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State Election Reform Payments: FY2018 Appropriations

Election infrastructure in at least 21 states was targeted by Russian hackers during the 2016 campaign, according to the U.S. Department of Homeland Security (DHS). The omnibus spending bill enacted in March 2018 (P.L. 115-141) included $380 million for payments to states, territories, and the District of Columbia (D.C.) to help secure their systems against such threats.

The payments were authorized under the Help America Vote Act of 2002 (HAVA; P.L. 107-252). HAVA, which was a response to issues exposed by the 2000 presidential election, is the only legislation to date to authorize major federal funding to the states for election administration. Prior to 2018, funds were last appropriated for HAVA's state payments in FY2010.

Background: Help America Vote Act

Difficulties with the vote count in Florida delayed the result of the 2000 presidential election by more than a month, and subsequent investigations revealed widespread weaknesses in states' election systems. Congress responded to those discoveries with more than a dozen election administration bills in the 106th Congress and more than 40 in the 107th Congress. Features of a number of those bills were incorporated into HAVA.

Key Provisions

Election administration in the United States is primarily the responsibility of states, territories, and localities, but the federal government also plays a role. HAVA provided for three main types of federal involvement in elections:

- **Requirements:** Established national requirements for various aspects of election administration, including voting systems, voter registration databases, provisional voting, and voter identification.
- **Agency:** Created the U.S. Election Assistance Commission (EAC) to assist states, territories, and localities with election administration, including by issuing voluntary guidance, certifying voting systems, and administering funding.
- **Funding:** Authorized federal funding for meeting the new national requirements and other election administration purposes, including formula payments to states and territories, funding for disability access and youth participation initiatives, and grants for research and pilot programs.

Formula Payments

The majority of the funding authorized by HAVA was for three formula-based payments to the states, D.C., Puerto Rico, Guam, American Samoa, and the U.S. Virgin Islands (referred to herein as *jurisdictions*); see Table 1.

Table 1. Overview of HAVA Formula Payments

Main provision	Primary purpose	Authorized funding	Basis for formula
Title I Sec. 101	Improving election administration	$325 million	Voting-age population
Title I Sec. 102	Replacing lever and punch card voting systems	$325 million	Number of precincts using systems
Title II Sec. 251	Meeting the new requirements	$3 billion	Voting-age population

Source: CRS, from the Help America Vote Act of 2002.

Note: Sec. 251's requirements payments could be spent on general election administration improvements under certain circumstances.

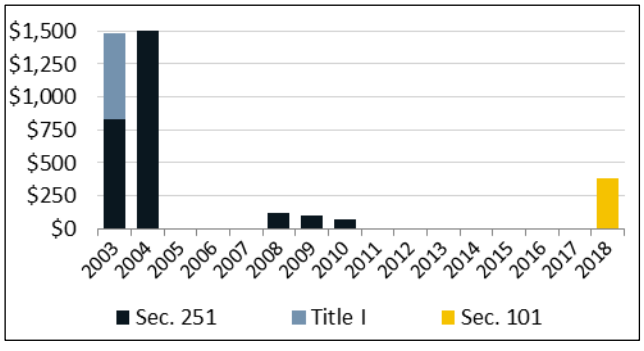
The jurisdictions were each guaranteed minimum Title I and Sec. 251 payments, with some eligible for additional funds based on voting-age population and/or number of precincts using lever or punch card voting systems. Recipients of Sec. 251 payments had to submit a plan for the funding and, with the exception of some of the territories, supply matching funds equal to 5% of the sum of the federal funds they received and the matching funds.

FY2018 Election Reform Payments

In September 2017, DHS informed 21 states that their election systems had been targeted by hackers in 2016.

Congress included funding in the FY2018 omnibus spending bill for responses by DHS and the Federal Bureau of Investigation to threats to election infrastructure. It also appropriated $380 million under HAVA Sec. 101 for election reform payments to the jurisdictions; see Figure 1.

Figure 1. Appropriations for Formula Payments



Source: CRS, from HAVA and annual appropriations acts.

Notes: Figures are in millions. They include funds for administrative expenses and do not reflect rescissions. The FY2003 act did not specify the distribution of funds between Secs. 101 and 102.

The FY2018 appropriations included minimum payments of $3 million each for the states and D.C. and $600,000 each for the territories, with the balance to be distributed according to the voting-age population-based formula in HAVA Secs. 101 and 103. The states, D.C., and Puerto Rico are required to match 5% of any federal funds they receive.

Uses of Funding

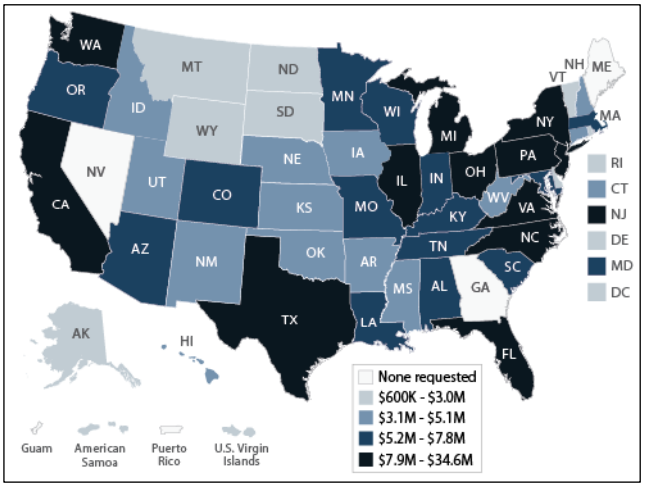
The FY2018 election reform payments were appropriated under provisions of HAVA that authorized funding for general improvements to election administration. The explanatory statement accompanying the FY2018 spending bill indicated that the funds could be used to

- replace voting machines that do not produce a voter-verifiable paper audit trail (VVPAT),
- conduct post-election audits to check the accuracy of the vote count,
- address vulnerabilities in election-related computer systems,
- provide state and local elections officials with cybersecurity training,
- institute election system cybersecurity best practices, and
- make other improvements to the security of federal elections.

Requests for Funding

Forty-seven states, two territories, and D.C. had requested FY2018 election reform payments as of July 6, 2018; see Figure 2. The EAC reported on June 5 that it expected to receive funding requests from all jurisdictions by the middle of July 2018.

Figure 2. Jurisdictions That Had Requested FY2018 Election Reform Payments as of July 6, 2018



Source: U.S. Election Assistance Commission.

The federal request process was streamlined to make the funding available as quickly as possible. Requesters were asked to submit a line item budget and a 1-3-page plan for use of the funds, and they could start spending against forthcoming payments before filing their paperwork.

Some jurisdictions did not claim their funds immediately because they also had to meet state-level conditions, such as approval by the state legislature, or because they were occupied with other elections-related obligations, such as preparing for their 2018 primary elections.

Some may also have been wary of making spending decisions too hastily. A number of states used their original HAVA payments to purchase direct electronic recording (DRE) voting systems that lacked VVPAT capabilities. Those systems have been the subject of election security concerns.

Issues for Congress

Assistant DHS Secretary Jeanette Manfra testified in April 2018 that the states identified as 2016 hacking targets were probably not the only ones affected. Administration officials have indicated that election infrastructure could be a target again in 2018.

One potential question for Congress is whether to provide states and territories with additional funds in future appropriations to address such threats.

The original HAVA funding debate focused in part on how much discretion the federal government should have over who received funds and how they spent them. If Congress chooses to consider providing additional funding for election security, similar issues may be relevant:

- **Distribution methods:** Should the additional funding be distributed according to population-based formulas like those in HAVA or by other methods, such as competitive grants or non-population-based formulas?
- **Permitted uses:** Should the additional funding be available for a broad range of uses or restricted to a more specific purpose, such as replacing DREs that lack VVPAT capabilities or investing in research into new kinds of voting technology?
- **Links to standards:** Should there be minimum national standards for election security? If so, should the additional funding be designated for use in meeting such standards, contingent on meeting them, or neither?
- **Spending timeframes:** Should the additional funding be designed for one-time expenditures, recurring costs like training and technology upgrades, or both?

Several bills have been introduced in the 115th Congress that would address these issues.

For additional information, see CRS Report RS20898, *The Help America Vote Act and Election Administration: Overview and Selected Issues for the 2016 Election*, by Arthur L. Burris and Eric A. Fischer; and CRS In Focus IF10677, *The Designation of Election Systems as Critical Infrastructure*, by Eric A. Fischer.

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