify for Section 101 funds, States had to certify to GSA that they would use the funds consistent with the provisions of HAVA. GSA distributed Section 101 funds to States between April and August of 2003. Section 101 funds have no fiscal year limitations.

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Title I, Section 102 Funds

States may only use Section 102 funds to replace punch card and lever voting systems that were in use during the November 2000 general Federal election.

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To qualify for a Section 102 payment, States had to submit a notice to the Administrator of GSA including a certification that the State would comply with the following requirements:

- The State would use the payment either directly or as a reimbursement for the costs of replacing punch card or lever voting systems by the required deadline.
- The State will comply with applicable Federal laws.
- The replacement voting systems would meet the requirements of HAVA Section 301.

GSA distributed Section 102 funds to States between April and June 2003. In accordance with HAVA Section

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102, these funds were distributed based on the number of precincts within an eligible State that used punch card or lever voting systems during the November 2000 Federal general election.

States had to replace these voting systems by November 2, 2004, unless a State filed for a waiver of that deadline with GSA under HAVA Section 102(a)(3)(B). Twenty-three of the 30 States that received Section 102 payments requested and received a waiver of the 2004 deadline (see appendix A).

States that received a waiver from GSA had until the first Federal election in the State in 2006 to replace the voting systems. On May 25, 2007, Congress extended the deadline for the use of Section 102 funds to the date of the first Federal election held in a State after March 1, 2008.¹ However, the extension applies only to those States that received a waiver of the 2004 date.

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Section 251 Funds

States may use Section 251 funds to perform the following activities:

- Implement provisional voting.
- Provide information to voters in the polling place.
- Procure voting systems that comply with the requirements of Title III, Section 301 of HAVA.²
- Develop and implement a computerized statewide voter registration list.

¹ The extension is contained in the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, Public Law 110-28.

² Section 301 of HAVA requires voting systems to permit the voter to verify the votes selected before the ballot is cast and to change the ballot before the ballot is cast and counted; notify the voter if more than a single candidate is selected and the impact of selecting more than one candidate, and allow the voter to correct the ballot; provide a voter education system for jurisdictions that use paper ballot, punch card, or central count voting systems; produce an auditable record, be accessible for individuals with disabilities; provide alternative language accessibility; and meet minimum error rates for counting ballots.

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- Implement identification requirements for first-time voters who register to vote by mail

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- Improve the administration of elections for Federal office.

HAVA Section 251(b)(2) allows States to use Section 251 funds to improve the administration of elections for Federal office if they certify to EAC that they have either (1) met the requirements of Title III or (2) will not spend more than the amount of the minimum payment applicable to the State. The minimum payment amount for the 50 States and the District of Columbia is currently \$11,596,803. The minimum amount for each of the four territories covered by HAVA is currently \$2,319,361. Thirteen States have filed certifications under Section 251(b)(2) (see appendix B).

States qualified for Section 251 payments (also referred to as “requirements payments”) if they filed a certification with EAC declaring that the State (1) had filed and implemented a plan for uniform, nondiscriminatory administrative complaint procedures required by HAVA Section 402; (2) had appropriated matching funds equal to “5 percent of the total amount to be spent for such activities (taking into account the requirements payment and the amount spent by the state). . .”; (3) had, to the extent that any portion of the requirements payment be used for activities other than meeting the requirements of Title III, provided that the proposed uses are not inconsistent with the requirements of HAVA Title III and are consistent with the usage restrictions set forth in Section 251(b); (4) is in compliance with six Federal laws³; and (5) that the State had filed a state plan that complies with HAVA requirements listed in Sections 254, 255, and 256.

Key parts of the State plan describe how the State will:

- Use the requirements payments.

³ The laws are the Voting Rights Act of 1965, the Voting Accessibility for the Elderly and Handicapped Act, the Uniformed and Overseas Citizens Absentee Voting Act, the National Voter Registration Act of 1993, the Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1973.

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- Distribute and monitor the distribution of the payments to local units of government.
- Establish an election fund for the deposit of “Amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment is made . . .,” Federal requirements payments, “other amounts appropriated under law,” and interest earned on the deposits.
- “. . . maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.”

EAC distributed Section 251 funds to States between June 2004 and December 2005. Section 251 funds have no fiscal year limitations.

METHODOLOGY

The Commission prepared this report based on information that States submitted in and with their annual financial reports.

State Reporting Requirements

GSA first established the annual financial reporting requirements for Section 101 and 102 funds. States were required to submit an Office of Management and Budget (OMB) Standard Form 269, Financial Status Report for each funding source that presents fiscal information such as total outlays, recipient's share of outlays, and Federal share of outlays. States were required to file the first report with GSA no later than January 21, 2004, and to cover activity from the State's first receipt of Title I funds to December 31, 2003. GSA also required each recipient to submit a description or list of actual purchases and expenditures.

EAC revised the reporting requirements after it assumed oversight of Section 101 and 102 funds in 2004. EAC continued the requirement for an annual report on Standard Form 269 and required States to provide the following information:

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- Detailed lists of expenditures by program, function, or task for each authorized category of activities in HAVA Sections 101(b) and 102(a)(2).
- Numbers, types, and costs of voting equipment obtained.
- An analysis and description of activities funded to meet HAVA requirements and how such activities conform to the submitted State plan.

These annual reports are due by February 28 of each year and must cover the period from January 1 through December 31 of the previous year for as long as HAVA Section 101 and 102 funds remain in the State's election fund.

Section 258 of HAVA set the annual financial reporting requirement for Section 251 funds. The reports must include a narrative that presents the following information:

- A list of expenditures for each category of authorized activities.
- The number and types of voting equipment obtained.
- An analysis and description of activities funded to meet HAVA requirements and how such activities conform to the state plan.

These narrative reports and Standard Forms s 269, are due March 30 of each year and must cover the previous Federal fiscal year (October 1 through September 30) for as long as Section 251 funds remain.

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EAC Report Preparation

The data presented in this report is based on information States submitted in annual reports covering 2003 through 2006. To identify expenditures

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of HAVA funds, EAC primarily used the total Federal share of net outlays reported on the Standard Form 269. This amount includes both expenditures and unliquidated obligations.⁴ To categorize expenditures by type of authorized HAVA activity, EAC mainly extracted information from State narrative reports.

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It should be noted that some States did not submit all required annual reports; failed to uniformly complete Standard Form 269; did not provide supporting information that presented expenditures by category of HAVA authorized activities; or did not relate their expenditures to their State plan. Further, some States did not report the amount of State matching funds expended or the amount of interest earned on Federal and matching funds deposited in the State election funds.

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EAC sent letters to 52 States requesting that they clarify reports filed from 2004 through 2006. All but five States responded to these requests, but some of the data was still inconsistent and incomplete. Consequently, the information in this report is qualified to the extent that some States did not submit all required reports or did not report all required information. EAC has not yet requested corrections for reports filed in 2007.

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SUMMARY

Overall, States have spent 60 percent (\$1,781,943,111) of HAVA funds received (\$2,968,860,616). Also, 60 percent of States have expended more than 50 percent of their HAVA funds. In contrast, five States have spent less than 10 percent of their HAVA funds. These five States, however, account for approximately 27 percent (\$365,263,991) of the unexpended funds (\$1,339,389,395). A financial summary of HAVA payments to States, State expenditures, and balance of unspent funds is presented in Table 1.

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Table 1. Total HAVA Sections 101, 102, and 251 Funds Received by States; Total State Expenditures of HAVA Funds; and Remaining Balance of Funds and Interest 1 of 2

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⁴ Unliquidated obligations represent the amount of grants/contracts awarded or orders placed for which payments have not been made.

State	Total HAVA Funds Received	Expended^a	Percentage of Funds Expended	Balance^b
Alabama	\$40,907,194	\$12,947,460	31.65	\$29,651,133
Alaska	16,596,803	8,006,393	48.24	10,367,582
American Samoa	3,319,361	3,371,840	101.58	0
Arizona	47,600,072	13,740,471	28.87	37,432,722
Arkansas	27,761,472	16,423,388	59.16	14,365,587
California	348,900,661	280,638,373	80.44	78,030,487
Colorado	41,582,761	22,849,704	54.95	22,157,712
Connecticut	32,719,501	3,096,045	9.46	34,936,789
Delaware	16,596,803	7,735,905	46.61	9,374,974
District of Columbia	16,596,803	4,918,303	29.63	12,909,938
Florida	158,531,048	73,304,281	46.24	94,244,933
Georgia	77,304,946	73,140,615	94.61	5,324,478
Guam	3,319,361	1,866,693	56.24	1,452,668
Hawaii	16,596,803	6,191,808	37.31	10,674,907
Idaho	16,596,803	8,741,234	52.67	8,755,567
Illinois	143,529,899	94,511,610	65.85	55,379,615
Indiana	64,297,862	56,297,878	87.56	8,078,612
Iowa	28,739,383	24,232,850	84.32	4,662,077
Kansas	26,409,789	19,275,443	72.99	9,140,051
Kentucky	38,067,744	19,355,672	50.85	20,726,784
Louisiana	47,330,777	34,859,102	73.65	15,287,651
Maine	16,596,803	3,321,221	20.01	13,275,584

**Table 1. Total HAVA Sections 101, 102, and 251 Funds
Received by States; Total State Expenditures
of HAVA Funds; and Remaining Balance of
Funds and Interest** 2 of 2

State	Total HAVA Funds Received	Expended^a	Percentage of Funds Expended	Balance^b
Maryland	\$49,752,770	\$35,713,473	71.78	\$17,297,799
Massachusetts	60,332,104	5,276,401	8.75	58,995,914
Michigan	94,699,081	67,003,920	70.75	32,459,061
Minnesota	44,492,574	37,688,821	84.71	6,690,119
Mississippi	27,869,654	20,139,498	72.26	9,171,324
Missouri	62,262,661	45,773,331	73.52	20,105,989
Montana	16,596,803	13,264,106	79.92	3,595,165
Nebraska	18,749,549	14,690,310	78.35	5,046,964
Nevada	21,166,810	12,497,029	59.04	9,359,448
New Hampshire	16,596,803	335,689	2.02	16,596,803
New Jersey	84,904,403	55,933,253	65.88	28,519,543
New Mexico	19,279,790	14,123,471	73.26	9,014,194
New York	219,512,672	3,144,170	1.43	224,694,515
North Carolina	74,259,370	49,200,344	66.25	33,102,811
North Dakota	16,596,803	8,367,713	50.42	8,838,732
Ohio	132,045,112	131,682,814	99.73	8,613,372
Oklahoma	32,659,638	2,619,668	8.02	30,039,970
Oregon	33,863,940	13,993,020	41.32	20,230,033
Pennsylvania	134,818,949	124,793,466	92.56	26,155,774
Puerto Rico	5,470,505	922,763	16.87	5,023,981
Rhode Island	16,596,803	14,117,981	85.06	2,478,822
South Carolina	39,241,210	40,362,239	102.86	3,684,755
South Dakota	16,596,803	5,635,898	33.96	11,702,173

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Tennessee	54,714,608	21,048,399	38.47	37,009,309
Texas	184,168,065	128,504,360	69.78	64,292,305
Utah	25,284,969	22,708,000	89.81	4,115,977
Vermont	16,596,803	2,692,784	16.22	15,030,010
Virgin Islands	3,319,361	1,286,780	38.77	2,444,869
Virginia	69,121,820	35,308,415	51.08	37,064,507
Washington	60,093,850	26,081,858	43.40	37,116,984
West Virginia	20,630,100	12,934,539	62.70	8,768,045
Wisconsin	50,066,781	17,948,603	35.85	35,293,708
Wyoming	16,596,803	7,323,706	44.13	10,606,567
Total	2,968,860,616	1,781,943,111	60.02	1,339,389,395

^aExpenditures include cash disbursements and unliquidated obligations. For Sections 101 and 102, the expenditures are as of December 31, 2006. For Section 251, the expenditures are as of September 31, 2006.

^bThe balance is greater than the difference between funds received and expenditures in most cases because it includes interest earned on funds deposited in State election fund accounts.

^cSouth Carolina reported that it overspent its Section 251 funds which resulted in total expenditures exceeding funds received. The balance shown in this table consists of remaining Section 101 and 102 funds.

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DISTRIBUTION, EXPENDITURE, AND USE OF HAVA FUNDS

DISTRIBUTION AND EXPENDITURE

The amount of HAVA funds received, expended and the balance available by State are presented in Tables 2, 3, and 4 for HAVA Section 101, 102, and 251 funds, respectively.

Table 2. Receipt and Expenditure of HAVA Section 101 Funds as of December 31, 2006 1 of 2

State	Amounts		
	Received	Expended ^a	Balance ^b
Alabama	\$4,989,605	\$1,102,215	\$4,147,912
Alaska	5,000,000	3,296,543 ^c	2,853,704
American Samoa	1,000,000	1,052,479	0
Arizona	5,451,369	2,095,600	3,654,990
Arkansas	3,593,165	3,892,935 ^d	35,445
California	27,340,830	24,900,973	2,439,857
Colorado	4,860,301	1,605,963	3,704,899
Maine ^e	5,000,000	2,798,214	2,201,788
Maryland	5,000,000	3,649,490	1,668,800
Massachusetts	6,590,381	2,719,041	4,153,243
Michigan	10,207,380	12,894,340	3,689,953
Minnesota	5,313,786	5,313,786	0
Mississippi	3,000,000	1,933,256	2,066,724
Missouri	5,875,170	2,479,354	3,812,817
Montana	5,000,000	3,800,649	4,325,403
Nebraska	5,000,000	2,379,019	3,231,199
Nevada	6,000,000	3,362,929 ^f	4,604,229
New Hampshire ^e	5,000,000	130,758	5,000,000
New Jersey	8,000,008	2,930,585	4,998,680
New Mexico	5,000,000	8,121,734	0
New York	16,494,325	3,000,866	14,861,591
North Carolina	7,887,740	6,823,759	1,535,420
North Dakota	5,000,000	5,067,675	0
Ohio	10,384,931	10,384,931	401,918

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Table 2. Receipt and Expenditure of HAVA Section 101 Funds as of December 31, 2006 2 of 2

State	Amounts		
	Received	Expended ^a	Balance ^b
Oklahoma	\$5,000,000	\$712,756	\$4,287,244
Oregon	4,203,776	4,262,975	0
Pennsylvania	11,323,168	10,937,961	1,473,509
Puerto Rico	3,151,144	761,770	2,666,264
Rhode Island	5,000,000	4,738,672	261,328
South Carolina ^f	4,652,412	1,520,877	3,434,231
South Dakota	5,000,000	729,795	4,696,163
Tennessee	6,004,507	829,020	5,526,329
Texas	17,206,595	6,191,672	12,876,462
Utah	3,090,943	1,379,319	2,065,322
Vermont	5,000,000	2,692,784	2,668,024
Virgin Islands ⁱ	1,000,000	941,408	58,592
Virginia	7,105,890	1,829,815	5,818,174
Washington	6,098,449	6,357,496	0
West Virginia	2,977,057	2,495,358	543,973
Wisconsin	5,694,036	1,260,669	4,753,648
Wyoming	5,000,000	789,779	4,903,336
Total	349,182,262	197,396,045	176,817,659

^aExpenditures include cash disbursements and unliquidated obligations.
^bThe balance is greater than the difference between funds received and expenditures in most cases because it includes interest earned on funds deposited in State election fund accounts. In those cases where states spent more than received, we reported a zero balance to avoid distorting the overall balance of funds remaining for other States.
^cWe increased by \$7033 Alaska's reported expenditures of \$3,289,510 to account for all expenditures Alaska identified in its supporting narrative report.
^dWe increased by \$6,714 Arkansas' reported expenditures of \$3,892,935 to account for all expenditures Arkansas identified in its supporting narrative report.
^eGuam reported on a fiscal year instead of calendar year (CY) basis for 2004.
^fNo current report; data is from the report for 2004.
^gNo current report filed; data is from CY 2005 report.
^hWe increased by \$20,051 Nevada's reported expenditures of \$3,344,244 to account for expenditures Nevada identified in its supporting narrative report.
ⁱWe allocated costs to Sections 101 and 251 on the basis of financial and narrative reports for 101 funds because the Virgin Islands incorrectly reported both Section 101 and 251 funds in a report for Section 101 funds.

Table 3. Receipt and Expenditure of HAVA Section 102 Funds as of December 31, 2006 1 of 3

State	Amounts		
	Received	Expended ^a	Balance ^b
Alabama	\$51,076	\$919	\$52,824
Alaska	0	0	0
American Samoa	0	0	0
Arizona	1,564,188	2,364,188	0
Arkansas	2,569,737	226,648	2,226,422
California	57,322,707	57,322,708	0
Colorado	2,177,095	2,323,852	0
Connecticut	0	0	0

Table 3. Receipt and Expenditure of HAVA Section 102 Funds as of December 31, 2006 2 of 3

Amounts		
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State	Received	Expended^a	Balance^b
Delaware	\$0	\$0	\$0
District of Columbia	0	0	0
Florida	11,581,377	11,581,377	36,029
Georgia	4,740,448	4,740,448	0
Guam	0	0	0
Hawaii	0	0	0
Idaho	0	0	0
Illinois	33,805,617	33,669,568	136,049
Indiana	9,522,394	9,601,022	0
Iowa	0	0	0
Kansas	0	0	0
Kentucky	469,256	469,229	17,549
Louisiana	7,351,684	7,545,474	0
Maine	0	0	0
Maryland	1,637,609	1,637,609	0
Massachusetts	1,519,497	1,446,076	73,421
Michigan	6,531,284	6,432,323	446,182
Minnesota	0	0	0
Mississippi	1,778,067	1,883,992	0
Missouri	11,472,841	12,119,621	0
Montana	0	0	0
Nebraska	0	0	0
Nevada	0	0	0
New Hampshire	0	0	0
New Jersey	8,695,609	8,695,609	0
New Mexico	0	0	0
New York	49,603,917	0	54,791,749
North Carolina	893,822	893,822	0
North Dakota	0	0	0
Ohio	30,667,664	31,854,565	0
Oklahoma	0	0	0
Oregon	1,822,758	1,711,406	111,352
Pennsylvania	22,916,952	22,998,677	4,132,527
Puerto Rico	0	0	0
Rhode Island	0	0	0
South Carolina	2,167,518	1,998,330	250,524
South Dakota	0	0	0
Tennessee	2,473,971	2,608,630	0
Texas	6,269,521	6,266,685	2,836
Utah	5,726,844	4,238,301	2,050,655
Vermont	0	0	0
Virgin Islands	0	0	0
Virginia	4,526,569	4,625,702	111,636
Washington	6,799,430	5,412,157	1,799,988
West Virginia	2,349,474	2,460,605	0
Wisconsin	1,308,810	781,679	637,272
Wyoming	0	0	0

Table 3. Receipt and Expenditure of HAVA Section 102 Funds as of December 31, 2006 **3 of 3**

State	Amounts		
	Received	Expended^a	Balance^b

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Total	\$300,317,736	\$247,911,222	\$66,877,015
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^aExpenditures include cash disbursements and unliquidated obligations. As applicable, States were able to spend more than they received because of interest earned on funds deposited in State election fund accounts.

^bThe balance is greater than the difference between funds received and expenditures in most cases because it includes interest earned on funds deposited in State election fund accounts. In those cases where states spent more than received, we reported a zero balance to avoid distorting the overall balance of funds remaining for other States.

Table 4. Receipt and Expenditure of HAVA Section 251 Funds as of September 30, 2006 1 of 2

State	Amounts		
	Received	Expended ^a	Balance ^b
Alabama	\$35,866,513	\$11,844,326	\$25,450,397
Alaska	11,596,803	4,709,850	7,513,878
American Samoa	2,319,361	2,319,361	0
Arizona	40,584,515	9,280,683	33,777,732
Arkansas	21,598,570	12,303,805	12,103,720
California	264,237,124	198,414,692	75,590,630
Colorado	34,545,365	18,860,139	18,439,863
Connecticut	27,719,501	770,244	31,947,231
Delaware	11,596,803	4,086,414	7,708,169
District of Columbia	11,596,803	2,955,174	9,257,348
Florida	132,502,091	49,850,562	90,563,951
Georgia	64,748,170	61,498,274	3,766,119
Guam ^c	2,319,361	1,813,417	505,944
Hawaii	11,596,803	5,758,660	6,108,055
Idaho	11,596,803	7,940,585	4,440,444
Illinois	98,595,252	52,281,416	50,769,630
Indiana	48,544,987	45,067,607	3,477,380
Iowa	23,739,383	19,077,306	4,662,077
Kansas	21,409,789	18,136,398 ^d	4,181,401
Kentucky	32,899,292	18,560,713	15,864,065
Louisiana	35,067,672	25,787,667	11,582,857
Maine ^e	11,596,803	523,007	11,073,796
Maryland	42,478,430	32,536,354	12,734,529
Massachusetts	52,222,226	1,111,284	54,769,250
Michigan	78,960,474	58,376,877	24,322,924
Minnesota	39,178,788	32,375,035	6,690,119
Mississippi	22,418,203	16,278,351	7,106,529
Missouri	44,914,650	31,174,356	16,293,172
Montana	11,596,803	9,879,931	2,173,758
Nebraska	13,749,549	12,311,291	1,815,765
Nevada	16,166,810	9,132,734	7,484,919
New Hampshire ^f	11,596,803	204,931	11,596,803
New Jersey	68,067,586	44,295,059 ^g	23,320,920

Table 4. Receipt and Expenditure of HAVA Section 251 Funds as of September 30, 2006 2 of 2

State	Amounts		
	Received	Expended ^a	Balance ^b
New Mexico	\$14,279,790	\$6,001,737	\$9,014,194
New York	153,414,430	143,304	155,041,175
North Carolina	65,477,808	41,482,763	31,567,391
North Dakota	11,596,803	3,300,038	8,838,732
Ohio	90,992,517	89,443,318	8,211,454

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Oklahoma	27,659,638	1,906,912	25,752,726
Oregon	27,837,406	8,018,639	20,118,681
Pennsylvania	100,578,829	90,856,828	20,549,738
Puerto Rico	2,319,361	160,993	2,357,717
Rhode Island	11,596,803	9,379,309	2,217,494
South Carolina ^f	32,421,280	36,843,032	0
South Dakota	11,596,803	4,906,103	7,006,010
Tennessee	46,236,130	17,610,749	31,482,980
Texas	160,691,949	116,046,003	51,413,007
Utah	16,467,182	17,090,380	0
Vermont	11,596,803	0	12,361,986
Virgin Islands ^h	2,319,361	345,372	2,386,277
Virginia	57,489,361	28,852,898	31,134,697
Washington	47,195,971	14,312,205	35,316,996
West Virginia	15,303,569	7,978,576	8,224,072
Wisconsin	43,063,935	15,906,255	29,902,788
Wyoming	11,596,803	6,533,927	5,703,231
Total	2,319,360,617	1,336,635,844	1,095,694,721

^aExpenditures include cash disbursements and unliquidated obligations. As applicable, States were able to spend more than they received because of interest earned on funds deposited in State election fund accounts.

^bThe balance is greater than the difference between funds received and expenditures in most cases because it includes interest earned on funds deposited in State election fund accounts. In those cases where states spent more than received, we reported a zero balance to avoid distorting the overall balance of funds remaining for other States.

^cGuam reported on a fiscal year instead of calendar year (CY) basis for 2004. Also, Guam did not file a current report; data is from the report for 2004.

^dWe decreased by \$953,957 Kansas' reported expenditures of \$19,090,355 to exclude state matching costs.

^eNo current report filed; data is from fiscal (FY) 2005 report.

^fNo current report filed; data is from FY 2004 report

^gWe decreased by \$451,607 New Jersey's reported expenditures of \$44,746,666 to account for matching costs and an error in carrying forward prior period expenditures.

^hWe allocated costs to Sections 101 and 251 on the basis of financial and narrative reports for 101 funds because the Virgin Islands incorrectly reported both Section 101 and 251 funds in a report for Section 101 funds.

USE OF HAVA FUNDS

Reported use of HAVA funds disclosed the following information:

- Seventy-six percent (\$1,349,305,518) of the total reported expenditures (\$1,781,941,110) were used for voting systems and statewide voter registration lists that comply with the requirements of HAVA Sections 301 and 303.
- Sixteen percent (\$287,644,904) of reported expenditures were used to improve the

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administration of Federal elections. This category includes expenses related to educating voters; creating a HAVA State plan; training election officials and poll workers; establishing voter hotlines; administering HAVA programs; improving polling place accessibility; establishing administrative complaint procedures; and other improvements. Voter education programs, used primarily to educate voters about new voting systems in the States, accounted for more than 26 percent (\$75,660,888) of expenditures in this category.

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- Eight percent (\$143,437,956) of reported expenditures were classified as uncategorized. The majority of this amount are unliquidated obligations which State reports did not specify the nature of the obligations.
- Less than one-tenth of one percent (\$305,948) of all reported expenditures were used for meeting the Section 302 requirements regarding provisional voting and voter information postings at the polls.

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Table 5 presents a breakdown of total reported expenditures among the various activities authorized by HAVA.

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Table 5. Use of HAVA Funds

Description of Funds Usage	Expenditures				Percent of Total for all Usage
	Section 101	Section 102	Section 251	Total	
Voting systems	\$38,527,650	\$247,911,222	\$834,765,416	\$1,121,204,287	62.92
Voter registration databases	32,878,231	0	195,223,000	228,101,231	12.80
Provisional voting	424,686	0	824,097	1,248,783	0.07
Voter information poll postings	49,060	0	204,703	253,763	0.01
IDs for first-time registrants	52,185	0	0	52,185	0.00
Improving the Administration of Federal Elections	91,164,800	0	196,480,104	287,644,904	16.15

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Uncatagorized ^c	34,299,431	0	109,138,525	143,437,956	08.05
Total	<u>197,396,043</u>	<u>247,911,222</u>	<u>1,336,635,845</u>	<u>1,781,941,110</u>	<u>100.00</u>

OVERSIGHT OF HAVA FUNDS

EAC ASSISTANCE

EAC and GSA informed States of the Federal administrative requirements that apply to HAVA funds. States were advised that they had to manage funds in accordance with the Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (the Common Rule); incur costs in accordance with OMB Circular A-87; and obtain audits in accordance with OMB Circular A-133. The Common Rule prescribes the minimum standards for administering Federal funds in areas such as accounting, purchasing, and property management. OMB Circular A-87 describes allowable costs and how they should be supported; while Circular A-133 requires States and counties to obtain an audit of all their Federal assistance each year they spend more

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than \$500,000 of Federal funds.

To help States meet these requirements and the provisions of HAVA, the Commission performed the following activities:

- Posted on www.eac.gov a guide for managing, recordkeeping, reporting and auditing HAVA funds. Deleted: (see appendix C)
- Presented training on using and accounting for HAVA funds in conjunction with the National Association of Secretaries of State and the National Association of State Election Directors meetings.
- Presented training on the negotiation of indirect cost rates.
- Negotiated indirect cost rates with States.
- Responded to questions from State administrators about the appropriate uses and reporting of HAVA funds.
- Posted on www.eac.gov a list of frequently asked questions on reporting requirements and the proper use of HAVA funds (see appendix C). Deleted: D
- Mailed to the States and posted on www.eac.gov sample Standard Forms 269 for reporting Title I and Section 251 funds, and sample narratives showing supporting information (see appendix D). Deleted: E
- Published formal advisories on www.eac.gov on maintaining effort when using requirements payments, treating income earned on HAVA funds, accounting for interest earned on HAVA funds, calculating the 5-percent matching requirement, and using county funds to match requirements payments (see appendix E).

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- Sent annual reminders to States about their reporting responsibilities.
- Established a comprehensive, uniform review process for annual State financial reports.
- Reviewed and resolved audits of HAVA funds prepared by State auditors and the EAC Office of Inspector General (OIG). Resolution documents are available at www.eac.gov.

Office of Inspector General Operations

In accordance with Section 812 of HAVA, EAC established an Office of Inspector General on August 9, 2005. According to the Inspector General Act, inspectors general shall do the following activities:

- Audit and investigate agency programs and operations including programs carried out with HAVA funds by States and independent contractors.
- Promote economy, efficiency, and effectiveness in agency programs and operations.
- Prevent and detect fraud, waste, abuse, and mismanagement of government resources.
- Inform the agency head, management, and the Congress about problems and deficiencies in agency operations, and the progress of corrective action.

Through December 2006, the OIG audits focused on State administration of HAVA Section 101, 102, and 251 funds. The OIG issued 11 final reports on States that reported some of the largest expenditures of HAVA funds. The audited States reported more than 59 percent of total reported expenditures of Section 101, 102, and 251 funds through December 31, 2006. Table 6 lists the States audited as of June 8, 2007, amounts audited, reported expenditures, and HAVA funds received.

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Table 6. Office of Inspector General Audits of States

State	HAVA Funds Audited		Reported Expenditures	Total HAVA Funds Received
State	Amount	As of		
California	\$14,922,867	12/31/04	\$280,638,373	\$348,900,661
New Jersey	16,771,106	12/31/05	55,933,253	84,904,403
Texas	29,912,682	12/31/05	128,504,360	184,168,065
Georgia	63,562,054	12/31/05	73,140,615	77,304,946
Pennsylvania	17,459,399	12/31/05	124,793,466	134,818,949
Illinois	30,090,394	12/31/05	94,511,610	143,529,899
Maryland	26,683,205	12/31/05	35,713,473	49,752,770
South Carolina	35,165,678	12/31/05	40,362,239	39,241,280
Ohio	114,741,683	6/30/06	131,682,814	131,682,814
Virginia	33,270,545	8/31/06	35,308,415	69,121,820
Indiana	56,297,878	8/31/06	56,297,878	64,297,862
	438,877,491		1,056,886,496	1,327,723,469

The 11 audits identified the potential return of funds used for questionable purposes and additional program funds from under-matching and lost interest of about \$14.6 million, as shown in Table 7.

Table 7. Disposition of Audit Findings with Dollar Impacts, December 2005 Through June 2007

State	Audit Findings		Agency Resolution of Findings		
	Questioned Expenditures	Additional Funds^a	Total	Sustained^b	Reinstated^c
CA	\$3,860,361	\$0	\$3,860,361	\$3,021,114	\$839,247
NJ	131,924	0	131,924	64,514	67,410
TX	180,609	0	180,609	180,609	0
GA	0	0	0	0	0
PA	526,513	0	526,513	Pending	
IL	3,889	453,290	457,179	Pending	
MD	250,554	0	250,554	Pending	
SC	95,206	114,794	210,000	Pending	
OH	875	6,800,000	6,800,875	Pending	
IN	0	2,222,955	2,222,955	Pending	
VA	0	0	0	0	0
Total	5,049,931	9,591,039	14,640,925	3,266,237	906,657

^aAdditional funds consist principally of added matching funds and interest on matching funds that a State did not deposit into its election fund.

^bSustained findings consists of findings which with EAC agreed with the OIG. To resolve sustained expenditures/additional funds, States must repay either the State election fund or the U.S. Treasury.

^cReinstated expenditures/funds consist of findings in which the State provided subsequent information sufficient to justify its use of the expenditures/funds or otherwise justify its actions.

In addition to the completed audits listed above, audits started to date during the 2007 Federal fiscal year are in process in New Mexico, Rhode Island, Missouri, Kentucky, and Wyoming. Generally, the OIG schedules States for audit on the basis of the highest amount of

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reported expenditures and will continue this strategy until all States are audited.

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STATE MATCHING FUNDS

MATCHING REQUIREMENT FOR SECTION 251 FUNDS

States must certify that they have appropriated matching funds as a condition for receiving Section 251 requirements payments. In that regard, Section 253(b)(5) of HAVA stipulates that the State match must equal 5 percent of the State's total program (“taking into account the requirements payment and the amount spent by the State”). A State’s matching requirement (for example Alabama’s) is computed as follows: (1) the State’s total requirements payment of \$35,866,513 is divided by 95 percent to determine the total program amount of \$37,754,225 and (2) the total program of \$37,754,225 is multiplied by 5 percent to compute the matching requirement of \$1,877,712. The total matching requirement for all States is \$122,071,611.

Although HAVA requires States receiving requirements payments to match those funds, 48 U.S.C. §1469(a)(d) provides a waiver to the United States Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa for all Federal matching funds under \$200,000. This statute requires the EAC to grant an automatic waiver of the first \$200,000 in matching HAVA funds to the U.S. Virgin Islands, Guam, and American Samoa. Although the current matching requirement for these territories is \$122,072, this amount may increase based on future appropriations of requirements payments by Congress. In addition, the EAC must consider on a case-by-case basis whether to grant a waiver of matching funds in excess of \$200,000 to the U.S. Virgin Islands, Guam, and American Samoa. Although exempt from the matching requirement, Guam reported expending \$790,015 in matching funds as of December 31, 2006.

As shown on Table 8, the total State expenditures of \$222,545,545 exceeds the matching requirement of \$122,071,611. This occurred because 14 States contributed in excess of their individual matching requirement. For example, Maryland’s matching requirement is \$2,235,707, but it reported

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the expenditure of State funds totaling \$54,140,189.

In contrast, information reported by 41 States indicates that they need to contribute a total of \$58,912,622 (total matching requirement of \$122,071,611 less matching contributions of \$63,158,989) to meet their matching requirement. Table 8 presents details on the status of each State's expenditure of matching funds.

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Table 8. STATUS OF STATE MATCHING FUNDS

1 of 2

State	Amount		Reported Expenditure of State Funds	Expenditures Applicable to Matching
	Section 251 Payments	State Matching Requirement ^a		
Alabama	\$35,866,513	\$1,887,712	\$623,386	\$623,386
Alaska	11,596,803	610,358	767,760	610,358
American Samoa	2,319,361	122,072	0	0
Arizona	40,584,515	2,136,027	1,822,933	1,822,933
Arkansas	21,598,570	1,136,767	0	0
California	264,237,124	13,907,217	99,997,305	13,907,217
Colorado	34,545,365	1,818,177	558,596	558,596
Connecticut	27,719,501	1,458,921	1,387,089	1,387,089
Delaware	11,596,803	610,358	0	0
District of Columbia	11,596,803	610,358	572,000	572,000
Florida	132,502,091	6,973,794	1,925,394	1,925,394
Georgia	64,748,170	3,407,798	2,865,571	2,865,571
Guam	2,319,361	122,072	\$790,015	122,072
Hawaii	11,596,803	610,358	631,633	610,358
Idaho	11,596,803	610,358	2,072,413	610,358
Illinois	98,595,252	5,189,224	6,721,153	5,189,224
Indiana	48,544,987	2,554,999	0	0
Iowa	23,739,383	1,249,441	765,000	765,000
Kansas	21,409,789	1,126,831	953,957	953,957
Kentucky	32,899,292	1,731,542	976,880	976,880
Louisiana	35,067,672	1,845,667	2,437,803	1,845,667
Maine	11,596,803	610,358	45,262	45,262
Maryland	42,478,430	2,235,707	54,140,189	2,235,707
Massachusetts	52,222,226	2,748,538	0	0
Michigan	78,960,474	4,155,814	3,072,468	3,072,468
Minnesota	39,178,788	2,062,041	3,029,018	2,062,04
Mississippi	22,418,203	1,179,905	856,755	856,755
Missouri	44,914,650	2,363,929	2,363,929	2,363,929
Montana	11,596,803	610,358	216,480	216,480
Nebraska	13,749,549	723,660	0	0
Nevada	16,166,810	850,885	509,498	509,498
New Hampshire	11,596,803	610,358	0	0
New Jersey	68,067,586	3,582,504	516,013	516,013

Table 8. STATUS OF STATE MATCHING FUNDS

2 of 2

State	Amount		Reported	Expenditures
	Section 251	State Matching		

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	Payments	Requirement^a	Expenditure of State Funds	Applicable to Matching
New Mexico	14,279,790	751,568	11,000,000	751,568
New York	153,414,430	8,074,444	7,542	7,542
North Carolina	65,477,808	3,446,200	0	0
North Dakota	11,596,803	610,358	0	0
Ohio	90,992,517	4,789,080	5,800,000	4,789,080 Deleted: 5,800,000
Oklahoma	27,659,638	1,455,770	338,290	338,290
Oregon	27,837,406	1,465,127	602,670	602,670
Pennsylvania	\$100,578,829	\$5,293,623	\$0	\$0
Puerto Rico	2,319,361	122,072	0	0
Rhode Island	11,596,803	610,358	0	0
South Carolina	32,421,280	1,706,383	0	0
South Dakota	11,596,803	610,358	165,160	165,160
Tennessee	46,236,130	2,433,481	926,882	926,882
Texas	160,691,949	8,457,471	6,092,210	6,092,210
Utah	16,467,181	866,694	899,494	866,694
Vermont	11,596,803	610,358	702,438	610,358
Virginia	57,489,361	3,025,756	0	0
Virgin Islands	2,319,361	\$122,072	0	0
Washington	47,195,971	2,483,998	2,359,799	2,359,799
West Virginia	15,303,569	805,451	0	0
Wisconsin	43,063,935	2,266,523	2,452,730	2,266,523
Wyoming	11,596,803	610,358	579,840	579,840
Total	2,319,360,617	122,071,611	222,545,545	<u>63,158,989</u> Deleted: 64,169,909

STATE PLANS

STATE PLAN AMENDMENTS

To obtain Section 251 requirements payments, HAVA mandated that a State submit a plan describing how

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funds will be used. In addition, States are prohibited by Section 254(a)(11) of HAVA from making a material change in the administration of the State plan unless (1) a committee of stakeholders (such as local election officials and representatives of groups with disabilities) has revised its State plan in accordance with Section 255; (2) the State has completed a 30-day public comment period in accordance with Section 256; and (3) EAC has published the revised state plan in the *Federal Register* for another 30 days in accordance with Section 255(b).

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Thirty States have revised their State plans since the initial publication of those plans in the *Federal Register* in March 2004. In addition, eight States certified that they will use Section 251 funds to improve the administration of elections for Federal office (see Appendix B), but have not updated their plans to reflect this change in planned expenditures since submitting the certifications. Table 9 shows the original and revised dates that State plans were published in the *Federal Register*. State plans may be accessed on www.eac.gov.

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Table 9. State Plan Federal Register Publication Dates as of May 15, 2007 1 of 3

State	Original Plan Publication Date ^a	Additional Plan Publication Date(s) ^a	Number of Revisions
Alabama	March 24, 2004	None	0
Alaska	March 24, 2004	April 7, 2005	1
American Samoa	March 24, 2004	June 29, 2006	1
Arizona	March 24, 2004	None	0
Arkansas	March 24, 2004	December 22, 2004	1
California ^b	March 24, 2004	September 30, 2004	1
Colorado	March 24, 2004	None	0
Connecticut	March 24, 2004	None	0
Delaware	March 24, 2004	October 27, 2005	1

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Table 9. State Plan Federal Register Publication Dates as of May 15, 2007 2 of 3

State	Original Plan Publication Date ^a	Additional Plan Publication Date(s) ^a	Number of Revisions
District of Columbia	March 24, 2004	None	0
Florida ^c	March 24, 2004	September 30, 2004	1
Georgia	March 24, 2004	None	0
Guam	March 24, 2004	None	0
Hawaii	March 24, 2004	None	0
Idaho	March 24, 2004	None	0

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Illinois ^b	March 24, 2004	December 22, 2004; September 28, 2006	2
Indiana	March 24, 2004	September 28, 2006	1
Iowa	March 24, 2004	June 29, 2005	1
Kansas	March 24, 2004	September 30, 2004	1
Kentucky	March 24, 2004	February 27, 2007	1
Louisiana	March 24, 2004	September 28, 2006	1
Maine	March 24, 2004	None	0
Maryland	March 24, 2004	February 27, 2006	1
Massachusetts	March 24, 2004	None	0
Michigan	March 24, 2004	November 16, 2005	1
Minnesota	March 24, 2004	None	0
Mississippi	March 24, 2004	June 29, 2005	1
Missouri	March 24, 2004	None	0
Montana	March 24, 2004	August 25, 2005	1
Nebraska	March 24, 2004	December 22, 2004	1
Nevada ^c	March 24, 2004	September 30, 2004; August 25, 2005	2
New Hampshire	March 24, 2004	None	0
New Jersey ^b	March 24, 2004	None	0
New Mexico	March 24, 2004	None	0
New York	March 24, 2004	None	0
North Carolina ^b	March 24, 2004	June 29, 2005	1
North Dakota	March 24, 2004	December 22, 2004	1
New Mexico	March 24, 2004	None	0
Ohio ^b	March 24, 2004	April 7, 2005	1
Oklahoma ^b	March 24, 2004	March 11, 2005	1
Oregon ^b	March 24, 2004	None	0
Pennsylvania	March 24, 2004	September 30, 2004; September 30, 2005	2
Puerto Rico	March 24, 2004	January 24, 2005; February 27, 2006	2
Rhode Island	March 24, 2004	None	0
South Carolina	March 24, 2004	September 30, 2004; August 25, 2005; September 28, 2006	3
South Dakota ^b	March 24, 2004	March 11, 2005	1
Tennessee	March 24, 2004	September 30, 2004	1
Texas	March 24, 2004	March 11, 2005	1
Utah	March 24, 2004	None	0

Table 9. State Plan Federal Register Publication Dates as of May 15, 2007 3 of 3

State	Original Plan Publication Date ^a	Additional Plan Publication Date(s) ^a	Number of Revisions
Vermont	March 24, 2004	None	0
Virgin Islands	March 24, 2004	None	0
Virginia	March 24, 2004	September 12, 2005; September 28, 2006	2
Washington	March 24, 2004	None	0
West Virginia	March 24, 2004	February 1, 2006	1
Wisconsin	March 24, 2004	None	0
Wyoming	March 24, 2004	None	0

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^aRevised State plans are effective 30 days after publication in the *Federal Register*.
^bState submitted a certification regarding Section 251 funds subsequent to the last revision and publication of the State plan.
^cState recently submitted a revised State plan to EAC but the plan has not yet been published in the *Federal Register*.

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STATES THAT RECEIVED A WAIVER OF THE ORIGINAL DEADLINE FOR THE USE OF SECTION 102 FUNDS

No.	State	Date of Waiver
1	Arkansas	December 23, 2003
2	California	December 23, 2003
3	Colorado	December 23, 2003
4	Illinois	July 8, 2003
5	Indiana	December 29, 2003
6	Kentucky	December 5, 2003
7	Indiana	December 5, 2003
8	Massachusetts	December 23, 2003
9	Michigan	December 30, 2003
10	Mississippi	December 16, 2003
11	Missouri	December 11, 2003
12	New Jersey	December 23, 2003
13	New York	December 23, 2003
14	North Carolina	December 11, 2003
15	Ohio	December 24, 2003
16	Pennsylvania	December 23, 2003
17	Tennessee	December 23, 2003
18	Texas	December 23, 2003
19	Utah	December 17, 2003
20	Virginia	December 4, 2003
21	Washington	December 12, 2003
22	West Virginia	December 17, 2003
23	Wisconsin	December 23, 2003

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***STATES THAT FILED A WAIVER UNDER SECTION 251(b)(2)
of HAVA FOR USING REQUIREMENTS PAYMENTS TO
IMPROVE THE ADMINISTRATION OF ELECTIONS FOR
FEDERAL OFFICE***

State	Certification Filed*			
	State Has Met Title III Requirements [251(b)(2)(A)]	Date of Filing	State Will Use Up to Minimum Amount [251(b)(2)(B)]	Date of Filing
American Samoa	Yes	12/26/2005		
California			Yes	04/03/2006
Florida	Yes	08/28/2006	Yes	03/13/2006
Illinois			Yes	03/20/2007
Kentucky	Yes	01/16/2007		
Maryland	Yes	05/15/2007		
New Jersey	Yes	06/25/2007		
North Carolina	Yes	03/28/2007		
North Dakota			Yes	04/28/2005
Ohio			Yes	04/24/2007
Oregon	Yes	07/06/2006		
South Dakota	Yes	03/15/2007		
Virginia			Yes	04/13/2006

*EAC will forward certifications received under HAVA Section 251(b)(2)(A) to the Voting Section of the Civil Rights Division of the U.S. Department of Justice, because the Division is charged with enforcing the uniform and nondiscriminatory election technology and administration requirements of Title III of HAVA. These certifications will also be forwarded to the OIG for potential review of compliance with the requirements of Title III during OIG audits.

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**FREQUENTLY ASKED QUESTIONS REGARDING APPROPRIATE
USE OF HELP AMERICA VOTE ACT FUNDS**

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This FAQ is not intended to provide specific advice about individual legal, business or other questions. It was prepared solely as a guide. If legal or other expert advice is required or desired with regard to a specific question or course of action, the services of an appropriate, competent professional should be sought.

Updated October 2006

INTRODUCTION

The Help America Vote Act of 2002 (HAVA) created the U.S. Election Assistance Commission (EAC) and required election officials throughout the country to implement various election administration reforms. To assist with those efforts, Congress authorized and appropriated more than \$3 billion.

One of the primary responsibilities of the EAC is to provide the states, insular territories and the District of Columbia with the funding appropriated under HAVA and to provide information and training on the appropriate management and use of those funds.

Over the past two years, EAC has answered dozens, if not hundreds, of questions from election administrators around the country regarding the appropriate use of HAVA funds. In order to provide all election administrators with information regarding the types of questions that EAC has received and the answers that it has given, we have compiled the following frequently asked questions.

Prior to considering the individual questions and answers there is some information that is fundamental to each of them and which covers the basic limitations on the uses of HAVA funds.

Sources and Uses of HAVA Funds

There are three sources of funding provided by HAVA for use to improve the administration of federal elections and to meet the requirements of Title III of HAVA (specifically to implement provisional voting, to improve voting technology, to develop and implement a statewide voter registration database, to provide information to voters, and to verify and identify voters according to the procedures set forth in HAVA). Those sources are Section 101, Section 102 and Section 251 funds.

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

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**FREQUENTLY ASKED QUESTIONS REGARDING APPROPRIATE
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- 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 1 of subtitle D of title II.
- F. Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.
- 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, to obtain general election information, and to access 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) of HAVA.

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 one of two conditions is met: (1) the state has met the requirements of Title III; or (2) the state notifies EAC of its intention 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.

The uses of Section 251 funds (and Section 101 funds, when used to meet the requirements of Title III) must be accounted for in the state's plan as originally submitted or later amended. Any material change in the use of

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FREQUENTLY ASKED QUESTIONS REGARDING APPROPRIATE USE OF HELP AMERICA VOTE ACT FUNDS

251 funds (and Section 101 funds as specified above) from the approved state plan will require the state to revise its plan and submit the revisions to the EAC for publication and approval.

Costs must be Allowable, Allocable and Reasonable

In addition to the restrictions on the uses of funds imposed by HAVA, when these funds were distributed by either the General Services Administration (GSA) or the EAC, those funds were made subject to several circulars developed by the [Office of Management and Budget](#), specifically OMB Circulars [A-87](#) (governs the use of federal funds to purchase goods for state and local governments), [A-102](#) (governs the management of federal funds for state and local governments), [A-122](#) (governs the use of federal funds to purchase goods for non-profits) and [A-133](#) (dealing with audits). These circulars further restrict the appropriate uses of Federal funds requiring generally that costs paid for by HAVA funds are allowable, allocable (directly or through an indirect cost rate), and reasonable.

Allowable Costs

A cost is allowable if it is necessary for the proper and efficient performance and administration of the federally sponsored program. Costs that fall within the specifically identified uses of HAVA funds in either Sections 101, 102 or Title III are allowable.

Allocable Costs

A state can allocate an expense by charging only a portion equal to the percentage of use for HAVA related purposes to the HAVA grant. This can be accomplished by either using only that percentage of HAVA fund per unit cost or by seeking reimbursement from the other departments within the state for their portion of the usage. The question of allocability arises generally in one of two circumstances. First, is the cost allocable to the program to which it is billed? Just because a cost is allowable under one or more funding programs of HAVA do not mean that it is allocable to each and every program. For example, if an expense is not directly related to meeting any of the Title III requirements, it is allocable only to Section 101 funds and Section 251 funds pursuant to the provisions of Section 251(b) that allow for the use of Title II funds for the improvement of the administration of elections for federal office only up to the minimum payment amount. Second, is the cost allocable to benefit a Federal election? Most of the uses identified in HAVA require the funds to be used to benefit a Federal election. Thus,

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costs that strictly benefit a state or local election are not allocable to the HAVA funding programs.

Indirect Costs

In some circumstances, the expense may be an indirect one that can be covered by an indirect cost rate. In that instance, the state may submit an indirect cost rate proposal in which it identifies and supplies information regarding direct and indirect costs of operation. Circular A-87 and ASMB C-10, *Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government*, provide guidance on negotiating indirect costs rates.

An indirect cost rate provides a state with the basis for allocating administrative costs that are inextricably linked to other services provided by the Secretary of State such that they cannot easily be segregated into those costs that directly benefit the HAVA funding program and those that do not. For example, the cost of printers and copy machines that are used for both Federal and State election activities and that are below the State's threshold for capitalized equipment may be expensed and included in the indirect cost pool. On the other hand, if you include an asset in the fixed capital assets section of your balance sheet and depreciate the asset, you should consider the asset as a capital expenditure and include only depreciation expense in the pool. [Click here](#) to see a power point presentation on indirect costs presented by KPMG on behalf of the EAC.

Reasonable Costs

A state must do some assessment as to whether the costs are reasonable. This is done by determining that the cost is justified based upon factors such as the frequency of use, leasing versus purchasing, and actual cost for the good or service.

SPECIFIC AREAS OF COST

The following questions cover specific areas and items that states, insular territories and the District of Columbia have asked the EAC about using HAVA funds to purchase. In order to be permissible, the use of funds must be permitted by the HAVA source and meet other Federal funds requirements discussed above. The questions are categorized for ease of use. The reader can use any of the following links to jump to the category of interest.

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FREQUENTLY ASKED QUESTIONS REGARDING APPROPRIATE USE OF HELP AMERICA VOTE ACT FUNDS

- Accounting for HAVA Funds
- Capital Improvements
- Cost Sharing
- Enforcement
- Equipment
 - Cellular Telephones
 - DeMinimis Use of Equipment
 - Leasing Equipment
 - Motorized Vehicles
 - Office Furniture and Equipment
 - Voting Systems
- Federal Elections
- Income from HAVA Funds
- Matching Funds
- Other Uses
 - Affirmative Action Plans
 - Conference Attendance
 - Get Out the Vote
 - Legal Fees
 - Reimbursements for Prior Expenses
 - Statewide Voter Registration Databases
 - Training Election Officials
 - Training Voters

Equipment

The cognizant agency for the funding program has the authority to pre-approve or waive the right to pre-approve the purchase of any capital equipment (generally equipment with a unit cost of \$5,000 or more) or capital improvements with grant funds. ([See Attachment B of A-87, Section 15, Equipment and other capital expenditures](#)). For purposes of HAVA funds, EAC is the cognizant agency. EAC will acknowledge and use the state's definition of capitalized equipment for purposes of requiring pre-approval of expenditure. Thus, if the state's definition sets forth a dollar amount lower (but not higher) than \$5,000, then the state's amount will serve as the threshold for requiring pre-approval. Equipment below the threshold is considered supplies. ([See Attachment B, Section 26, Materials and Supplies](#).) No pre-approval or waiver is required for supplies.

EAC has waived its right to pre-approve **ONLY** the purchase of voting equipment that complies with Section 301 of HAVA and any computer equipment used solely for the purpose of developing or operating the statewide voter registration list. Conversely, the EAC has not waived its

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FREQUENTLY ASKED QUESTIONS REGARDING APPROPRIATE USE OF HELP AMERICA VOTE ACT FUNDS

right to pre-approve the use of HAVA funds for other items that may be required to meet the requirements of Title III or that may be used to improve the administration of elections for Federal office.

Prior to purchasing any equipment with HAVA funds you should determine the answers to the following:

1. What is my state's dollar threshold in determining the definition of what is equipment?
2. What HAVA funding source will be used?
3. Do I need to get EAC permission or ask them to waive the right to pre-approve the purchase?
4. Is the cost allowable?
5. How will the cost be allocated?
6. Is the cost reasonable?
7. If Section 251 funds are used will this be a material change to the state HAVA plan?

The answers to the questions listed below are not self contained. They are based in large part on the information that has been provided above regarding the stated uses of HAVA funds and the information provided with regard to determining whether an item is allowable, allocable and reasonable. That information is fundamental to ensuring an accurate answer, and proper use of HAVA funds.

Leasing Equipment

1. May a state lease equipment?

Leasing equipment is considered an allowable expense under [OMB Circular A-87, according to the limitations and conditions of Attachment B, 37](#). Rental Costs of Buildings and Materials. The limitations include that “sale and lease back” arrangements cannot cost the state or local government more than when it owned the property. The costs include expenses such as depreciation or use allowance, maintenance, taxes, and insurance. A “less-than-arms-length” agreement (i.e., a state government established a corporation to own the property then leases it back to the state) cannot cost the state or local government more than if title had vested in the state or local government.

Rental costs under leases which are required to be treated as capital leases under Generally Accepted Accounting Principles (GAAP) are allowable only up to the amount that would be allowed had the state or local

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**FREQUENTLY ASKED QUESTIONS REGARDING APPROPRIATE
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government purchased the property on the date the lease agreement was executed. The provisions of [Financial Accounting Standards Board Statement 13](#), Accounting for Leases, determine whether a lease is a capital lease. The determination is based on factors such as if the lease transfers ownership of the property to the lessee by the end of the lease term; contains a bargain purchase option; the lease term is equal to 75 percent or more of the estimated economic life of the leased property unless the lease term falls within the last 25 percent of the total estimated economic life of the leased property; or the present value at the beginning of the lease term of the minimum lease payments excluding executory costs such as insurance, maintenance, and taxes to be paid by the lessor, including any profit, equals or exceeds 90 percent of the excess of the fair value of the leased property to the lessor at the inception of the lease.

DeMinimis Uses of Equipment**2. May HAVA funds be used to support de minimus uses of equipment by the State for non-HAVA related purposes?**

No. The State can allocate only that portion of the equipment purchase cost that will go to benefit the state's HAVA program. Alternatively, the expenses may qualify as an indirect cost in which case the state may submit an indirect cost rate proposal in which it identifies and supplies information regarding direct and indirect costs of operation.

Cellular Telephones**3. May HAVA funds be used to purchase cellular phones in administering elections and maintaining contact with polling places on Election Day?**

Cellular phones would generally be considered an allowable cost. However, because this expense is not directly related to meeting any of the Title III requirements, the expense could be allocated only to Section 101 funds or Section 251 funds pursuant to Section 251(b). Before a final decision can be made with regard to this expense, the question of cost reasonableness must be considered and answered. For example, it may be more reasonable to purchase prepaid cellular phones rather than to purchase phones with monthly plans that will only be used infrequently or periodically.

Motorized Vehicles

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FREQUENTLY ASKED QUESTIONS REGARDING APPROPRIATE USE OF HELP AMERICA VOTE ACT FUNDS**4. May a State use HAVA funds to purchase motorized vehicles for use in voter outreach efforts?**

While motorized vehicles are an allowable cost when they are used for voter education pursuant to Section 101(b)(1)(C) of HAVA, there are significant issues related to allocability and cost reasonableness that must still be considered in assessing the appropriateness of such an expense. For example, if the vehicle will not be used exclusively for the purpose of voter outreach or other activities associated with improving the administration of federal elections and are used for purposes unrelated to improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant. Even in this instance, the appropriate percentage of cost could only be allocated to the funding programs under Section 101 or Section 251(b). As for the reasonableness analysis, it may be more reasonable to rent a vehicle rather than to purchase, insure and maintain vehicles that will only be used infrequently or periodically.

5. May a State use HAVA funds to purchase forklifts used to move and store voting equipment within a warehouse?

Forklifts used exclusively for stacking, moving and storing voting equipment are an allowable cost for this stated purpose. Because this expense is not directly related to meeting any of the Title III requirements, such a cost can be allocated ONLY to Section 101 funds or Section 251 funds pursuant to Section 251(b). However, allocability and cost reasonableness must still be considered. For example if the forklift will not be used exclusively for the purpose of moving stored voting equipment and are used for purposes unrelated to improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant. Similarly, it may be more reasonable to rent a forklift rather than to purchase and maintain forklifts that will only be used infrequently or periodically.

Office Furniture and Equipment**6. May HAVA funds be used to purchase office furniture (tables, cabinets and desks) for the new voting systems equipment and statewide voter registration database equipment?**

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Office furniture would generally be considered an allowable cost as long as such cost is not covered by the maintenance of effort requirements imposed by Section 254(a)(7). The purchase of office furniture is only allowable if it can be demonstrated that the furniture would improve the administration of Federal elections. As such, those costs could only be allocated to the funding programs under Sections 101 and 251(b). Factors such as allocability and cost reasonableness must still be considered. For example if the office furniture will not be used exclusively for the purpose of improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant. Furthermore, the cost for the furniture must be reasonable as compared to what the election jurisdiction is getting.

7. May HAVA funds be used to purchase storage cabinets, security cages and shelving for storage of ballots to secure and store ballots as required by state and federal law?

Storage cabinets and shelving are allowable costs as long as they are not covered by the required maintenance of effort. See Section 254(a)(7). Because this expense would not be directly related to meeting any of the Title III requirements, it could be allocated only to funding programs under Sections 101 and 251(b). Cost principles such as allocability and cost reasonableness must still be considered. For example, if the security cages and shelving will not be used exclusively for the purpose of improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant.

8. May HAVA funds be used to purchase high speed letter openers to process absentee ballots?

High speed letter openers are an allowable cost for this stated purpose. As this expense is not directly related to meeting any of the Title III requirements, the cost can be allocated only to the Section 101 funding program or to Section 251 funds pursuant to Section 251(b). Allocability and cost reasonableness must be considered in assessing the propriety of this type of expense. If the letter opener will not be used exclusively for the purpose of opening absentee ballots and other mail unrelated to improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant. Similarly, depending on the volume of mail it may be more reasonable to manually open the letters.

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FREQUENTLY ASKED QUESTIONS REGARDING APPROPRIATE USE OF HELP AMERICA VOTE ACT FUNDS

9. May HAVA funds be used for a mail processing system that will assemble, sort, label and affix proper postage amounts for all outgoing mail, including absentee ballots from the Elections Office?

This type of mail processing system is an allowable cost for the stated purpose. Because this expense is not directly related to meeting any of the Title III requirements, it may be allocated only to the funding programs established in Section 101 or Section 251 funds pursuant to Section 251(b). However, allocability and cost reasonableness must be considered to fully assess the appropriateness of such an expense. For example, if the mail processing system will not be used exclusively for the purpose of processing mail related to improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant. Similarly, depending on the volume of mail it may be more reasonable to manually process the mail.

Voting Systems

10. May a State use HAVA funds to purchase absentee voting equipment?

States and its counties may use funds distributed under Section 101 or Section 251 to purchase voting equipment used to conduct absentee voting as long as that equipment meets the requirements of Section 301(a) of HAVA. The definition of voting system in Section 301(b) of HAVA includes equipment used to administer absentee voting. As such, no pre-approval from the EAC is required prior to purchase. However, cost reasonableness must still be considered in selecting the equipment. The cost must be reasonably related to the value of the equipment purchased.

11. May a State or local government use HAVA funds to purchase additional accessible voting equipment?

Yes. States and its counties may use funds distributed under Section 101 or Section 251 to purchase additional accessible voting equipment as long as that equipment meets the requirements of Section 301(a) of HAVA.

12. May HAVA funds be used to purchase voting systems with Voter Verified Paper Audit Trail (VVPAT) capabilities?

The answer depends on whether the purchase of VVPAT is part of the purchase of a compliant voting system (under Section 301(a)) or if it is purchased as a retrofit for a compliant voting system. If it is a component of

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FREQUENTLY ASKED QUESTIONS REGARDING APPROPRIATE USE OF HELP AMERICA VOTE ACT FUNDS

a voting system that is being purchased, then section 251 funds can be used to the same extent that they are available to meet the requirements of Title III. However, if the VVPAT is purchased as a retrofit, then 251 funds can be used ONLY to the extent that they can be used to improve the administration of federal elections (see 251(b)(2)), as VVPAT is not a required component of voting systems under section 301(a) and would serve only to improve the administration of elections. Also, Section 101 funds can be used. Section 102 funds would not be appropriate for a retrofit VVPAT because VVPAT is not a requirement of Section 301.

13. Does the EAC give opinions as to whether a specified voting system would be considered compliant with HAVA Section 301(a)?

No. EAC does not believe that it was the intention of Congress for this Commission to pre-clear or approve the purchase of voting systems by states and local governments. Rather, Congress intended that EAC provide information and guidance on the meaning and implementation of HAVA. Furthermore, EAC has waived its right to pre-approve the expenditure of HAVA funds on compliant voting systems.

14. Does HAVA Section 301(a)(3)(C) mean that if HAVA funds are used after January 1, 2007 to purchase a voting system (or any additional voting units), the funds can only be used to purchase voting units that meet the accessibility requirements of Section 301(a)(3)?

The January 1, 2007 date referenced in Section 301(a)(3)(C) applies to when the funds are provided, not when the equipment is purchased. The HAVA funds (provided under sections 101, 102, or 251) the States currently have were all provided prior to January 1, 2007. If a jurisdiction already meets the accessibility requirements under Section 301(a)(3) and they wish to purchase additional voting systems, the State would not be required to procure additional voting equipment that is accessible to persons with disabilities. Nevertheless, the equipment procured with those funds must meet all other HAVA section 301 requirements. If states receive additional HAVA funding from the EAC after January 1, 2007 and wish to use that funding to purchase new voting systems, then all equipment purchased with the new funding must meet the requirements of Section 301(a)(3). If mixed funding sources are used in future voting system procurements, states will have to separately account for restricted and unrestricted money separately if the State wishes to purchase non-accessible equipment.

Capital Improvements

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A capital improvement is an improvement to any structure (building) or component erected as a permanent fixture on real property (land) that adds to its value and useful life. The cognizant agency for the funding program, EAC in this case, has the authority to pre-approve or waive the right to pre-approve the purchase of any capital equipment (generally equipment with a unit cost of \$5,000 or more) or capital improvements made with grant funds. ([See Attachment B of A-87, Section 15. Equipment and other capital expenditures](#)). EAC does not waive its right to pre-approve capital improvements.

Prior to making any capital improvements with HAVA funds you should determine the answers to the following:

1. What is my state's dollar threshold in determining the definition of a capital improvement?
2. What HAVA funding source will be used?
3. Do I need to get EAC permission or ask them to waive the right to preapprove the improvement? EAC permission is required.
4. Is the cost allowable?
5. How will the cost be allocated?
6. Is the cost reasonable?
7. If Section 251 funds are used will this be a material change to the state HAVA plan?

If the facility to be improved is not owned by the State or local government, the State or local government must have a guarantee of use of that facility for at least the length of time that the State could claim full depreciation of the improvement according to standard accounting procedures.

The answers to the questions listed below are not self contained. They are based in large part on the information that has been provided above regarding the stated uses of HAVA funds and the information provided with regard to determining whether an item is allowable, allocable and reasonable. That information is fundamental to ensuring an accurate answer, and proper use of HAVA funds.

15. Can a State or local government use HAVA funds to upgrade wiring so that the election office can connect its locality LAN to access the Internet?

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FREQUENTLY ASKED QUESTIONS REGARDING APPROPRIATE USE OF HELP AMERICA VOTE ACT FUNDS

Generally, upgrading wiring is an allowable cost for this purpose. Upgrading wiring is justified if it improves the administration of Federal elections. It can be paid for using Section 101 funds or Section 251 funds up to the minimum payment identified in Section 252. However allocability and cost reasonableness must still be considered. For example, if the internet wiring will not be used exclusively for the purpose of improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant.

16. May HAVA funds be used to make polling places used in Federal elections accessible to people with disabilities if those polling places will be used in future elections?

Generally, making polling places accessible is an allowable cost. However, this expense is not directly related to meeting any of the Title III requirements. As such, this cost can be allocated only to funding programs under Section 101 or Section 251(b).

17. Can a locality be reimbursed with HAVA funds for ADA modifications to polling places made before HAVA became law on October 29, 2002?

No. HAVA provides only for reimbursement of expenses related to voting system purchases. There is no provision for the reimbursement of expenses incurred to improve access to polling places.

18. Can a locality use HAVA funds to make modifications to a storage space in order to provide appropriate storage for voting equipment?

Generally, making modifications to a warehouse to store voting equipment is an allowable cost. However, this expense is not directly related to meeting any of the Title III requirements. Only Section 101 funds or Section 251(b) funds may be used for this expense. However allocability and cost reasonableness must still be considered. For example, if the warehouse modification will not be used exclusively for the purpose of improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant. Similarly, it may be more reasonable to select a different warehouse rather than retrofit the current structure.

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FREQUENTLY ASKED QUESTIONS REGARDING APPROPRIATE USE OF HELP AMERICA VOTE ACT FUNDS

19. May HAVA Section 101 or 251 funds be used to purchase a building to be used for warehouse voting system equipment?

Generally, purchasing a warehouse to store voting equipment is an allowable cost. This expense is not directly related to meeting any of the Title III requirements. Thus, only Section 101 or Section 251(b) funds may be used. Factors such as allocability and cost reasonableness must still be considered in determining the appropriateness of the expense. For example, if the warehouse will not be used exclusively for the purpose of improving the administration of federal elections, only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant. Similarly, it may be more reasonable to rent a warehouse rather than purchase one.

20. Can HAVA Section 102 funds be used to buy, rent or improve a warehouse to store voting systems?

No. Section 102 of HAVA grants payments to states for the purpose of replacing punch card and lever voting systems not for the storage or warehousing of such equipment.

21. May HAVA funds be used to rent space to store voting equipment purchased to meet HAVA requirements?

Generally, renting a warehouse to store voting equipment is considered to be an allowable cost. This expense is not directly related to meeting any of the Title III requirements. Thus, only Section 101 or Section 251(b) funds may be used. Factors such as allocability and cost reasonableness must still be considered in order to determine the appropriateness of this type of expense. If the warehouse will not be used exclusively for the purpose of improving the administration of federal elections (e.g., rental space would be used to house equipment other than voting systems that would be used in federal elections), only that percentage of costs associated with the administration of federal elections can be charged to the HAVA grant.

Rental costs of buildings and equipment are covered by OMB Circular A-87, see the section on Rental costs of buildings and equipment. Rental costs under leases which are required to be treated as capital leases under Generally Accepted Accounting Principles (GAAP) are allowable only up to the amount that would be allowed had the state or local government purchased the property on the date the lease agreement was executed. The provisions of Financial Accounting Standards Board Statement 13, Accounting for Leases, determine whether a lease is a capital lease. The

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determination is based on factors such as if the lease transfers ownership of the property to the lessee by the end of the lease term; contains a bargain purchase option; the lease term is equal to 75 percent or more of the estimated economic life of the leased property unless the lease term falls within the last 25 percent of the total estimated economic life of the leased property; or the present value at the beginning of the lease term of the minimum lease payments excluding executory costs such as insurance, maintenance, and taxes to be paid by the lessor, including any profit, equals or exceeds 90 percent of the excess of the fair value of the leased property to the lessor at the inception of the lease.

Other Uses of HAVA Funds

The following questions deal with spending of HAVA funds on conference attendance, training, voter outreach and other non equipment or non capital improvement expenses; and costs incurred prior to getting HAVA funds, reimbursements.

The answers to the questions listed below are not self contained. They are based in large part on the information that has been provided above regarding the stated uses of HAVA funds and the information provided with regard to determining whether an item is allowable, allocable and reasonable. That information is fundamental to ensuring an accurate answer, and proper use of HAVA funds.

Prior to spending HAVA funds on non-equipment purchases or capital improvements you should determine the answers to the following:

1. What HAVA funding source will be used?
2. Do I need to get EAC permission or ask them to waive the right to pre-approve the use of funds? EAC permission is required.
3. Is the cost allowable?
4. How will the cost be allocated?
5. Is the cost reasonable?
6. If Section 251 funds are used will this be a material change to the state HAVA plan?

Conference Attendance

22. May HAVA funds be used to send elections office employees to an election industry association conference to see available voting equipment?

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Generally, HAVA funds may be used to attend an election industry association conference to see available voting equipment if such funds were not a part of the state's maintenance of effort requirement. HAVA funds may not be used to pay dues to the association. Because this expense is not directly related to meeting any of the Title III requirements, only Section 101 or Section 251(b) funds may be used.

Training Voters

- 23. May a State or local government use HAVA funds to**
- produce public service announcements about new voting equipment;**
 - take new equipment out to the public (e.g., senior centers, schools, grocery stores, malls or shopping centers) in advance of the first election in which the new equipment will be used;**
 - produce customized written material on voters' rights and responsibilities for use on Election Day;**
 - mail information to voters about voting equipment purchased to replace punch card/lever machines;**
 - produce and run radio and TV spots about registration deadlines, rights and responsibilities, absentee voting, information about grievance procedures, provisional ballots and ID requirements?**

Generally, Section 101 funds may be used to educate voters concerning voting procedures, voting rights, and voting technology. Section 251 can only be used for the educational costs that benefit federal elections, as those funds are restricted to improving the administration of federal elections funds, and subject to Section 251(b). However cost reasonableness must be considered. Furthermore, the state should carefully consider the prudence of funding an ongoing expense such as printing and distribution charges with a one-time funding source like these HAVA funds. These costs will inevitably be assumed by the state or local government upon the exhaustion of federal funds.

- 24. May HAVA section 101 funds be used to buy children's coloring books (educational)?**

No. Pursuant to the language of HAVA, the funds must be expended to educate "voters" or groups of people who meet state voting requirements. As coloring books are traditionally geared towards the young (who are not

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eligible to vote) this use of HAVA 101 Funds appears not to meet the fund's educational use requirements.

Training Election Officials

25. May HAVA funds be used to create video training aids or instruction lead training, or employ a full time training manager for Officers of Election on new voting equipment, provisional ballots and/or ID requirements for first time mail registrants?

Yes. Section 101 funds may be used to train election officials, poll workers, and election volunteers. Section 251 can only be used for the educational costs that benefit federal elections, as those funds are restricted to improving the administration of federal elections funds subject to the requirements of Section 251(b). The state should carefully consider the prudence of funding an ongoing expense such as printing and distribution charges with a one-time funding source like these HAVA funds. These costs will inevitably be assumed by the state or local government upon the exhaustion of federal funds.

26. May HAVA funds be used to provide food during a training of election officers (poll workers) on new voting equipment before the initial use?

Generally, HAVA funds may be used to purchase food consumed during training. The provision of food is covered by Office of Management and Budget Circular A-87, Attachment B, *Cost Principles for State, Local and Indian Tribal Governments* see [Meetings and Conferences](#). Meals associated with meetings and conferences are allowable. However, meals that are used for entertainment purposes and alcohol are not allowable.

Get Out the Vote

27. May HAVA section 101 funds be used to buy "voting is cool" bracelets?

No. In order to fit within the allowable expense of voter education, the item procured must provide information on voting procedures, rights or technology. Items intended to "get out the vote" or merely encourage voting do not meet this requirement. Items that are not fundamentally educational may be considered advertising or public relations costs prohibited by Office of Management and Budget Circular A-87, Attachment B, *Cost Principles for*

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State, Local and Indian Tribal Governments [advertising and public relations costs](#).

28. May HAVA section 101 funds be used to buy “Top Ramen” as a humorous means to attract the attention of college students to the importance of voting?

No. In order to fit within the allowable expense of voter education, the item procured must provide information on voting procedures, rights or technology. Items intended to “get out the vote” or merely encourage voting do not meet this requirement. Items that are not fundamentally educational may be considered advertising or public relations costs prohibited by Office of Management and Budget Circular A-87, Attachment B, *Cost Principles for State, Local and Indian Tribal Governments [advertising and public relations costs](#).*

Legal Fees

29. May HAVA funds be used to employ legal counsel to advise and or represent the Secretary of State and/or State Election Commissioners in litigation pertaining to the implementation of the State HAVA plan?

According to the plain language of HAVA in Sections 101(b)(2) and 251(f), funds distributed under Sections 101 and 251 cannot be used to pay for costs associated with litigation unless the exceptions in Sections 101(b)(2)(A) and 251(f)(1) which permit legal expenses covering the implementation of HAVA (not a State provision that is more strict than the provisions of HAVA).

30. Whether HAVA funds (101 and 251) can be spent to determine whether the proposed uses of HAVA funds for litigation are allowable, allocable, and reasonable?

Yes. However, grantees generally seek advice from the agency that administers the grant on what constitutes an allowable cost. A State may be able to obtain the information that it needs without the necessity of a legal opinion by consulting with other state departments that are administering federal grant programs at the state level. Grantees are encouraged to request the assistance of the EAC in determining the permissibility of certain costs rather than expending HAVA funds to make this determination. Office of Management and Budget Circular A-87, Attachment B, *Cost Principles for State, Local and Indian Tribal Governments see [Defense and prosecution of](#)*

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[criminal and civil proceedings, and claims](#), allows for legal expenses required in the administration of a federal program.

Statewide Voter Registration Database

31. May HAVA funds be used to pay to maintain and support a HAVA compliant statewide voter registration system?

Yes. Maintenance of a statewide voter registration system can be paid for from Section 251 funds or Section 101 funds. However, cost reasonableness must still be considered. The state should carefully consider the prudence of funding an ongoing expense such as printing and distribution charges with a one-time funding source like these HAVA funds. These costs will inevitably be assumed by the state or local government upon the exhaustion of federal funds.

Reimbursement for Prior Expenses

32. May HAVA Section 251 funds be used to reimburse a state for statewide voter registration database costs incurred prior to award of the funds?

The EAC has concluded that (for the purposes of requirements payments) any pre-award cost “incurred pursuant to negotiation and in anticipation of grant award”, as required by Office of Management and Budget Circular A-87, Attachment B, *Cost Principles for State, Local and Indian Tribal Governments* see [Section 31, Pre Award Costs](#); is reimbursable if the cost was included in a (later) approved HAVA state plan and it was incurred after Congress appropriated HAVA requirements payment funding on February 20, 2003. In order to be properly attributed as a pre-award grant cost, a cost must have been necessary to incur in order to meet the scheduled requirements of the grant. Requirements payments provided states to meet HAVA Title III requirements include a mandate for the creation of a Statewide Voter Registration Database (42 U.S.C. §15483(a)) on or before January 1, 2004 (42 U.S.C. §15483(d)) or apply for a waiver (for good cause shown) to extend the deadline to January 1, 2006. The EAC has concluded that it is reasonable for a State to conclude that pre-award expenditures on Statewide Voter Registration Databases were necessary in order to meet HAVA timelines. Pre-award costs expended to procure a voter registration database that will meet HAVA requirements fits the use limitation. The cost must not have been allocated to meet the states maintenance of effort requirement or 5% matching fund requirement. In

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order to properly allocate a pre-award cost to a grant, recipient must get the written approval of the awarding agency, the EAC.

33. What voting machine purchases made prior to the passage of HAVA are reimbursable under HAVA?

Voting machine purchases made prior to the passage of HAVA and after January 1, 2001 are reimbursable under Sections 102 and 251. In addition, Section 251(c)(1) of HAVA permits reimbursement of voting machine purchases made after the federal general election in 2000. If Section 102 funds are used to reimburse expenses incurred to purchase voting systems those purchases (1) must have been made after January 1, 2001; (2) must have been made to replace punch card or lever voting systems used on or before the deadline for submitting certifications established in Section 102; and (3) must have been used to purchase voting systems that comply with Section 301(a) of HAVA. In addition, the amount of reimbursement per precinct cannot exceed the pro rata amount distributed by the General Services Administration. If Section 251 funds are used as reimbursement for HAVA compliant voting machine purchases made on a multi-year contract, then pursuant to Section 253(a)(5) the amount of the state's matching funds must be increased in an amount equal to the amount of the reimbursement. If Section 251 funds are used as reimbursement for voting machine purchases made on other than a multi-year contract, the provision requiring an increased matching funds does not apply.

34. May states use Section 251 funds to reimburse a county or local government for its purchase of voting equipment?

Yes. The funds can only be used to reimburse the purchase of voting systems that meet the requirements of Section 301(a) of HAVA; purchase must have occurred after the November 2000 election; and if the money is used to reimburse a purchase of voting equipment on a multi-year contract, then the state must increase its maintenance of effort expenditure by the amount of the payment and additional matching funds are required under Section 253(b)(5).

35. May a State reimburse a County that has fully satisfied the payment obligation to the voting system vendor for the purchase of voting equipment made prior to the State receiving HAVA funds?

Section 251(c) of HAVA contemplates using Title II funds for the purpose of reimbursing States for expenses associated with voting equipment that meets the requirements of HAVA purchased prior to the availability of

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funds under HAVA. This concept of reimbursement applies to the county or other local government unit that purchases voting equipment in lieu of such purchases on a state level. HAVA funds may reimburse and replace county funds that were obligated after October 29, 2002, (or obligated prior to January 1, 2001 under a multi-year contract) in advance of the receipt of federal funds. Thus, if the county has already earned those reimbursement payments, it can re-appropriate the funds to uses it deems proper, subject to any conditions established by the State in granting funds to counties.

36. May HAVA funds be used to reimburse counties for vendor voting system maintenance fees?

Yes. Either Section 101 or Section 251(b) funds can be used for expenses related to maintenance of voting systems. Under Section 251(b), a state is limited to the amount that it would have been entitled to as a minimum payment until the state meets the requirements of Title III.

Affirmative Action Plans

37. Does Executive Order 11246, dealing with affirmative action plan requirements, apply to a State because it received more than \$65 million from the federal government under HAVA?

No. The provisions of Executive Order 11246 apply to contractors and subcontractors with the federal government. The funds provided by EAC under HAVA do not meet the definition of a contract as stated in the Federal Acquisition Regulations, [Part 2.101](#), and as defined by the Government Accountability Office in Principles of Federal Appropriations Law ([GAO Red Book, Volume II](#), page 10-10).

Accounting for HAVA Funds

38. What is the proper year to account for retroactive reimbursement payments made under HAVA for the Single Audit Act?

The funds should be included in the audit of the fiscal year in which the funds were expended, which is the fiscal year in which the funds were received from the Federal Government and then appropriated to use by the state or county. So, if the funds were received in FY05 (October 1, 2004 – September 30, 2005) and appropriated in FY05 by the state or county as reimbursement for expenses made in a previous fiscal year by the state or county, then the funds should be covered by the FY05 audit.

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39. What is the grant period for HAVA funds?

EAC has established the grant period for HAVA Title II funds as the period beginning on the date of disbursement of the funds to the state and ending when the state and/or a political subdivision of the state expends all of the funds distributed by EAC to the state, all matching funds, and all interest earned on either the federal funds or state matching funds.

40. When do the grant period end and the record keeping requirement start for HAVA funds?

The record keeping requirement begins upon the close of the grant period, when the last and closing report is filed. The grant period closes when the state (or political subdivisions of the state on its behalf) has expended all federal, state and interest funds contained in the election fund.

41. If a sub-grantee (State grant of HAVA funds to a county or local government) misspends HAVA funds will the EAC recover the funds directly from the sub-grantee?

No. The EAC will not be engaged in recouping funds from a local government that were misspent by a local government or which were overpaid to a local government under a subgrant, the obligation is on the state. The EAC will recoup any funds misspent by a local government from the state government.

42. What CFDA number do I use when reporting my expenditure of HAVA funds?

The following CFDA numbers have already been assigned to HAVA funding programs: (The Secretary of State's office should be able to tell you which HAVA funds were provided to a county.)

- 39.011 - Title I, sections 101 and 102 - "early money" election reform payments made to States (distributed by the General Services Administration in 2003);
- 93.617 - Title II, section 261 - grants to States for voting access for individuals with disabilities (aka EAID, distributed by the U.S. Department of Health and Human Services in 2003, 2004, and 2005);
- 93.618 - Title II, section 291 - grants to State protection and advocacy systems to promote voting access for individuals with disabilities

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(distributed by the U.S. Department of Health and Human Services in 2003, 2004, and 2005);

- 90.400 - Help America Vote College Program - grants to promote the participation of college students as nonpartisan poll workers (distributed by EAC before 9/30/04); and
- 90.401 – Sections 251- 258 - Requirements Payments to States – (distributed by the EAC in 2004 and 2005)

43. Does the state need to notify the EAC of the states compliance and intent to use 251 funds for "other election improvements"?

Yes. Consistent with Section 251(b) in order to use remaining Title II funds for the improvement of the administration of elections for federal office, the state must submit a verification that all of the Title III requirements have been met (not just the voting system requirements) or certify prior to the time that all Title III requirements are met that the state will not use more than the minimum payment amount. This does not alleviate the responsibility that the state has to assure that its spending is in keeping with its state plan. Thus, if the proposed spending on improving election administration is not reflected in the state plan and represents a material change the state plan must be changed prior to the change in spending.

Income from HAVA Funds

44. May a state or county rent or lease out its voting systems?

Generally, a state or county can rent or lease out its voting systems. Common Rule, 41 C.F.R. § 105-71.32 Equipment, prohibits a grantee from using a piece of equipment purchased using grant funds to compete unfairly with the private sector. If a State rents or leases its voting machines out it must do so in a way that does not thwart competition with the private sector. The price paid by the lessee must be a competitive price. Equipment is defined by the common rule as "tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above." If the voting systems meet the definition of "equipment" either under the Common Rule or state laws, rules or regulations, the restriction must apply.

Income from leasing voting equipment to other jurisdictions would be considered program income, see OMB Circular A-102, Common Rule, 41 C.F.R. § 105-71.25 Program Income. The only appropriate treatment of income classified as program income during the grant period is for the county

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to dedicate the income to uses permitted under HAVA, Section 251. Section 251 allows the use of HAVA funds to implement the requirements of Title III and, after those requirements are met, to improve the administration of elections for federal office. After the expiration of the grant period, the income generated by the lease of voting systems may be used by the county as it chooses. (See Question 39 for the definition of grant period).

Cost Sharing

45. Must a county, the sub-grantee of HAVA funds, enter into an agreement with each municipality for the use of Federal Funds or is the agreement between the state and county sufficient?

The state must follow its own laws and procedures regarding the distribution of grant funds when issuing a subgrant, but must also assure that the subgrantee is aware of the limitations imposed by the federal grant. A state must follow its own law as to whether a cost sharing agreement is required or some other form of grant agreement is needed. EAC suggests that there be some documentation that supports the transfer of these funds to the local governments, whether it be a certification by the governments they will comply with the limitations or that the governments receive funds on a cost reimbursement basis after providing a request for the funds and proof that they were spent in accordance with the state and federal restrictions. Office of Management and Budget Circular A-102, The Common Rule, 41 C.F.R. § 105-71.37, Subgrants, covers the requirements for states that issue subgrants of federal funds.

Matching Funds

46. May a state use its Elections Board staff compensation as an in-kind match to help meet the Help America Vote Act's (HAVA) 5% matching requirement (Section 253(b)(5) of HAVA, 42 U.S.C. § 15403(b)(5))?

In-kind contributions may be accepted to meet the 5% matching requirement, as HAVA does not specifically require a "hard" or cash match, but doing so may violate HAVA's maintenance of effort provision. The services costs of the individuals who shifted from other administrative or managerial activities within the Elections Board to HAVA specific projects activities must be consistent with the authorized uses to meeting the requirements of Title III and improving the administration of elections for federal office. The State has an obligation under HAVA Section 254(7) to maintain its expenditures "for activities funded by the payment at a level

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that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.” A State is required to maintain its previously defined expenditures on activities funded by Requirements Payments in addition to its 5% matching obligation. If the individuals were previously paid by the State to work on improving the administration of Federal elections as either a direct cost, as an election administrator, or as an indirect cost, as a manager or member of the support staff and assuming all State expenditures have remained constant, using these costs to serve as an in-kind match towards the States 5% matching obligation accomplishes nothing more than shifting State expenditures from meeting HAVA’s maintenance of effort provisions to meeting the statute’s matching requirement. In the end, there has been no increase in State spending. While in-kind contributions, such as employee compensation, may be used to meet HAVA’s matching requirement, such contributions must create an overall increase in State spending.

47. How do I calculate the amount needed for our state’s 5% match?

According to HAVA Section 253(b)(5), the State match is 5% of total amount to be spent (taking into account the Federal amount + the State amount). The formula for determining the amount of state matching funds based on the federal funds requested is:

$$(\text{Federal Dollars} / .95) = \text{Federal Dollars} + \text{State Match}$$

Deriving from that formula an equation that would allow us to figure the Federal dollars from the available State match:

$$\text{Federal Dollars} = 19 \times \text{State Match}$$

48. Can a State use its state matching funds to satisfy the maintenance of effort requirement?

No, a State may not use state matching funds to satisfy the requirement that it maintain its effort. Both maintenance of effort and matching funds requirements are considered cost sharing methods, ways by which Congress and thereby the Federal Government get states to share in the expense of funding a particular endeavor. Maintenance of effort requirements are considered different from matching fund requirements in that the intent, generally, is to assure that the Federal funding actually increases the amount of funding to a particular program or task.

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While there is no legislative history on this particular issue, a plain reading of HAVA must result in an understanding that Congress included two separate and distinct cost sharing requirements, matching funds and maintenance of effort. Congress did not intend for one of these cost sharing methods to cancel the other. Rather, it is apparent that Congress intended that the state both contribute to the improvement of election systems through the 5% match requirement as well as the fact that the Federal and state funding would increase the funding to election administration efforts.

Federal Election

- 49. Does the HAVA, specifically section 301, definition of "election for federal office", found at 42 USC 1973ff-6, include a presidential primary which is an election of delegates to a national political convention?**

Federal campaign finance laws and regulations define these types of elections as federal elections ([See 11 C.F.R. Part 100.2\(c\)\(2\) and \(3\)](#)) and case law interpreting 42 U.S.C. Section 1973i relating to prohibited election offenses consider a presidential preference primary to be an election for federal office. While HAVA does not define an election for federal office, the statements of law regarding other election processes are instructive as to the meaning of the term for purposes of HAVA. State law may interplay. Some states have a definition of federal election that excludes a presidential preference primary. While these statutes may be enacted for reasons related to the cost of an election, etc., they must be considered.

- 50. What is a federal election?**

The Voting Section, U.S. Department of Justice (charged with enforcing the requirements of HAVA Title III), addressed this issue: HAVA does not contain a definition of the term "election for federal office." However, Section 3 of the National Voter Registration Act of 1993, 42 U.S.C. 1973gg-1(1)&(2), defines "election" and "federal office" as those terms appear in the Federal Election Campaign Act of 1971 (2 U.S.C. 431(1) & (3)). It is the Department's view that the requirements of Title III of HAVA were intended to apply in any general, special, primary, or runoff election for the office of President or Vice President, including presidential preference primaries, and any general, special, primary, or runoff election for the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress from the 50 states, the District of Columbia, and the four Territories. The EAC has taken the same approach with regard to the

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federal funding programs that the agency oversees (HAVA Title I "early money" and Title II requirements payments).

Enforcement

51. Will restrictions of Section 251 be lifted on a by-county basis when a county meets the requirements of Title III of HAVA?

No. The plain language of Section 251(b)(2) of HAVA requires that the state have implemented the requirements of Title III prior to using more than what the state could have obtained as a minimum payment for activities to improve the administration of elections for federal office. Thus, the Section 251 restrictions will not be lifted on a county-by-county basis.

52. What types of penalties might be imposed against a State if a county's voting system is found non-compliant with HAVA?

The Department of Justice is given enforcement authority over Title III of HAVA. Any claim, law suit, or request for remedies including penalties would be sought against the State for its failure or one of its county's failure to comply with HAVA, would be brought by the Department of Justice.

53. How will the EAC treat noncompliant precincts after the deadline for replacement of punch card and lever voting systems under Section 102 of HAVA?

The EAC expects the state to repay a pro rata portion of the funds received by the state in compliance with the requirement of Section 102(d). That pro rata portion would be determined by multiplying the percentage of noncompliant precincts with the amount of funding originally received under Section 102.

54. Does a State law that permits some small towns to use paper ballots for non-federal elections instead of HAVA compliant voting equipment violate the 'private and independent' requirement of HAVA?

No. The voting equipment provisions of HAVA apply only to elections for Federal office. However, there may be state laws, rules or regulations that require the use of accessible voting systems in state and/or local elections.

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**FREQUENTLY ASKED QUESTIONS REGARDING APPROPRIATE
USE OF HELP AMERICA VOTE ACT FUNDS****55. Can a state request an extension for complying with the voting system standard requirements in Section 301?**

No. Section 301(d) of the Help America Vote Act of 2002 (HAVA) requires all States to comply on and after January 1, 2006 with the requirement that each voting system used in elections for Federal office must meet the HAVA Title III, Section 301, voting system standards. The EAC has no authority to extend or waive this statutory deadline. The U.S. Department of Justice, the agency authorized by HAVA to enforce Title III provisions, has made it clear that the agency plans to enforce this deadline. (See letter DOJ sent to Louisiana regarding this issue: <http://www.usdoj.gov/crt/voting/hava/lavotsyst.htm>) Only the enactment of Federal legislation providing for the extension or waiver of this deadline can change this requirement.

HAVA Section 102(a)(3)(B) did permit States, which had received Title I, Section 102, funds to replace punch card and lever machine voting systems, to file for a waiver of the original November 2, 2004 replacement deadline. Twenty-three of the thirty States that received such funds requested the waiver. The waiver gives these States until the first election for Federal office held on or after January 1, 2006 to replace such systems without risk of losing these Federal funds. The first Federal election would normally be the 2006 primary election for Federal office, unless the State holds an earlier special election for Federal office to fill a vacancy.

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APPENDIX D

MODEL STANDARD FORMS 269 FOR TITLE I, SECTION 101 AND, 102 AND TITLE II, SECTION 251 FUNDS

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U.S. Election Assistance Commission
Model SF 269, Long Form, to Guide Annual Reporting on either Title I, Section 101 Funds or Section 102 Funds

Go to www.whitehouse.gov/omb/grants/sf269.pdf and download (save) an auto-fill form

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APPENDIX D

MODEL STANDARD FORMS 269 FOR TITLE I, SECTION 101 AND, 102 AND TITLE II, SECTION 251 FUNDS

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U. S. ELECTION ASSISTANCE COMMISSION

Model SF 269, *Long Form*, to Guide Annual Reporting on Title II, Section 251 Requirements Payments

Go to www.whitehouse.gov/omb/grants/sf269.pdf and download (save) an auto-fill form

FINANCIAL STATUS REPORT (Long Form)									
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269-104 Standard Form 269 (Rev. 7-97) Prescribed by OMB Circulars A-102 and A-110 200-498 P.O. 139 (Face)									

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**EAC FORMAL ADVISORIES ON ADMINISTRATION
OF HAVA FUNDS**

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**U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005**

January 18, 2005

EAC Advisory 05-001 - Use of funds provided by counties as part of the State's matching funding under Title II of HAVA

Question: Can county governments appropriate and maintain the funding that a state intends to appropriate as its matching funding pursuant to section 253(b)(5) of the Help America Vote Act of 2002 (HAVA)?

Response: A State may use funds that are set aside by county or local governments and maintained under the control of those governments as their matching funds for purposes of receiving Requirements Payments. However, there are several stipulations to that authority:

1. In order for the money to be under the control of the State, there must be some written agreement between the counties and the State establishing that the funds have been set aside by the counties for use by the State for this purpose and that the only purposes for which those funds may be used are those provided by HAVA for the use of matching funds. A cooperative agreement, memorandum of understanding or other contract would be sufficient to satisfy the requirement of a written agreement.
2. Maintenance of funds at the county level does not obviate in any way the State's obligation to provide the matching funds, account for their use, report on their use, and audit those funds as required by HAVA and OMB Circulars A-87 and A-133.
3. The provision and maintenance of matching funds by the counties does not alleviate the State's obligation to use all HAVA funding in keeping with the tenets and spirit of the Voting Rights Act and other state and federal laws and regulations prohibiting the discriminatory use of federal funds and/or discriminatory application of voting systems.

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EAC FORMAL ADVISORIES ON ADMINISTRATION OF HAVA FUNDS



**U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005**

January 18, 2005

EAC Advisory 05-002 - Appropriate of matching funds equal to 5% of an amount less than the total available Requirements Payment

Question: Can a state receive a Requirements Payment in an amount less than the total amount authorized and appropriated to the State for a single fiscal year?

Response: Yes, a State may obtain portion of the total HAVA Title II Requirements Payment available to the State in a Fiscal Year. When a State cannot appropriate the amount of matching funds required to receive the full Requirements Payment, the state can certify using a lesser amount of matching funds. Whatever amount of matching funding is provided by the State, the State will receive funds from the federal government such that the State's funding makes up 5% of the total State and Federal money, in accordance with Section 253(b)(5). If the State is later able to provide a supplemental amount of matching funds, the State may apply for additional federal funding at the commensurate rate.

If a State wishes to make a certification for less than the total amount of Title II payments available for a fiscal year, certifications and submissions should be made in the same manner as they have in the past with the exception of identifying the specific amount of matching funds that are being provided and the expected amount of Requirements Payment. Such a submission will be considered and processed in the same manner as all other submissions made in the past.

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**U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005**

January 18, 2005

EAC Advisory 05-003 - Interest on HAVA Title I, Section 101 Funds

Question: Does the State have to remit interest earned on Title I, Section 101 funds to the Federal Government? Further, if the State does not have to remit interest earned on these funds, may the State use that interest to make up a part, or the entirety, of its matching funds pursuant to Section 253(b)(5)?

Response: States do not have to remit the interest earned on Title I, Section 101 funds to the Federal Government. Generally, interest on federal grant funds are required to be remitted to the federal government under either or both the Cash Management Improvement Act or the Common Rule (OMB Circular A-102). However, the Help America Vote Act of 2002 (HAVA) specifically designates the use of the interest on money deposited into the election fund required by sections 104(d) and 254(b)(1) of HAVA to be used to meet the requirements of Title III and for such other purposes that a requirements payment could be used. These sections allow the State to retain, rather than remit, the interest earned on Title I, Section 101 funds, when they have been deposited in the State's section 254 election fund for use in accordance with its state plan and for the purposes permitted by Section 254(b)(2) and 251(b).

A State may not use interest from Title I, Section 101 funds to serve as a part of the matching funds appropriated by the State in order to receive Title II Requirements Payments. The interest that is earned on Section 101 grant funds is interest on Federal funds and thus is Federal in nature. As such, the provisions of OMB Circular A-87 apply. Specifically, the factors affecting the allowability of costs prohibit the use of federal grant funds to meet cost sharing or matching requirements of another federal award:

“h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.”

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HAVA does not specifically allow the use of Title I, Section 101 interest as matching funds for Title II Requirements Payments. Thus, while the interest on Section 101 funds may be used to further the State's efforts to meet the requirements of Title III and to improve the administration of Federal elections, those funds cannot be used as any part of the State's matching funds for purposes of receiving Title II Requirements Payments.

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U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

March 20, 2007

**EAC Advisory 07-002 – Program Income and Set-off of Cost Incident
to Program Income**

Question 1: What is program income?

Response 1: Program income “includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.” Common Rule, 41 C.F.R. 71.125, Program Income.

The Common Rule establishes three possible treatments of program income: deduction, addition, or cost sharing. Deduction is used when, as in most Federal grants, there are additional funds to distribute to the grantee. In the instant situation, the States have received all of the funds to which they are entitled of those funds that have been appropriated by Congress. Similarly, the cost sharing methods that are required by HAVA have already been satisfied by the States. Thus, the only appropriate treatment of program income under the HAVA funding program is for the State or county that earns the program income during the grant period to dedicate the income to uses permitted under HAVA, Section 251. Section 251 allows the use of HAVA funds to implement the requirements of Title III and, after those requirements are met, to improve the administration of elections for federal office.

After the expiration of the grant period, program income may be used by the State or county as it chooses. EAC has established the grant period for HAVA Title II funds as the period beginning on the date of disbursement of the funds to the State and ending when the State and/or a political subdivision of the State expends all of the funds distributed by EAC to the

EAC FORMAL ADVISORIES ON ADMINISTRATION OF HAVA FUNDS

State, all matching funds, and all interest earned on either the federal funds or state matching funds.

Question 2: Can a State set off costs incident to the generation of program income?

Response 2: The Common Rule permits the Federal agency granting the funds to allow a grantee to set off costs incident to the program income from the gross program income, thereby reducing the amount of program income that must, in this case, be re-dedicated to use for purposes expressly allowed under Section 251 of HAVA. The concept of costs incident to the program income is more complicated than it may appear. There must be a determination of what costs are incident to the program income and which are not. Likewise, there must be documentation to justify these costs.

The following are examples of costs incident to program income generated from the lease of voting systems to a local jurisdiction. Costs associated with the following activities, if appropriately documented, may be deducted from the gross program income to determine the “net program income” that must be returned to the election fund for use consistent with Section 251 of HAVA:

- Costs of storing voting systems prorated to the local government and the particular election;
- Costs of maintaining and/or upgrading voting systems prorated to the local government and the particular election;
- Costs of transporting voting systems to polling places for the particular election;
- Costs of programming voting systems for the particular election;
- Costs associated with any election function performed by the county on behalf of the local government incident to the specific election, including but not limited to auditing the election, producing poll books for the election, and hiring and compensating poll workers.

This list is not exclusive; however it represents EAC’s thinking on the types of costs that can be deducted from program income related to leasing voting equipment.

Another common form of program income is income generated from charging counties or local governments for the use of or services related to the state-wide voter registration database. For example, a state may derive income from charging counties to print poll books from the state-wide voter registration database. Actual, documented costs associated with the printing, production and delivery of those poll books can be deducted from the program income.

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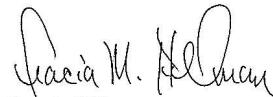
APPENDIX E

EAC FORMAL ADVISORIES ON ADMINISTRATION OF HAVA FUNDS

If a State has program income generated from other sources and/or other costs that it believes should be considered as incident to the generation of program income, those types of costs, an explanation of how they are derived, and an argument in favor of why they should be considered incident to the program income and therefore deductible should be forwarded to the EAC for consideration.



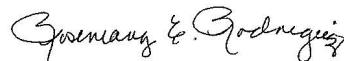
Donetta Davidson
Chair



Gracia Hillman
Commissioner



Caroline Hunter
Commissioner



Rosemary Rodriguez
Commissioner

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EAC FORMAL ADVISORIES ON ADMINISTRATION OF HAVA FUNDS



**U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005**

May 1, 2007

EAC Advisory 07-003 – Maintenance of Effort Funding

Question 1: What is maintenance of effort (MOE)?

Response 1: MOE is a means by which Congress and thereby the Federal Government requires States to share in the expense of funding a particular endeavor. Specifically, MOE requirements are used to assure that the Federal funding actually *increases* the amount of funding to a particular program or task.

Section 254(a)(7) of the Help America Vote Act of 2002 (HAVA) creates a requirement that States maintain the effort or level of funding that each State expended in the fiscal year preceding November 2000:

- (7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

HAVA ties the MOE requirement to the State's fiscal year. Because State funding is allocated on an annual or in some cases biennial basis, the State must continue to commit annually or biennially the same amount of funding to the effort that it committed prior to the availability of Federal funding. Furthermore, HAVA requires that these funds be expended, not just appropriated. Because the intent of the MOE requirement is to prevent a State from replacing its own funding with Federal funding, expenditures at the State, county, and, where appropriate, the local level must be considered. In other words, a State, county or local government *may not* replace or supplant its prior level of funding with Federal dollars.

However, the MOE provision in Section 254(a)(7) of HAVA is limited. The MOE requirement is only related to activities that the State, county or local government spent money on that are consistent with the requirements of Title III of HAVA. Activities that State, county and local governments may have funded in the past include:

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- Purchasing voting equipment;
- Developing, operating and/or maintaining a list of registered voters who are eligible to vote in Federal elections;
- Providing information to voters at the polling place for Federal elections;
- Implementing and/or operating a system of provisional voting during Federal elections;
- Verifying voter registration information using other Federal, State, county or local data;
- Other activities that improve the administration of elections for Federal office.

The expenditures are also limited to those made in the State fiscal year that ended prior to November 2000.

Question 2: How does MOE relate to the State's matching fund requirement?

Response 2: Both MOE and matching funds requirements are considered cost sharing methods, ways by which Congress and thereby the Federal Government get States to share in the expense of funding a particular endeavor. MOE requirements are considered different from matching fund requirements in that the intent, generally, is to assure that the Federal funding actually increases the amount of funding to a particular program or task.

While there is no legislative history on this particular issue, a plain reading of HAVA results in an understanding that Congress included two separate and distinct cost sharing requirements, matching funds and MOE. Congress did not intend for one of these cost sharing methods to cancel the other. Rather, it is apparent that Congress intended that the state both contribute to the improvement of election systems through the 5% match requirement and use the Federal and state (matching) funding to increase the prior level of State funding for Federal election administration efforts.

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Question 3: What is the impact of the MOE requirement?

Response 3: In order to receive a requirements payment under Title II of HAVA, each State was required to certify that it would maintain its effort at the same level that it expended money for HAVA funded activities in the fiscal year preceding November 2000. Each State has made such a certification and has been distributed requirements payments under HAVA. Thus, the State is obligated to keep that promise and continue to spend the same amount that it spent in the fiscal year preceding November 2000 on HAVA funded activities.

Question 4: How should States document that they have maintained their effort?

Response 4: The first step in documenting MOE is to determine the base level of expenditure in the state fiscal year preceding November 2000 (base year). This number should be derived by examining the State and county or local government spending on HAVA funded activities during the base year. These activities include:

- Purchasing voting equipment;
- Developing, operating and/or maintaining a list of registered voters who are eligible to vote in Federal elections;
- Providing information to voters at the polling place on Federal elections;
- Implementing and/or operating a system of provisional voting during Federal elections;
- Verifying voter registration information using other Federal, State, county or local data;
- Other activities that improve the administration of elections for Federal office.

Once a base level of expenditure is obtained, the State can demonstrate that it has maintained its effort by providing documentation that shows that the State spent the same amount of money (base level of expenditures) on any election-related activities during any Federal fiscal year in which the State had and used requirements payments distributed under Title II of HAVA.

A State can also demonstrate that they have maintained their effort by documenting the same or greater level of expenditures as the base level of expenditure in each year that the State had and used requirements payments.

Donetta Davidson
Chair

Rosemary Rodriguez
Vice Chair

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Commissioner

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